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**INSTALLMENT PURCHASE AGREEMENT**

**between the**

**MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**

**and**

**[CORPORATION]**

**Dated as of April 1, 2013**

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## INSTALLMENT PURCHASE AGREEMENT

This INSTALLMENT PURCHASE AGREEMENT, dated as of April 1, 2013 (this "Installment Purchase Agreement"), is made by and between the MONTEREY PENINSULA WATER MANAGEMENT DISTRICT (the "District"), a special district duly organized and validly existing under the laws of the State of California, including the Monterey Peninsula Water Management District Act, Statutes of 1977, Chapter 527 (the "Act"), and [CORPORATION], a \_\_\_\_\_ corporation duly organized and validly existing under and by virtue of the laws of the State of California (the "Corporation");

### WITNESSETH:

WHEREAS, the District is authorized by the laws of the State of California (the "State") and the Act to acquire certain property and to finance projects of the District through the execution and delivery of installment purchase agreements; and

WHEREAS, the District has entered into a Sale and Transfer Agreement, dated as of April 1, 2013, pursuant to which the District has sold the Property (as defined herein) to the Corporation; and

WHEREAS, the District desires to (i) retire a Bank of America, N.A. line of credit, (ii) fund reserves for the District, (iii) finance and refinance certain capital improvements for the District, (iv) fund a debt service reserve, and (v) pay certain costs of the execution and delivery of this Installment Purchase Agreement and related documents (collectively, the "Project"); and

WHEREAS, to provide funds to pay the costs of the Project, the District proposes to purchase the Property pursuant to this Installment Purchase Agreement; and

WHEREAS, the District has determined that the best interests of the District are served, and it is necessary and proper for District purposes, that the District acquire the Property from the Corporation in the manner described herein for the purposes of financing and refinancing the Project as described herein, and that the District pay the Corporation for the costs of acquiring the Property in the manner described herein; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Installment Purchase Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Installment Purchase Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

## ARTICLE I

### DEFINITIONS

#### Section 1.01. Definitions.

Unless the context otherwise requires, the terms defined in this Section 1.01 shall for all purposes hereof, and of any amendment hereof, and of any opinion or report or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

“Acquisition,” “Acquire” or “Acquired” means, with respect to the Project or the Property, the acquisition or perfection of an ownership or capacity interest in the Project or the Property, or the acquisition, financing, refinancing or ownership of the Project or the Property.

“Act” means the Monterey Peninsula Water Management District Act, Statutes of 1977, Chapter 527.

“Alternate Project” means an alternate project designated by the District pursuant to Section 2.01 hereof.

“Assignment Agreement” means the Assignment Agreement, dated as of April 1, 2013, between the Corporation and the Bank relating to this Installment Purchase Agreement.

“Bank” means initially Rabobank, N.A. and thereafter any successor or assign.

“Business Day” means any day of the year other than (i) a Saturday or Sunday or (ii) a day on which the New York Stock Exchange is closed.

“Closing Date” means \_\_\_\_\_, 2013.

“Corporation” means the [Corporation] and any successor thereto.

“Debt Service Coverage Ratio” means EBITDA plus the amount held in the Reserve Fund divided by the Installment Payments due for the preceding twelve months.

“Debt Service Fund” means the fund established in Section 3.05 hereof.

“Due Date” means the date three (3) Business Days prior to an Interest Payment Date.

“EBITDA” means at any date (a) net income, excluding any extraordinary and non-operating income, of a Person for the preceding twelve months plus (b) any interest expense, income taxes, depreciation, amortization, and other non-cash charges for that twelve months to the extent they were deducted from gross income to calculate net income.

“Electronic Notice” means notice given through means of telecopy, facsimile transmission, e-mail or other similar electronic means of communication confirmed by writing or written transmission.

“Event of Default” means an event of default described in Section 7.01.

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

“Finance Officer” means the General Manager or Assistant General Manager of the District.

“Fiscal Year” means the twelve calendar month period terminating on the last day of December of each year, or any other annual accounting period hereafter selected and designated by the District as its Fiscal Year in accordance with applicable law.

“Installment Payments” means the installment payments of principal and interest scheduled to be paid by the District under this Installment Purchase Agreement plus amounts required to be paid by the District hereunder, including, without limitation (except when calculating the Reserve Requirement), amounts necessary to replenish the Reserve Fund.

“Interest Payment Date” means the [first Business Day of each month].

“Maximum Annual Debt Service” means, as of the date of any calculation and with respect to the Installment Payments or any Specified Obligations, as the case may be, the maximum sum obtained for the current or any future Fiscal Year during the term of this Installment Sale Agreement by totaling the following amounts for such Fiscal Year:

(a) the aggregate amount of the Installment Payments coming due and payable in such Fiscal Year pursuant hereto;

(b) the aggregate principal amount of Specified Obligations, if any, coming due and payable by their terms in such Fiscal Year; and

(c) the amount of interest that would be due during such Fiscal Year on the Installment Payments and on the aggregate principal amount of all outstanding Specified Obligations, if any, which would be outstanding in such Fiscal Year if such Specified Obligations are retired as scheduled.

“Maintenance and Operation Costs” means the reasonable and necessary costs and expenses paid by the District for maintaining and operating the Water System, including but not limited to the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Water System in good repair and working order, and including but not limited to administrative costs of the District attributable to the Water System and the financing thereof. “Maintenance and Operation Costs” does not include (a) interest expense relating to unsecured, subordinate obligations of the District, (b) depreciation, replacement and obsolescence charges or reserves therefor, (c) amortization of intangibles or other bookkeeping entries of a similar nature, including bookkeeping entries which consist of expenses relating to the acquisition and storage of water which was acquired in prior fiscal years, and (d) capital expenditures.

“Maturity Date” means \_\_\_\_\_, 2023, or such other date (i) on which no Installment Payments are Outstanding and (ii) this Installment Purchase Agreement has terminated.

“Net Proceeds” means, when used with respect to any insurance or condemnation award, the proceeds from such insurance or condemnation award remaining after payment of all reasonable expenses (including attorneys’ fees) incurred in the collection of such proceeds.

“Net Revenues” means, for any period, all of the Revenues during such period less all of the Maintenance and Operation Costs during such period.

“Outstanding” when used as of any particular time with reference to this Installment Purchase Agreement, means all Installment Payments except Installment Payments paid or deemed to have been paid within the meaning of Article VI.

“Person” means any individual, partnership, firm, corporation, association, joint venture, trust or other entity, or any government (or political subdivision or agency, department or instrumentality thereof).

“Permitted Investments” means any investment that is a legal investment for the District under the laws of the State for the moneys proposed to be invested therein.

“Project” has the meaning ascribed thereto in the recitals hereto.

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

“Project Fund” means the fund established in Section 2.02 hereof.

“Property” means the existing facilities and property owned by the District described in Exhibit B attached hereto, together with all extensions thereof and improvements thereto hereafter acquired, constructed or installed by the District.

“Reserve Fund” means the fund by that name established pursuant to Section 3.07 to be held by the Bank.

“Reserve Requirement” means the amount of \$\_\_\_\_\_.

“Revenue Fund” means the fund held and maintained by the District into which the District deposits Revenues.

“Revenues” means the water supply charge levied pursuant to \_\_\_\_\_ [need resolution or other evidence of charge and Proposition 218 back up materials].

“Sale and Transfer Agreement” means that Sale and Transfer Agreement, dated as of April 1, 2013, by and between the District and the Corporation relating to this Installment Purchase Agreement.

“Specified Obligations” means (i) all bonds, notes, installment sale agreements, leases, or other obligations of the District, payable from and secured by a pledge of and lien upon any of the Revenues incurred on a parity with the payment of the Installment Payments pursuant to Section 4.01 and (ii) any agreement designated by the Bank and the District as a Specified Obligation, including an agreement to fund operating expenses of the District.

“State” means the State of California.

“Water System” means the existing facilities and property owned by the District for the supply and distribution of water within the service area of the District, together with all extensions thereof and improvements thereto hereafter acquired, constructed or installed by the District (which system does not include the wastewater reclamation project described in that certain Water Purchase Agreement, dated as of December 1, 1992, among the District and the various project owners named therein). [need copy of agreement]

## ARTICLE II

### INSTALLMENT SALE OF THE PROPERTY

#### Section 2.01. Acquisition of the Property; Financing the Project.

The Corporation represents and warrants that it is the sole and exclusive owner of the Property. To finance the Project, the Corporation agrees to sell and hereby sells all right, title and interest in and to the Property obtained pursuant to the Sale and Transfer Agreement to the District, and the District agrees to purchase and hereby purchases the Property from the Corporation. The District hereby covenants to use the proceeds received from the Corporation to finance and refinance the Project. The District may change the specifications of the Project, so long as such change does not substantially alter the nature of the Project; provided, however, that the District, the Corporation and the Bank may designate such Alternate Project. If an Alternate Project is designated, the District shall certify in writing to the Bank that Project Costs shall not materially increase as a result of such change. If Project Costs shall materially increase as a result of the designation of an Alternate Project, prior to designating such Alternate Project the District shall either deposit in the Project Fund an amount sufficient to pay such increase, or shall certify in writing to the Bank that funds sufficient to pay such increase in Project Costs are otherwise available to the District.

The Bank agrees, on the Closing Date, as assignee of the Corporation under the Assignment Agreement to cause there to be deposited in the Project Fund the amount of \$ \_\_\_\_\_ (less net disbursements of \$ \_\_\_\_\_ to the Bank to fund the Reserve Fund and pay the Bank a nonrefundable facility fee of \$20,000). If the money so deposited is insufficient to pay all the Project Costs, the Bank shall have no obligation to use or provide any additional funds for the foregoing purposes.

On the Closing Date, all of the Corporation’s remaining interest in the Property, if any, shall be transferred to and vest in the District, without the necessity of any additional document or transfer. Nothing herein shall require the Corporation or the Bank to perform any obligations



of any purchaser with respect to any contract or purchase order with respect to the Property or the Project.

If the Corporation fails to observe or perform any agreement, condition, covenant or term contained herein required to be observed or performed by it, the District may institute such action or proceeding against the Corporation as the District may deem necessary to compel the observance or performance of such agreement, condition, covenant or term, or to recover damages for the nonobservance or nonperformance thereof; provided, however, that the District shall have no right to terminate this Installment Purchase Agreement as a remedy to such failures. The District may, at its own cost and expense and in its own name or in the name of the Corporation, prosecute or defend any action or proceeding or take any other action involving third persons which the District deems reasonably necessary to protect or secure its rights hereunder, and in such event the Corporation agrees to cooperate fully with the District and to take all action necessary to effect the substitution of the District for the Corporation in any action or proceeding if the District shall so request.

**Section 2.02. Use of Money in the Project Fund.**

The District shall establish and maintain the Project Fund. All money in the Project Fund shall be held by the District in trust and shall be applied by the District, along with certain other funds of the District, for the payment of Project Costs and the expenses incidental thereto (including reimbursement to the District for any such costs or expenses theretofore paid by it whether or not paid prior to the date hereof). The District shall maintain accurate records and accounts for the Project Fund and make same available to the Corporation or the Bank upon request within two (2) Business Days. The District covenants not to disburse any money from the Project Fund if an Event of Default has occurred and is continuing under this Installment Purchase Agreement without the prior written consent of the Bank.

**ARTICLE III**

**INSTALLMENT PAYMENTS, PLEDGE OF REVENUES,  
FUNDS AND ACCOUNTS**

**Section 3.01. Payment of the Installment Payments.**

The total principal amount of the Installment Payments owed and to be paid by the District to the Bank as assignee of the Corporation under the Assignment Agreement for the Acquisition of the Property is \$\_\_\_\_\_, which shall be paid with interest thereon at the interest rate of 3.6%, together with any amounts required to be paid hereunder to replenish the Reserve Fund. The Installment Payments shall, subject to any rights of prepayment of the District provided in Article VI, be due in installments in the amounts and on the dates described in Exhibit A attached hereto.

Each Installment Payment shall be payable to the Bank in accordance with the terms hereof and at the times required by this Section 3.01 hereof in lawful money of the United States of America. If the District fails to make any of the payments required to be made by it under this Section 3.01, such payment shall continue as an obligation of the District until such amount shall

have been fully paid and the District agrees to pay the same with the stated interest thereon at the rate set forth in Exhibit A attached hereto.

The obligation of the District to make the Installment Payments is absolute and unconditional, and until such time as all Installment Payments shall have been fully paid (or provision for the payment thereof shall have been made pursuant to this Installment Purchase Agreement), the District will not, under any circumstances, discontinue, abate or suspend any Installment Payments required to be made by it under this Section 3.01 when due, whether or not the Property or any part thereof is operating or operable or has been completed, or whether or not the Property is condemned, damaged, destroyed or seized or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset, counterclaim, defense, recoupment, abatement, suspension, deferment or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement or covenant contained herein for any cause whatsoever.

Section 3.02. Interest Component of the Installment Payments.

The Installment Payments shall bear interest from the Closing Date until the payment of the principal thereof and the prepayment premiums, if any, thereon, shall have been made or provided for in accordance with the provisions of Article VI hereof, whether at maturity, upon prepayment or otherwise. Interest accrued on the Installment Payments from the Closing Date and from each Interest Payment Date to, but not including, the next succeeding Interest Payment Date shall be paid on each such succeeding Interest Payment Date. Interest with respect to the Installment Payments shall be computed on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) elapsed. The Bank's determination of a rate of interest hereunder will be conclusive, absent manifest error.

Section 3.03. Pledge and Application of Revenues.

All of the Revenues and amounts in the Revenue Fund, the Project Fund, the Reserve Fund, the Debt Service Fund and accounts therein, are hereby irrevocably pledged to the punctual payment of the Installment Payments and Specified Obligations, to the extent applicable. Such pledge constitutes a first and exclusive lien on and security interest in the Revenues for the payment of the Installment Payments and payments of all Specified Obligations in accordance with the terms hereof and thereof. The Installment Payments are payable from Net Revenues.

The District shall take all actions as required under the Act to levy and collect an amount of Revenues during each Fiscal year that are at least sufficient, after making allowances of contingencies and error in the estimates, to pay the Installment Payments when due. If there is a deficiency in the Reserve Fund, the amount of Revenues levied hereunder shall also be sufficient to restore the balance in the Reserve Fund to the full amount of the Reserve Requirement.

The District covenants and agrees that all Revenues, when and as received, will be deposited into the Revenue Fund hereby created and established and held by the District in trust. All Revenues shall be disbursed, allocated and applied solely to the uses and purposes

hereinafter in this Article III set forth, and shall be accounted for separately and apart from all other money, funds, accounts or other resources of the District.

**Section 3.04. Covenant to Budget and Appropriate.**

The District covenants to take such action as may be necessary to include all Installment Payments due hereunder in each of its final approved budgets, and to make all necessary appropriations for payment of the Installment Payments. The covenants on the part of the District contained herein are duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Installment Purchase Agreement agreed to be carried out and performed by the District.

**Section 3.05. Funds and Accounts.**

All Installment Payments shall be transferred by the District from the Revenue Fund to the Debt Service Fund, which fund the District hereby agrees to establish and maintain with the Bank so long as any Installment Payments are due hereunder, on the applicable Due Date. Such payments shall be held in trust by the Bank under the terms hereof. The District covenants that the Debt Service Fund shall be maintained at the Bank in a segregated identified fund.

Within the Debt Service Fund there is hereby established a Debt Service Account and a Prepayment Account.

(a) **Debt Service Account.** Installment Payments shall be deposited in the Debt Service Account. All moneys in the Debt Service Account shall be used and withdrawn by the Bank on behalf of the District solely for the purpose of paying Installment Payments and principal and interest on any Specified Obligations designated by the District on each Interest Payment Date or such other date as provided in an instrument for a Specified Obligation, as applicable. The District shall be entitled to receive as a credit against Installment Payments an amount equal to the amount of any balance contained in the Debt Service Account prior to the Due Date for such Installment Payments (excluding money designated or necessary for the payment of Specified Obligations).

(b) **Prepayment Account.** The District, on any prepayment date, shall deposit, or cause the deposit, in the Prepayment Account moneys to accomplish any such prepayment. All money in the Prepayment Account shall be used and withdrawn by the District solely for the purpose of prepaying the Installment Payment to be prepaid on their respective prepayment dates.

**Section 3.06. Application of Revenues.**

The District covenants and agrees that all Revenues, when and as received, will be received and held by the District in trust for the benefit of the Bank as assignee of the Corporation under the Assignment Agreement and payments with respect to Specified Obligations, and will be transferred by the District for deposit by the Bank in the Revenue Fund and will be accounted for and held in trust by the Bank for the benefit of the Bank and for

payments with respect to Specified Obligations. All Revenues shall be disbursed, allocated and applied solely to the uses and purposes set forth in this Article and in the following order of priority:

(1) Maintenance and Operation Costs of the Water System. To carry out and effectuate the pledge and lien contained herein, the District agrees and covenants to pay all Maintenance and Operation Costs of the Water System (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation Costs of the Water System, the payment of which is not then immediately required) from the Revenue Fund as they become due and payable.

(2) Debt Service Funds. Installment Payments payable pursuant to this Agreement and all other payments relating to principal and interest on or with respect to Specified Obligations, shall be paid in accordance with the terms hereof and the terms of such Specified Obligations, without preference or priority, and in the event of any insufficiency of such moneys, *pro rata* without any discrimination or preference.

(3) Reserve Funds. Payments required pursuant to Section 3.07 hereof or payments to replenish debt service reserve funds, if any, established for such Specified Obligations shall be made in accordance with the terms hereof and such Specified Obligations, without preference or priority, and in the event of any insufficiency of such moneys, ratably without any discrimination or preference.

(4) General Expenditures. All Revenues not required to be withdrawn pursuant to the provisions of (1), (2) and (3) above shall be used for any lawful purpose of the District, including payment of any obligation subordinate to the payment of all amounts due hereunder or under Specified Obligations.

Section 3.07. Reserve Fund; Replenishment.

The Bank, on behalf of the District, will establish and hold in trust the Reserve Fund. The Reserve Fund shall initially be funded, as set forth in Section 4 of the Assignment Agreement, and shall continuously be funded, from available Revenues in an amount equal to the Reserve Requirement. The District covenants that the Reserve Fund shall be maintained at the Bank, in a segregated identified account. Moneys in the Reserve Fund shall be applied in accordance with the following provisions.

If, two (2) Business Days prior to any Interest Payment Date, the money in the Debt Service Account does not equal the amount required to be paid to the Bank on such date, the District shall cause the transfer from the Reserve Fund to the Debt Service Account (or request that the Bank withdraw a sum from the Reserve Fund to pay the Bank) the amount of such insufficiency; provided, that any such amounts transferred or withdrawn shall be used only for Installment Payments and any Specified Obligation owned by the Bank and secured by amounts on deposit in the Reserve Fund.

If, following valuation or calculation thereof, the amount available and contained in the Reserve Fund exceeds the Reserve Requirement and if an Event of Default is not occurring hereunder, the District may withdraw the amount of such excess from the Reserve Fund. The

District shall deposit such amount in the Debt Service Account. For purposes of determining the amount on deposit in the Reserve Fund, the District shall make a valuation of the Reserve Fund as of \_\_\_\_\_ 1 of each year. Except for such withdrawals, all money in the Reserve Fund shall be used and withdrawn solely for the purpose of making the Installment Payments or payments with respect to Specified Obligations if amounts on deposit in the Debt Service Account are insufficient for such purposes, or to pay the final Installment Payments (and any Specified Obligation secured by amounts on deposit in the Reserve Fund).

If amounts on deposit in the Reserve Fund shall, at any time, be less than the Reserve Requirement, such deficiency shall be made up by the District from the first available Revenues after required payment of Installment Payments as soon as possible, and the Reserve Fund shall be valued monthly by the District until amounts on deposit therein equal the Reserve Requirement.

**Section 3.08. Investment of Funds.**

Amounts on deposit in any fund or account created pursuant to this Installment Purchase Agreement shall be invested in Permitted Investments which will, as nearly as practicable, mature on or before the dates when such money is anticipated to be needed for disbursement hereunder. Subject to the limitations set forth in Section 3.06 hereof, amounts on deposit in the Reserve Fund shall be invested in Permitted Investments as directed by the District in writing to the Bank (i) having an average aggregate weighted term to maturity not greater than five (5) years, or (ii) of any maturity, but putable or redeemable at par for any purpose required by this Installment Purchase Agreement. The Bank and any affiliates may act as sponsor, advisor, principal or agent in the acquisition or disposition of any such investment. Interest or profit received on such investments shall be deposited to the Reserve Fund to the extent the amount on deposit therein is less than the Reserve Requirement, and thereafter to the Debt Service Account. In computing the amount in any fund or account, Permitted Investments shall be valued at market value, exclusive of accrued interest.

**ARTICLE IV**

**SPECIFIED OBLIGATIONS**

**Section 4.01. Specified Obligations.**

If any Installment Payments are outstanding hereunder, the District shall not issue or incur any obligations payable from Revenues or the Revenue Fund senior to the Installment Payments, without the prior written consent of the Bank. The District may at any time issue Specified Obligations payable from Net Revenues secured by Revenues on a parity with the Installment Payments provided that the following conditions are satisfied:

(a) No Event of Default shall have occurred and be continuing and the District shall deliver a certificate to the Bank to that effect; and

(b) The Net Water Revenues, calculated in accordance with accounting principles consistently applied, as shown by the books of the District for the latest Fiscal Year or as shown by the books of the District for any more recent twelve (12) month period selected by

the District, shall be at least equal to one hundred twenty five percent (125%) of the amount of Maximum Annual Debt Service.

## ARTICLE V

### REPRESENTATIONS, COVENANTS AND WARRANTIES

#### Section 5.01. Compliance with Installment Purchase Agreement.

The District will not suffer or permit any material default by it to occur hereunder, but will faithfully comply with, keep, observe and perform all the agreements, conditions, covenants and terms hereof required to be complied with, kept, observed and performed by it.

#### Section 5.02. Observance of Laws and Regulations.

The District will faithfully comply with, keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States of America or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of each and every franchise, right or privilege now owned or hereafter acquired by it, including their right to exist and carry on their respective businesses, to the end that such franchises, rights and privileges shall be maintained and preserved and shall not become abandoned, forfeited or in any manner impaired.

#### Section 5.03. Prosecution and Defense of Suits.

The District will promptly, upon request of the Corporation or the Bank, take such action from time to time as may be necessary or proper to remedy or cure any cloud upon or defect in the title to the Property, the Water System or any part thereof, whether now existing or hereafter developing, will prosecute all actions, suits or other proceedings as may be appropriate for such purpose and will indemnify and save the Corporation and the Bank harmless from all cost, damage, expense or loss, including reasonable attorneys' fees, which they or any of them may incur by reason of any such cloud, defect, action, suit or other proceeding.

#### Section 5.04. Accounting Records and Statements.

The District will keep proper accounting records in which complete and correct entries shall be made of all transactions made by the District relating to the receipt, deposit and disbursement of the Installment Payments, and such accounting records shall be available for inspection by the Bank or its agent duly authorized in writing on any Business Day upon reasonable notice at reasonable hours and under reasonable conditions prescribed by the District.

**Section 5.05. Further Assurances.**

Whenever and so often as requested to do so by the Bank, the District will promptly execute and deliver or cause to be executed and delivered all such other and further assurances, documents or instruments and promptly do or cause to be done all such other and further things as may be necessary or reasonably required in order to further and more fully vest in the Bank all advantages, benefits, interests, powers, privileges and rights conferred or intended to be conferred upon them by this Installment Purchase Agreement.

**Section 5.06. Against Encumbrances.**

The District hereby covenants that there is no pledge of or lien on Revenues other than the lien securing the Installment Payments. The District will not make any pledge of or place any lien on the Revenues; provided, that the District may at any time, or from time to time, pledge or encumber the Revenues in connection with the issuance or execution of Specified Obligations in accordance with Section 4.01.

**Section 5.07. Against Sale or Other Disposition of Property.**

The District will not sell, lease, encumber or otherwise dispose of the Property, the Water System or any part thereof in excess of one-half of one percent of the book value of the Property and the Water System in any Fiscal Year, unless a Finance Officer certifies that such sale, lease, encumbrance or disposition will not materially adversely affect the operation of the Water System, the Property or the Revenues; provided however, that any real or personal property which has become non-operative or which is not needed for the efficient and proper operation of the Property or the Water System, or any material or equipment which has become worn out, may be sold or exchanged at not less than the fair market value thereof and the proceeds (if any) of such sale or exchange shall be deposited in the Revenue Fund.

**Section 5.08. Against Competitive Facilities.**

Except for any utility system existing as of the date hereof, the District will not, to the extent permitted by law, acquire, maintain or operate and will not, to the extent permitted by law and within the scope of its powers, permit any other public or private agency, authority, city or political subdivision or any person whomsoever to acquire, maintain or operate within the District any utility system competitive with the Water System; provided, however, that the District may, with the prior written consent of the Bank, assign all or a portion of the Water System to another entity.

**Section 5.09. Minimum Debt Service Coverage Ratio Requirement.**

Within one hundred and eighty (180) days following the end of each Fiscal Year, the Bank shall receive a certificate of an independent certified public accountant (acceptable to the Bank in its sole discretion) that the Debt Service Coverage Ratio is at least equal to 1.25:1. The first such certificate shall be delivered for the Fiscal Year ended June 30, 2014.

Section 5.10. Maintenance and Preserve Water System.

The District will maintain and preserve the Water System in good repair and working order at all times and will operate the Water System in an efficient and economical manner. The District will pay all maintenance and operation costs of the Water System as they become due and payable.

Section 5.11. Payment of Claims.

The District will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien on the Revenues or any part thereof or on any funds in the control of the District prior or superior to the lien of the Installment Payments or which might impair the security of the Installment Purchase Agreement; provided, that the District shall not be obligated to make such payment so long as the District contracts such payment in good faith.

Section 5.12. Compliance with Contracts.

The District will comply with, keep, observe and perform all agreements, conditions, covenants and terms, expressed or implied, required to be performed by it contained in all contracts for the use of the Water System and all other contracts affecting or involving the Water System to the extent that the District is a party thereto.

Section 5.13. Insurance.

(a) The District will procure and maintain insurance on the Water System with commercial insurers or through participation in a joint powers insurance authority, in such amounts, with such deductibles and against such risks (including accident to or destruction of the Water System) as are usually insurable in accordance with industry standards with respect to similar enterprises.

In the event of any damage to or destruction of the Water System caused by the perils covered by such insurance, the proceeds of such insurance shall be applied to the repair, reconstruction or replacement of the damaged or destroyed portion of the Water System. The District shall cause such repair, reconstruction or replacement to begin promptly after such damage or destruction shall occur and to continue and to be properly completed as expeditiously as possible, and shall pay out of the proceeds of such insurance all costs and expenses in connection with such repair, reconstruction or replacement so that the same shall be completed and the Water System shall be free and clear of all liens and claims. If the proceeds received by reason of any such loss shall exceed the costs of such repair, reconstruction or replacement, the excess shall be applied *pro rata* to the payment and/or prepayment of Installment Payments and any outstanding Specified Obligations.

Alternatively, if the proceeds of such insurance are sufficient to enable the District to retire all outstanding Specified Obligations and the Installment Payments and all other amounts due hereunder, the District may elect not to repair, reconstruct or replace the damaged or destroyed portion of the Water System, and thereupon such proceeds shall be applied to the prepayment of Installment Payments as provided herein and to the payment of all other amounts



due hereunder, and as otherwise required by the documents pursuant to which such Specified Obligations were issued.

(b) The District will procure and maintain commercial general liability insurance covering claims against the District for bodily injury or death, or damage to property, occasioned by reason of the ownership or operation of the Water System, including the Property, such insurance to afford protection in such amounts and against such risks as are usually covered in connection with similar enterprises.

(c) The District will procure and maintain workers' compensation insurance against liability for compensation under the Workers' Compensation Insurance and Safety Act of California, or any act hereafter enacted as an amendment or supplement or in lieu thereof, such insurance to cover all persons employed in connection with the Water System.

(d) In lieu of obtaining insurance coverage as required by this Section, such coverage may be maintained by the District in the form of self-insurance so long as the District certifies that (i) the District has segregated amounts in a special insurance reserve meeting the requirements of this Section; (ii) an Insurance Consultant certifies annually to the Bank, on or before \_\_\_\_\_ 1 of each year in which self-insurance is maintained, in writing that the District's general insurance reserves are actuarially sound and are adequate to provide the necessary coverage; and (iii) such reserves are held in a separate trust fund by an independent trustee. The District shall pay or cause to be paid when due the premiums for all insurance policies required hereby.

#### Section 5.14. Books and Accounts; Financial Statements.

The District shall keep proper books of record and accounts of the Water System, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the Water System. Such books shall, upon prior request, be subject to the inspection by the Bank, or its representatives authorized in writing, upon not less than two (2) Business Days' prior notice to the District.

The District shall cause the books and accounts of the Water System, which shall include a statement of revenues and expenditures and changes in fund balances, a balance sheet and a statement of cash flow, to be audited annually by an independent certified public accountant or firm of certified public accountants, not more than one hundred and eighty (180) days after the close of each Fiscal Year. The District shall send a copy of such report to the Bank as soon as possible. Such audit may be part of an audit of the Water System. Within thirty (30) days of it being adopted by the Board of Directors of the District, the District shall send to the Bank a copy of the annual budget of the District and any amendment or supplement thereto.

#### Section 5.15. Payment of Taxes and Compliance with Governmental Regulations.

The District will pay and discharge all taxes, assessments and other governmental charges, if any, which may hereafter be lawfully imposed upon the Water System or any part thereof or upon the Revenues when the same shall become due. The District will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Water System, including the Property, or any part thereof, but the District

shall not be required to make such payments, or to comply with any regulations or requirements, so long as the payment or validity or application thereof shall be contested in good faith.

**Section 5.16. Eminent Domain Proceeds.**

If all or any part of the Water System shall be taken by eminent domain proceedings, the Net Proceeds thereof shall be applied as follows:

(a) If (1) the District certifies (i) the estimated loss of annual Revenues, if any, suffered or to be suffered by the District by reason of such eminent domain proceedings, (ii) a general description of the additions, betterments, extensions or improvements to the Water System proposed to be acquired by the District from any Net Proceeds, and (iii) an estimate of the additional annual Revenues to be derived from such additions, betterments, extensions or improvements, and (2) on the basis of such certificate, determines that the estimated additional annual Revenues will sufficiently offset the estimated loss of annual Revenues resulting from such eminent domain proceedings so that the ability of the District to meet its obligations hereunder will not be substantially impaired (which determination shall be final and conclusive); then the District shall promptly proceed with the acquisition of such additions, betterments, extensions or improvements substantially in accordance with such certification and such Net Proceeds shall be applied for the payment of the costs of such acquisition, and any balance of such Net Proceeds not required by the District for such purpose shall be applied to prepay the Installment Payments, and any Specified Obligations, on a *pro rata* basis in the manner provided herein and in the instruments authorizing such Specified Obligations.

(b) If the foregoing conditions are not met, then such Net Proceeds shall be applied to prepay the Installment Payments, and any Specified Obligations, on a *pro rata* basis in the manner provided herein and in the instruments authorizing such Specified Obligations.

**Section 5.17. Release and Indemnification Covenants.**

The District shall and hereby agrees to indemnify and save the Bank, its officers, directors, agents, employees, successors or assigns harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) the use, maintenance, condition or management of, or from any work or thing done on, the Water System or the Project by the District, (ii) any breach or default on the part of the District in the performance of any of the District's obligations under the Installment Purchase Agreement or the Sale and Transfer Agreement, (iii) any act of negligence of the District or of any of its contractors, servants, employees or licensees with respect to the Water System or the Project, (iv) any act of negligence of any assignee or sublessee of the District, or of any agents, contractors, servants, employees or licensees of the assignee or sublessee of the District with respect to the Water System or the Project, (v) any environmental claims or issues, or (vi) the Acquisition of the Water System or the Project or authorization of payment of the costs of the Acquisition of the Water System or the Project, to the extent permitted by law. Indemnification for any tort mentioned in this Section shall exclude those arising from the willful misconduct or negligence hereunder or under the Sale and Transfer Agreement by the Bank, its officers and employees. The District further covenants and agrees to indemnify and save the Bank harmless against any claim, loss, expense, advance, and liabilities which it may incur arising out of or in the exercise

and performance of their powers and duties hereunder and under the Sale and Transfer Agreement, including the costs and expenses (including attorneys' fees and disbursements) of defending against any claim of liability or enforcing any remedies, and which are not due to their negligence or willful misconduct. The District further covenants and agrees to advance to the Bank the amounts requested as the costs and expenses of such defense. Any and all special obligations of the District under this Section shall be and remain valid and binding special obligations of the District notwithstanding the payment in full of the Installment Payments and the termination of this Installment Purchase Agreement.

Section 5.18. Reserved.

Section 5.19. Reserved.

Section 5.20. Further Representations, Covenants and Warranties of the District.

The District represents, covenants and warrants to the Bank as follows:

(a) The District is a duly organized and validly existing special district of the State.

(b) The Constitution and the laws of the State authorize the District to enter into the Installment Purchase Agreement and the Sale and Transfer Agreement and to enter into the transactions contemplated thereby and to carry out its obligations under each of the aforesaid agreements, and the District has duly authorized and executed each of the aforesaid agreements in accordance with the laws of the State.

(c) Neither the execution and delivery of the Installment Purchase Agreement or the Sale and Transfer Agreement nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a 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 either of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District.

(d) The District has duly authorized and executed this Installment Purchase Agreement and the Sale and Transfer Agreement in accordance with the laws of the State.

(e) This Installment Purchase Agreement and the pledge of the Revenues is a first lien and pledge on the Revenues.

## ARTICLE VI

### PREPAYMENT OF INSTALLMENT PAYMENTS

#### Section 6.01. Prepayment.

(a) The District may or shall, as the case may be, prepay on any date from the Net Proceeds of insurance or condemnation awards, as provided herein, all or any part, in integral multiples of \$5,000, of the principal amount of the unpaid Installment Payments in the inverse order of the times they are due at a prepayment price equal to the sum of the principal amount prepaid plus accrued and unpaid interest thereon to the date of prepayment of the corresponding Certificates to be prepaid, without premium. Notwithstanding any such prepayment, the District shall not be relieved of its obligations hereunder, including its obligations under Article III hereof, until the entire principal amount of the unpaid Installment Payments together with the interest accrued thereon, if any, shall have been fully paid and the Installment Payments are no longer due hereunder (or provision for payment thereof shall have been made pursuant to Section 6.03 hereof).

(b) The District may prepay the unpaid principal balance of the Installment Payments in whole or in part, on any date, by paying a prepayment price equal to the principal amount of the Installment Payments to be prepaid, plus accrued interest to the date of prepayment; provided, that the District also pay any termination payment or other amount owing under an Interest Rate Hedging Agreement.

#### Section 6.02. Method of Prepayment.

The District shall provide written notice to the Bank of its intent to prepay the Installment Payments pursuant to Section 6.01 at least thirty (30) and not more than sixty (60) days in advance of the prepayment date (the Bank may waive any such notice or time period for such notice); provided, that the District shall, within five (5) days following the event permitting the exercise of a right to prepay or creating such obligation to prepay under Section 6.01(a), provide written notice to the Bank describing such event.

#### Section 6.03. Security Deposit.

Notwithstanding any other provision of this Installment Purchase Agreement, the District may secure the payment of all or a portion of Installment Payments by a deposit with the Bank, as escrow holder under an escrow deposit and trust agreement, of either (i) cash in an amount which is sufficient to pay such unpaid Installment Payments, including the principal and interest components thereof, in accordance with the Installment Payment schedule set forth in Exhibit A attached hereto, or (ii) non-callable Federal Securities or pre-refunded non-callable municipal obligations rated "AA" and "Aa" by S&P and Moody's, respectively, together with cash if required, in such amount as will, in the opinion of nationally-recognized bond counsel and of an independent certified public accountant (which opinion shall be addressed to the Bank), together with interest to accrue thereon, be fully sufficient to pay such unpaid Installment Payments on their payment dates so that such Installment Payments shall be defeased. In the event of any

shortfall, the District shall deposit from legally available funds such amount as is necessary to make up such shortfall.

In the event of a deposit pursuant to this Section, and provided that all other amounts payable by the District hereunder have been paid in full, all obligations of the District under this Installment Purchase Agreement shall cease and terminate, excepting only the obligation of the District to make, or cause to be made, all Installment Payments from the deposit made by District pursuant to this Section 6.03 and the obligation to pay amounts due the Bank. Said deposit shall be deemed to be and shall constitute a special fund for the payment of Installment Payments in accordance with the provisions of this Installment Purchase Agreement.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

#### Section 7.01. Events of Default and Events of Mandatory Acceleration; Acceleration of Maturities.

If one or more of the following Events of Default shall happen:

(a) default shall be made in the due and punctual payment by the District of any Installment Payment when and as the same shall become due and payable, and such default shall continue for a period of three (3) Business Days after the District shall have been given notice in writing of such default by the Corporation;

(b) default shall be made by the District in the performance of any of the agreements or covenants contained herein required to be performed by it, and such default shall have continued for a period of thirty (30) days after the District shall have been given notice in writing of such default by the Corporation;

(c) any financial statement or certificate furnished to the Corporation or the Bank in connection with the execution of this Installment Purchase Agreement, or any representation or warranty made by the District shall prove to be incorrect, false or misleading in any material respect when furnished or made;

(d) the District shall file a petition seeking arrangement or reorganization under federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with the consent of the District seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or 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; or

(e) an event of default shall have occurred with respect to any Specified Obligation;

then and in each and every such case during the continuance of such Event of Default the Corporation or the Bank as assignee may, by notice in writing to the District declare the principal amount of the unpaid Installment Payments, and the accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything contained herein to the contrary notwithstanding.

This provision, however, is subject to the condition that, except with respect to an Event of Default under subsection (d) above, if at any time after such principal amount of the unpaid Installment Payments and the accrued interest thereon shall have been so declared due and payable and before the acceleration date or the date of any judgment or decree for the payment of the money due shall have been obtained or entered, the District shall deposit with the Bank a sum sufficient to pay such unpaid principal amount of the Installment Payments due prior to such date and the accrued interest thereon, with any interest due on such overdue installments, and the reasonable expenses of the Bank, and any and all other defaults known to the Bank (other than in the payment of such principal amount of the unpaid Installment Payments and the accrued interest thereon due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Bank or provision deemed by the Bank to be adequate shall have been made therefor, then and in every such case the Bank, by written notice to the District, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

**Section 7.02. Application of Funds Upon Default.**

All moneys and investments in the funds and accounts held hereunder upon the date of the declaration of acceleration as provided in Section 7.01 and all Revenues thereafter received shall be applied as follows:

(a) Unless the principal of all Installment Payments shall have become or shall have been declared due and payable, all such moneys shall be applied:

First: to the payment of the interest portion of all Installments Payments in the order of the maturity of the installments of such interest, and, if the amount available shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably according to the amounts due on such installment, to the persons entitled thereto without any discrimination or privilege; and

Second: to the payment of the unpaid principal of any of the Installment Payments which shall have become due, with interest at their rate from the respective dates upon which they became due, in the order of their due dates, and, if the amount available shall not be sufficient to pay in full Installment Payments due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal and interest due on such date, to the persons entitled thereto without any discrimination or privilege.

(b) If all of the Installment Payments shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the

Installment Payments, with interest on overdue interest and principal, as aforesaid, without preference or priority over interest or of interest over principal or of any installment of interest over any other installment of interest, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

Section 7.03. Other Remedies.

The Corporation or the Bank as assignee thereof, as applicable, may--

(a) by mandamus or other action or proceeding or suit at law or in equity enforce its rights against the District, or any board member, officer or employee thereof, and compel the District or any such board member, officer or employee to perform and carry out its or his duties under applicable law and the agreements and covenants contained herein required to be performed by it or him;

(b) by suit in equity enjoin any acts or things which are unlawful or violate the rights of the Bank;

(c) by suit in equity upon the happening of an Event of Default require the District and its board members, officers and employees to account as the trustee of an express trust; or

(d) by suit in equity, to seek the appointment of a receiver or other third party to operate the Water System and collect the Revenues.

Section 7.04. Non-Waiver.

Nothing in this Article VII or in any other provision hereof shall affect or impair the obligation of the District, which is absolute and unconditional, to pay the Installment Payments at the respective due dates or upon prepayment from the Revenues, or, except as expressly provided herein, shall affect or impair the right of the Corporation or the Bank, as assignee of the Corporation, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied herein.

A waiver of any default or breach of duty or contract by the Bank shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Bank by applicable law or by this Article VII may be enforced and exercised from time to time and as often as shall be deemed expedient.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely, the parties shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Section 7.05. Remedies Not Exclusive.

No remedy herein conferred upon or reserved is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by any other law.

Section 7.06. Bank Exercise of Remedies. The rights and remedies provided to the Corporation under this Article VII have been assigned by the Corporation to the Bank pursuant to the Assignment Agreement and shall be exercised by solely by the Bank in its discretion.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01. Liability of District Limited.

Notwithstanding anything contained herein, the District shall not be required to advance any moneys derived from any source of income other than the Revenues legally available therefor in the Revenue Fund or the Reserve Fund, and the other funds provided herein for the payment of the Installment Payments or for the performance of any agreements or covenants contained herein required to be performed by it. The District may, however, but shall not be required to, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the District for such purpose.

The obligation of the District to make the Installment Payments and the other amounts due hereunder is a special obligation of the District payable solely from the moneys legally available therefor hereunder, including but not limited to the Revenues and such other funds, and does not constitute a debt or pledge of the faith and credit of the District or of the State or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

Section 8.02. Benefits of Installment Purchase Agreement Limited to Parties.

Except as provided in Section 8.03, nothing contained herein, express or implied, is intended to give to any person other than the District or the Bank any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the District or the Bank shall be for the sole and exclusive benefit of the other party.

Section 8.03. Successor Is Deemed Included In All References to Predecessor.

Whenever the District or the Bank is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the District or the Bank, and all agreements and covenants required hereby to be performed by or on behalf of the District or the Bank shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.



**Section 8.04. Waiver of Personal Liability.**

No board member, officer or employee of the District or the Corporation shall be individually or personally liable for the payment of the Installment Payments, but nothing contained herein shall relieve any board member, officer or employee of the District or the Corporation from the performance of any official duty provided by any applicable provisions of law or hereby.

**Section 8.05. Article and Section Headings, Gender and References.**

The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles," "Sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith," "hereunder" and other words of similar import refer to this Installment Purchase Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

**Section 8.06. Partial Invalidity.**

If any one or more of the agreements or covenants or portions thereof contained herein required to be performed by or on the part of the District or the Corporation shall be contrary to the law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The District and the Corporation hereby declare that they would have executed this Installment Purchase Agreement, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

**Section 8.07. Assignment.**

This Installment Purchase Agreement and any rights hereunder, and any participation of the Installment Payments by the Bank, may be assigned by the Bank with notice to the District and the Corporation. The District may not assign any of its rights hereunder, except as otherwise provided in Section 5.07.

**Section 8.08. Governing Law; Waiver.**

This Installment Purchase Agreement shall be construed and governed in accordance with the laws of the State of California. The Authority irrevocably agrees that all actions, proceedings or counterclaims arising out of or relating to this Installment Purchase Agreement will be litigated in the Superior Court of California selected by the Bank, or the United States District Court for the Eastern District of California. The Authority irrevocably consents to service, jurisdiction, and venue of those courts for all such actions, proceedings and counterclaims and waives any other venue to which it might be entitled by virtue of domicile,

habitual residence or otherwise. Final judgment against the Authority in any such action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment, a certificate or exemplified copy of which shall be conclusive evidence of the judgment or in any other manner provided by law. The Authority irrevocably waives to the fullest extent permitted by applicable law (a) any objection which it may have now or in the future to the laying of the venue of any such action, suit or proceeding in any court referred to in the first sentence above; (b) any claim that any such action, suit or proceeding has been brought in an inconvenient forum; (c) its right of removal of any matter commenced by any other party in the courts of the State of California to any court of the United States of America; (d) to the extent permitted by law, any immunity which it or its assets may have in respect of its obligations under this agreement or the purchase agreement from any suit, execution, attachment (whether provisional or final, in aid of execution, before judgment or otherwise) or other legal process; and (e) any right it may have to require the moving party in any suit, action or proceeding brought in any of the courts referred to above arising out of or in connection with this Installment Purchase Agreement to post security for the costs of the district or to post a bond or to take similar action.

To the fullest extent permitted by law, the parties hereto (a) covenant and agree not to elect a trial by jury in any action or proceeding for the resolution of any controversy or claim that arises out of or relates to this Installment Purchase Agreement, whether arising in contract, tort or by statute (individually and collectively, a "controversy or claim"); and, (b) to the extent permitted by applicable law, hereby irrevocably waive all right to a trial by jury as to any issue relating hereto in any action, proceeding or counterclaim arising out of or relating to any transaction document to the extent such right exists now or in the future. The provisions of this Section are separately given by each party hereto knowingly and voluntarily; and are a material inducement for the Bank entering into this Installment Purchase Agreement and accepting the assignment set forth herein.

Section 8.09. Notices.

Notices hereunder sent by mail shall be sent by first class mail or overnight mail, postage prepaid, or by reputable courier service, addressed as follows:

If to the District:                    Monterey Peninsula Water Management District  
5 Harris Court, Building G  
Monterey, California 93942  
Attention: General Manager

If to the Corporation:                [Corporation]

Attention:

If to the Bank:                        Rabobank, N.A.  
Roseville Executive Office  
915 Highland Pointe Drive, Suite 350  
Roseville, CA 95678  
Attention: Ian Carroll, Senior Vice President

The parties hereto may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Unless otherwise requested by the parties, any notice required to be given hereunder in writing may be given by any form of Electronic Notice capable of making a written record.

Section 8.10. Effective Date.

This Installment Purchase Agreement shall become effective upon its execution and delivery, and shall terminate when all Installment Payments shall have been fully paid (or provision for the payment thereof shall have been made to the written satisfaction of the Bank pursuant to Article VI hereof); provided, that the obligation of the District to indemnify the Bank shall survive the termination of this Installment Purchase Agreement.

Section 8.11. Execution in Counterparts.

This Installment Purchase Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 8.12. Third-Party Beneficiary.

The Bank shall be a third-party beneficiary of this Installment Purchase Agreement.

Section 8.13. Amendments.

The District may at any time amend or modify the definition of Project as set forth in this Installment Purchase Agreement to provide for the designation of an Alternate Project as provided for in Section 2.01 hereof with the consent of the Bank, which shall not be unreasonably withheld. This Installment Purchase Agreement may be amended in writing as may be mutually agreed by the District and the Bank. Any amendment made in violation of this Section shall be a nullity and void.

IN WITNESS WHEREOF, the parties hereto have executed and attested the Installment Purchase Agreement by their officers thereunto duly authorized as of the day and year first written above.

**MONTEREY PENINSULA WATER  
MANAGEMENT DISTRICT**

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

ATTEST

By: \_\_\_\_\_  
General Manager

**[CORPORATION]**

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

ACKNOWLEDGED

**RABOBANK, N.A.**

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

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

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

**EXHIBIT A**

**INSTALLMENT PAYMENT SCHEDULE**

**EXHIBIT B**

**DESCRIPTION OF PROPERTY**

## EXHIBIT C

### FEE LETTER AGREEMENT

This Fee Letter Agreement, dated \_\_\_\_\_, 2013 (this "Fee Letter"), by and between the MONTEREY PENINSULA WATER MANAGEMENT DISTRICT (the "District") and RABOBANK, N.A. (the "Bank") sets forth the agreement between the District and the Bank with respect to certain fees payable in connection with the Installment Purchase Agreement, dated as of April 1, 2013 (the "Agreement"), by and between the District and the [Corporation]. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

Section 1. Facility and Closing Fees and Expenses. On the Closing Date, the District hereby agrees to pay to the Bank a nonrefundable facility fee of \$20,000.

Section 2. Legal Fees and Expenses. On the Closing Date, the District shall pay to Fulbright & Jaworski LLP its invoiced fees and expenses.

Section 3. Governing Law.

(a) This Fee Letter and any disputes or controversies arising out of or relating to this Fee Letter shall be governed by and construed in accordance with the laws of the State of California, without regard to choice of law rules. Any and all disputes or legal actions or proceedings arising out of, under and/or pertaining to this Fee Letter or any document related hereto shall be brought in the courts of the State of California or of the Courts of the United States of America for the Eastern District of California and, by execution and delivery of this Agreement, the parties hereto consent to and hereby accept jurisdiction of such courts.

(b) To the full extent permitted by law, the District and the Bank hereby waive trial by jury in any action or proceeding arising out of this Fee Letter.

(c) The waivers made pursuant to this Section 3 shall be irrevocable and unmodifiable, whether in writing or orally, and shall be applicable to any subsequent amendment, renewal, supplement or modification of this Fee Letter. In the event of litigation, this Fee Letter may be filed as a written consent to a trial by the court.

Section 4. Counterparts. This Fee Letter may be executed in two or more counterparts, each of which shall constitute an original but both or all of which, when taken together, shall constitute but one instrument.

Section 5. Severability. Any provision of this Fee Letter which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction. The parties shall endeavor, in good faith negotiations, to replace the

invalid, illegal, or unenforceable provisions with valid provisions, the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

IN WITNESS WHEREOF, the parties hereto have caused this Fee Letter to be duly executed and delivered by their respective duly authorized representatives as of the day and year first above written.

**MONTEREY PENINSULA WATER  
MANAGEMENT DISTRICT**

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

**RABOBANK, N.A.**

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