



CITY COUNCIL AND BOARD OF DIRECTORS STAFF REPORT

TO: Honorable Mayor, City Council and Board of Directors of the Grover Beach Financing Authority **DATE:** February 18, 2020

FROM: Matthew Bronson, City Manager

PREPARED BY: Deanne Purcell, Administrative Services Director

SUBJECT: Consideration of Approval of the City and Authority Resolutions, Installment Purchase Contract, and Assignment Agreement, and Authorization for Execution and Delivery of Necessary Documents

RECOMMENDATION

Adopt the Resolutions for the City of Grover Beach and Grover Beach Financing Authority authorizing the execution and delivery by the City and Authority of an Installment Purchase Contract for water infrastructure financing along with an Authority Assignment Agreement and all other necessary documents and related actions for the \$4.5 million private placement financing.

BACKGROUND

On November 18, 2019, the City Council heard a presentation from staff and Albert Peché reviewing the Water Fund capital needs, current and prospective utility rates, and financing options for the water improvements (the “2020 Water Revenue Project Financing”). The City Council adopted a resolution authorizing staff to proceed with the financing process and confirming the approved 6% increase in water rates on July 1, 2020 as per the Prop. 218 hearing approving rate increases on March 6, 2017.

In December 2019, staff worked with the Financing Team to review a Term Sheet, prepared by Piper Sandler, and draft legal documents prepared by Kutak Rock LLP, that would go out to potential bidders for the financing. Because of the importance of having independent water enterprise projections, the services of Tuckfield & Associates, a Rate Consultant with experience with the City, was engaged to prepare: three years of historical cashflows and five-year projected cashflows showing that proposed debt service would meet the 1.20 times coverage requirement.

On January 6, 2020, Piper Sandler sent out the Term Sheet, three years of the City CAFRs including the FY 2018-19 CAFR, the projections and other relevant information out to 48 potential banks, including several local and regional banks shown in Attachment 1. Piper Sandler received several questions over the following two weeks from 10 banks and staff cooperated with responding to these inquiries. Bids were due on January 22, 2020. BBVA USA (“BBVA”) provided the lowest true interest cost when factoring in all costs.

On February 3, 2020, Albert Peché and Piper Sandler presented the terms of BBVA’s bid. After the presentation, City Council approved BBVA as the winning bidder and directed staff to proceed

with the next steps in the financing process including Council approval of the issuance resolution and legal documents on February 18. The following page shows a summary of BBVA's bid:

- Interest Rate – 2.43%
- Lock – 30 days; 3 bps premium for 60-day lock
- Additional Fees - \$10,000 Bank Counsel plus out of pocket expenses
- Estimated Annual Average Debt Service – \$282,000
- Optional Redemption – 10 years at Par
- Default Rate – 5% plus Final Rate
- Maturity Date - September 1, 2039
- Expected Closing Date – February 26, 2020
- Additional Requirements – Annual CAFR and budget provided within 270 days of the end of the fiscal year. CAFR to include debt service coverage calculation.

The Resolutions provide for a not-to-exceed loan amount of \$4,500,000 and a not-to-exceed interest rate of 2.46% (if the loan can be closed by February 26th as planned, the interest rate would be 2.43%) and a maturity date not to exceed September 1, 2039. The Installment Payments due under the Installment Purchase Contract will be secured by a pledge of net revenues of the City's Water System. The debt service coverage ratio pursuant to the Installment Purchase Contract is 120% but the City is allowed to establish a rate stabilization fund and the City's deposits into the rate stabilization fund may be counted for purposes of meeting the debt service coverage ratio.

The City is entering into the Installment Purchase Contract with the Grover Beach Financing Authority (the "Authority") pursuant to which the City will make Installment Payments to the Authority in consideration of the loan from BBVA. The Authority is assigning the Installment Payments to BBVA in order to repay the loan. An installment purchase structure is used to utilize the City's authority to purchase property for City purposes without limitation. Under the Installment Purchase Contract, the City is selling the water project to the Authority in order to obtain the BBVA loan proceeds and in turn the Authority sells it back to the City in exchange for the City making the Installment Payments.

FISCAL IMPACT

Estimated debt service of approximately \$282,000 will start in FY 2020-21 and will be repaid by Water Enterprise Fund revenues.

ALTERNATIVES

The Council and Financing Authority, sitting as part of a joint meeting, have the following alternatives to consider:

1. Adopt the City and Authority Resolution authorizing both agencies to execute an Installment Purchase Contract for water infrastructure financing, and an assignment agreement along with other necessary documents and related actions for the \$4.5 million private placement financing; or
2. Do not adopt a Resolution; or
3. Provide alternate direction to staff.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act.

ATTACHMENTS

1. Resolutions No. ____ and No. _____
2. Installment Purchase Contract
3. Assignment Agreement

RESOLUTION NO. _____

RESOLUTION OF THE COMMISSION OF THE GROVER BEACH FINANCING AUTHORITY AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT PURCHASE CONTRACT AND ASSIGNMENT AGREEMENT AND APPROVING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH AND CERTAIN OTHER MATTERS

WHEREAS, the Grover Beach Financing Authority is a joint exercise of powers authority organized and validly existing under the laws of the State of California (the “Authority”) with the authority to assist public agencies in the financing and refinancing of facilities and property useful to such agencies and the Authority is authorized to assist the City of Grover Beach (the “City”) in the refinancing and financing of the construction, acquisition, and improvement of the City’s facilities and property, including its water system; and

WHEREAS, the City proposes to finance certain improvements to the City’s water system (the “2020 Project”); and

WHEREAS, to provide funds necessary to finance the 2020 Project, the City desires that the Authority purchase the 2020 Project from the City which the City will then repurchase from the Authority for certain installment payments to be made by the City pursuant to an Installment Purchase Contract, by and between the City and the Authority (such Installment Purchase Contract, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the “Installment Purchase Contract”); and

WHEREAS, the Authority intends to assign without recourse certain of its rights under and pursuant to the Installment Purchase Contract to BBVA USA (the “Bank”), pursuant to an Assignment Agreement, between the Bank and the Authority; and

WHEREAS, there are on file with the Secretary of the Commission of the Authority (the “Commission”):

- (a) A form of Installment Purchase Contract; and
- (b) A form of Assignment Agreement;

WHEREAS, the Authority has determined that it is necessary and desirable to enter into the Installment Purchase Contract and the Assignment Agreement; and

NOW THEREFORE, the Commission of the Authority hereby finds, determines, declares and resolves as follows:

SECTION 1. All of the recitals herein contained are true and correct and the Commission so finds.

SECTION 2. The Installment Purchase Contract is hereby approved, substantially in the form presented to this Commission and on file with the Secretary, with such revisions, amendments and completions as shall be approved by the Executive Director of the Authority, or any Executive Director's written designee (each a "Responsible Officer"), such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 3. The Assignment Agreement is hereby approved, substantially in the form presented to this Commission and on file with the Secretary, with such revisions, amendments and completions as shall be approved by a Responsible Officer, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 4. The Responsible Officers, and each of them acting singly, and any other officer of the Authority, are each hereby authorized and directed to execute and deliver any and all documents, certificates and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by the Installment Purchase Contract and the Assignment Agreement.

SECTION 5. All actions heretofore taken by the officers and employees of the Authority with respect to or related to any of the agreements or documents referenced in this Resolution, are hereby approved, confirmed and ratified.

SECTION 6. This resolution shall take effect immediately.

ADOPTED, SIGNED AND APPROVED this 18th day of February, 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

GROVER BEACH FINANCING AUTHORITY

By: _____
President

ATTEST:

Secretary

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF GROVER BEACH, CALIFORNIA
AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF AN
INSTALLMENT PURCHASE CONTRACT AND AUTHORIZING THE
EXECUTION OF OTHER NECESSARY DOCUMENTS AND RELATED
ACTIONS**

WHEREAS, the City of Grover Beach (the “City”) is a municipal corporation duly organized and existing under the laws of the State of California; and

WHEREAS, the City is authorized by the laws of the State of California to sell and purchase its property to finance and refinance public capital improvements, including certain improvements to its water system through the execution of installment purchase contracts; and

WHEREAS, the City proposes to finance certain improvements to the City’s water system (the “2020 Project”); and

WHEREAS, to provide funds necessary to finance the 2020 Project, the City desires to enter into that certain Installment Purchase Contract (the “Installment Purchase Contract”) with the Grover Beach Financing Authority (the “Authority”) in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution; and

WHEREAS, the Authority intends to assign without recourse certain of its rights under and pursuant to the Installment Purchase Contract to BBVA USA (the “Bank”), pursuant to an Assignment Agreement, between the Bank and the Authority; and

WHEREAS, there have been presented at this meeting the form of Installment Purchase Contract relating to such action; and

WHEREAS, pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), under certain circumstances, certain obligations the interest on which is exempt from federal income tax under Section 103 of the Code may be designated by the issuer thereof as “qualified tax-exempt obligations,” thereby allowing certain financial institutions that are holders of such qualified tax exempt obligations to deduct for federal income tax purposes a portion of such institution’s interest expense that is allocable to such qualified tax-exempt obligations, all as determined in accordance with Sections 265 and 291 of the Code; and

WHEREAS, the City wishes to designate the Installment Purchase Contract as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code; and

WHEREAS, Senate Bill 450 (Chapter 625 of the 2017-2018 Session of the California Legislature) (“SB 450”) requires that the City obtain from an underwriter, municipal advisor or private lender and disclose, prior to authorization of the issuance of bonds, including debt instruments such as the Installment Purchase Contract, with a term of greater than 13 months, good faith estimates of the following information in a meeting open to the public: (a) the true interest cost of the Installment Purchase Contract, (b) the sum of all fees and charges paid to third parties with respect to the Installment Purchase Contract, (c) the amount of proceeds of the Installment Purchase Contract expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the Installment Purchase Contract, and (d) the sum total of all debt service payments on the Installment Purchase Contract calculated to the final maturity of the Installment Purchase Contract plus the fees and charges paid to third parties not paid with the proceeds of the Installment Purchase Contract; and

WHEREAS, in compliance with SB 450, the City obtained from Piper Sandler & Co. (the “Placement Agent”), the required good faith estimates and such estimates are disclosed and set forth on Exhibit A attached hereto; and

WHEREAS, all acts, conditions and things required by the Constitution and laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the financing and refinancing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such financing for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE CITY OF GROVER BEACH AS FOLLOWS:

Section 1. All of the recitals herein contained are true and correct and the City Council so finds.

Section 2. The form of Installment Purchase Contract submitted to this meeting and made a part hereof as though set forth herein is hereby approved. The Mayor of the City, and such other member of the City Council as the Mayor may designate, the City Manager of the City, and such other officers of the City as the City Manager of the City may designate (each an “Authorized Officer”) are, and each of them is, hereby authorized and directed, for and in the name of the City, to execute and deliver the Installment Purchase Contract in the form submitted to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, with the advice and approval of the City Attorney and Kutak Rock LLP, special counsel to the City (“Special Counsel”), such requirement or approval to be conclusively evidenced by the execution and delivery of the Installment Purchase Contract by such Authorized Officer. In connection therewith, the City approves the execution and delivery of the Installment Purchase Contract so long as the maturity of the Installment Payments (as defined in the Installment Purchase Contract) does not

exceed September 1, 2039, the interest rate with respect to the Installment Payments does not exceed 2.46%, and the principal amount of the Installment Payments does not exceed \$4,500,000.

Section 3. The Installment Payments due under the Installment Purchase Contract are hereby designated as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code. The City Council hereby finds and determines that the aggregate face amount of all tax- exempt obligations (other than private activity bonds) issued by the City (and all subordinate entities thereof) during calendar year 2020 is not expected to exceed \$10,000,000.

Section 4. The City Council hereby authorizes and directs the Mayor of the City, the City Manager or a designee in writing to make appropriate arrangements to establish a special fund into which the proceeds of the financing received by the City are deposited for the purpose of paying the costs of the 2020 Project.

Section 5. In accordance with SB 450, good faith estimates of the following have been obtained from the Placement Agent and are set forth on Exhibit A attached hereto: (a) the true interest cost of the Installment Purchase Contract, (b) the sum of all fees and charges paid to third parties with respect to the Installment Purchase Contract, (c) the amount of proceeds of the Installment Purchase Contract expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the Installment Purchase Contract, and (d) the sum total of all debt service payments on the Installment Purchase Contract calculated to the final maturity of the Installment Purchase Contract plus the fees and charges paid to third parties not paid with the proceeds of the Installment Purchase Contract.

Section 6. The Authorized Officers and staff of the City are hereby authorized and directed, jointly and severally, to do any and all things, to execute and deliver any and all documents, including but not limited to a fee agreement, costs of issuance agreement, custodian agreement or other similar agreements, which in consultation with the City Attorney and Special Counsel, they may deem necessary or advisable in order to effectuate the purposes of this Resolution, and any and all such actions previously taken by such Officers or staff members are hereby ratified and confirmed.

On motion by Council Member _____, seconded by _____, and on the following roll call vote, to wit:

AYES:	Council Members – _____
NOES:	Council Members – _____
ABSENT:	Council Members – _____
ABSTAIN:	Council Members – _____

the foregoing Resolution was **PASSED, APPROVED, AND ADOPTED** at the Regular Meeting of the City Council of the City of Grover Beach, California, this 18th day of February 2020.

JEFF LEE, MAYOR

Attest:

WENDI B. SIMS, CITY CLERK

Exhibit A

GOOD FAITH ESTIMATES

The following information was obtained from the City's Placement Agent, and is provided in compliance with Senate Bill 450 (Chapter 625 of the 2017-2018 Session of the California Legislature) with respect to the Installment Purchase Contract:

1. *True Interest Cost of the Installment Purchase Contract.* Assuming the maximum aggregate principal amount of the Installment Purchase Contract authorized to be issued (\$4,500,000) is sold, and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the true interest cost of the Installment Purchase Contract, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for Installment Purchase Contract, is 2.43%.

2. *Finance Charge of the Installment Purchase Contract.* Assuming the maximum aggregate principal amount of the Installment Purchase Contract authorized to be issued (\$4,500,000) is sold, and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the City's finance charge of the Installment Purchase Contract, which means the sum of all fees and charges paid to third parties from the principal amount of the Installment Purchase Contract, is \$135,145.13.

3. *Amount of Proceeds to be Received by the City.* Assuming the maximum aggregate principal amount of the Installment Purchase Contract authorized to be issued (\$4,500,000) is sold, and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the amount of proceeds expected to be received by the City for sale of the Installment Purchase Contract less the finance charge of the Installment Purchase Contract described in paragraph 2 above and any reserves or capitalized interest paid or funded with proceeds of the Installment Purchase Contract, is \$4,320,000.

4. *Total Payment Amount.* Assuming the maximum aggregate principal amount of the Installment Purchase Contract authorized to be issued (\$4,500,000) is sold, and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the total payment amount, which means the sum total of all payments the City will make to pay debt service on the Installment Purchase Contract plus the finance charge of the Installment Purchase Contract described in paragraph 2 above not paid with the proceeds of the Installment Purchase Contract, calculated to the final maturity of the Installment Purchase Contract, is \$5,627,500.30.

Attention is directed to the fact that the foregoing information constitutes good faith estimates only. The actual interest cost, finance charges, amount of proceeds and total payment amount may vary from those presently estimated due to variations from these estimates in the timing of the sale of the Installment Purchase Contract, the actual

principal amount of Installment Purchase Contract sold, the amortization of the Installment Purchase Contract sold and market interest rates at the time of sale. The date of sale and the amount of Installment Purchase Contract sold will be determined by the City based on need for improvement funds and other factors. The actual interest rates at which the Installment Purchase Contract will be sold will depend on the bond market at the time of sale. The actual amortization of the Installment Purchase Contract will also depend, in part, on market interest rates at the time of sale. Market interest rates are affected by economic and other factors beyond the City's control. The City Council has approved the execution of the Installment Purchase Contract with a maximum true interest cost of 2.46%.

INSTALLMENT PURCHASE CONTRACT

between the

CITY OF GROVER BEACH

and

GROVER BEACH FINANCING AUTHORITY

Dated as of February 1, 2020

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INSTALLMENT PURCHASE CONTRACT

This INSTALLMENT PURCHASE CONTRACT, dated as of February 1, 2020 (the “Installment Purchase Contract”), between the CITY OF GROVER BEACH, a municipal corporation duly organized and validly existing under the laws of the State of California (the “City”), and GROVER BEACH FINANCING AUTHORITY, a joint exercise of powers authority organized and validly existing under the laws of the State of California (the “Authority”);

WITNESSETH:

WHEREAS, the City is authorized by the laws of the State of California to acquire certain property for its water system and to finance and refinance the acquisition and construction of such facilities through the execution of installment purchase contracts; and

WHEREAS, the City further proposes to finance certain improvements to the City’s water system, as more particular described in Exhibit A hereto (the “Project”); and

WHEREAS, the Authority has been formed for the purpose of, among other things, assisting public agencies such as the City in financing facilities and property useful to them and the Authority is authorized to assist the City in the financing, construction, acquisition, and improvement of the City’s facilities and property; and

WHEREAS, the Authority has agreed to assist the City in financing the Project; and

WHEREAS, the City and the Authority have duly authorized the execution of this Installment Purchase Contract; and

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

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

**ARTICLE I.
DEFINITIONS**

Section 1.01 Definitions.

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

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

“Acquisition Costs” with respect to the Project means the contract price paid or to be paid for the Acquisition of the Project.

“Acquisition Fund” means the fund established and held by the City pursuant to Section 2.05 hereof.

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

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

“Assignment Agreement” means the Assignment Agreement, dated as of February 1, 2020, between the Authority and the Bank relating to this Installment Purchase Contract.

“Authority” means Grover Beach Financing Authority, a joint exercise of powers authority organized and existing under the laws of the State of California, and any successor thereto.

“Bank” means BBVA USA, an Alabama banking corporation, solely in its capacity as assignee under the Assignment Agreement, and its successors and assignors.

“Business Day” means any day other than a Saturday, Sunday or legal holiday or a day on which banks are authorized to be closed for business in California and New York.

“City” means the City of Grover Beach, a municipal corporation duly organized and existing under the Constitution and laws of the State of California, and its successors and assigns.

“Closing Date” means February 26, 2020.

“Debt Service” means, for any Fiscal Year, the sum of (1) the Installment Payments (except to the extent that interest has been fully capitalized and is invested in Federal Securities which mature at times and in such amounts as are necessary to pay the interest to which such amounts are pledged) required to be paid hereunder during such Fiscal Year, (2) the interest falling due during such Fiscal Year on all Parity Obligations (which are outstanding under the documents or agreements pursuant to which they were issued), assuming that all outstanding serial Parity Obligations are retired as scheduled and that all outstanding term Parity Obligations are redeemed from sinking fund payments as scheduled (except to the extent that such interest has been fully capitalized and is invested in Federal Securities

which mature at times and in such amounts as are necessary to pay the interest to which such amounts are pledged), (3) the principal amount of all serial Parity Obligations (which are outstanding under the documents or agreements pursuant to which they were issued) falling due by their terms during such Fiscal Year, and (4) the minimum amount of term Parity Obligations (which are outstanding under the documents or agreements pursuant to which they were issued) required to be paid or called and redeemed during such Fiscal Year, together with the redemption premiums, if any, thereon; provided that, whenever interest as described herein accrues at other than a fixed rate, such interest shall be assumed to be a rate equal to the greater of (i) the actual rate on the date of calculation, or if the Parity Obligations are not yet outstanding, the initial rate (if established and binding), (ii) if the Parity Obligations have been outstanding for at least twelve months, the average rate over the twelve months immediately preceding the date of calculation, and (iii) (x) if interest on the Parity Obligations is excludable from gross income under the applicable provisions of the Tax Code, the most recently published The Bond Buyer Bond Revenue Index (or comparable index if no longer published) plus fifty (50) basis points, or (y) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities, plus fifty (50) basis points.

“Debt Service Fund” means the fund established in Section 3.04 hereof.

“Debt Service Payments” means the payments of Debt Service.

“Default Rate” means 7.43% per annum.

“Delivery Costs” means all items of expense directly or indirectly payable by or reimbursable to the City, the Authority or the Bank relating to the financing of the Project, including but not limited to filing costs, settlement costs, initial fees and charges of the Authority or the Bank and their counsel, financing discounts, outside legal fees and charges, financial and other professional consultant fees, and charges and fees in connection with the foregoing.

“Determination of Taxability” means and shall be deemed to have occurred on the first to occur of the following:

(i) the date on which the City files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

(ii) the date on which the Authority received written notification from the City, supported by a written opinion of Bond Counsel to the effect that an Event of Taxability has occurred;

(iii) the date on which the City is advised in writing by the Commissioner or any district director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon filings of the City (or a statutory notice of deficiency, or a document of substantially similar import), or upon any review or audit of the City, or upon any other ground whatsoever, an Event of Taxability has occurred; or

(iv) on the date when the City receives notice from the Authority that the Internal Revenue Service (or any other Governmental Authority exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of the Authority due to the occurrence of an Event of Taxability;

provided, however, that: (1) no Determination of Taxability shall occur under clauses (iii) or (iv) above unless the City has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; and (2) upon demand from the Authority, the City shall promptly reimburse the Authority or any assignee thereof for any payments, including any taxes, interest, penalties or other charges, including the Authority's legal fees, that the Authority or such assignee is obligated to make as a result of the Determination of Taxability.

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

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

“Enterprise” means the City's water system, including all facilities, works, properties and structures of the City for the treatment, transmission and distribution of potable and non-potable water, including all contractual rights to water supplies, transmission capacity supply, easements, rights-of-way and other works, property or structures necessary or convenient for such facilities, together with all additions, betterments, extension and improvements to such facilities or any part thereof hereafter acquired or constructed.

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

“Event of Taxability” means, with respect to this Installment Purchase Contract, (1) the application of the proceeds of this Installment Purchase Contract in such a manner that this Installment Purchase Contract becomes an “arbitrage bond” within the meaning of Code Sections 103(b)(2) and 148, and with the result that interest components of the Installment Payments are or become includable in the Bank's gross income (as defined in Code Section 61); or (2) if as the result of any act, failure to act or use of the proceeds of this Installment Purchase Contract or any misrepresentation or inaccuracy in any of the representations, warranties or covenants contained in this Installment Purchase Contract by the City or the enactment of any federal legislation or the promulgation of any federal rule or regulation after the date of this Installment Purchase Contract, the interest component of Installment Payments is or becomes includable in the Bank's gross income (as defined in Code Section 61); and (3) the City does not undertake any remedial action afforded to it by the Internal Revenue Service.

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

“Finance Officer” means the City Manager of the City or any officer of the City duly designated by the City Manager in writing.

“Fiscal Year” means the twelve-calendar month period terminating on June 30 of each year, or any other annual accounting period hereafter selected and designated by the City as its Fiscal Year in accordance with applicable law.

“Flood Control District” means the San Luis Obispo County Flood Control and Water Conservation District.

“Generally Accepted Accounting Principles” means the uniform accounting and reporting procedures prescribed by the California State Controller or his successor for cities in the State of California, or failing the prescription of such procedures means generally accepted accounting principles as presented and recommended by the American Institute of Certified Public Accountants or its successor, or by the National Council on Governmental Accounting or its successor, or by any other generally accepted authority on such principles.

“Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

“Governmental Loan” means a loan from the State or the United States of America, acting through any of its agencies, to finance improvements to the Enterprise, and the obligation of the City to make payments to the State or the United States of America under the loan agreement memorializing said loan on a parity basis with the payment of Installment Payments.

“Gross Revenues” means all gross income and revenue received or receivable by the City from the ownership and operation of the Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including all rates, fees and charges (including fees for connecting to the Enterprise and any water stand-by or water availability charges or assessments) received by the City for Water Service and all other income and revenue howsoever derived by the City from the Enterprise or arising from the Enterprise; provided, however, that (i) any specific charges levied for the express purpose of reimbursing others for all or a portion of the cost of the acquisition or construction of specific facilities, or (ii) customers’ deposits or any other deposits subject to refund until such deposits have become the property of the City, are not Gross Revenues and are not subject to the lien of the Installment Purchase Contract. Gross Revenues shall include amounts on deposit in the Revenue Fund which have been previously released from the pledge and lien of this Installment Purchase Contract. Gross Revenues shall also include interest with respect to any Parity Obligations reimbursed to or on behalf of the City by the United States of America pursuant to Section 54AA of the Internal Revenue Code of 1986, as amended (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009), or any future similar program. Gross Revenues shall also be increased by the amounts, if any, transferred during such Fiscal Year from a Rate Stabilization Fund to the Revenue Fund.

“Independent Financial Consultant” means any financial consultant, rate consultant or firm of such consultants generally recognized to be well qualified in financial matters relating to systems similar to the Enterprise, appointed and paid by the City, and who, or each of whom--

1. is in fact independent and not under the domination of the City;
2. does not have a substantial financial interest, direct or indirect, in the operations of the City; and
3. is not connected with the City as a council member, officer or employee of the City, but may be regularly retained to audit the accounting records of and make reports thereon to the City.

“Installment Payments” means the installment payments scheduled to be paid by the City under and pursuant to this Installment Purchase Contract for the purposes and as described in Section 3.01 hereof in the amounts on the dates designated in Exhibit B to this Installment Purchase Contract.

“Interest Payment Date” means each March 1 and September 1, commencing September 1, 2020.

“Maintenance and Operation Costs” of the Enterprise means the reasonable and necessary costs and expenses paid by the City for maintaining and operating the Enterprise, as determined in accordance with Generally Accepted Accounting Principles, including but not limited to (a) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Enterprise in good repair and working order, including the cost of water, (b) the payments made by the City to the Flood Control District pursuant to the Water Supply Contract and (c) administrative costs of the City attributable to the Enterprise and the financing thereof; but excluding (x) depreciation, replacement and obsolescence charges or reserves therefor, (y) in any Fiscal Year prior to setting aside an amount equal to the Installment Payments for such Fiscal Year, capital expenditures other than as set forth in subsection (a) above, and (z) amortization of intangibles or other bookkeeping entries or a similar nature.

“Material Adverse Effect” means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business, facilities or operations of the City, (b) the ability of the City to carry out its business in the manner conducted as of the date of this Installment Purchase Contract or to meet or perform its obligations under this Installment Purchase Contract on a timely basis, (c) the validity or enforceability of this Installment Purchase Contract, or (d) the exclusion of the interest component of the Installment Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes.

“Material Litigation” means any action, suit, proceeding, inquiry or investigation against the City in any court or before any arbitrator of any kind or before or by any Governmental Authority, of which the City has notice or knowledge and which: (i) if determined adversely to the City, may have a Material Adverse Effect; (ii) seek to restrain or enjoin any of the transactions contemplated hereby or by this Installment Purchase Contract; or (ii) may adversely affect: (a) the exclusion of interest with respect to the Installment Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes; or (b) the ability of the City to perform its obligations under this Installment Purchase Contract.

“Maximum Annual Debt Service” means the largest annual sum of (i) Debt Service Payments during the period from the date of such determination through the later of (a) the final Interest Payment Date hereunder or (b) the maturity date of Parity Obligations reflected by such Debt Service Payments.

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

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

“Outstanding” (i) when used as of any particular time with reference to this Installment Purchase Contract, means all Installment Payments except Installment Payments paid or deemed to

have been paid within the meaning of Article VI, and (ii) when used as of any particular time with reference to any Parity Obligation, means all debt service payments due and owing on such Parity Obligation except debt service payments paid or deemed to have been paid pursuant to the terms of such Parity Obligation.

“Parity Obligations” means all bonds, notes, loan agreements, installment sale agreements, leases or other obligations of the City, payable from and secured by a pledge of and lien upon any of the Net Revenues incurred on a parity with the payment of the Installment Payments pursuant to Section 4.01 hereof.

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

“Project” means the additions, betterments, extensions and improvements to the Enterprise described in Exhibit A hereto, including any Alternate Project.

“Rate Stabilization Fund” means any fund established and held by the City as a fund for the stabilization of rates and charges imposed by the City with respect to the Revenue Fund, which fund is established, held and maintained in accordance with Section 3.05(c).

“Revenue Fund” means the fund maintained by the City into which it deposits Gross Revenues.

“State” means the State of California.

“Tax Code” means the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder, as the same may be amended from time to time, and any successor provisions of law. Reference to a particular section of the Tax Code shall be deemed to be a reference to any successor to any such section.

“Taxable Rate” means, for any date of determination, the rate of interest per annum equal to the interest rate set forth in Section 3.01 divided by 0.79%.

“Water Service” means the water service made available or provided by the Enterprise.

“Water Supply Contract” means the Water Supply Contract, dated as of _____, by and between the City and the Flood Control District, including any amendments thereto.

ARTICLE II. SALE AND PURCHASE OF THE PROJECT

Section 2.01 Sale and Purchase of the Project.

The Authority hereby agrees to cause the Project, and any additions or modifications thereto to be constructed, acquired or installed, as applicable, by the City as its agent, and the City shall enter into contracts and provide for, as agent of the Authority, the complete acquisition and construction of the Project. The City hereby agrees that it will cause the construction, acquisition and installation of the Project to be diligently performed upon satisfactory completion of design work and compliance with the California Environmental Quality Act and approval by the City Council of the City, unforeseeable delays beyond the reasonable control of the City only excepted. It is hereby expressly

understood and agreed that the Authority shall be under no liability of any kind or character whatsoever for the payment of any cost of the Project and that all such costs and expenses shall be paid by the City, regardless of whether the funds deposited in the Acquisition Fund are sufficient to cover all such costs and expenses.

In consideration for the Authority's assistance in acquiring the Project, the City agrees to sell, and hereby sells, to the Authority, and the Authority agrees to purchase, and hereby purchases, from the City, the Project in the manner and in accordance with the provisions of this Installment Purchase Contract. In consideration for the Installment Payments as set forth in Section 3.01, the Authority agrees to sell, and hereby sells, to the City, and the City agrees to purchase, and hereby purchases, from the Authority, the Project at the purchase price specified below and otherwise in the manner and in accordance with the provisions of this Installment Purchase Contract. All right, title and interest in the Project shall vest in the City immediately upon execution and delivery of this Installment Purchase Contract.

The City hereby covenants to use the proceeds received from the Authority for the costs and expenses of the Acquisition of the Project. The City may change the specifications of the Project, so long as such change does not substantially alter the nature of the Project; provided, however, that the City and the Bank, as assignee of the Authority under the Assignment Agreement, in their sole discretion, may jointly designate an Alternate Project in writing. In the event an Alternate Project is designated, the City shall certify in writing to the Bank that Acquisition Costs shall not materially increase as a result from such change. In the event Acquisition Costs shall materially increase as a result of the designation of an Alternate Project, prior to designating such Alternate Project the City shall either deposit in the Acquisition Fund an amount sufficient to pay such increase, or shall certify in writing to the Bank that funds sufficient to pay such increase in Acquisition Costs are otherwise available to the City.

The Authority, upon the effective date hereof, agrees to cause to be deposited in the Acquisition Fund the aggregate amount of \$_____, respecting its purchase of the Project hereunder. In the event the money so deposited as first above provided is insufficient to pay all the costs of the Acquisition of the Project, the Authority shall have no obligation whatsoever to use or provide any additional funds for the purposes described in this Article II.

All right, title and interest in each component of the Project shall vest in the City immediately upon execution and delivery of this Installment Purchase Contract. Such vesting shall occur without further action by the Authority or City and the Authority shall, if requested by the City, if necessary, to assure such automatic vesting, deliver any and all documents required to assure such vesting.

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

Section 2.02 Indemnification and Expenses of the Authority.

The City hereby agrees to indemnify and hold harmless the Authority, the Bank and their directors, officers and employees 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 and the Assignment Agreement; provided that no indemnification will be made for willful misconduct, negligence or breach of an obligation hereunder or under the Assignment Agreement by the Authority or the Bank.

Section 2.03 Authority not Liable.

The Authority and its directors, officers and employees shall not be liable to the City or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in, on, or about or relating to the Project, and in no event shall the Authority be liable for any incidental, indirect, special or consequential damage in connection herewith or arising hereunder.

Section 2.04 Disclaimer of the Authority.

The City acknowledges and agrees that the Authority makes no representation or warranty, express or implied, as to the Enterprise or the Project, except as expressly set forth in this Installment Purchase Contract. The City acknowledges that all risks relating to the Enterprise or the Project or the transactions contemplated hereby, are to be borne by the City, and the benefits of any and all implied warranties and representations of the Authority are hereby waived by the City.

Section 2.05 Acquisition Fund.

There is hereby established with the City a fund known as the "Acquisition Fund," which the City shall maintain and hold in trust for the benefit of the City. On the Closing Date, \$_____ shall be deposited into the Acquisition Fund. The moneys in the Acquisition Fund shall be applied to the payment of the costs of Acquisition of the Project or to reimburse the City for previous costs expended in the acquisition or construction of the Project, and of expenses incidental thereto.

**ARTICLE III.
INSTALLMENT PAYMENTS, REVENUES AND ACCOUNTS**

Section 3.01 Payment of the Installment Payments.

The total principal amount of the Installment Payments owed and to be paid by the City to the Bank, as assignee of the Authority under the Assignment Agreement, for the Project is \$_____, plus interest thereon, calculated at the rate of 2.43% per annum. The Installment Payments shall, subject to any rights of prepayment of the City provided in Article VI, be due in installments in the amounts and on the dates described in Exhibit B attached hereto.

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

and the City agrees to pay the same with the stated interest thereon at the rate set forth in the preceding paragraph.

Subject to Section 8.01 hereof, the obligation of the City to make the Installment Payments is absolute and unconditional, and until such time as all Installment Payments shall have been fully paid (or provision for the payment thereof shall have been made pursuant to Article VI hereof), the City will not, under any circumstances, discontinue, abate or suspend any Installment Payments required to be made by it under this Section 3.01 when due, whether or not the Enterprise or any part thereof is operating or operable or has been completed, or whether or not the Enterprise is condemned, damaged, destroyed or seized or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset, counterclaim, defense, recoupment, abatement, suspension, deferment or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement or covenant contained herein for any cause whatsoever.

If the City fails to make any of the payments required in this Section 3.01 within 10 days of an Interest Payment Date, the payment in default shall continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon at the Default Rate, to the extent permitted by law, from the Interest Payment Date to the applicable date of payment.

So long as this Installment Purchase Contract is held by the Bank, all principal and interest payments with respect to this Installment Purchase Contract shall be made by wire transfer using the following wiring instructions (unless the City shall receive subsequent wiring instructions from the Bank):

BBVA USA
8333 Douglas Avenue, 2nd Floor
Dallas, Texas 75225
Attention: LDFC Public Finance

ABA#: 113-010-547
Beneficiary Account No.: 90124099
Beneficiary Account Name: Wire GL
Reference: DO NOT POST CONTACT:
LDFCPublicFinance.us@bbva.com
Reference: City of Grover Beach – Insert Acct # Included on Invoice

Section 3.02 Interest Component of the Installment Payments.

The Installment Payments shall bear interest from the Closing Date until the payment of the principal thereof and the prepayment premiums, if any, thereon, shall have been made or provided for in accordance with the provisions of Article VI hereof, whether at maturity, upon prepayment or otherwise. Interest accrued on the Installment Payments from the Closing Date and from each Interest Payment Date to, but not including, the next succeeding Interest Payment Date shall be paid on each such succeeding Interest Payment Date and shall be computed on the basis of a year of 360 days and twelve 30-day months. From and after the final Interest Payment Date, or upon the occurrence and during the continuance of an Event of Default, the outstanding principal balance of the Installment

Payments shall bear interest until paid in full at the Default Rate (computed on the basis of a 360-day year of twelve thirty-day months). From and after a Determination of Taxability, the interest rate applicable to the outstanding principal balance of the Installment Payments shall be the Taxable Rate and shall be computed on the basis of a 360-day year of twelve thirty-day months.

Section 3.03 Establishment of Accounts.

The funds and accounts and flow of funds set forth in this Article III are hereby established and shall control to the extent inconsistent with any other terms of this Installment Purchase Contract.

Section 3.04 Pledges of Net Revenues and Other Funds; Debt Service Fund.

The City hereby irrevocably pledges all of the Net Revenues to the punctual payment of the Installment Payments and any Parity Obligations, and such Net Revenues, except as otherwise permitted herein, shall not be used for any other purposes while any of the Installment Payments are due hereunder. The pledge of Net Revenues to secure the Installment Payments and any Parity Obligations shall constitute a first lien on the Net Revenues, for the payment of such Installment Payments and such Parity Obligations in accordance with the terms hereof and thereof.

There is hereby established with the City a fund known as the “Debt Service Fund,” which the City shall maintain and hold in trust separate and apart from other funds held by it. Within the Debt Service Fund, the City shall establish a Debt Service Account and a Redemption Account. Installment Payments made by the City shall be deposited in the Debt Service Account. Such payments shall be net of amounts already on deposit therein that are in excess of the amount required to accumulate therein pursuant to Section 3.01 above. The City shall transfer the money contained in the Debt Service Account and the Redemption Account at the following respective times in the following respective accounts in the following order of priority in the manner hereinafter provided, each of which accounts the City hereby agrees to establish and maintain so long as any Installment Payments are due hereunder, and the money in each of such accounts shall be disbursed only for the purposes and uses hereinafter authorized:

- (i) Debt Service Account. All moneys in the Debt Service Account shall be used and withdrawn by the City solely for the purpose of paying Installment Payments and principal of and interest on any Parity Obligations on each Interest Payment Date. The City shall be entitled to receive as a credit against Installment Payments an amount equal to the amount of any balance contained in the Debt Service Account prior to the Due Date for such Installment Payments (excluding money designated or necessary for the payment of Parity Obligations).
- (ii) Redemption Account. The City, on any optional prepayment date, shall deposit in the Redemption Account moneys to accomplish any such optional prepayment. All money in the Redemption Account shall be used and withdrawn by the City solely for the purpose of paying the Installment Payment to be optionally prepaid on their respective prepayment dates.

Section 3.05 Receipt and Deposit of Gross Revenues; Establishment and Maintenance of Accounts for Gross Revenues; Use and Withdrawal of Gross Revenues.

The City covenants and agrees that all Gross Revenues, when and as received, will be received and held by the City in trust hereunder for the benefit of the Bank, as assignee of the Authority under the Assignment Agreement, and for the benefit of the holders of any Parity Obligations. All Gross Revenues will be deposited by the City in the Revenue Fund (which the City hereby covenants and agrees to maintain so long as any Installment Payments are due hereunder) and will be accounted for through and held in trust in the Revenue Fund; provided, that the City may withdraw such amounts in the Revenue Fund as may be necessary to make refunds for amounts paid in advance for services provided by the Enterprise, which such service was not thereafter made available or provided. All Gross Revenues held by the City shall be disbursed, allocated and applied solely to the uses and purposes hereinafter in this Article III set forth, and shall be accounted for separately and apart from all other money, funds, accounts or other resources of the City.

All Gross Revenues in the Revenue Fund shall be set aside by the City or deposited by the City as follows and in the following order of priority:

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

(b) Debt Service Funds. Installment Payments payable pursuant to Sections 3.01 and 3.02 above, and all other payments relating to principal and interest on or with respect to Parity Obligations, shall be paid in accordance with the terms hereof and of such Parity Obligations, without preference or priority, and in the event of any insufficiency of such moneys, ratably without any discrimination or preference.

(c) General Expenditures. All Gross Revenues not required to be withdrawn pursuant to the provisions of (a) and (b) above shall be used for expenditure for any lawful purpose of the City, including payment of any rebate requirement or of any obligation subordinate to the payment of all amounts due hereunder or under Parity Obligations. The City may maintain and hold a separate fund to be known as the "Rate Stabilization Fund." From time to time the City may deposit in the Rate Stabilization Fund, from remaining Net Revenues described in this Section 3.05(c) or other available funds of the City, such amounts as the City shall determine; provided that deposits for each Fiscal Year may be made until (but not after) 270 days following the end of such Fiscal Year. The City may withdraw amounts from the Rate Stabilization Fund (i) for transfer to the Revenue Fund for inclusion in Gross Revenues for any Fiscal Year, or (ii) for any other lawful use of the City. Amounts transferred from the Rate Stabilization Fund to the Revenue Fund pursuant to this Section 3.05 during or within 270 days after the end of a Fiscal Year, may be taken into account as Gross Revenues for purposes of the calculations in Sections 4.01 and 5.16 in such Fiscal Year. All interest or other earnings upon deposit in the Rate Stabilization Fund shall be withdrawn therefrom and accounted for as Gross Revenues. Amounts on deposit in the Rate Stabilization Fund are not pledged to and do not secure the Installment Payments or any Parity Obligations.

Section 3.06 Investment of Funds.

Amounts on deposit in any fund or account created pursuant to this Installment Purchase Contract shall be invested in Permitted Investments which will, as nearly as practicable, mature on or before the dates when such money is anticipated to be needed for disbursement hereunder. Interest or profit received on such investments shall be deposited to the Debt Service Fund in which such investments are then held. In computing the amount in any fund or account, Permitted Investments shall be valued at market value, exclusive of accrued interest.

If at any time after investment therein a Qualified Investment ceases to meet the criteria set forth in the definition of Permitted Investments and such obligation, aggregated with other non-conforming investments, exceeds five percent (5%) of invested funds, such Qualified Investment shall be sold or liquidated.

**ARTICLE IV.
PARITY OBLIGATIONS**

Section 4.01 Parity Obligations.

(a) So long as any Installment Payments are due hereunder, the City shall not issue or incur any obligations payable from Net Revenues or the Revenue Fund senior or superior to the Installment Payments.

(b) The City may at any time issue Parity Obligations payable from Net Revenues on a parity with the Installment Payments to provide financing for the Enterprise in such principal amount as shall be determined by the City. The City may issue or incur any such Parity Obligations subject to the following specific conditions which are hereby made conditions precedent to the issuance and delivery of such Parity Obligations:

(1) No Event of Default shall have occurred and be continuing;

(2) The Net Revenues, calculated in accordance with Generally Accepted Accounting Principles, either (i) as shown by the books of the City for the latest Fiscal Year, as verified by a certificate of the City, or (ii) as shown by the books of the City for any more recent twelve (12) consecutive month period selected by the City, as verified by a certificate or opinion of an Independent Financial Consultant employed by the City, plus in either case (at the option of the City) the Additional Revenues, shall be at least equal to one hundred and twenty percent (120%) of the amount of Maximum Annual Debt Service.

Notwithstanding the above, the City may incur debt payable from Net Revenues (i) to cause a defeasance of the Installment Payments pursuant to Article VI hereof or a defeasance of any outstanding Parity Obligations if, after giving effect to the application of the proceeds of such refunding debt, total Debt Service (including Installment Payments or Parity Obligations outstanding on the date of issuance or incurrence of such refunding debt, but excluding such refunding debt) does not increase in any Fiscal Year, or (ii) which is payable on a basis which is subordinate to the payment of the Installment Payments.

The City may at any time execute contracts or issue bonds or other indebtedness payable from Net Revenues or the Revenue Fund payable on a subordinated basis to the payment of the Installment Payments.

**ARTICLE V.
REPRESENTATIONS, COVENANTS AND WARRANTIES**

Section 5.01 Compliance with Installment Purchase Contract.

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

Section 5.02 Observance of Laws and Regulations; Internal Revenue Code.

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

(b) The City has complied with the Internal Revenue Code of 1986, as amended (the "Tax Code"), with respect to the Installment Payments, and the City shall not knowingly take or omit to take any action that, under existing law, may adversely affect the exclusion from gross income for federal income tax purposes, or the exemption from any applicable State tax of the interest on the Installment Payments.

Section 5.03 Prosecution and Defense of Suits.

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

Section 5.04 Accounting Records and Statements.

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

Section 5.05 Further Assurances.

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

Section 5.06 Against Encumbrances.

The City hereby represents that there is no pledge of or lien on Net Revenues senior to the pledge and lien securing the Installment Payments. The City will not make any pledge of or place any lien on the Net Revenues, provided that the City may at any time, or from time to time, pledge or encumber the Net Revenues in connection with the issuance or execution of Parity Obligations in accordance with Section 4.01 or other obligations permitted hereby, or subordinate to the pledge of Net Revenues herein.

Section 5.07 Against Sale or Other Disposition of Property.

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

The City will not enter into any agreement or lease which would impair the ability of the City to meet the covenant set forth in Section 5.16 hereof or which would otherwise impair the rights of the Bank or the operation of the Enterprise.

Section 5.08 Against Competitive Facilities.

To the extent permitted by law, the City 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 City any water system competitive with the Enterprise.

Section 5.09 Tax Covenants.

The City shall not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, the interest with respect to the Installment Payments to become includable in gross income for federal income tax purposes. To that end, the City hereby makes the following specific covenants:

(a) The City hereby covenants that it shall not make or permit any use of the proceeds of this Installment Purchase Contract that may cause the Installment Purchase Contract to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended.

(b) The City covenants that the proceeds of the Installment Purchase Contract will not be used as to cause the proceeds of the Installment Purchase Contract to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(c) The City hereby designates this Installment Purchase Contract as a “qualified tax-exempt obligation” under Section 265(b)(3) of the Tax Code.

(d) The City covenants not to take any action or permit or suffer any action to be taken if the result of the same would be to cause the Installment Purchase Contract to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

In furtherance of the covenants stated in this Section, the City shall comply with the requirements of the Tax Certificate executed in connection with this Installment Purchase Contract.

Section 5.10 Maintenance and Operation of the Enterprise; Budgets.

The City 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. The City will pay all Maintenance and Operation Costs of the Enterprise as they become due and payable.

Section 5.11 Payment of Claims.

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

Section 5.12 Compliance with Contracts.

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

Section 5.13 Insurance.

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

In the event of any damage to or destruction of the Enterprise caused by the perils covered by such insurance, the proceeds of such insurance shall be applied to the repair, reconstruction or replacement of the damaged or destroyed portion of the Enterprise. The City shall cause such repair, reconstruction or replacement to begin promptly after such damage or destruction shall occur and to continue and to be properly completed as expeditiously as possible, and shall pay out of the proceeds of such insurance all costs and expenses in connection with such repair, reconstruction or replacement so that the same shall be completed and the Enterprise shall be free and clear of all liens and claims, unless the City determines that such reconstruction, repair, or replacement is not necessary to the efficient or proper operation or use of the Enterprise and therefore determines not to reconstruct, repair, or replace such damaged or destroyed portion of the Enterprise. If such Net Proceeds exceed the costs of such reconstruction, repair, or replacement, then the excess Net Proceeds shall be deposited in such funds and accounts of the City as is permitted by law.

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

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

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

Section 5.14 Books and Accounts; Financial Statements.

The City shall keep proper books of record and accounts of the Enterprise and the Debt Service Fund all separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the Enterprise and relating to the funds created by this Installment Purchase Contract. Said books shall, upon prior request, be subject to the inspection by the Bank, or its representatives authorized in writing, upon not less than five (5) Business Days' prior notice to the City.

The City shall cause the books and accounts of the Enterprise, which shall include a statement of revenues and expenditures and changes in fund balances, a balance sheet and a statement of cash flow, to be audited annually by an independent certified public accountant or firm of certified public accountants, not more than two hundred and seventy (270) days after the close of each Fiscal Year (commencing with Fiscal Year ending June 30, 2020). The City shall send a copy of such report and all related financial statements and notes to the Bank not more than two hundred and seventy (270) days after the close of each Fiscal Year or shall file such report and all related financial statements and notes with the Municipal Securities Rulemaking Board ("MSRB") by posting onto the Electronic

Municipal Market Access system (“EMMA”), a centralized on-line repository for municipal disclosure documents (or any successor repository site prescribed by the MSRB). Within each such audit report, the City shall provide evidence as to whether or not the City is in compliance with Section 5.16 hereof.

No later than one month after the end of each Fiscal Year, the City shall also send to the Bank a copy of the annual budget of the Enterprise and any amendment or supplement thereto and any other financial information reasonably requested by the Bank. The City shall furnish at the Bank’s request such additional information that the Bank may from time to time reasonably request.

Section 5.15 Payment of Taxes and Compliance with Governmental Regulations.

The City will pay and discharge all taxes, assessments and other governmental charges, if any, which may hereafter be lawfully imposed upon the Enterprise or any part thereof or upon the Net Revenues when the same shall become due and the City 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. However, the City shall not be required to make such payments, or to comply with any regulations or requirements, so long as the payment or validity or application thereof shall be contested in good faith.

Section 5.16 Amount of Rates and Charges.

(a) To the fullest extent permitted by law, so long as any Installment Payments remain outstanding, the City will fix and prescribe rates and charges for the Enterprise which are reasonably expected to be at least sufficient to yield during each Fiscal Year Net Revenues equal to 120% of the aggregate amount of the Installment Payments, and principal of and interest on any Parity Obligations issued or incurred after the date hereof payable from Net Revenues coming due and payable during such Fiscal Year. The City may make adjustments from time to time in such rates and charges and may make such classifications thereof as it deems necessary but shall not reduce the rates and charges then in effect unless the Net Revenues from such reduced rates and charges are reasonably expected to be sufficient to meet the requirements of this subsection. For purposes of this calculation, amounts transferred from the Rate Stabilization Fund to the Revenue Fund pursuant to this Section 5.16 during or within 270 days after the end of a Fiscal Year, may be taken into account as Gross Revenues for purposes of the calculations in this Section 5.16 in such Fiscal Year.

(b) So long as the City has complied with its obligations set forth in subsections 5.16(a) above, the failure of Net Revenues to meet the thresholds set forth in subsections 5.16(a) above at the end of a Fiscal Year shall not constitute a default or an Event of Default so long as the City has complied with subsection 5.16(a) above at the commencement of the succeeding Fiscal Year.

Section 5.17 Collection of Rates and Charges.

The City will have in effect at all times rules and regulations requiring all users of the Enterprise to pay the assessments, rates, fees and charges applicable to the Enterprise provided or made available to such users. Such rules and regulations shall also provide for the billing thereof and for a due date and a delinquency date for each bill.

Section 5.18 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 City certifies (i) the estimated loss of annual Net Revenues, if any, suffered or to be suffered by the City 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 by the City from any Net Proceeds, and (iii) an estimate of the additional annual Net Revenues to be derived from such additions, betterments, extensions or improvements, and (2) on the basis of such certificate, determines that the estimated additional annual Net Revenues will sufficiently offset the estimated loss of annual Net Revenues resulting from such eminent domain proceedings so that the ability of the City to meet its obligations hereunder will not be substantially impaired (which determination shall be final and conclusive); then the City shall promptly proceed with the acquisition of such additions, betterments, extensions or improvements substantially in accordance with such certification and such Net Proceeds shall be applied for the payment of the costs of such acquisition, and any balance of such Net Proceeds not required by the City for such purpose shall be deposited in such funds and accounts of the City as is permitted by law.

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

Section 5.19 Notification of Material Adverse Effect, Material Litigation and Parity Obligation Default.

The City shall timely inform the Bank of (i) any Material Adverse Effect upon learning of the existence of such an effect, (ii) any Material Litigation upon which the City has notice or knowledge of such litigation, and (iii) any event of default which has occurred with respect to any Parity Obligations.

Section 5.20 Release and Indemnification Covenants.

The City shall indemnify the Authority and the Bank and their respective officers, employees, agents, successors and assigns and hold them harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of the following:

(a) the use, maintenance, condition or management of, or from any work or thing done on or about the Enterprise by the City, or its employees, agents, directors, contractors or officers;

(b) any breach or default on the part of the City in the performance of any of its obligations under this Installment Purchase Contract;

(c) any intentional misconduct or negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Enterprise; and

(d) any intentional misconduct or negligence of any lessee of the City with respect to the Enterprise.

No indemnification is made under this Section 5.20 or elsewhere in this Installment Purchase Contract for willful misconduct, gross negligence, or breach of duty under this Installment Purchase Contract by the Authority or the Bank, and their respective officers, agents, employees, successors or assigns.

Section 5.21 Further Representations, Covenants and Warranties of the City.

The City represents, covenants and warrants as follows:

(a) The City is a duly organized and validly existing municipal corporation of the State of California.

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

(c) The City has duly authorized and executed this Installment Purchase Contract in accordance with the laws of the State of California.

(d) The City is empowered to set rates and charges for services provided by the Enterprise provided to the users of the Enterprise without review or approval by any state or local governmental agency.

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

(f) The City has not since June 30, 2019 issued or incurred any obligations which are currently outstanding having any priority in payment out of the Revenues or the Net Revenues over the payment of the Installment Payments.

(g) There has been no material adverse change in the financial condition of the City since June 30, 2019.

(h) The City's comprehensive annual financial report for the period ended June 30, 2019, presents fairly the financial condition of the City and the Enterprise as of the date thereof and the results of operation for the period covered thereby. Except as has been disclosed to the Authority, there has been no change in the financial condition of the City or the Enterprise since June 30, 2019, that will in the reasonable opinion of the City materially impair its ability to perform its obligations under this Installment Purchase Contract. All information provided by the City to the Authority with respect to the financial performance of the Enterprise is accurate in all material respects as of its respective date and does not omit any information necessary to make the information provided not misleading.

(i) To the best of its knowledge, as currently conducted, the City's activities with respect to the Enterprise are in all material respects in compliance with all applicable laws, administrative regulations of the State of California and of the United States and any district or instrumentality of either, and any judgment or decree to which the City is subject.

(j) The City is not in any material respect in breach of or default under any constitutional provision, law or administrative regulation of the State or of the United States or any district or instrumentality of either or any judgment or decree or any loans, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or to which the City or any of its property or assets is otherwise subject (including, without limitation, this Installment Purchase Contract), and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument; and the adoption of the Resolution, the execution, and the execution and delivery of this Installment Purchase Contract and compliance with the City's obligations therein and herein will not in any material respect conflict with, violate or result in a breach of or constitute a default under, any constitutional provision, law, administrative regulation, judgment, decree, Installment Purchase Agreement, indenture, agreement, mortgage, lease or other instrument to which the City is a party or to which the City or any of its property or assets is otherwise subject, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the City or under the terms of any such law, regulation or instruments, except as provided by this Installment Purchase Contract.

(k) All consents, approvals, authorizations, orders, licenses or permits of any Governmental Authority, legislative body, board, district or commission having jurisdiction of the matter, that are required for the due authorization by, or that would constitute a condition precedent to or the absence of which would materially adversely affect the making or accepting of this Installment Purchase Contract and the execution, delivery of and performance of this Installment Purchase Contract by the City have been duly obtained (except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of this Installment Purchase Contract, as to which no representation is made).

(l) The City acknowledges and agrees that: (i) the transaction contemplated herein is an arm's length commercial transaction between the City and the Bank and its affiliates; (ii) in connection with such transaction, the Bank and its affiliates are acting solely as a principal and not as an advisor including, without limitation, a "Municipal Advisor" as such term is defined in Section 15B of the Securities and Exchange Act of 1934, as amended, and the related final rules (the "Municipal Advisor Rules"), agent or fiduciary of the City; (iii) the Bank and its affiliates have not provided any advice or assumed any advisory or fiduciary responsibility in favor of the City with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto; (iv) the Bank and its affiliates have financial and other interests that differ from those of the City; and (v) the City has consulted with its own financial, legal, accounting, tax and other advisors, as applicable, to the extent it deemed appropriate.

Section 5.22 Representations, Covenants and Warranties of the Authority.

The Authority represents, covenants and warrants to the City as follows:

(a) The Authority is 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 Installment Purchase Contract and to carry out and consummate all transactions contemplated by this Installment Purchase Contract and by proper action has duly authorized the execution and delivery and due performance of this Installment Purchase Contract.

(b) The execution and delivery of this Installment Purchase Contract 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 Authority 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 Authority.

ARTICLE VI.
PREPAYMENT OF INSTALLMENT PAYMENTS

Section 6.01 Prepayment.

(a) The City may prepay the unpaid principal balance of the Installment Payments in whole or in part, on any date on or after September 1, 2030 by paying a prepayment price equal to 100% of the principal amount of the Installment Payments to be prepaid, plus accrued interest to the date of prepayment.

(b) The City may or shall, as the case may be, prepay on any date from the Net Proceeds of insurance or condemnation awards, as provided herein, all or any part, in integral multiples of \$5,000, of the principal amount of the unpaid Installment Payments, pro-rata among the remaining Installments Payments, at a prepayment price equal to the sum of the principal amount prepaid plus accrued and unpaid interest thereon to the date of prepayment, without premium.

In the event that a portion of the Installment Payments shall have been prepaid by the City pursuant to subsections (a) or (b) above, the total amount of all future payments set forth in the schedules attached hereto as Exhibit B shall be reduced by the aggregate amount of Installment Payments so prepaid, as the case may be, as agreed to by the Bank. The City shall file a revised schedule of Installment Payments with the Bank.

Notwithstanding any such prepayment, the City shall not be relieved of its obligations hereunder, including its obligations under Article III hereof, until the entire principal amount of the unpaid Installment Payments together with the interest accrued thereon, if any, and together with the ordinary and extraordinary fees, costs and expenses of the Bank, shall have been fully paid and the Installment Payments are no longer due hereunder (or provision for payment thereof shall have been made pursuant to Section 6.03 hereof).

Section 6.02 Method of Prepayment.

Before making any prepayment pursuant to Section 6.01(a) or Section 6.01(b), the City shall, give written notice to the Bank specifying the date on which the prepayment will be made, which date shall be not less than thirty (30) days from the date such notice is given.

Section 6.03 Security Deposit.

Notwithstanding any other provision of this Installment Purchase Contract, the City may secure the payment of (i) all or a portion of the Installment Payments by a deposit with the Bank or, at the Bank's sole option, a bank or trust company acceptable to the Bank, as escrow holder under an escrow deposit and trust agreement, of either (i) cash in an amount which is sufficient to pay such unpaid Installment Payments, including the principal and interest components thereof, in accordance with the Installment Payment schedule set forth in Exhibit B attached hereto, or (ii) non-callable Federal Securities or pre-refunded non-callable municipal obligations rated "AA" and "Aa" by S&P and Moody's, respectively, together with cash if required, in such amount as will, without re-investment, in the opinion of an independent certified public accountant (which opinion shall be addressed to the Bank), together with interest to accrue thereon, be fully sufficient to pay such unpaid Installment Payments on their payment dates so that such Installment Payments shall be defeased; provided, that prior to any such deposit or defeasance, the City must provide an opinion of nationally recognized bond counsel addressed to the Bank to the effect that such deposit and defeasance will not cause the interest component of the Installment Payments to be included in gross income for federal income tax purposes. In the event of any shortfall, the City shall deposit from legally available funds such amounts as is necessary to make up such shortfall. In all cases, deposits of cash or Federal Securities made to secure the Installment Payments pursuant to this paragraph shall be kept in segregated escrow accounts or escrow subaccounts and such deposits shall not be commingled for any reason.

In the event of deposits pursuant to this Section 6.03 sufficient to fully defease all of the Installment Payments, and provided that all other amounts payable by the City hereunder have been paid in full, all obligations of the City under this Installment Purchase Contract shall cease and terminate, excepting only the obligation of the City to make, or cause to be made, all Installment Payments from the deposits made by the City pursuant to this Section 6.03 and the obligation to pay amounts due the Bank, as assignee of the Authority. Said deposits shall be deemed to be and each of the deposits shall constitute a separate special fund that may be used solely for the payment of the Installment Payments in accordance with the provisions of this Installment Purchase Contract, and pending such application shall be held in trust and pledged to and for the sole benefit of the Bank and any assignee or transferee of the Bank. The City hereby grants to the Bank, as assignee of the Authority, a first priority security interest in any amounts so deposited.

**ARTICLE VII.
EVENTS OF DEFAULT AND REMEDIES**

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

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

- (a) default shall be made in the due and punctual payment by the City of any Installment Payment when and as the same shall become due and payable, and such default shall continue for a

period of ten (10) Business Days after the City shall have been given notice in writing of such default by the Bank;

(b) default shall be made by the City in the performance of any of the agreements or covenants contained herein required to be performed by it, and such default shall have continued for a period of sixty (60) days after the City shall have been given notice in writing of such default by the Bank;

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

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

(e) if any representation, warranty or certification of the City shall have been false when made;

(f) if any court of competent jurisdiction with jurisdiction to rule on the validity of any provision of this Installment Purchase Contract shall find or rule that this Installment Purchase Contract is not valid or not binding on the City;

(g) the occurrence of any event that has a Material Adverse Effect;

(h) an Event of Taxability has occurred; or

(i) an event of default shall have occurred with respect to any Parity Obligations;

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

This provision, however, is subject to the condition that, except with respect to an Event of Default under subsection (d) above, if at any time after such principal amount of the unpaid Installment Payments and the accrued interest thereon shall have been so declared immediately due and payable and before the acceleration date or the date of any judgment or decree for the payment of the money due shall have been obtained or entered:

(1) the City shall deposit with the Bank a sum sufficient to pay (x) all delinquent Installment Payments then-due and owing and causing an Event of Default under subsection (a) above and the accrued interest thereon, with any interest due on such overdue installments, and (y) the reasonable expenses of the Bank incurred as the result of such Event of Default, and

(2) any and all other defaults known to the Bank (other than in the payment of such overdue principal amount of the unpaid Installment Payments and the accrued interest thereon due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Bank or provision deemed by the Bank to be adequate shall have been made therefor, then and in every such case the Bank, by written notice to the City, may rescind and annul such declaration of immediate payment of all of the principal amount of the unpaid Installment Payments and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

Section 7.02 Application of Funds Upon Default.

All moneys and investments in the funds and accounts held hereunder (other than the Rebate Fund, if any) upon the date of the declaration of an Event of Default as provided in Section 7.01 and all Gross Revenues thereafter received shall be applied as follows:

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

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

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

(b) If all of the Installment Payments shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the Installment Payments, with interest on overdue interest and principal, as aforesaid, without preference or priority over interest or of interest over principal or of any installment of interest over any other installment of interest, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

Section 7.03 Other Remedies of the Authority.

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

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

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

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

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

Section 7.04 Non-Waiver.

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

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

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

Section 7.05 Remedies Not Exclusive.

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

Section 7.06 Agreement to Pay Attorneys' Fees and Expenses.

In the event either party to this Installment Purchase Contract should default under any of the provisions hereof and the non-defaulting party should employ attorneys (including in-house counsel) or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the non-defaulting party the reasonable fees of such

attorneys (including the allocable cost of in-house counsel) and such other expenses so incurred by the non-defaulting party.

Section 7.07 Bank Exercise of Remedies.

The rights and remedies provided to the Authority under this Article VII have been assigned by the Authority to the Bank pursuant to the Assignment Agreement and shall be exercised by solely by the Bank in its discretion.

**ARTICLE VIII.
MISCELLANEOUS**

Section 8.01 Liability of City Limited.

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

The obligation of the City to make the Installment Payments and the other amounts due hereunder is a special obligation of the City payable solely from Net Revenues and does not constitute a debt or pledge of the faith and credit of the City or of the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

Section 8.02 Benefits of Installment Purchase Contract Limited to Parties.

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

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

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

Section 8.04 Waiver of Personal Liability.

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

Section 8.05 Article and Section Headings, Gender and References.

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

Section 8.06 Partial Invalidity.

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

Section 8.07 Assignment.

(a) The City hereby consents to the Authority’s assignment of this Installment Purchase Contract to the Bank pursuant to the Assignment Agreement.

(b) The Bank has the right at any time to assign, transfer, or convey this Installment Purchase Contract or any interest therein or portion thereof, but no such assignment, transfer or conveyance shall be effective as against the City unless and until the Bank has delivered to the City written notice thereof that discloses the name and address of the assignee or the Loan Servicer (as hereafter provided and defined) and such assignment, transfer or conveyance shall be made only to (i) an affiliate of the Bank or (ii) banks, insurance companies or other financial institutions or their affiliates. Nothing herein limits the right of the Bank or its assignees to sell or assign participation interests in this Installment Purchase Contract to one or more entities listed in (i) or (ii), provided that any participation, custodial or similar agreement under which multiple ownership interests in this Installment Purchase Contract are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single entity, owner, servicer or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the “Loan Servicer”) to act on their behalf with respect to the rights and interests of the Bank under this Installment Purchase Contract, including with respect to the exercise of rights and remedies of the Bank on behalf of such owners upon the occurrence of an event of default under this Installment Purchase Contract.

Section 8.08 California Law.

This Installment Purchase Contract shall be construed and governed in accordance with the laws of the State of California.

Section 8.09 Notices.

All written notices to be given hereunder shall be given by certified mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time namely:

If to the City: City of Grover Beach
154 S. Eighth Street
Grover Beach, CA 93433
Attention: City Manager

If to the Authority: Grover Beach Financing Authority
154 S. Eighth Street
Grover Beach, CA 93433
Attention: Executive Director

If to the Bank: BBVA USA
[TO COME]
Attention: _____

With a copy to: BBVA USA
8333 Douglas Avenue, 2nd Floor
Dallas, Texas 75225
Attention: LDFC Public Finance

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

Section 8.10 Effective Date.

This Installment Purchase Contract shall become effective upon its execution and delivery and shall terminate when all Installment Payments shall have been fully paid (or provision for the payment thereof shall have been made to the written satisfaction of the Bank pursuant to Article VI hereof).

Section 8.11 Execution in Counterparts.

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

Section 8.12 Amendments.

This Installment Purchase Contract may be amended in writing as may be mutually agreed by the City and the Bank. Any amendment made in violation of this Section 8.12 shall be a nullity and void.

Section 8.13 Third-Party Beneficiary.

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

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

CITY OF GROVER BEACH

By: _____
City Manager

GROVER BEACH FINANCING AUTHORITY

By: _____
Executive Director

EXHIBIT A

DESCRIPTION OF THE PROJECT

The Project consists of the following:

EXHIBIT B

INSTALLMENT PAYMENT SCHEDULE

1. The principal amount of Installment Payments to be made by the City hereunder is \$_____.

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

<i>Installment Payment Date</i>	<i>Amount Attributable to Principal</i>	<i>Amount Attributable to Interest</i>	<i>Total</i>
<i>Third Business Day Prior To:</i>			

TOTAL	\$	\$	\$
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ASSIGNMENT AGREEMENT

between the

GROVER BEACH FINANCING AUTHORITY

and

BBVA USA, an Alabama banking corporation

Dated as of February 1, 2020

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT, dated as of February 1, 2020 (this “Assignment Agreement”), is made between the GROVER BEACH FINANCING AUTHORITY, a joint exercise of powers authority organized and validly existing under the laws of the State of California (the “Authority”) and BBVA USA, an Alabama banking corporation (the “Bank”);

WITNESSETH:

WHEREAS, the Authority desires to assign to the Bank without recourse certain of its rights under the Installment Purchase Contract, dated as February 1, 2020 (the “Installment Purchase Contract”), between the Authority and the City of Grover Beach (the “City”), including, but not limited to, all of its rights to receive certain installment payments (the “Installment Payments”) scheduled to be paid by the City under and pursuant to the Installment Purchase Contract;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Installment Purchase Contract.

Section 2. Assignment. The Authority hereby assigns and transfers to the Bank without recourse all of the Authority’s rights, title and interest in and to the Installment Purchase Contract (except for the Authority’s rights to indemnification and payment or reimbursement of its reasonable costs and expenses). The assignment herein is absolute and presently effective.

Section 3. Acceptance of Assignment. The Bank hereby accepts the assignment and transfer of such of the Authority’s rights, title and interest in and to the Installment Purchase Contract as are assigned and transferred to it pursuant to the terms of this Assignment Agreement.

Section 4. Deposit and Application of Funds. In consideration of the assignment made hereunder by the Authority to the Bank, the Bank hereby agrees to provide the amount of \$_____ on the Closing Date for the account of the City for the purpose of providing funds to finance the Project (as defined in the Installment Purchase Contract).

Section 5. Representations and Warranties of the Authority. The Authority hereby represents and warrants to the Bank that, as of the date hereof:

(a) It has full right, title and interest and legal title in and to the Installment Purchase Contract and the Installment Payments due under the Installment Purchase Contract, in each instance free and clear of all claims, liens, security interests, encumbrances of any kind or character except the rights of the City under the Installment Purchase Contract. The City has asserted no claims or defenses against the Authority relating to the Installment Purchase Contract. The Installment Purchase Contract is and shall remain free of all claims (including any defenses or offset rights claimed by the City), liens, security interests, and encumbrances

arising through any act or omission of the Authority or any person claiming by, through, or under it.

(b) No modifications, amendments or changes have been made to the Installment Purchase Contract.

(c) The Installment Purchase Contract is valid, binding and enforceable in accordance with its terms.

(d) It has not previously assigned any right, title or interest the Authority has in the Installment Purchase Contract to any other party and no other party has any superior right, title or interest than such right, title and interest being assigned to the Bank pursuant to this Assignment Agreement.

(e) It has the right to assign the Installment Purchase Contract to the Bank as set forth herein.

(f) The undersigned officer of the Authority has the requisite power and authority to enter into this Assignment Agreement.

Section 6. No Additional Rights or Duties. This Assignment Agreement shall not impose any duties, obligations or responsibilities upon the Authority or the City beyond those expressly provided in the Installment Purchase Contract or as otherwise set forth herein.

Section 7. Further Assurances. The Authority will make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Assignment Agreement, and for the better assuring and confirming to the Bank the rights and obligations intended to be conveyed pursuant hereto.

Section 8. Counterparts. This Assignment Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 9. Law Governing. This Assignment Agreement is made in the State of California under the Constitution and laws of the State of California and is to be so construed.

Section 10. Notices. All notices under this Assignment Agreement shall be in accordance with the Installment Purchase Contract.

Section 11. Binding Effect; Successors. This Assignment Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Whenever in this Assignment Agreement any party is named or referred to, such reference shall be deemed to include such party's successors and assigns and all covenants and agreements contained in this Assignment Agreement by or on behalf of any party hereto shall bind and inure to the benefit of such party's successors and assigns whether so expressed or not.

Section 12. Entire Agreement. This Assignment Agreement contains the entire agreement between the Authority and the Bank with respect to the subject matter hereof and supersedes all prior agreements and understandings relating thereto. No other agreement is effective to change, modify or

terminate this Assignment Agreement in whole or in part unless such agreement is in writing and duly executed by the Authority and the Bank. No representations, inducements, promises or agreements, oral or otherwise, that are not embodied herein (or any written instrument or document delivered pursuant hereto or in connection herewith) are of any force or effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment Agreement as of the date first above written.

GROVER BEACH FINANCING AUTHORITY

By: _____
Executive Director

BBVA USA

By: _____
Name:
Title: