

JUNE 12, 2013

ITEM E-1

ATTACHMENT C

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INSTALLMENT SALE AGREEMENT

by and between

NIPOMO COMMUNITY SERVICES DISTRICT,  
as Purchaser

and

NIPOMO COMMUNITY SERVICES DISTRICT  
PUBLIC FACILITIES CORPORATION,  
as Seller

Dated as of June 1, 2013

Relating to

[\$principal amount]  
REVENUE CERTIFICATES OF PARTICIPATION  
(SUPPLEMENTAL WATER PROJECT)  
SERIES 2013

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## INSTALLMENT SALE AGREEMENT

This INSTALLMENT SALE AGREEMENT ("Agreement"), made and entered into as of June 1, 2013, by and between the NIPOMO COMMUNITY SERVICES DISTRICT, a community services district duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "District"), as seller, and the NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the "Corporation"), as purchaser:

### WITNESSETH:

WHEREAS, the District has heretofore caused the issuance of its \$2,845,000 Nipomo Community Services District Water Revenue Refunding Bonds, Series 2013A (the "2013 Bonds") for the purpose of financing certain refinancing improvements (the "Prior Improvements") to the District's water system (the "Enterprise"); and

WHEREAS, the District wishes to finance a portion of the costs of constructing certain additional water improvements to the Enterprise, known as Phase 1 of the Supplemental Water Project (the "Phase 1 Improvements"), to be secured by net revenues of the Enterprise on a parity with the 2013 Bonds; and

WHEREAS, the Board of Directors of the District has determined that in order to accomplish such financing of a portion of the Phase 1 Improvements (the "Project"), it is necessary and desirable that the Corporation cause the Project to be constructed and sold to the District pursuant to the Installment Sale Agreement dated as of June 1, 2013 (the "Installment Sale Agreement"), by and between the Corporation, as seller, and the District, as purchaser; and

WHEREAS, the Corporation has agreed to assist the District by financing the Project for the District on the terms and conditions set forth in the Installment Sale Agreement; and

WHEREAS, the District will agree to make installment payments pursuant to the Installment Sale Agreement in order to purchase the Project from the Corporation on a parity with its obligations to pay principal and interest on the 2013 Bonds; and

WHEREAS, the District proposes to cause to be executed and delivered \$[principal amount] aggregate principal amount of its Revenue Certificates of Participation (Supplemental Water Project) Series 2013 under the Trust Agreement dated as of June 1, 2013 (the "Trust Agreement"), by and among the Corporation, the District and The Bank of New York Mellon Trust Company, N.A., as trustee; and

WHEREAS, the District and the Corporation have duly authorized the execution of this Agreement; 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 delivery of this 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 Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THESE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

## **ARTICLE I DEFINITIONS AND EXHIBITS**

**Section 1.1. Definitions.** Unless the context otherwise requires, the capitalized terms used herein shall for all purposes hereof and of any amendment hereof or supplement hereto and of any report or other document mentioned herein or therein have the meanings defined herein and if not defined herein, shall have the meanings ascribed thereto in the Trust Agreement.

### **Section 1.2. Content of Written Certificates.**

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

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

### **Section 1.3. Exhibits.**

The following Exhibits are attached to, and by this reference are made a part of, this Agreement:

Exhibit A: Purchase Price and Schedule of Series 2013 Installment Payments

Exhibit B: Description of Project

**ARTICLE II  
REPRESENTATIONS AND WARRANTIES;  
OPINIONS OF COUNSEL**

**Section 2.1. Representations by the District.** The District makes the following representations:

(a) The District is a community services district duly organized and existing under and pursuant to the laws of the State of California.

(b) The District has full legal right, power and authority to enter into this Agreement and carry out its obligations hereunder, to carry out and consummate all other transactions contemplated by this Agreement, and the District has complied with the provisions of the Law in all matters relating to such transactions.

(c) By proper action, the District has duly authorized the execution, delivery and due performance of this Agreement.

(d) The District will not take or, to the extent within its power, permit any action to be taken as a consequence of which any Interest Component of Series 2013 Installment Payments would fail to be excluded pursuant to section 103(a) of the Code from the gross income of the Corporation or its assigns for purposes of federal income taxation, or to fail to be exempt from the California personal income tax.

(e) The District has determined that it is necessary and proper for District uses and purposes within the terms of the Law that the District finance the Project in the manner provided for in this Agreement.

**Section 2.2. Representations and Warranties by the Corporation.** The Corporation makes the following representations and warranties:

(a) The Corporation is a nonprofit public benefit corporation authority duly organized and in good standing under the laws of the State of California, has full legal right, power and authority to enter into this Agreement and to carry out and consummate all transactions contemplated by this Agreement and by proper action has duly authorized the execution and delivery and due performance of this Agreement.

(b) The execution and delivery of this Agreement and the consummation of the transactions herein contemplated will not violate any provision of law, any order of any court or other agency of government, or any indenture, material agreement or other instrument to which the Corporation is now a party or by which it or any of its properties or assets is bound, or be in

conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Corporation.

(c) The Corporation will not take or permit any action to be taken as a consequence of which any Interest Component of Series 2013 Installment Payments would fail to be excluded pursuant to section 103(a) of the Code from the gross income of the Corporation or its assigns for purposes of federal income taxation, or to fail to be exempt from the California personal income tax.

### **ARTICLE III DEPOSIT OF MONEYS; CONSTRUCTION OF PHASE 1 IMPROVEMENTS**

**Section 3.1. Deposit of Moneys.** On the Closing Date, the Corporation shall cause to be deposited with the Trustee the amount derived from Certificate proceeds.

**Section 3.2. Construction of Phase 1 Improvements.** The Corporation hereby agrees to construct the Phase 1 Improvements under the terms and conditions set forth herein. The Corporation has appointed the District as its agent to construct the Phase 1 Improvements pursuant to the Agency Agreement.

**Section 3.3. Payment of Series 2003 Installment Payments, Construction Costs and Delivery Costs.** Prepayment of the Series 2003 Installment Payments shall be made from the moneys irrevocably deposited with the Trustee in the Escrow Fund, which moneys shall be disbursed for such purpose in accordance and upon compliance with the Escrow Agreement. Payment of the Construction Costs shall be made from the moneys deposited with the Trustee in the Construction Fund, which moneys shall be disbursed for such purpose in accordance and upon compliance with Section 3.06 of the Trust Agreement. Payment of Issuance Costs shall be made from the moneys deposited with the Trustee in the Costs of Issuance Fund, which moneys shall be disbursed for such purpose in accordance and upon compliance with Section 3.04 of the Trust Agreement. The District hereby covenants to pay necessary Construction Costs and Issuance Costs in excess of amounts available from Certificate proceeds from any legally available source of funds.

**Section 3.4. Unexpended Proceeds.** In accordance with Section 3.07 of the Trust Agreement, all excess moneys remaining in the Construction Fund and not required for payment of Construction Costs shall be transferred to the Installment Payment Fund and applied to the prepayment of Certificates.

### **ARTICLE IV SALE OF PROJECT; TITLE TO THE PROJECT; TERM OF THE INSTALLMENT SALE AGREEMENT; INSTALLMENT PAYMENTS**

**Section 4.1. Sale.** The Corporation hereby sells, bargains and conveys the Project to the District, and the District hereby purchases the Project from the Corporation, for a purchase price not to exceed \$[principal amount], upon the terms and conditions set forth in this Agreement.

**Section 4.2. Title.** The District and the Corporation agree that title to the Project shall be deemed conveyed to and vested in the District on the Closing Date, subject only to Permitted Encumbrances. The Corporation and its officers shall take all actions necessary to vest in the District all of the Corporation's rights in and title to the Project.

**Section 4.3. Term of the Installment Sale Agreement.** The Term of this Agreement shall become effective upon its execution and delivery and shall end on September 1, 2053, unless such term is sooner terminated when all Installment Payments shall have been paid in full or payment thereof shall have been provided for in accordance with the provisions hereof.

**Section 4.4. Purchase Price.**

(a) The Purchase Price to be paid by the District hereunder to the Corporation is the sum of the principal amount of the District's obligations hereunder, plus the interest to accrue on the unpaid balance of such principal amount from the effective date hereof over the term hereof, subject to prepayment as provided in Article VII.

(b) The principal amount of the payments to be made by the District hereunder (\$[principal amount] or the "principal component") on each Series 2013 Installment Payment Date is set forth in Exhibit A hereto; provided however, the amount payable by the District to the Corporation on each Series 2013 Installment Payment Date shall be reduced by the amount, if any, on deposit in the Installment Payment Fund and available or to be available for the payment of principal of and interest with respect to the Certificates on such Interest Payment Date as a result of prepayment in accordance with Article VII.

(c) The interest to accrue on the unpaid balance of such principal amount is as specified in Section 2.03 of the Trust Agreement and Exhibit A hereto, and all amounts attributable to interest (the "interest component") will be calculated and determined in accordance with the provisions set forth in the Trust Agreement and shall be paid by the District as and constitute interest paid on the principal amount of the District's obligations hereunder.

**Section 4.5. Series 2013 Installment Payments.** The District shall, subject to any rights of prepayment provided in Article VII, pay the Corporation the Purchase Price in installment payments consisting of components of interest and principal in the amounts relating to each Series 2013 Installment Payment Date as set forth in Exhibit A hereto.

Each Series 2013 Installment Payment shall be paid to the Corporation in lawful money of the United States of America. In the event the District fails to make any of the payments required to be made by it under this section, 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 interest accruing thereon at the rate or rates of interest then applicable to the remaining unpaid principal balance of the Series 2013 Installment Payments if paid in accordance with their terms.

The obligation of the District to make the Series 2013 Installment Payments is absolute and unconditional, and until such time as the Purchase Price shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article IX), the District will not discontinue or suspend any Series 2013 Installment Payments required to be made by it under this section when due, whether or not the Enterprise or any part thereof is operating or

operable or the Project has been completed, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part and such payments shall not be subject to reduction whether by offset, abatement or otherwise and shall not be conditional upon the performance or nonperformance by any party to any agreement for any cause whatsoever.

## **ARTICLE V SECURITY**

**Section 5.1. Pledge of Gross Revenues.** The Ad Valorem Tax Revenues are irrevocably pledged as the first source of repayment of the Series 2003 Installment Payments and shall not be used for any other purposes while any of the Series 2013 Installment Payments remain unpaid. In the event that the Ad Valorem Tax Revenues are not sufficient in amount to pay the Series 2013 Installment Payments when due, any unpaid portion of the Installment Payments shall be paid from other Net Revenues. In furtherance of the foregoing, all Gross Revenues and all amounts on deposit in the Water Enterprise Fund are hereby irrevocably pledged to the payment of the Series 2013 Installment Payments as provided in the Installment Sale Agreement and, except for the payment of the Operation and Maintenance Costs, the Gross Revenues shall not be used for any other purpose while any of the Series 2013 Installment Payments remain unpaid; provided that out of the Gross Revenues there may be apportioned such sums for such purposes as are expressly permitted herein. This pledge shall constitute a first and exclusive lien on the Ad Valorem Revenues and other Net Revenues, the Water Enterprise Fund and the other funds and accounts created hereunder for the payment of the Series 2013 Installment Payments and all other Parity Obligations in accordance with the terms hereof and of the Trust Agreement. Moneys in the Reserve Fund are pledged to the Series 2013 Installment Payments as provided herein.

**Section 5.2. Allocation of Gross Revenues and Ad Valorem Tax Revenues.** In order to carry out and effectuate the pledge and lien contained herein, the District agrees and covenants that (i) all Gross Revenues (other than Ad Valorem Tax Revenues) shall be received by the District in trust hereunder and shall be deposited when and as received in a special fund designated as the "Water Enterprise Fund", and (ii) all Ad Valorem Tax Revenues shall be received by the District in trust hereunder and shall be deposited when and as received in the "Ad Valorem Tax Account of the Water Enterprise Fund," which fund and account is hereby created and established and which fund and account the District agrees and covenants to maintain and to hold in trust separate and apart from other funds so long as any Installment Payments or Parity Obligations remain unpaid. The District shall, from the moneys in the Water Enterprise Fund other than the Ad Valorem Tax Account, pay all Operation and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operation and Maintenance Costs, the payment of which is not then immediately required) as they become due and payable. Thereafter, all moneys in the Ad Valorem Tax Account and all remaining moneys in the Water Enterprise Fund shall be set aside by the District at the following times for the transfer to the following respective special funds in the following order of priority; and all moneys in each of such funds shall be held in trust and shall be applied, used and withdrawn only for the purposes set forth in this Section, provided, that pending the use by the District of the money in the Water Enterprise Fund for the foregoing purposes, such money may be invested by the District in Permitted Investments or other lawful investments.

(a) Installment Payment Fund. On or before each Series 2013 Installment Payment Date, until the Certificates have been paid or provision for their payment has been made as provided in Section 10.01 of the Trust Agreement, the District shall, first from moneys in the Ad Valorem Tax Account and second from other remaining moneys in the Water Enterprise Fund, transfer to the Trustee for deposit in the Installment Payment Fund the Series 2013 Installment Payment due and payable on that Series 2013 Installment Payment Date. The District shall also, from the moneys in the Water Enterprise Fund, transfer to the applicable trustee for deposit in the applicable payment fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any other Debt Service in accordance with the provisions of any Parity Obligation.

Such deposit to the Installment Payment Fund shall be reduced to the extent amounts on deposit therein are available for application to the Series 2013 Installment Payment due and payable on said Series 2013 Installment Payment Date.

All money in the Installment Payment Fund shall be used and withdrawn by the Trustee in accordance with the Trust Agreement.

(b) Reserve Fund. On or before each Series 2013 Installment Payment Date until the Certificates have been paid or provision for their payment has been made as provided in Section 10.01 of the Trust Agreement, the District shall, first from moneys in the Ad Valorem Tax Account and second from other remaining moneys in the remaining moneys in the Water Enterprise Fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, transfer to the Trustee as provided in Section 5.04 of the Trust Agreement for deposit in the Reserve Fund and such other reserve funds and/or accounts, if any, as may have been established in connection with Parity Debt or Contracts other than this Agreement, that sum, if any, necessary to (i) reimburse amounts advanced under any Reserve Fund Credit Facility; (ii) restore the Reserve Fund to an amount equal to the Series 2013 Reserve Fund Requirement and/or such other reserve funds or accounts to an amount equal to the amount required to be maintained therein, provided, however, that the District may provide for the Reserve Fund by means other than cash and Permitted Investments pursuant to Section 5.04 of the Trust Agreement; and (iii) pay the provider thereof interest on amounts advanced under any Reserve Fund Credit Facility.

No transfer of moneys for deposit to the Reserve Fund in connection with the Series 2013 Installment Payments need be made if the amount contained therein is at least equal to the Series 2013 Reserve Requirement.

(c) Surplus. The District shall manage, conserve and apply the Net Revenues on deposit in the funds of the District in such a manner that all deposits required to be made pursuant to the preceding subsection (a) shall be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default shall have occurred and be continuing hereunder, the District may each Certificate Year following the payment in full of the principal of and interest on the Certificates due and payable during such Certificate Year and the payment in full of any principal of and interest on any Contract or Parity Debt during said period of time, use and apply Net Revenues on deposit in the funds of the District for (i) deposits to the Rate Stabilization Fund; (ii) the payment of Additional Payments; (iii) the payment of any subordinate obligations or any unsecured obligations of the District; (iv) the

acquisition or construction of extensions or betterments to the Enterprise; (v) the prepayment of any other obligations of the District relating to the Enterprise; or (vi) any other lawful purpose of the District.

Investment earnings received by the Trustee from the investment of moneys on deposit in the Installment Payment Fund and the Reserve Fund are to be retained by the Trustee and applied by it as provided for in the Trust Agreement.

**Section 5.3. Issuance of Parity Obligations.** The District may at any time incur Parity Obligations, including execute any Contract or issue any Parity Debt, as the case may be, in accordance herewith; provided:

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

(b) The Net 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, plus (at the option of the District) the Additional Revenues, shall be at least equal to one hundred twenty-five percent (125%) of the amount of Maximum Annual Debt Service;

(c) The Net Revenues derived from subsections (1) through (4) of the definition of Gross Revenues excluding development fees and connection fees), 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, plus (at the option of the District) the Additional Revenues, shall be at least equal to one hundred ten percent (110%) of the amount of Maximum Annual Debt Service;

(d) There shall be established upon the execution of such Contract or the issuance of such Parity Debt a reserve fund for such Parity Obligation in an amount equal to the lesser of (i) the maximum amount of debt service required to be paid by the District with respect to such Parity Obligation during any Fiscal Year, or (ii) the maximum amount then permitted under the Code; and

(e) The trustee or fiscal agent for such Parity Obligation shall be the same entity performing the functions of Trustee under the Trust Agreement.

The provisions of subsections (b) and (c) of this Section shall not apply to any Parity Obligation if all of the proceeds of such Parity Obligation (other than proceeds applied to pay costs of executing such Contracts or issuing such Parity Debt and to make a reserve fund deposit required pursuant to subsection (d) of this Section) shall be deposited in an irrevocable escrow for the purpose of paying the principal of and interest and premium (if any) on any Installment Payments or on any outstanding Parity Obligation.

For purposes of this section, Net Revenues shall include investment earnings on the Reserve Fund transferred to the Trustee for deposit in the Installment Payment Fund.

**Section 5.4. Additional Payments.** In addition to the Installment Payments, the District shall pay when due all costs and expenses incurred by the Corporation to comply with the provisions of the Trust Agreement, including without limitation all Costs of Issuance (to the extent not paid from amounts on deposit in the Costs of Issuance Fund), and shall pay to the Trustee upon request therefor all compensation for fees due to the Trustee and 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, together with all amounts required to indemnify the Trustee pursuant to the Trust Agreement, and all costs and expenses of auditors, engineers and accountants. The Additional Payments shall be payable from, but shall not be secured by a pledge or lien upon, the Net Revenues. The rights of the Trustee and the obligations of the District under this Section 5.4 shall survive the termination of this Agreement and the resignation or removal of the Trustee.

**Section 5.5. Investments.** All moneys held by the District in the Water Enterprise Fund shall be invested in Permitted Investments and the investment earnings thereon shall remain on deposit in such fund, except as otherwise provided herein.

**Section 5.6. Rate Stabilization Fund.** The District shall maintain and hold a separate fund to be known as the "Rate Stabilization Fund". From time to time the District may deposit in the Rate Stabilization Fund from Net Revenues remaining, after making the allocation provided in Section 5.2(b) hereof, such amounts as the District shall determine, provided that deposits with respect to any Fiscal Year may be made at any time during such Fiscal Year and until (but not after) the day which is sixty (60) days following the end of such Fiscal Year. The District may withdraw amounts from the Rate Stabilization Fund for inclusion in Gross Revenues for any Fiscal Year, or for any other lawful purpose of the Enterprise, such withdrawals to be made at any time during such Fiscal Year and until (but not after) the day which is sixty (60) days after the end of such Fiscal Year. All interest or other earnings upon deposits in the Rate Stabilization Fund may be withdrawn therefrom and accounted for as Gross Revenues. Notwithstanding the foregoing, no deposit of Gross Revenues to the Rate Stabilization Fund may be made to the extent such Gross Revenues were included in an independent consultant's report submitted in accordance with the Installment Sale Agreement or an instrument relating to Parity Obligations and withdrawal of the Gross Revenues to be deposited in the Rate Stabilization Fund from the Gross Revenues employed in rendering said independent consultant's report would cause noncompliance with provisions of this Agreement.

## ARTICLE VI COVENANTS OF THE PURCHASER

**Section 6.1. Compliance with Installment Sale Agreement and Ancillary Agreements.** The District will punctually pay the Series 2013 Installment Payments in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by it, and will not terminate this Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of California or any political subdivision of either or any failure of the Corporation to observe or perform any agreement, condition, covenant or term contained herein required to be observed and performed by it, whether express or

implied, or any duty, liability or obligation arising out of or connected herewith or the insolvency, or deemed insolvency, or bankruptcy or liquidation of the Corporation or any force majeure, including acts of God, tempest, storm, earthquake, war, rebellion, riot, civil disorder, acts of public enemies, blockade or embargo, strikes, industrial disputes, lock outs, lack of transportation facilities, fire, explosion, or acts or regulations of governmental authorities.

The District will faithfully observe and perform all the agreements, conditions, covenants and terms contained in the Trust Agreement required to be observed and performed by it; and it is expressly understood and agreed by and between the parties to this Agreement that, subject to Section 10.6 hereof, each of the agreements, conditions, covenants and terms contained in each of this Agreement and the Trust Agreement is an essential and material term of the purchase of and payment for the Project by the District pursuant to and in accordance with the Law.

The District will faithfully observe and perform all the agreements, conditions, covenants and terms required to be observed and performed by it pursuant to all outstanding Contracts and Parity Debt as such may from time to time be executed or issued, as the case may be.

**Section 6.2. Against Encumbrances.** The District will not make any pledge of or place any lien on Net Revenues or the moneys in the Water Enterprise Fund except as provided herein. The District may at any time, or from time to time, issue evidences of indebtedness or incur other obligations for any lawful purpose that are payable from and secured by a pledge of and lien on Net Revenues or any moneys in the Water Enterprise Fund as may from time to time be deposited therein (as provided in Section 5.2), provided that such pledge and lien shall be subordinate in all respects to the pledge of and lien thereon provided herein. The District will not issue any evidences of indebtedness or incur other obligations that are payable from and secured by a pledge of and lien on Net Revenues senior to the pledge of and lien on Net Revenues of the Series 2013 Installment Payments.

**Section 6.3. Against Sale or Other Disposition of Property.** The District will not enter into any agreement or lease that impairs the operation of the Enterprise or any part thereof necessary to secure adequate Net Revenues for the payment of the Series 2013 Installment Payments, or that would otherwise impair the rights of the Corporation hereunder or the operation of the Enterprise. Any real or personal property that has become nonoperative or that is not needed for the efficient and proper operation of the Enterprise, or any material or equipment that has become worn out, may be sold if such sale will not impair the ability of the District to pay the Series 2013 Installment Payments and if the proceeds of such sale are deposited in the Water Enterprise Fund.

Nothing herein shall restrict the ability of the District to sell or lease any portion of the Enterprise if such portion is immediately repurchased or relet by the District or an entity related to the District and if such arrangement cannot by its terms result in the purchaser of such portion of the Enterprise exercising any remedy that would deprive the District or a related entity of or otherwise interfere with its right to own and operate such portion of the Enterprise.

**Section 6.4. Against Competitive Facilities.** To the extent that it can so legally obligate itself, the District covenants that it will not acquire, construct, 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, corporation, district or political subdivision or any person whomsoever

to acquire, construct, maintain or operate within the territory of the District any wastewater system competitive with the Enterprise.

**Section 6.5. Tax Covenants.** The District and the Corporation covenant as follows:

(a) Definitions. When used in this Section, the following terms have the following meanings:

“*Computation Date*” has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

“*Gross Proceeds*” means any proceeds as defined in section 1.148-1(b) of the Tax Regulations, and any replacement proceeds as defined in section 1.148-1(c) of the Tax Regulations, of this Agreement. The District and the Corporation acknowledge that this Agreement is intended to be treated for federal income tax purposes as an obligation the debt service on which comprises the mandatory rental or installment payments, respectively, that undivided interests in the form of certificates of participation were or are to be sold in respect of that obligation, and that the “Gross Proceeds” of that obligation include the proceeds of sale of such certificates of participation and any other amounts that, had such certificates of participation comprised an issue of governmental obligations, would be “proceeds” or “replacements proceeds” of such issue.

“*Investment*” has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

“*Nonpurpose Investment,*” with respect to any issue of governmental obligations (including this Agreement), means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of such obligations are invested and that is not acquired to carry out the governmental purposes of such obligations.

“*Rebatable Amount*” has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

“*Yield*” of

(1) any Investment has the meaning set forth in section 1.148-5 of the Tax Regulations; and

(2) this Agreement has the meaning set forth in section 1.148-4 of the Tax Regulations.

(b) Not to Cause Interest Component to Fail to be Excluded. The District and Corporation shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts in respect of this Agreement (including any amounts derived from the sale or offering of the Certificates), or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with such Gross Proceeds, in a manner that if made or omitted, respectively, would cause any Interest Component of Series 2013 Installment Payments to fail to be excluded pursuant to section 103(a) of the Code from the gross income of the Corporation or its assigns for purposes of federal income taxation, or to fail to be exempt from the California

Personal Income Tax. Without limiting the generality of the foregoing, unless and until the District receives a written opinion of Special Counsel to the effect that failure to comply with such covenant will not adversely affect the exclusion from gross income for federal income tax purposes of any Interest Component of Series 2013 Installment Payment, the District and Corporation shall comply with each of the specific covenants in this Section. The Corporation shall not assign this Agreement, or any interest therein, unless the assignee, other than the Trustee, shall have assumed and undertaken the obligations of the Corporation under this Section 6.5; provided further, however, that no such assignment permitted unless the Corporation shall have undertaken to cooperate with the assignee in its satisfaction of such obligations. Any assignment described in the previous sentence having been completed, each reference to "Corporation" in this Section 6.5 then after shall be treated as a reference also to the assignee.

(c) No Private Use or Private Payments. Except as would not cause this Agreement to become a "private activity bond" within the meaning of section 141 of the Code and the Tax Regulations and rulings thereunder, the District shall at all times prior to the making of the final Series 2013 Installment Payment and termination of this Agreement:

(1) require that one or more state or local governmental agencies exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the this Agreement, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not permit the direct or indirect imposition of any charge or other payment on or by any person or entity that is treated as using Gross Proceeds of this Agreement or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the District.

For purposes of the foregoing, any "use" of the Gross Proceeds of this Agreement, or of any portion of the Enterprise, by any person as a member of (*i.e.*, on the same basis as) the general public will be disregarded; provided, however, that (i) use pursuant to an output contract (such as a take, or a take or pay, contract) will not be treated as use by the nongovernmental person as a member of the general public unless that use is pursuant to generally applicable tariffs and is pursuant to a contract having a term of not in excess of ninety days, or is pursuant to a retail requirements contract, is pursuant to an arm's-length arrangement having a term not in excess of thirty days, or commences only after consultation by the District with Special Counsel or with other counsel that is nationally recognized as expert in the area of taxation of municipal obligations on the basis of which consultation the District concludes such arrangement will not result in a violation of the covenants of this Section, and (ii) use pursuant to an arrangement under which a nongovernmental person provides services to the District with respect to any portion of the Enterprise will not be disregarded unless such arrangement satisfies the administrative criteria established by the Internal Revenue Service for management contracts that do not establish private business use relationships or commences only after consultation by the

District with Special Counsel or with other counsel that is nationally recognized as expert in the area of taxation of municipal obligations on the basis of which consultation the District concludes such arrangement will not result in a violation of the covenants of this Section.

(d) No Private Loan. Except as would not cause this Agreement to become a “private activity bond” within the meaning of section 141 of the Code and the Tax Regulations and rulings thereunder, neither the District nor the Corporation has used or permitted the use of, or shall use or permit the use of Gross Proceeds of this Agreement to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction that creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction that is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except as would not cause this Agreement to become an “arbitrage bond” within the meaning of section 148 of the Code and the Tax Regulations and rulings thereunder, neither the District nor Corporation shall directly or indirectly invest or permit the investment of Gross Proceeds of this Agreement at any time prior to the final payment of the Series 2013 Installment Payments and the termination of this Agreement in any Investment, if as a result of such investment the Yield on Investments acquired with Gross Proceeds, whether then held or previously disposed of, materially exceeds the Yield of this Agreement within the meaning of said section 148. For purposes of this paragraph, Yield on Investments shall be determined in accordance with the provisions of section 1.148-5 of the Tax Regulations (which, under certain circumstances, requires Yield to be determined separately for each Investment or class of Investments).

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Tax Regulations and rulings thereunder, neither the District nor the Corporation shall take or omit to take, or permit, any action that would cause this Agreement to be treated as “federally guaranteed” within the meaning of section 149(b) of the Code and the Tax Regulations and rulings thereunder.

(g) Information Report. The District shall timely file or cause to be filed any information required by section 149(e) of the Code with respect to this Agreement with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate. Except to the extent otherwise provided in section 148(f) of the Code and the Tax Regulations and rulings thereunder:

(1) The District shall account for all Gross Proceeds of this Agreement (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day of final payment of the Series 2013 Installment Payments and termination of this

Agreement. However, to the extent permitted by law, the District may commingle Gross Proceeds of this Agreement with other money of the District, provided that the District separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the District shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Tax Regulations and rulings thereunder, which the District shall maintain with its official transcript of proceedings relating to the execution and delivery of this Agreement until six years after the final Computation Date, and to provide promptly to the Corporation a copy of each said calculation.

(3) In order to assure the excludability of the Interest Component of Series 2013 Installment Payments from the gross income of the owners thereof for federal income tax purposes, the District shall make or cause to be made rebate payments at the times and in the amounts as are or may be required by section 148(f) of the Code and the Tax Regulations and rulings thereunder, which payments shall be accompanied by Form 8038-T prepared by the Districts or such other forms and information as is or may be required by section 148(f) of the Code and the Tax Regulations and rulings thereunder.

(4) The District shall cause the exercise of reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3) hereof, that if nevertheless an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after the error has been or with the exercise of reasonable diligence would have been discovered), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under section 1.148-3(h) of the Tax Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Tax Regulations and rulings thereunder, neither the District nor the Corporation shall enter into any transaction that reduces the amount required to be paid to the United States pursuant to section 148(f) of the Code because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and the Yield of this Agreement had been irrelevant to each party.

(j) Agreement Not Hedge Bond. The District represents that (i) on the date of execution and delivery of this Agreement, it reasonably expects that no less than 85 percent of the spendable proceeds of this Agreement would be expended for the governmental purposes of that obligation within the three-year period commencing on such date, and (ii) no more than 50% of the proceeds of this Agreement will be invested in "nonpurpose investments" having a substantially guaranteed yield for 4 years or more.

**Section 6.6. Maintenance and Operation of the Enterprise.** The District will maintain and preserve the Enterprise in good repair and working order at all times and will operate the Enterprise in an efficient and economical manner and will pay all Operation and Maintenance Costs as they become due and payable.

**Section 6.7. Payment of Claims.** The District will pay and discharge any and all lawful claims for labor, materials or supplies that, if unpaid, might become a lien on the Revenues or the funds or accounts created hereunder or under the Trust Agreement or on any funds in the hands of the District pledged to pay the Installment Payments or to the Owners prior or superior to the lien of the Installment Payments or that might impair the security of the Installment Payments, except that if the District desires to contest any such lien it may do so. If any such lien shall be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the District will forthwith pay or cause to be paid and discharged such judgment.

**Section 6.8. Insurance.**

(a) The District will procure and maintain or cause to be procured and maintained insurance relating to the Enterprise with responsible insurers in such amounts and against such risks (including damage to or destruction of the Enterprise) as are usually covered in connection with facilities similar to the Enterprise, so long as such insurance is available from reputable insurance companies at reasonable costs.

In the event of any damage to or destruction of the Enterprise caused by the perils covered by such insurance, the Net Proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the Enterprise. The District shall begin such reconstruction, repair or replacement promptly after such damage or destruction shall occur, and shall continue and properly complete such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such Net Proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the Enterprise shall be free and clear of all claims and liens.

If such Net Proceeds exceed the costs of such reconstruction, repair or replacement portion of the Enterprise, and/or the cost of the construction of additions, betterments, extensions or improvements to the Enterprise, then the excess Net Proceeds shall be applied in part to prepayment of Series 2013 Installment Payments as provided in Article VII and in part to such other fund or account as may be appropriate and used for the retirement of Parity Obligations in the same proportion that the aggregate unpaid principal balance of the Series 2013 Installment Payments then bears to the aggregate unpaid principal amount of such Parity Obligations. If such Net Proceeds are sufficient to enable the District to retire the entire obligation evidenced hereby prior to the final due date of the Series 2013 Installment Payments as well as the entire obligations evidenced by Parity Obligations then remaining unpaid prior to their final respective due dates, the District may elect not to reconstruct, repair or replace the damaged or destroyed portion of the Enterprise, and/or not to construct other additions, betterments, extensions or improvements to the Enterprise; and thereupon such Net Proceeds shall be applied to the prepayment of the Series 2013 Installment Payments as provided in Article VII and to the retirement of such Parity Obligations.

(b) The District will procure and maintain such other insurance as it shall deem advisable or necessary to protect its interests and the interests of the Corporation, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with municipal wastewater systems similar to the Enterprise.

(c) Any insurance required to be maintained by paragraph (a) above and, if the District determines to procure and maintain insurance pursuant to paragraph (b) above, such insurance, may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner usually maintained in connection with wastewater systems similar to the Enterprise and is, in the opinion of an accredited actuary, actuarially sound.

All policies of insurance required to be maintained herein shall provide that the Corporation and the Trustee shall be given thirty (30) days written notice of any intended cancellation thereof or reduction of coverage provided thereby.

The Trustee shall not be responsible for the sufficiency or adequacy of the insurance maintained by the District.

**Section 6.9. Accounting Records; Financial Statements and Other Records.**

(a) The District will keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Enterprise, which records shall be available for inspection by the Corporation and the Trustee at reasonable hours and under reasonable conditions.

(b) The District will prepare and file with the Corporation and the Trustee annually within two hundred forty (240) days after the close of each Fiscal Year (commencing with the Fiscal Year ending June 30, 2013);

(1) financial statements of the District for the preceding Fiscal Year prepared in accordance with generally accepted accounting principles, together with an Accountant's Report thereon; and

(2) a detailed report as to all insurance policies maintained and self-insurance programs maintained by the District with respect to the Enterprise, as of the close of such Fiscal Year, including the names of the insurers that have issued the policies and the amounts thereof and the property or risks covered thereby.

(c) The District will prepare annually not more than two hundred forty (240) days after the close of each Fiscal Year (commencing with the Fiscal Year ending June 30, 2013) a summary report showing in reasonable detail the Gross Revenues and the Operation and Maintenance Costs for such Fiscal Year and containing a general statement of the physical condition of the Enterprise. The District will furnish a copy of such summary report to the Corporation and upon request to any investment bankers, security dealers and others interested in the Series 2013 Installment Payments.

**Section 6.10. Protection of Security and Rights of the Corporation.** The District will preserve and protect the security hereof and the rights of the Corporation to the Series 2013 Installment Payments hereunder and will warrant and defend such rights against all claims and demands of all persons.

**Section 6.11. Payment of Taxes and Compliance with Governmental Regulations.** The District will pay and discharge all taxes, assessments and other governmental charges that

may hereafter be lawfully imposed upon the Enterprise, or any part thereof or upon the Net 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 Enterprise, or any part thereof, but the District shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith.

**Section 6.12. Amount of Rates, Fees and Charges.** The District shall fix, prescribe and collect rates, fees and charges for the Water Services furnished by the Enterprise during each Fiscal Year, which are at least sufficient, along with other Gross Revenues, after making allowances for contingencies and error in the estimates, to yield during each Fiscal Year Gross Revenues (excluding amounts in the Reserve Fund for purposes of this Section 6.12) sufficient to pay the following amounts in the following order of priority:

(a) All Operation and Maintenance Costs estimated by the District to become due and payable in such Fiscal Year;

(b) All Installment Payments and payments of principal of and interest on any Parity Obligations as they become due and payable during such Fiscal Year, without preference or priority, except to the extent Installment Payments or interest on any Contract or Parity Debt are payable from proceeds of the Certificates, Contracts or Parity Debt deposited for such purpose;

(c) All amounts, if any, required to restore the balance in the Reserve Fund to the full amount of the Reserve Requirement; and

(d) All payments required to meet any other obligations of the District that are charges, liens, encumbrances upon, or that are otherwise payable from, the Gross Revenues or the Net Revenues during such Fiscal Year.

In addition, the District shall fix, prescribe, revise and collect rates, fees and charges for the Water Services furnished by the Enterprise during each Fiscal Year, that are sufficient, along with other Net Revenues, to yield during each Fiscal Year Net Revenues that are at least equal to one hundred twenty-five percent (125%) of the amount described in the preceding clause (b) for such Fiscal Year. The District may make adjustments from time to time in such rates, fees and charges and make such classification thereof as deemed necessary, but shall not reduce the rates, fees and charges then in effect unless the resulting Net Revenues shall at all times be sufficient to meet the requirement of this rate covenant.

**Section 6.13. Collection of Rates and Charges.** The District will have in effect at all times by-laws, rules and regulations requiring each customer to pay the rates, fees and charges applicable to the wastewater services and providing for the billing thereof and for a due date and a delinquency date for each bill.

**Section 6.14. Eminent Domain Proceeds.** If all or any part of the Enterprise shall be taken by eminent domain proceedings, the Net Proceeds thereof shall be applied as follows:

(a) If (1) the District files with the Corporation and the Trustee a certificate showing (i) the estimated loss of annual Net 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 Enterprise proposed to be acquired and constructed by the District from such Net Proceeds, and (iii) an estimate of the additional annual Net Revenues to be derived from such additions, betterments, extensions or improvements, and (2) the District, on the basis of such certificate filed with the Corporation and the Trustee, determines that the estimated additional annual Net Revenues will sufficiently offset the estimated loss of annual Net 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 and construction of such additions, betterments, extensions or improvements substantially in accordance with such certificate and such Net Proceeds shall be applied for the payment of the costs of such acquisition and construction, and any balance of such Net Proceeds not required by the District for such purpose shall be deposited in the Water Enterprise Fund.

(b) If the foregoing conditions are not met, then such Net Proceeds shall be applied by the District in part to the prepayment of Series 2013 Installment Payments as provided in Article VII, and in part to such other fund or account as may be appropriate and used for the retirement of Parity Obligations in the same proportion that the aggregate unpaid principal balance of Series 2013 Installment Payments then bears to the aggregate unpaid principal amount of such Parity Obligations.

**Section 6.15. District Budget.** On or prior to the fifteenth (15<sup>th</sup>) day of each Fiscal Year, the District shall certify to the Trustee that the amounts budgeted for payment of the Installment Payments due under this Agreement are dully adequate for the payment of all Installment Payments due under this Agreement for such Fiscal Year. If the amounts so budgeted are not adequate for the payment of the Installment Payments due under this Agreement, the District shall take such action as may be necessary to cause such annual budget to be amended, corrected or augmented so as to include the amounts required to be raised by the District in the then ensuing Fiscal Year for the payment of Installment Payment due under this Agreement and shall notify the Trustee of the proceedings then taken or proposed to be taken by the District.

**Section 6.16. Further Assurances.** The District will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the Corporation of the rights and benefits provided to it herein.

**Section 6.17. Continuing Disclosure.** The District will comply with the continuing disclosure requirements promulgated under Securities and Exchange Commission Rule 15c2-12(b)(5) and will also comply with the terms of the Continuing Disclosure Agreement.

**Section 6.18. Access to the Enterprise.** The District agrees that the Corporation, the Trustee, and any duly authorized representative thereof, shall have the right at all reasonable times to enter upon and to examine and inspect the Enterprise. The District further agrees that the Corporation and the Trustee, and any duly authorized representative thereof, shall have such rights of access to the Enterprise as may be reasonably necessary to cause the proper maintenance of the Enterprise in the event of failure by the District to perform its obligations hereunder.

**ARTICLE VII  
PREPAYMENT OF SERIES 2013 INSTALLMENT PAYMENTS**

**Section 7.1. Prepayment.** (a) Prepayment from Net Proceeds The District may or shall, as the case may be, prepay from the Net Proceeds as provided in Sections 6.8 and 6.14 herein and from unexpended proceeds the Series 2013 Installment Payments as a whole or in part in the order of payment date as directed by the District (or in the event the District has not directed the order of payment date, in inverse order of maturity) at a Prepayment Price equal to the sum of the principal amount prepaid plus accrued interest thereon to the date of prepayment as provided in Section 4.01(b) of the Trust Agreement.

(b) Optional Prepayment. The 2012 Installment Payments are subject to optional prepayment in accordance with the provisions of Section 4.01(c) of the Trust Agreement relating to optional prepayment of the Certificates.

(c) Other Obligations. Notwithstanding any such prepayment, the District shall not be relieved of its obligations hereunder, including its obligations under Article IV, until the Purchase Price shall have been fully paid (or provision for payment thereof shall have been provided to the written satisfaction of the Corporation).

**Section 7.2. Method of Prepayment.** Before making any prepayment pursuant to Section 7.1, the District shall, within five (5) days following the event permitting the exercise of such right to prepay or creating such obligation to prepay, give written notice to the Corporation and the Trustee describing such event and specifying the date on which the prepayment will be paid, which date shall be not less than sixty (60) days from the date such notice is given, unless such prepayment must occur on an Interest Payment Date, in which case such date shall be the next Interest Payment Date with respect to which notice of prepayment may be timely given pursuant to the Trust Agreement.

**ARTICLE VIII  
EVENTS OF DEFAULT AND REMEDIES OF THE AUTHORITY**

**Section 8.1. Events of Default and Acceleration of Maturities.** If one or more of the following Events of Default shall happen, that is to say --

(1) if default shall be made in the due and punctual payment of any Series 2013 Installment Payment or any Parity Obligation when and as the same shall become due and payable;

(2) if default shall be made by the District in the performance of any of the agreements or covenants required herein 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; provided, however, if in the reasonable opinion of the District the failure stated in the notice can be corrected, but not within such thirty (30) day period, such failure shall not constitute an Event of Default if corrective action is instituted by the District within such thirty (30) day period and the District shall thereafter diligently and in good faith cure such failure in a reasonable period of time; or

(3) if the District shall file 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 if a court of competent jurisdiction shall approve a petition filed with or without 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;

then and in each and every such case during the continuance of such Event of Default specified in clause (3) above, the Corporation shall, and for any other such Event of Default the Corporation may, by notice in writing to the District, declare the entire principal amount of the unpaid Series 2013 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 subsection however, is subject to the condition that if at any time after the entire principal amount of the unpaid Series 2013 Installment Payments referred to in clause (1) above that have come due and the accrued interest thereon shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered the District shall deposit with the Corporation a sum sufficient to pay the unpaid principal amount of the Series 2013 Installment Payments or any Parity Obligations referred to in clause (1) above due prior to such declaration and the accrued interest thereon, with interest on such overdue installments, at the rate or rates applicable to the remaining unpaid principal balance of the Series 2013 Installment Payments or such Parity Obligations if paid in accordance with their terms, and the reasonable expenses of the Corporation, and any and all other defaults known to the Corporation (other than in the payment of the entire principal amount of the unpaid Series 2013 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 Corporation or provision deemed by the Corporation to be adequate shall have been made therefor, then and in every such case the Corporation, 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 8.2. Application of Funds Upon Acceleration.** Upon the date of the declaration of acceleration as provided in Section 8.1, all Gross Revenues thereafter received shall be applied in the following order -

First, to the payment of the fees, costs and expenses of the Trustee, if any, incurred in and about the performance of its powers and duties under this Agreement and then to the payment of the Corporation of the fees, costs and expenses, if any, in carrying out the provisions of this article, including reasonable compensation to its accountants, advisors and legal counsel;

Second, to the payment of the Operation and Maintenance Costs; and

Third, to the payment of the entire principal amount of the unpaid Series 2013 Installment Payments and Parity Obligations and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable to the Series 2013 Installment Payments and Parity Obligations if paid in accordance with their respective terms.

**Section 8.3. Other Remedies of the Corporation.** The Corporation shall have the right -

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

(b) by suit in equity to enjoin any acts or things that are unlawful or violate the rights of the Corporation or the Trustee; or

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

Notwithstanding anything contained herein, the Corporation shall have no security interest in or mortgage on the Project or the Enterprise or any other real property of the District and no default hereunder shall result in the loss of the Project or the Enterprise or any other real property of the District

**Section 8.4. Non-Waiver.** Nothing in this article or in any other provision hereof shall affect or impair the obligation of the District, which is absolute and unconditional, to pay the Series 2013 Installment Payments to the Corporation at the respective due dates or upon prepayment from the Net Revenues, the Water Enterprise Fund and the other funds herein pledged for such payment, or shall affect or impair the right 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 Corporation 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 by the Corporation 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 Corporation by the Law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Corporation.

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

**Section 8.5. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Corporation or the Certificate Owners, or as provided in the Trust Agreement, 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 under the Trust Agreement 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 the Law or any other law.

**ARTICLE IX  
DISCHARGE OF OBLIGATIONS**

**Section 9.1. Discharge of Obligations.** When:

(a) all or any portion of the Series 2013 Installment Payments shall have become due and payable in accordance herewith or a written notice of the District to prepay all or any portion of the Series 2013 Installment Payments shall have been filed with the Trustee; and

(b) there shall have been deposited with the Trustee at or prior to the Series 2013 Installment Payment Dates or date (or dates) specified for prepayment, in trust for the benefit of the Corporation or its assigns and irrevocably appropriated and set aside to the payment of all or any portion of the Series 2013 Installment Payments, Defeasance Securities in a sufficient amount to pay all principal, prepayment premium, if any, and interest of such Series 2013 Installment Payments to their respective Series 2013 Installment Payment Dates or prepayment date or dates as the case may be; and

(c) provision shall have been made for paying all fees and expenses of the Trustee,

then and in that event, if an opinion of Special Counsel is filed with the Trustee to the effect that the actions authorized by and taken pursuant to this Article IX shall not adversely affect the tax exempt status of the interest portion of the Series 2013 Installment Payments, the right, title and interest of the Corporation herein and the obligations of the District hereunder shall, with respect to all or such portion of the Series 2013 Installment Payments as have been so provided for, thereupon cease, terminate, become void and be completely discharged and satisfied (except for the right of the Trustee and the obligation of the District to have such moneys and such Permitted Investments applied to the payment of such Series 2013 Installment Payments).

In such event, upon request of the District the Trustee shall cause an accounting for such period or periods as may be requested by the District to be prepared and filed with the District and shall execute and deliver to the District all such instruments as may be necessary or desirable to evidence such total or partial discharge and satisfaction, as the case may be, and, in the event of a total discharge and satisfaction, the Trustee shall pay over to the District, after payment of all amounts due the Trustee pursuant to the Trust Agreement, as an overpayment of Series 2013 Installment Payments, all such moneys or such Permitted Investments held by it pursuant hereto other than such moneys and such Permitted Investments as are required for the payment or prepayment of the Series 2013 Installment Payments, which moneys and Permitted Investments shall continue to be held by the Trustee in trust for the payment of the Series 2013 Installment Payments and shall be applied by the Trustee to the payment of the Series 2013 Installment Payments of the District.

**ARTICLE X  
MISCELLANEOUS**

**Section 10.1. Liability of District Limited to Net Revenues.** Notwithstanding anything contained herein, the District shall not be required to advance any moneys derived from any source of income other than the Net Revenues, the Water Enterprise Fund and the other funds provided herein and in the Trust Agreement for the payment of the Series 2013 Installment

Payments or for the performance of any agreements or covenants required to be performed by it contained herein. The District may, however, 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 Series 2013 Installment Payments is a special obligation of the District payable solely from Net Revenues, the Water Enterprise Fund and other funds described in this Agreement and in the Trust Agreement, and does not constitute a debt of the District or of the State of California or of any political subdivision thereof in contravention of any constitutional or statutory debt limitation or restriction.

**Section 10.2. Benefits of Installment Sale Agreement Limited to Parties.** Except as provided in Section 10.3 hereto, nothing contained herein, expressed or implied, is intended to give to any person other than the District, the Corporation 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, the Corporation shall be for the sole and exclusive benefit of the other party.

**Section 10.3. Successor Is Deemed Included in All References to Predecessor.** Whenever either the District or the Corporation 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 Corporation, and all agreements and covenants required hereby to be performed by or on behalf of the District or the Corporation shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

**Section 10.4. Waiver of Personal Liability.** No director, officer or employee of the District shall be individually or personally liable for the payment of the Series 2013 Installment Payments, but nothing contained herein shall relieve any director, officer or employee of the District from the performance of any official duty provided by any applicable provisions of law or hereby.

**Section 10.5. Third Party Beneficiary.** The Trustee shall be and is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary.

**Section 10.6. 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" and other words of similar import refer to this Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

**Section 10.7. Partial Invalidity.** If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the District or the Corporation shall be contrary to 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



**Section 10.14. Indemnification of Corporation.** The District hereby agrees to indemnify and hold harmless the Corporation if and to the extent permitted by law, from and against all claims, advances, damages and losses, including legal fees and expenses, arising out of or in connection with the acceptance or the performance of its duties hereunder, under the Trust Agreement, and the Assignment Agreement; provided that no indemnification will be made for willful misconduct, negligence or breach of an obligation hereunder, under the Trust Agreement or the Assignment Agreement by the Corporation.

**Section 10.15. Amendments Permitted.** (a) This Agreement and the rights and obligations of the Corporation, the District, the Owners of the Certificates and of the Trustee may be modified or amended at any time, by an amendment hereto that shall become binding when the written consents of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, exclusive of Certificates disqualified as provided in Section 12.04 of the Trust Agreement, shall have been filed with the Trustee. No such modification or amendment shall:

(1) extend the stated maturities of the Certificates, or reduce the rate of interest represented thereby, or extend the time of payment of interest, or reduce the amount of principal represented thereby, or reduce any premium payable on the prepayment thereof, without the consent of the Owner of each Certificate so affected, or

(2) reduce the aforesaid percentage of Owners of Certificates whose consent is required for the execution of any amendment or modification of this Agreement, or

(3) modify any of the rights or obligations of the Trustee or the Corporation without its respective written consent thereto.

(b) This Agreement and the rights and obligations of the Corporation, the District and of the Owners of the Certificates may also be modified or amended at any time, by an amendment hereto that shall become binding upon adoption, without the consent of the Owners of any Certificates, but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the Corporation or the District contained in this Agreement other covenants and agreements thereafter to be observed or to surrender any right or power herein reserved to or conferred upon the Corporation or the District, and that shall not adversely affect the interests of the Owners of the Certificates;

(2) to cure, correct or supplement any ambiguous or defective provision contained in this Agreement or in regard to questions arising under this Agreement, as the Corporation or the District may deem necessary or desirable and that shall not adversely affect the interests of the Owners of the Certificates; and

(3) to make such other amendments or modifications as may be in the best interests of the Owners of the Certificates.

(c) No amendment without consent of the Owners may modify any of the rights or obligations of the Trustee without its written consent thereto.

**Section 10.16. Notice to Rating Agencies.** Any rating agency rating the Certificates shall receive notice of each amendment to the Installment Sale Agreement and a copy thereof at least 15 days in advance of its execution.

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

NIPOMO COMMUNITY SERVICES DISTRICT,  
as Purchaser

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

NIPOMO COMMUNITY SERVICES DISTRICT  
PUBLIC FACILITIES CORPORATION,  
as Seller

By: \_\_\_\_\_  
Executive Director

**EXHIBIT A**

**PURCHASE PRICE  
AND SCHEDULE OF SERIES 2013 INSTALLMENT PAYMENTS**

1. The principal amount of payments to be made by the District hereunder is \$[principal amount].

2. The installment payments of principal and interest are payable in the amounts and on the Installment Payment Dates as follows:

<u>Series 2013 Installment Payment Date (5 days prior to below date)</u>	<u>Amount Attributable to Principal</u>	<u>Amount Attributable to Interest</u>	<u>Total</u>
09/01/2013			
03/01/2014			
09/01/2014			
03/01/2015			
09/01/2015			
03/01/2016			
09/01/2016			
03/01/2017			
09/01/2017			
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03/01/2040  
09/01/2040  
03/01/2041  
09/01/2041  
03/01/2042  
09/01/2042  
03/01/2043  
09/01/2043

TOTAL

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\$(principal  
amount).00

\$

\$

**EXHIBIT B**  
**DESCRIPTION OF PROJECT**

JUNE 12, 2013

ITEM E-1

ATTACHMENT D

**AGENCY AGREEMENT**

by and between

**NIPOMO COMMUNITY SERVICES DISTRICT  
PUBLIC FACILITIES CORPORATION,**

as Seller

and

**NIPOMO COMMUNITY SERVICES DISTRICT,**

as Purchaser

Dated as of June 1, 2013

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\$[principal amount]  
Nipomo Community Services District  
Revenue Certificates of Participation  
(Supplemental Water Project)  
Series 2013

## AGENCY AGREEMENT

This AGENCY AGREEMENT, dated as of June 1, 2013, by and between NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the "Corporation"), and NIPOMO COMMUNITY SERVICES DISTRICT, a community services district duly organized and existing under the laws of the State of California (the "District");

### W I T N E S S E T H:

WHEREAS, the Corporation and the District have executed and entered into an Installment Sale Agreement (the "Agreement"), dated as of the date hereof, whereby the Corporation has agreed to construct certain improvements to the District's water enterprise, as described in Exhibit A thereto (the "Phase 1 Improvements"); and

WHEREAS, under and pursuant to the Agreement, the District is obligated to make Series 2013 Installment Payments, as defined therein, to the Corporation for the purchase of a portion of the Phase 1 Improvements (the "Project"); and

WHEREAS, the Corporation, under and pursuant to an Assignment Agreement (the "Assignment Agreement") to be executed and entered into as of the date hereof by and between the Corporation and The Bank of New York Mellon Trust Company, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States, as trustee (the "Trustee"), has assigned without recourse all its rights to receive the Series 2013 Installment Payments scheduled to be paid by the District under and pursuant to the Agreement to the Trustee for the benefit of the owners of certain certificates of participation (the "Certificates") to be executed and delivered under a Trust Agreement (the "Trust Agreement") to be executed and entered into as of the date hereof by and among the Trustee, the Corporation and the District; 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 Agency 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 Agency Agreement;

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

Section 1. Definitions. Unless the context otherwise requires, all capitalized terms used in this Agency Agreement and not defined herein shall for all purpose of this Agency Agreement have the meaning specified therefor in the Trust Agreement.

Section 2. District to Act as Agent for the Corporation. The Corporation hereby irrevocably appoints the District as its agent in connection with the acquisition, construction, delivery and/or installation of the Project in accordance with such other agreements as shall be approved and entered into by the District. The District, as the agent of the Corporation for the foregoing purpose, shall cause the acquisition, delivery and installation of the Additional Improvements to be completed in accordance with the Agreement and any applicable requirements of governmental authorities and law.

Section 3. Acceptance. The District, for One Dollar (\$1.00) and other good and valuable consideration in hand received, does hereby accept the foregoing appointment as agent of the Corporation for the purposes set forth in Section 2.

Section 4. Disclaimers of the Corporation. The District acknowledges and agrees that the design of the Project has not been made by the Corporation, and the Corporation has not supplied any plans or specifications with respect thereto and that the Corporation (a) is not a manufacturer of, or a dealer in, any component of the Project, (b) has not made any recommendation, given any advice nor taken any other action with respect to (1) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Project or any component of the Project or any property or rights relating thereto or (2) any action taken or to be taken with respect to the Project or any component of the Project or any property or rights relating thereto at any stage of the acquisition, delivery or installation thereof, (c) has not at any time had physical possession of the Project or any component of the Project or made any inspection thereof or any property or rights relating thereto and (d) has not made any warranty or other representation, express or implied, that the Project or any component of the Project or any property or rights relating thereto (1) will not result in or cause injury or damage to persons or property, (2) has been or will be properly designed or constructed or will accomplish the results which the District intends therefor or (3) is safe in any manner or respect.

The Corporation makes no express or implied warranty or representation of any kind whatsoever with respect to the Project or any component of the Project to the District or any other circumstance whatsoever with respect thereto, including but not limited to any warranty or representation with respect to: the merchantability or the fitness or suitability thereof for any purpose; the design or condition thereof; the safety, workmanship, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the title to or interest of the Corporation thereof beyond that title or interest which the District obtains for the Corporation pursuant hereto; the ability thereof to perform any function; that the proceeds derived from the sale of the Certificates will be sufficient (together with other available funds of the District) to pay the cost of acquiring, delivering,

installing and/or constructing the Project; or any other characteristic of the Project; it being agreed that all risks relating to the Project or the transactions contemplated hereby or by the Agreement, the Assignment Agreement or the Trust Agreement are to be borne by the District, and the benefits of any and all implied warranties and representations of the Corporation are hereby waived by the District.

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Agency Agreement by their respective officers thereunto duly authorized as of the day and year first written above.

NIPOMO COMMUNITY SERVICES  
DISTRICT PUBLIC FACILITIES  
CORPORATION,  
as Seller

By \_\_\_\_\_  
Executive Director

NIPOMO COMMUNITY SERVICES  
DISTRICT, as Purchaser

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

JUNE 12, 2013

ITEM E-1

ATTACHMENT E

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ASSIGNMENT AGREEMENT

by and between

NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION,  
as Corporation

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Trustee

Dated as of June 1, 2013

Relating to

[\$principal amount]  
REVENUE CERTIFICATES OF PARTICIPATION  
(SUPPLEMENTAL WATER PROJECT)  
SERIES 2013

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## ASSIGNMENT AGREEMENT

This Assignment Agreement is dated as of June 1, 2013 by and between the NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation") and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States of America, as trustee (the "Trustee");

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

### SECTION 1. Assignment.

The Corporation, for good and valuable consideration in hand received, does hereby unconditionally sell, assign and transfer to the Trustee without recourse, for the benefit of the owners of the Revenue Certificates of Participation (Supplemental Water Project) Series 2013 (the "Certificates") to be executed and delivered by the Trustee pursuant to the Trust Agreement dated as of June 1, 2013 by and among the Nipomo Community Services District (the "District"), the Corporation and the Trustee (the "Trust Agreement"), all of its rights, title, and interest in the Installment Sale Agreement relating to the construction and sale of certain water system facilities by the District from the Corporation, dated as of June 1, 2013, by and between the District and the Corporation (the "Installment Sale Agreement") including the Corporation's right to receive all Series 2013 Installment Payments (as defined in the Installment Sale Agreement) from the District under the Installment Sale Agreement (but not including the right to be indemnified pursuant to the Installment Sale Agreement and the right of the Corporation to receive notices thereunder). This assignment is absolute and is presently effective, and all Installment Payments shall be applied and the rights so assigned shall be exercised by the Trustee provided in the Trust Agreement.

### SECTION 2. Acceptance.

The Trustee hereby accepts the foregoing assignment for the benefit of the owners of the Certificates, subject to the terms and provisions of the Trust Agreement, and all Series 2013 Installment Payments shall be applied and the rights so assigned shall be exercised by the Trustee as provided in the Trust Agreement.

### SECTION 3. Conditions.

This Assignment Agreement shall confer no rights and shall impose no obligations upon the Trustee beyond those expressly provided in the Trust Agreement.

### SECTION 4. Partial Invalidity.

If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the Trustee or the Corporation shall be contrary to 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 Trustee and the Corporation hereby declare that they would have executed this Assignment 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 5. California Law.

THE ASSIGNMENT AGREEMENT SHALL BE CONSTRUED AND GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

SECTION 6. Execution in Counterparts.

This Assignment 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.

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

NIPOMO COMMUNITY SERVICES  
DISTRICT PUBLIC FACILITIES  
CORPORATION

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

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Trustee

By: \_\_\_\_\_  
Authorized Officer