

INSTALLMENT SALE AGREEMENT

This INSTALLMENT SALE AGREEMENT (this “Agreement”), dated as of October 1, 2023, is between the CITY OF SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the “Corporation”), as seller, and the CITY OF SANTA CLARA, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California (the “City”), as purchaser.

BACKGROUND:

1. The City owns and operates facilities and property for the collection and transmission of wastewater within the service area of the City (the “Wastewater System”). Wastewater collected by the City is transmitted for treatment to the San José-Santa Clara Regional Wastewater Facility (the “Wastewater Treatment Facility”) which is co-owned by the City and the City of San José, pursuant to that certain Sewage Plant Agreement dated March 30, 1959, as amended, between the City and the City of San José (the “Wastewater Treatment Agreement”).

2. Under the Wastewater Treatment Agreement, the City is obligated to contribute its share of the capital costs of improvements to the Wastewater Treatment Facility, and the City is currently obligated to contribute the amount of \$_____ to the capital costs of improving the Wastewater Treatment Facility (as more fully described in Appendix B, the “2023 Project”).

3. The City and the Corporation have previously entered into an Installment Sale Agreement dated as of June 1, 2020 (the “2020 Installment Sale Agreement”), for the purpose of providing financing for the City’s share of certain capital costs of improvements to the Wastewater Treatment Facility (the “2020 Project”).

4. The Corporation has been formed for the purpose of assisting the City in the financing of public capital improvements.

5. In order to provide funds to finance the 2023 Project, and to refinance the 2020 Project through the prepayment in full of the City’s obligations under the 2020 Installment Sale Agreement, the Corporation has proposed to enter into this Agreement with the City, under which the Corporation agrees to provide financing for the 2023 Project and refinancing of the 2020 Project, and to sell the completed 2023 Project and 2020 Project to the City in consideration of the agreement by the City to pay the purchase price thereof in semiannual installments (the “Installment Payments”).

6. For the purpose of obtaining the moneys required for the foregoing purposes in accordance with the terms hereof, the Corporation has agreed to assign and transfer certain of its rights under this Agreement to The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), under a Trust Agreement dated as of October 1, 2023, among the City, the Corporation and the Trustee, under which the Trustee will execute and deliver Wastewater Revenue Certificates of Participation, Series 2023, in the

aggregate principal amount of \$_____, evidencing direct, undivided fractional interests in the Installment Payments.

7. The City and the Corporation have previously entered into an Installment Sale Agreement dated November 8, 2016 (the "2016 Trimble Road Installment Sale Agreement"), for the purpose of providing financing for the rehabilitation and replacement of the Trimble Road trunk sanitary sewer pipelines, under which the City is obligated to pay semiannual installment payments in the aggregate principal amount of \$12,000,000 (the "Prior Installment Payments").

8. The 2016 Trimble Road Installment Sale Agreement provides that the City may incur additional indebtedness to finance improvements to the Wastewater System upon satisfaction of the conditions set forth in Section 5.8 thereof, and the City has determined that such conditions have been met and that the Installment Payments may be payable from and secured by a pledge of and lien on the Net Revenues of the Wastewater System on a parity with the Prior Installment Payments.

A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Corporation formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement have the respective meanings given them in Appendix A to the Trust Agreement.

SECTION 1.2. *Interpretation.*

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

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

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

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

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

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

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

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

- (a) Due Organization and Existence. The Corporation is a nonprofit public benefit corporation duly organized and existing under the laws of the State of California, and has power to enter into this Agreement and the Trust Agreement and to perform the duties and obligations imposed on it hereunder and thereunder. The Board of Directors of the Corporation has duly authorized the execution and delivery of this Agreement and the Trust Agreement.

- (b) Due Execution. The representatives of the Corporation executing this Agreement and the Trust Agreement are fully authorized to execute the same.
- (c) Valid, Binding and Enforceable Obligations. This Agreement and the Trust Agreement have been duly authorized, executed and delivered by the Corporation and constitute the legal, valid and binding agreements of the Corporation with the Corporation, enforceable against the Corporation in accordance with their respective terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.
- (d) No Conflicts. The execution and delivery hereof and of the Trust Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Corporation is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated hereby and by the Trust Agreement or the financial condition, assets, properties or operations of the Corporation, including but not limited to the performance of the Corporation's obligations under this Agreement and the Trust Agreement.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Corporation, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery hereof or of the Trust Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Corporation after reasonable investigation, threatened against or affecting the Corporation or the assets, properties or operations of the Corporation which, if determined adversely to the Corporation or its interests, would have a material and adverse effect upon the

consummation of the transactions contemplated by or the validity of this Agreement or the Trust Agreement, or upon the financial condition, assets, properties or operations of the Corporation, and the Corporation is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the Trust Agreement or the financial conditions, assets, properties or operations of the Corporation, including but not limited to the performance of the Corporation's obligations hereunder and under the Trust Agreement.

ARTICLE III

EXECUTION AND DELIVERY OF CERTIFICATES; APPLICATION OF PROCEEDS

SECTION 3.1. *The Certificates.* The Corporation will cause the Certificates to be executed and delivered under the Trust Agreement in the aggregate principal amount of \$_____. The Corporation agrees that the proceeds of sale of the Certificates will be paid to the Trustee on the Closing Date for deposit under the Trust Agreement. The City hereby approves the Trust Agreement, the assignment thereunder to the Trustee of certain rights of the Corporation, and the execution and delivery of the Certificates.

SECTION 3.2. *Deposit and Application of Funds.* The proceeds received by the Trustee from the sale of the Certificates to the Original Purchaser will be deposited in the respective funds and accounts, and in the respective amounts, as set forth in Section 3.01 of the Trust Agreement.

SECTION 3.3. *Acquisition and Construction of the 2023 Project.* The Corporation hereby agrees to provide funds to finance the acquisition, construction and installation of the 2023 Project in accordance with all applicable requirements of law. The failure to complete the 2023 Project by its estimated completion date does not constitute an Event of Default hereunder or a grounds for termination hereof, nor will any such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Installment Payments when due.

SECTION 3.4. *Appointment of City as Agent.* The Corporation hereby appoints the City as its agent to carry out all phases of the acquisition, construction and installation of the 2023 Project under and in accordance with the provisions hereof. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Corporation regarding the acquisition, construction and installation of the 2023 Project. As agent of the Corporation hereunder, the City will administer the acquisition of the 2023 Project and the expenditure of the proceeds of the Certificates for Project Costs in accordance with the Wastewater Treatment Agreement. Payment of Project Costs will be made by the City from amounts held by the Trustee in the Project Fund in accordance with the provisions of this Agreement and the provisions of the Trust Agreement.

SECTION 3.5. *Certificate of Project Completion.* Not later than 30 days following the completion of the 2023 Project, a City Representative will execute and deliver to the Corporation and the Trustee a written certificate stating that the 2023 Project has been substantially completed and that no further amounts are intended to be requisitioned from the Project Fund established under the Trust Agreement, and directing the Trustee regarding the disposition of any remaining amounts in the Project Fund.

ARTICLE IV

SALE OF PROJECT; INSTALLMENT PAYMENTS

SECTION 4.1. *Sale of Project.* The Corporation hereby sells the 2023 Project and the 2020 Project to the City, and the City hereby purchases the 2023 Project and the 2020 Project from the Corporation, upon the terms and conditions set forth in this Agreement.

SECTION 4.2. *Term.* The Term of this Agreement begins on the Closing Date and ends on February 1, 20__, or such later or earlier date on which the Certificates cease to be Outstanding under and within the meaning of the Trust Agreement.

SECTION 4.3. *Transfer of Ownership.* Ownership of the 2023 Project and the 2020 Project, and each component thereof, will be deemed conveyed by the Corporation to and vested in the City upon the completion of the acquisition, construction and installation thereof. The Corporation and the City agree that no further action or documentation is intended to be required to cause the transfer of ownership to the 2023 Project and the 2020 Project; however, if any further actions or documentation is so required, the Corporation and the City will take such actions and execute, deliver and cause to be recorded all such documents.

SECTION 4.4. *Installment Payments.*

(a) Obligation to Pay. The City hereby agrees to pay to the Corporation, as the purchase price of the 2023 Project and the 2020 Project hereunder, the aggregate principal amount of \$_____ together with interest (calculated on the basis of a 360-day year of twelve 30-day months) on the unpaid principal balance thereof, payable in semiannual Installment Payments in the respective amounts and on the respective Installment Payment Dates specified in Appendix A. The Installment Payment coming due and payable on any Installment Payment Date will be deposited by the City with the Trustee, as assignee of the Corporation under the Trust Agreement, in an amount which, together with amounts then held by the Trustee in the Installment Payment Fund, is equal to the full amount of such Installment Payment. The Installment Payments will be secured by and payable solely from the sources specified in Section 4.5.

(b) Effect of Prepayment. If the City prepays all remaining Installment Payments in full under Section 7.2, the City's obligations under this Agreement will thereupon cease and terminate, including but not limited to the City's obligation to pay Installment Payments therefor under this Section; *provided, however,* that the City's obligations to compensate and indemnify the Trustee under Sections 7.03 and 10.03 of the Trust Agreement will survive such prepayment. If the City prepays the Installment Payments in part but not in whole under Section 7.2, the principal component of each succeeding Installment

Payment will be reduced as provided in such Sections, and the interest component of each remaining Installment Payment will be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Certificates thereby prepaid under the applicable provisions of Section 4.01 of the Trust Agreement.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section or in Section 4.8, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment, at the rate or rates of interest borne by the respective Installment Payments.

(d) Assignment. The City understands and agrees that certain rights of the Corporation, including but not limited to the right of the Corporation to receive payment of the Installment Payments, have been assigned by the Corporation to the Trustee in trust under the Trust Agreement, for the benefit of the Owners of the Certificates, and the City hereby consents to such assignment. The Corporation hereby directs the City, and the City hereby agrees, to pay to the Trustee at its Office, all payments payable by the City under this Section and all amounts payable by the City under Article VII.

SECTION 4.5. *Pledge and Application of Revenues.*

(a) Pledge. All Net Revenues and all moneys on deposit in any of the funds and accounts established and held by the Trustee under the Trust Agreement, other than the Costs of Issuance Fund, the Refunding Fund and the Project Fund, are hereby irrevocably pledged, charged and assigned to the punctual payment of the Installment Payments. Such pledge, charge and assignment constitutes a lien on the Net Revenues and such moneys on deposit in such funds and accounts for the payment of the Installment Payments in accordance with the terms hereof, which lien will be on a parity with the pledge and lien which secures the Prior Installment Payments and any Additional Parity Debt.

(b) Deposit of Gross Revenues Into Wastewater Fund; Transfers to Make Payments. The City has previously established the Wastewater Fund, which the City will continue to hold and maintain for the purposes and uses set forth herein. The City will deposit all Gross Revenues in the Wastewater Fund immediately on receipt. The City will apply amounts in the Wastewater Fund as set forth in this Agreement, the Trimble Road ISA and any Additional Parity Debt Documents. The City will apply amounts on deposit in the Wastewater Fund to pay when due the following amounts in the following order of priority:

- (i) all Operation and Maintenance Costs;
- (ii) the Installment Payments, the Prior Installment Payments and all payments of principal of and interest on any Additional Parity Debt;
- (iii) any deficiency in any reserve fund established for Additional Parity Debt, the notice of which deficiency has been sent to the City in accordance with the related Additional Parity Debt Documents;

- (iv) any other payments required to comply with the provisions of this Agreement, the Joint Powers Agreement, the Trimble Road ISA and any Additional Parity Debt Documents; and
- (v) any other purposes authorized under subsection (d) of this Section.

(c) No Preference or Priority. Payment of the Installment Payments, the Prior Installment Payments and the principal of and interest on any Additional Parity Debt will be made without preference or priority. If the amount of Net Revenues on deposit in the Wastewater Fund are any time insufficient to enable the City to pay when due the Installment Payments, the Prior Installment Payments and the principal of and interest on any Additional Parity Debt, such payments will be made on a pro rata basis.

(d) Other Uses of Net Revenues Permitted. The City will manage, conserve and apply the Net Revenues on deposit in the Wastewater Fund in such a manner that all deposits required to be made under the preceding subsection (b) will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default has occurred and is continuing, the City may use and apply moneys in the Wastewater Fund for (i) the payment of any subordinate obligations or any unsecured obligations, (ii) the acquisition and construction of improvements to the Wastewater System, (iii) the prepayment of any other obligations of the City relating to the Wastewater System, or (iv) any other lawful purposes of the City.

(e) Budget and Appropriation of Installment Payments. During the Term of this Agreement, the City will adopt all necessary budgets and make all necessary appropriations of the Installment Payments from the Net Revenues. If any Installment Payment requires the adoption by the City of a supplemental budget or appropriation, the City will promptly adopt the same. The covenants on the part of the City contained in this subsection (e) are duties imposed by law and it is the duty of each and every public official of the City to take such actions and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this subsection (e).

SECTION 4.6. *Establishment of Rate Stabilization Fund.* The City has the right at any time to establish a fund to be held by it and administered in accordance with this Section, for the purpose of stabilizing the rates and charges imposed by the City with respect to the Wastewater System. From time to time the City may deposit amounts in the Rate Stabilization Fund, from any source of legally available funds, including but not limited to Net Revenues which are released from the pledge and lien which secures the Installment Payments, the Prior Installment Payments and any Additional Parity Debt, as the City may determine.

The City may, but is not be required to, withdraw amounts on deposit in the Rate Stabilization Fund and deposit such amounts in the Wastewater Fund in any Fiscal Year for the purpose of paying the Installment Payments, the Prior Installment Payments or the principal of and interest on any Additional Parity Debt coming due and payable in such Fiscal Year. Amounts so transferred from the Rate Stabilization Fund to the Wastewater Fund in any Fiscal Year constitute Gross Revenues for that Fiscal Year (except for purposes of Section 5.7(b) relating to the issuance of Additional Parity Debt), and will be applied for the purposes of the Wastewater Fund. Amounts on deposit in the Rate

Stabilization Fund are not pledged to and do not secure the Installment Payments, the Prior Installment Payments or any Additional Parity Debt.

All interest or other earnings on deposits in the Rate Stabilization Fund will be retained therein or, at the option of the City, be applied for any other lawful purposes. The City has the right at any time to withdraw any or all amounts on deposit in the Rate Stabilization Fund and apply such amounts for any other lawful purposes of the City.

SECTION 4.7. *Special Obligation of the City; Obligations Absolute.* The City's obligation to pay the Installment Payments and any other amounts coming due and payable hereunder will be a special obligation of the City limited solely to the Net Revenues. Under no circumstances is the City required to advance moneys derived from any source of income other than the Net Revenues and other sources specifically identified herein for the payment of the Installment Payments and such other amounts, and no other funds or property of the City are liable for the payment of the Installment Payments.

The obligation of the City to make the Installment Payments from the Net Revenues and to perform and observe the other agreements contained herein is absolute and unconditional and is not subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by the Corporation or the Trustee of any obligation to the City or otherwise with respect to the Wastewater System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Corporation or the Trustee. Until all of the Installment Payments, Additional Payments and other amounts coming due and payable hereunder have been fully paid or prepaid, the City:

- (a) will not suspend or discontinue payment of any Installment Payments, Additional Payments or such other amounts,
- (b) will perform and observe all other agreements contained in this Agreement, and
- (c) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Wastewater System, failure to complete the acquisition and construction of the 2023 Project by the estimated completion date thereof, sale of the Wastewater System, the taking by eminent domain of title to or temporary use of any component of the Wastewater System, commercial frustration of purpose, any change in the tax or law other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Corporation or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Trust Agreement or this Agreement.

SECTION 4.8. *Additional Payments.* In addition to the Installment Payments, the City will pay when due the following amounts to the following parties:

- (a) to the Corporation, all costs and expenses incurred by the Corporation to comply with the provisions of this Agreement or the Trust Agreement; and
- (b) to the Trustee upon request therefor, all of its costs and expenses payable as a result of the performance of and compliance with its duties hereunder or under the Trust Agreement or any related documents;
- (c) to the Corporation and the Trustee, all amounts required to indemnify the Corporation and the Trustee under Section 10.03 of the Trust Agreement; and
- (d) all costs and expenses of auditors, engineers and accountants and other professional services relating to the Wastewater System; and
- (e) all Excess Investment Earnings payable under Section 9.04(e) of the Trust Agreement.

Subject to the provisions of Section 7.03 of the Trust Agreement, the Additional Payments are payable from, but are not secured by a pledge or lien upon, the Net Revenues. The rights of the Trustee and the Corporation under this Section, and the obligations of the City under this Section, shall survive the termination of this Agreement and the resignation or removal of the Trustee.

ARTICLE V

COVENANTS OF THE CITY

SECTION 5.1. *Disclaimer of Warranties.* The Trustee makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the 2023 Project or the 2020 Project or any component thereof, or any other representation or warranty with respect to any of the 2023 Project or the 2020 Project or any component thereof. In no event shall the Corporation or the Trustee be liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Agreement or the Trust Agreement for the existence, furnishing, functioning or use of the 2023 Project or the 2020 Project.

SECTION 5.2. *Sale or Eminent Domain of Wastewater System.* Except as provided herein, the City covenants that the Wastewater System will not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole if such encumbrance, sale, lease, pledge, charge or other disposition would materially impair the ability of the City to pay the Installment Payments, the Prior Installment Payments or the principal of or interest on any Additional Parity Debt, or would materially adversely affect its ability to comply with the terms of this Agreement, the Trimble Road ISA or any Additional Parity Debt Documents. The City may not enter into any agreement which impairs the operation of the Wastewater System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments, the Trimble Road Installment Payments or any Additional Parity Debt, or which otherwise

would impair the rights of the Certificate Owners or the Trustee with respect to the Net Revenues. If any substantial part of the Wastewater System is sold, the payment therefor must either (a) be used for the acquisition or construction of improvements and extensions or replacement facilities or (b) be applied on a pro rata basis to prepay the Installment Payments, the Prior Installment Payments and any Additional Parity Debt on the next available prepayment date.

Any amounts received as awards as a result of the taking of all or any part of the Wastewater System by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the City, will either (a) be used for the acquisition or construction of improvements and extension of the Wastewater System, or (b) be applied to prepay on a pro rata basis the Installment Payments, the Prior Installment Payments and any Additional Parity Debt on the next available prepayment date.

SECTION 5.3. *Insurance.* The City will at all times maintain with responsible insurers all such insurance on the Wastewater System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the Wastewater System. All amounts collected from insurance against accident to or destruction of any portion of the Wastewater System will be used, at the option of the City, either (a) to repair or rebuild such damaged or destroyed portion of the Wastewater System, or (b) to prepay on a pro rata basis the Installment Payments, the Prior Installment Payments and any Additional Parity Debt on the next available prepayment date.

The City will also maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the City, the Corporation, the Trustee and the Owners of the Certificates.

Any policy of insurance required under this Section may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance.

SECTION 5.4. *Records and Accounts.* The City will keep proper books of record and accounts of the Wastewater System in which complete and correct entries will be made of all transactions relating to the Wastewater System. Said books will, upon prior request, be subject to the reasonable inspection of the Owners of not less than 10% of the Outstanding Certificates, or their representatives authorized in writing, upon not less than five Business Days' prior notice to the City.

The City will cause the books and accounts of the Wastewater System to be audited annually by an Independent Accountant not more than nine months after the close of each Fiscal Year, and will make a copy of such report available for inspection by the Certificate Owners at the office of the City and at the Office of the Trustee. Such report may be part of a combined financial audit or report covering all or part of the City's finances. The Trustee has no duty to review, verify or analyze such reports and shall hold such reports solely as a repository for the benefit of the Certificate Owners. The Trustee will not be deemed to have notice of any information contained therein or Event of Default which may be disclosed therein in any manner.

SECTION 5.5. *Rates and Charges.*

(a) Gross Revenues Covenant. The City shall fix, prescribe and revise rates, fees and charges for the services and facilities furnished by the Wastewater System during each Fiscal Year, which are at least sufficient, together with amounts transferred from a Rate Stabilization Fund as provided in Section 4.6, and taking into account allowances for contingencies, to yield Gross Revenues sufficient to pay the following amounts in the following order of priority:

- (i) All Operation and Maintenance Costs estimated by the City to become due and payable in the Fiscal Year.
- (ii) All Installment Payments, Prior Installment Payments and payments of principal of and interest on any Additional Parity Debt as they become due and payable during the Fiscal Year, without preference or priority.
- (iii) All payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the Gross Revenues or the Net Revenues during such Fiscal Year.

(b) Net Revenues Covenant. In addition, the City shall fix, prescribe and revise rates, fees and charges for the services and facilities furnished by the Wastewater System during each Fiscal Year which (together with amounts transferred from a Rate Stabilization Fund as provided in Section 4.6, and taking into account allowances for contingencies), are sufficient to yield Net Revenues which are at least equal to 125% of the aggregate amount of the Installment Payments, the Prior Installment Payments and all payments of principal of and interest on any Additional Parity Debt coming due and payable during the Fiscal Year.

So long as the City has complied with its obligations as described in the above paragraph at the commencement of the succeeding Fiscal Year or as soon thereafter as is reasonably possible, but no later than June 30 of such applicable succeeding Fiscal Year, the failure of Net Revenues to meet the threshold described in the above paragraph at the end of a Fiscal Year will not constitute a default or an Event of Default.

SECTION 5.6. *Superior and Subordinate Obligations.* The City may not issue or incur any additional bonds or other obligations during the Term of this Agreement having any priority in payment of principal or interest out of the Gross Revenues or the Net Revenues over the Installment Payments. Nothing herein limits or affects the ability of the City to issue or incur (a) Additional Parity Debt under Section 5.7, or (b) obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established hereunder.

SECTION 5.7. *Issuance of Additional Parity Debt.* The City may issue or incur any Additional Parity Debt during the Term hereof upon satisfaction of all of the following conditions:

- (a) no Event of Default (or no event with respect to which notice has been given and which, once all notice of grace periods have passed, would constitute an Event of Default) has occurred and is continuing.
- (b) the Net Revenues (excluding any amounts derived from a Rate Stabilization Fund), calculated in accordance with generally accepted accounting principles, as shown by the books of the City for the most recent completed Fiscal Year for which audited financial statements of the City are available, or for any more recent consecutive 12-month period selected by the City, in either case verified by an Independent Accountant or a Financial Consultant or shown in the audited financial statements of the City, plus (at the option of the City) any Additional Revenues, are at least equal to 125% of Maximum Annual Debt Service (taking into account the Additional Parity Debt then proposed to be issued).
- (c) The City will deliver to the Trustee a written certificate of a City Representative certifying that the conditions precedent to the issuance of such Additional Parity Debt set forth in subsections (a) and (b) of this Section have been satisfied.

SECTION 5.8. *Operation of Wastewater System in Efficient and Economical Manner.* The City will operate the Wastewater System in an efficient and economical manner and to operate, maintain and preserve the Wastewater System in good repair and working order.

SECTION 5.9. *Assignment and Amendment Hereof.* This Agreement may not be assigned by the City in whole or in part. This Agreement may be amended by the City and the Corporation, but only (a) for the purpose of providing for the issuance of any Additional Parity Debt under and in accordance with Section 5.7, or (b) otherwise under the circumstances and to the extent permitted under Sections 8.01 or 8.02 of the Trust Agreement.

ARTICLE VI

EVENTS OF DEFAULT

SECTION 6.1. *Events of Default Defined.* The following events constitute Events of Default hereunder:

- (a) Failure by the City to pay any Installment Payment when due and payable hereunder.
- (b) Failure by the City to pay any Additional Payment when due and payable hereunder, and the continuation of such failure for a period of 30 days.
- (c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding clauses (a) or (b), for a period of 30 days

after written notice specifying such failure and requesting that it be remedied has been given to the City by the Trustee or the Corporation; *provided, however*, that if the failure stated in the notice cannot be corrected within such 30-day period, the Corporation shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within such 30-day period and diligently pursued until the default is corrected.

- (d) The filing by the City of a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or the approval by a court of competent jurisdiction of a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction assumes custody or control of the City or of the whole or any substantial part of its property.
- (e) The occurrence of any event defined to be an event of default under the Trimble Road ISA or any Additional Parity Debt Documents.

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

- (a) Apply to and obtain from any court of competent jurisdiction such decree or order as may be necessary to require officials of the City to charge and collect rates for services provided by the City and the Wastewater System sufficient to meet all requirements of this Agreement.
- (b) Take whatever action at law or in equity, including specific enforcement, mandamus, or any equitable remedies available, as may be desirable and permitted by law to collect the Installment Payments then due or thereafter to become due during the Term of this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.

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

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

SECTION 6.5. *No Additional Waiver Implied by One Waiver.* If any agreement contained in this Agreement is breached by either party and thereafter waived by the other party, the waiver will be limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

SECTION 6.6. *Trustee and Certificate Owners to Exercise Rights.* Such rights and remedies as are given to the Corporation under this Article have been assigned by the Corporation to the Trustee under the Trust Agreement, and the City hereby consents to such assignment. Such rights and remedies will be exercised by the Trustee and the Owners of the Certificates as provided in the Trust Agreement.

ARTICLE VII

PREPAYMENT OF INSTALLMENT PAYMENTS

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

- (a) sufficient to pay all such Installment Payments, including the principal and interest components thereof, when due under Section 4.4(a), or
- (b) invested in whole or in part in non-callable Federal Securities, the payments of principal of and interest on which, together with other available cash, are sufficient to pay the Installment Payments when due under Section 4.4(a) or when due on any optional prepayment date under Section 7.2, as the City instructs at the time of said deposit.

The sufficiency of amounts deposited with the Trustee under the foregoing subsection (b) must be verified by the report of an Independent Accountant which is addressed and delivered to the Trustee.

If the City makes a security deposit under this Section for the payment of all remaining Installment Payments, all obligations of the City hereunder, and the pledge of Net Revenues and all other security provided by this Agreement for said obligations, will cease and terminate, excepting only the obligation of the City to make, or cause to be made, all Installment Payments from such security deposit. Any such security deposit

shall constitute a special fund for the payment of such Installment Payments in accordance with the provisions hereof.

SECTION 7.2. *Optional Prepayment.* The City may exercise its option to prepay the principal components of the Installment Payments in whole or in part on any date on or after February 1, 20___. Such option will be exercised by payment of a prepayment price equal to the sum of (a) the aggregate principal components of the Installment Payments to be prepaid, plus (b) the interest component of the Installment Payment required to be paid on or accrued to such date, plus (c) any premium required to be paid on the corresponding prepayment of the Certificates under Section 4.01(a) of the Trust Agreement. Such prepayment price will be deposited by the Trustee in the Installment Payment Fund to be applied to the prepayment of Certificates under Section 4.01(a) of the Trust Agreement. If the City prepays the Installment Payments in part but not in whole, the principal components will be prepaid among such maturities and in such integral multiples of \$5,000 as the City designates in written notice to the Trustee. The City will give the Trustee written notice of its intention to exercise its option not less than 45 days in advance of the date of exercise.

SECTION 7.3. *Credit for Amounts on Deposit.* If the City prepays the Installment Payments in full under this Article, such that the Trust Agreement is discharged by its terms as a result of such prepayment, and if all Additional Payments and other amounts then due and payable hereunder have been paid, then the prepayment price of the Installment Payments shall reflect a credit for any available amounts then on deposit in the funds and accounts established under the Trust Agreement.

ARTICLE VIII

MISCELLANEOUS

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

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

*If to the City
or the Corporation:*

City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Attention: Director of Finance
Fax: (408) 243-8687
Email: finance@santaclaraca.gov

If to the Trustee:

The Bank of New York Mellon Trust Company, N.A.
333 South Hope Street, Suite 2525
Los Angeles, California 90071
Attention: Corporate Trust Services

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

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

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

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

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

SECTION 8.7. *Payment on Non-Business Days.* Whenever any payment is required to be made hereunder on a day which is not a Business Day, such payment will be made on the immediate preceding Business Day.

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

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

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

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

**CITY OF SANTA CLARA PUBLIC
FACILITIES FINANCING CORPORATION**

By: _____
Executive Director

APPROVED AS TO FORM:

By _____
General Counsel

ATTEST:

By _____
Secretary

CITY OF SANTA CLARA

By: _____
City Manager

APPROVED AS TO FORM:

By _____
City Attorney

ATTEST:

By _____
City Clerk

APPENDIX A

SCHEDULE OF INSTALLMENT PAYMENTS

<u>Installment Payment Date⁽¹⁾</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Payment</u>
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- (1) Installment Payment Dates are the 5th Business Day immediately preceding each date shown in the table.

APPENDIX B

DESCRIPTION OF 2023 PROJECT

The 2023 Project consists of the City’s allocable share of the following improvements to the San José-Santa Clara Regional Wastewater Facility pursuant to the Wastewater Treatment Agreement:

Based on information provided by San Jose, a five-year capital improvement plan is updated annually for the Treatment Plant (the “Treatment Plant CIP”). The current Treatment Plant CIP totals approximately \$475 million for Fiscal Year 2022-23 through Fiscal Year 2026-27. The City’s estimated share of the Treatment Plant CIP is approximately \$13,815,517, or 15.74%, for 2022-23 and approximately \$76.5 million for the five year period from Fiscal Year 2022-23 through Fiscal Year 2026-27.

The 2023 Project consists of the City’s share of Treatment Plant CIP project costs incurred in Fiscal Year 2022-23 and anticipated to be incurred in Fiscal Year 2023-24.

City Share of Treatment Plant Capital Improvement Program

Fiscal Year*	City Share Percentage	City Share Amount	Total Expenditures
2018-19	16.06	\$15,665,135	\$98,896,054
2019-20	15.71	49,832,221	317,200,643
2020-21	15.38	9,952,101	64,708,069
2021-22	15.97	37,645,683	236,319,416
2022-23	15.74	13,815,517	88,170,000
2023-24	15.92	12,426,484	78,046,000
2024-25	15.91	14,297,703	89,851,000
2025-26	16.04	10,016,045	62,444,000
2026-27	16.61	25,771,132	155,173,000
2027-28	16.03	35,502,701	221,486,000
2028-29	16.02	3,286,884	20,514,000
2029-30	15.77	12,688,727	80,454,000
2030-31	15.92	3,634,682	22,838,000
2031-32	16.51	2,550,268	15,444,000
2032-33	15.97	885,273	5,543,000

* Fiscal years 2023-24 through 2032-33 are projected and subject to change.
Source: City of San Jose.

Capital Improvement Plan Projects. The capital improvement projects in the Treatment Plant CIP will repair, replace, and upgrade the facilities and treatment processes at the Treatment Plant. Capital projects generally include replacing and upgrading the Treatment Plant’s electrical system, digester rehabilitation, digester gas line replacement, aeration tank and blower improvements, new headworks, filter rehabilitation, yard piping, outfall channel and instrumentation improvements, energy generation improvements, digested sludge dewatering facility, nitrification clarifiers rehabilitation, storm drain system improvements and other plant infrastructure improvements.

