

## JOINT AGENDA

**Borrego Water District  
Board of Directors  
Special Meeting  
September 14, 2021 @ 9:00 a.m.**

**Borrego Water District Public Facilities Corporation  
Board of Directors  
Special Meeting  
September 14, 2021 @ 9:00 a.m.**

**806 Palm Canyon Drive  
Borrego Springs, CA 92004**

**COVID-19 UPDATE: The Borrego Water District Board of Directors meeting as scheduled in an electronic format. BWD will be providing public access to the Meeting thru electronic means only to minimize the spread of the COVID-19 virus, based upon direction from the California Department of Public Health, the California Governor's Office and the County Public Health Office. Anyone who wants to listen to or participate in the meeting is encouraged to observe the GO TO MEETING at:**

Tue, Sep 14, 2021 9:00 AM - 12:00 PM (PDT)

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### **I. OPENING PROCEDURES**

- A. Call to Order**
- B. Pledge of Allegiance**
- C. Roll Call: Directors Baker, Brecht, Duncan, Johnson and President Dice**
- D. Approval of Agenda**
- E. Approval of Minutes - None**
- F. Comments from the Public & Requests for Future Agenda Items (may be limited to 3 min)**
- G. Comments from Directors**
- H. Correspondence Received from the Public (3)**

### **II. ITEM FOR BOARD OF DIRECTORS OF BORREGO WATER DISTRICT CONSIDERATION AND POSSIBLE ACTION**

- A. Resolution No. 2021-09-01 of the Board of Directors of Borrego Water District Authorizing Execution and Delivery by the District of an Installment Purchase**

AGENDA: September 14, 2021

All Documents for public review on file with the district's secretary located at 806 Palm Canyon Drive, Borrego Springs CA 92004. Any public record provided to a majority of the Board of Directors less than 72 hours prior to the meeting, regarding any item on the open session portion of this agenda, is available for public inspection during normal business hours at the Office of the Board Secretary, located at 806 Palm Canyon Drive, Borrego Springs CA 92004.

The Borrego Springs Water District complies with the Americans with Disabilities Act. Persons with special needs should call Geoff Poole at (760) 767 – 5806 at least 48 hours in advance of the start of this meeting, in order to enable the District to make reasonable arrangements to ensure accessibility.

If you challenge any action of the Board of Directors in court, you may be limited to raising only those issues you or someone else raised at the public hearing, or in written correspondence delivered to the Board of Directors (c/o the Board Secretary) at, or prior to, the public hearing.

Agreement and an Assignment Agreement and Approving Certain Other Actions in Connection Thereto (4-62)

ADJOURN WATER DISTRICT MEETING AND CONVENE BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION BOARD OF DIRECTOR MEETING. FOLLOWING THE CORPORATION MEETING, THE WATER DISTRICT BOARD WILL RE-CONVENE

**III. ITEM FOR BOARD OF DIRECTORS OF BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION CONSIDERATION AND POSSIBLE ACTION**

A. Resolution No. 2021-09-02 of the Board of Directors of Borrego Water District Public Facilities Corporation Authorizing Execution and Delivery by the Corporation of an Installment Purchase Agreement and an Assignment Agreement and Approving Certain Other Actions with Respect Thereto (63-120)

ADJOURN CORPORATION MEETING AND RE-CONVENE THE WATER DISTRICT MEETING

**IV. CLOSED SESSION:**

- i. Conference with Legal Counsel - Significant exposure to litigation pursuant to paragraph (3) of subdivision (d) of Section 54956.9: (Two (2) potential cases)
- ii. Conference with Legal Counsel – Existing Litigation (BWD v. All Persons Who Claim a Right to Extract Groundwater, et al. (San Diego Superior Court case no. 37-2020-00005776)

**V. CLOSING PROCEDURE:** The next Board Meeting is scheduled for September 28, 2021 at 9 AM @ Borrego Water District, 806 Palm Canyon Drive, Borrego Springs, CA 92004 – **ELECTRONICALLY**

AGENDA: September 14, 2021

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CONSIDINE BORREGO LLC  
T2 BORREGO LLC

Borrego Water District  
PO Box 1870  
Borrego Springs, CA 92004  
Attn: Board of Directors and  
Geoff Poole, General Manger  
Re: Pilot Program  
*via email*

August 24, 2021

Dear Directors & Mr. Poole:

This letter relates to the Borrego Water District's (BWD's) Pilot Program for Provision of Water for Small Developments, which was on the BWD's agenda for today, August 24<sup>th</sup>. I provided public comment during the meeting, and at the request of Director Brecht, I am now providing those comments in writing.

We at Rams Hill believe the pilot program is a good idea and will solve some immediate needs now that water rights have been settled in the basin. We applaud the BWD's recognition of its obligation to serve customers within its service area.

Current customers' expansion, granny flats, and new homes are important uses, and buying of water rights in small quantities has high transaction costs. It makes sense for the BWD to have a program that allows these small users to not buy water rights in the private market but rather just be assured of service and let the BWD, who already owns over 10% of the market and is one of the largest pumpers in the valley, handle the water rights acquisition.

While we support the program, we do not believe that potential customers will have reached out to all water rights owners in the basin and request that the acknowledgment for this be removed. Additionally, we are concerned that the \$8,725 price point is too low and want to be careful that new customers or expanded users are paying their full share of costs. We would like to review supporting data for this number and understand that more learning will occur as time passes.

We also have an on-going concern that, as we all know, the BWD will need to make additional acquisitions to serve its current customers in the long-term. We hope this program will provide learning, community benefits, and allow for further consideration on costs and future acquisitions by the BWD.

Thank you for the work you have done to continue to serve your current and new customers. As always, I'm available to discuss my comments and any questions you may have.

Sincerely,



Cathryn R. Milkey  
Senior Vice President

BORREGO WATER DISTRICT  
JOINT MEETING WITH  
BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION

SEPTEMBER 14, 2021  
AGENDA ITEM II.A

September 10, 2021

**TO:** Board of Directors, Borrego Water District

**FROM:** Geoffrey Poole, General Manager/Jessica Clabaugh, Finance Officer

**SUBJECT:** Resolution No. 2021-09-01 of the Board of Directors of Borrego Water District Authorizing Execution and Delivery by the District of an Installment Purchase Agreement and an Assignment Agreement and Approving Certain Other Actions in Connection Thereto – N. O'Brien, BB&K & L. Carpenter, FRA

**RECOMMENDED ACTION:**  
Approve Resolution No. 2021-09-01

**ITEM EXPLANATION:**

Staff has been working with Fieldman, Rolapp & Associates, Inc.(FRA) as Municipal Advisor, Best Best & Krieger LLP(BBK) as Bond Counsel and Hilltop Securities, Inc. as Placement Agent on a financing to (1) refinance, at a lower rate, the District's current debt with Pacific Western Bank (PWB) and (2) to fund BWD capital improvements. BWD has been presented with a very competitive interest rate and terms from Capital One Public Funding, LLC (COPF).

Staff and Consultants are recommending approval of the attached Resolution to begin the transaction. The Borrego Water District Public Facilities Corporation Board is required to hold a meeting as part of this transaction.

**FISCAL IMPACT**

Prepay the principal portion of the installment payments due to PWB under the 2018 Installment Purchase Agreement of \$4,431,000, resulting in a savings of \$568,000 NPV. Finance approximately \$2.9M of new money for capital improvement projects for the water and sewer enterprise (less fees and charges to third parties).

**ATTACHMENTS**

Resolution 2021-09-01  
Installment Agreement  
Assignment Agreement

**RESOLUTION NO. 2021-09-01**

**RESOLUTION OF THE BOARD OF DIRECTORS OF BORREGO WATER DISTRICT AUTHORIZING EXECUTION AND DELIVERY BY THE DISTRICT OF AN INSTALLMENT PURCHASE AGREEMENT AND AN ASSIGNMENT AGREEMENT AND APPROVING CERTAIN OTHER ACTIONS IN CONNECTION THERETO**

**WHEREAS**, the Borrego Water District (the “District”) previously entered into an Installment Purchase Agreement dated as of July 1, 2018 (the “2018 Installment Purchase Agreement”), by and between the District and the Borrego Water District Public Facilities Corporation (the “Corporation”) to finance certain improvements to its water enterprise (the “Water Enterprise”) and sewer enterprise (the “Sewer Enterprise” and, together with the Water Enterprise, the “Enterprises”); and

**WHEREAS**, the Board of Directors (the “Board of Directors”) of the District has determined that it is in the best interest of the District and the property owners and residents served by the District’s Enterprises that the District prepay the installment payments due under the 2018 Installment Purchase Agreement and finance certain improvements to the Enterprises (together, the “Project”); and

**WHEREAS**, in order to accomplish the financing of the Project, it is necessary that the District enter into an Installment Purchase Agreement (the “2021 Installment Purchase Agreement”) with the Corporation hereinafter more particularly described, and that certain other action be taken and authorized; and

**WHEREAS**, the aforementioned 2021 Installment Purchase Agreement provides that the District’s obligation to make the 2021 Installment Payments (as defined in the 2021 Installment Purchase Agreement) for the purchase from the Corporation of the Project shall be secured by a pledge of and a charge and lien upon Net Revenues (as defined in the 2021 Installment Purchase Agreement) of the District, and that the District covenants to establish, maintain and collect Revenues (as defined in the 2021 Installment Purchase Agreement) from each of the Enterprises in each fiscal year in amounts sufficient to pay the 2021 Installment Payments; and

**WHEREAS**, in order to accomplish the financing of the Project, the District, with the assistance of Fieldman, Rolapp & Associates, Inc., the municipal advisor to the District (the “Municipal Advisor”) and Hilltop Securities, Inc., the placement agent to the District (the “Placement Agent”), solicited proposals for the direct sale of the right to receive the 2021 Installment Payments (“2021 Installment Payment Rights”) which rights would be assigned by the Corporation to the responsible bidder submitting that proposal for the purchase of the 2021 Installment Payment Rights offering the most advantageous proposal for the District in consideration of all terms of such proposal; and

**WHEREAS**, District staff, the Municipal Advisor and the Placement Agent have determined that Capital One Public Funding, LLC (the “Bank”), submitted the proposal with the most advantageous proposal in consideration of all of the terms of the proposal and has

recommended that the purchase of the 2021 Installment Payment Rights be awarded to the Bank; and

**WHEREAS**, as the result of the passage of SB 450 that became effective on January 1, 2018, Section 5852.1 of the Government Code of the State of California (“Section 5852.1”) provides that the Board of Directors obtain from an underwriter, financial advisor or private lender and disclose, in a meeting open to the public, prior to authorization of the Installment Purchase Agreement, good faith estimates of: (a) the true interest cost of the 2021 Installment Payment Rights, (b) the finance charge of the 2021 Installment Payment Rights, meaning the sum of all fees and charges paid to third parties, (c) the amount of proceeds of the 2021 Installment Payment Rights received less the finance charge described above and any reserves or capitalized interest paid or funded with proceeds of the 2021 Installment Payment Rights and (d) the sum total of all 2021 Installment Payments calculated to the final maturity of the 2021 Installment Payments plus the fees and charges paid to third parties not paid with the proceeds of the 2021 Installment Payment Rights; and

**WHEREAS**, in accordance with Section 5852.1, the Board of Directors has obtained such good faith estimates from the Municipal Advisor, and such estimates are disclosed in Exhibit A attached hereto (the “SB 450 Summary”); and

**WHEREAS**, in order to enable the Corporation to assign the 2021 Installment Payment Rights to the Bank it is necessary that the Corporation, the District and the Bank enter into an Assignment Agreement (the “2021 Assignment Agreement”); and

**WHEREAS**, the Board of Directors has determined that it is in the best interest of the District and desirable that the 2021 Installment Purchase Agreement and the 2021 Assignment Agreement be approved as hereinafter described for the purposes provided above; and

**WHEREAS**, the District has not issued or effected the issuance of, and does not reasonably expect to issue or effect the issuance of more than \$10,000,000 of tax exempt obligations during the 2021 calendar year and, therefore, desires to designate the 2021 Installment Purchase Agreement as a “qualified tax-exempt obligation” as defined by Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (a “Qualified Tax-Exempt Obligation”); and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have been met.

**NOW, THEREFORE**, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT AS FOLLOWS:

**SECTION 1. Approval of 2021 Installment Purchase Agreement.** The 2021 Installment Purchase Agreement presented at this meeting to be entered into by and between the District and the Corporation, which provides generally for (a) financing the Project, (b) the appointment of the District by the Corporation as its agent for purposes of undertaking the Project, (c) the purchase by the District from the Corporation of the Project, and (d) the payment by the District to the Corporation from the Net Revenues of the 2021 Installment Payments (each as defined in the Installment Purchase Agreement), is approved, and the President and Vice-President of the Board of Directors and the General Manager of the District (each, an “Authorized Officer”) are each, acting alone, authorized to execute, acknowledge and delivery said agreement on behalf of the

District. The principal component of all 2021 Installment Payments shall be in an amount of not to exceed \$7,600,000 and the interest rate with respect to the interest components of the 2021 Installment Payments shall not exceed 2.19% per annum.

SECTION 2. Award of Purchase of the 2021 Installment Purchase Rights. The purchase of the 2021 Installment Payment Rights is hereby awarded to the Bank.

SECTION 3. Approval of the 2021 Assignment Agreement. The 2021 Assignment Agreement presented at this meeting to be entered into by and among the Corporation, the District and the Bank, which provides generally for (a) right to receive all 2021 Installment Payments from the District under the 2021 Installment Purchase Agreement, together with any and all of the other rights of the Corporation under the 2021 Installment Purchase Agreement as may be necessary to enforce payment of such 2021 Installment Payments when due or otherwise to protect the interests of the Bank, (b) the acceptance by the Bank of such assignment, and (c) establishment of conditions precedent to the obligation of the Bank to purchase the 2021 Installment Payment Rights, is approved, and each Authorized Officer, acting alone, is authorized to execute, acknowledge and delivery said agreement on behalf of the District.

SECTION 4. Modifications. The approval of the 2021 Installment Purchase Agreement and the 2021 Assignment Agreement given by this resolution shall apply to any modification or amendment of any of said documents which is agreed upon and approved by the Authorized Officer executing the 2021 Installment Purchase Agreement and the 2021 Assignment Agreement and Best Best & Krieger LLP, as General Counsel and Special Counsel to the District, as being necessary to carry out the provisions thereof and the authorizations and direction provided in this Resolution.

SECTION 5. Designation of 2021 Installment Purchase Agreement as a Qualified Tax-Exempt Obligation. Based upon the fact that the District has not issued or effected the issuance of, and does not reasonably expect to issue or effect the issuance of more than \$10,000,000 of tax exempt obligations during the 2021 calendar year, the District hereby designates the 2021 Installment Purchase Agreement as a Qualified Tax-Exempt Obligation.

SECTION 6. Further Action. Each Authorized Officer and the other officers of the District are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the execution and delivery of the agreements approved hereby and to otherwise effectuate the purpose of this Resolution, and such actions previously taken by such officers are hereby ratified and confirmed.

SECTION 7. Effective Date. This Resolution shall take effect upon adoption.

**PASSED AND ADOPTED** by said Board on this 14th day of September, 2021 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

STATE OF CALIFORNIA            )

)

COUNTY OF SAN DIEGO         )

I, Dave Duncan, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the foregoing is a true and correct copy of a resolution passed and adopted by the Board of Directors of the Borrego Water District at a meeting of said Board held on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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Name: Dave Duncan  
Secretary of the Board of Directors of the  
Borrego Water District

## EXHIBIT A

### SB 450 SUMMARY

Set forth below are **good faith estimates** of Fieldman, Rolapp & Associates, Inc., the municipal advisor, as required under Section 5852.1 of the California Government Code (the “Code”). **The following estimates have no bearing on, and should not be misconstrued as, any not-to-exceed financial parameters authorized by resolution.**

(a) The true interest cost of the 2021 Installment Payment Rights is estimated at 2.19%, calculated as provided in Section 5852.1(a)(1)(A) of the Code.

(b) The finance charge of the 2021 Installment Payment Rights, including all fees and charges paid to third parties, is estimated at \$98,500.

(c) Proceeds of the 2021 Installment Payment Rights is \$7,529,510 less the finance charges set forth in (b) above, is equal to \$7,431,010.

(d) The sum total of all 2021 Installment Payments calculated as provided in Section 5852.1(a)(1)(D) of the Code is estimated at \$8,915,671.

The foregoing are estimates and the final costs will depend on market conditions and can be expected to vary from the estimated amounts set forth above.

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2021 INSTALLMENT PURCHASE AGREEMENT

by and between

BORREGO WATER DISTRICT

and

BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION

Dated as of October 1, 2021

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2021 INSTALLMENT PURCHASE AGREEMENT

This 2021 INSTALLMENT PURCHASE AGREEMENT, made and entered into as of October 1, 2021 (the “Installment Purchase Agreement”), by and between BORREGO WATER DISTRICT, a water district duly organized and existing under and by virtue of the laws of the State of California (the “District”), and BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the “Corporation”).

W I T N E S S E T H:

WHEREAS, the District is authorized by Division 13 of the Water Code of the State of California (the “Law”), including but not limited to Section 35565, to, among other powers, provide water and sewer services for the beneficial use or uses of the District, its inhabitants, or the owners of rights to water in the District (“Services”); and

WHEREAS, the District is also authorized by the Law, including but not limited to Section 35565.2 and Section 35600, to sell real and personal property and to acquire real and personal property in order to achieve its public purposes of providing Services within the District; and

WHEREAS, the District previously entered into an Installment Purchase Agreement dated as of July 1, 2018 (the “2018 Installment Purchase Agreement”), by and between the District and the Corporation to finance certain improvements (the “2018 Project”) to its water enterprise (the “Water Enterprise”) and sewer enterprise (the “Sewer Enterprise” and, together with the Water Enterprise, the “Enterprises”); and

WHEREAS, the Board of Directors of the District has determined that it is in the best interest of the District and the property owners and residents served by the District’s Enterprises that the District prepay the installment payments due under the 2018 Installment Purchase Agreement for the 2018 Project and finance certain improvements to the Enterprises (the “2021 Project” and with the 2018 Project, the “Project”) as described in Exhibit A attached hereto; and

WHEREAS, in order to accomplish the financing of the Project, it is necessary that the District enter into the Installment Purchase Agreement with the Corporation; and

WHEREAS, the District and the Corporation desire to provide for the Corporation to assign this Installment Purchase Agreement to Capital One Public Funding, LLC (the “Lender”), in consideration of the Lender paying to the Corporation an amount sufficient to finance the Project and to pay costs of the financing including special counsel fees, municipal advisor fees and other expenses in connection therewith; and

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

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Installment Purchase Agreement do exist, have happened and have been performed in regular and

due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Installment Purchase Agreement;

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

## ARTICLE I

### DEFINITIONS

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

#### Accountant's Report

The term "Accountant's Report" means a report signed by an Independent Certified Public Accountant.

#### Additional Revenues

The term "Additional Revenues" means, with respect to the issuance of any Parity Obligations (other than the 2018 Notes and the 2021 Installment Payments), any or all of the following amounts:

(a) An allowance for Net Revenues from any additions or improvements to or extensions of an Enterprise or the Enterprises which, during all or any part of the most recently completed Fiscal Year or for any more recent consecutive twelve (12) month period selected by the District, were not in service, in an amount equal to ninety percent (90%) of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first thirty-six (36) month period in which each addition, improvement or extension is respectively to be in operation, all as shown by the certificate or opinion of an Authorized Representative or Independent Engineer.

(b) An allowance for Net Revenues arising from any increase in the charges made for service from an Enterprise which has become effective (or adopted but not yet effective) prior to the incurring of such Parity Obligations but which, during all or any part of the most recently completed Fiscal Year or for any more recent consecutive twelve (12) month period selected by the District, was not in effect, 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 such Fiscal Year or twelve (12) month period, all as shown by the certificate or opinion of an Authorized Representative or Independent Financial Consultant.

### Assignment Agreement

The term “Assignment Agreement” means that certain Assignment Agreement by and between the Corporation and the Lender dated as of the date hereof, as supplemented or amended from time to time.

### Authorized Representative

The term “Authorized Representative” means the District’s President, Vice-President, and General Manager or any other person designated as an Authorized Representative of the District by a Certificate of the District signed by its President or General Manager and filed with the Lender.

### Lender

The term “Lender” means initially Capital One Public Funding, LLC, or its successors or assigns, as assignee of the Corporation.

### Closing Date

The term “Closing Date” means the date that the Corporation, or the Lender, delivers to the District the Purchase Price.

### Code

The term “Code” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury regulations.

### Contracts

The term “Contracts” means the 2018 Loan Agreement, this Installment Purchase Agreement and any amendments and supplements hereto, and all contracts of the District authorized and executed by the District, the payments under which are on parity with the Installment Payments and which are secured by a pledge and lien on the Net Revenues.

### Corporation

The term “Corporation” means Borrego Water District Public Facilities Corporation, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California.

### Cost of Delivery

The term “Cost of Delivery” means all items of expense directly or indirectly payable by or reimbursable to the Corporation or the District and related to the authorization, execution and delivery of this Installment Purchase Agreement and the Assignment Agreement, including, but not related to, costs of preparation and reproduction of documents, legal fees and charges, fees and expenses of consultants and professionals, and any other charge, cost or fee in connection with the

execution and delivery of this Installment Purchase Agreement, including, but not limited to, the fees of CDIAC and the Lender's counsel.

### Debt Service

The term "Debt Service" means, for any Fiscal Year, the sum of (1) the interest falling due during such Fiscal Year on all Parity Obligations that 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 that mature at times and in such amounts as are necessary to pay the interest to which such amounts are pledged), (2) the principal amount of all serial Parity Obligations (that are outstanding under the documents or agreements pursuant to which they were issued) falling due by their terms during such Fiscal Year, and (3) the minimum amount of term Parity Obligations (that 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, (A) 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 Code, the most recently published The Bond Buyer Bond Revenue Index (or comparable index if no longer published) plus one hundred fifty (150) basis points, or (y) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities, plus one hundred fifty (150) basis points, and (B) for purposes of calculating the Debt Service on any Parity Obligation requiring a balloon payment at maturity, such interest shall be assumed to be a rate equal to the greater of (i) the actual rate on the date of calculation, or (ii) six percent (6%), and the principal shall be assumed to be fully amortized, solved for substantially level debt service, over a period of fifteen (15) years from the date of calculation.

### Default Rate

The term "Default Rate" means the interest rate due on the unpaid portion of any Installment Payment due pursuant to Section 4.02 hereof. Such Default Rate shall also be applicable upon the occurrence and continuation of an Event of Default pursuant to Section 8.01 and shall be equal to the interest rate applicable to the principal portion of Installment Payments, plus four percent (4%); provided, however, that such Default Rate shall be a minimum of eight percent (8%).

### Determination of Taxability

The term "Determination of Taxability" means and shall be deemed to have occurred on the first to occur of the following:

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

(ii) on the date when the Lender notifies the District that it has received a written opinion from Bond Counsel to the effect that an Event of Taxability has occurred, which notice shall be accompanied by a copy of such opinion of Bond Counsel, unless, within 180 days after receipt by the District of such notification and copy of such opinion from the Lender, the District shall deliver to the Lender a ruling or determination letter issued to or on behalf of the District by the Commissioner or any District Director of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the District shall be 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 any review or audit or upon any other ground whatsoever, an Event of Taxability has occurred; or

(iv) on that date when the District shall receive notice from the Lender that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed the interest component of the Installment Payments as includable in the gross income of the Lender due to the occurrence of an Event of Taxability;

*provided*, however, that no Determination of Taxability shall occur under subparagraph (iii) or subparagraph (iv) above unless the District 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; provided further, however, that upon demand from the Lender, the District shall reimburse the Lender for any payments, including any taxes, interest, penalties or other charges, such Lender shall be obligated to make as a result of the Determination of Taxability.

#### District

The term “District” means Borrego Water District, a water district duly organized and existing under and by virtue of the laws of the State of California.

#### Enterprises; Enterprise

The term “Enterprises” means, collectively, the Sewer Enterprise and the Water Enterprise. The term “Enterprise” means the Sewer Enterprise or the Water Enterprise, as applicable.

#### Event of Default

The term “Event of Default” means an event described in Section 8.01.

### Event of Taxability

The term “Event of Taxability” means the taking of any action by the District, or the failure to take any action by the District, or the making by the District of any misrepresentation in this Installment Purchase Agreement or the certificate regarding federal arbitrage which has been executed and delivered by the District in connection with this Installment Purchase Agreement, which has the effect of causing the interest component of the Installment Payments to be includable, in whole or in part, in the gross income of the Lender for federal income tax purposes.

### Federal Securities

The term “Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; and (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are fully, unconditionally and directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

### Fiscal Year

The term “Fiscal Year” means the period beginning on July 1 of each year and ending on the last day of June of the next succeeding year, or any other twelve-month period selected and designated as the official Fiscal Year of the District.

### Generally Accepted Accounting Principles

The term “Generally Accepted Accounting Principles” means the generally accepted accounting principles as presented and recommended by the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

### General Manager

The term “General Manager” means the General Manager of the District.

### Governmental Authority

The term “Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central Lender, 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.

### Independent Certified Public Accountant

The term “Independent Certified Public Accountant” means any firm of certified public accountants appointed by the District, and each of whom is independent pursuant to the Statement on Auditing Standards No. 1 of the American Institute of Certified Public Accountants.

### Installment Payment Date; 2021 Installment Payment Dates

The term “Installment Payment Date” means any date on which Installment Payments are scheduled to be paid by the District under and pursuant to any Contract. The term “2021 Installment Payment Date” means April 1 and October 1 of each year commencing on April 1, 2022.

### Installment Payments; 2021 Installment Payments

The term “Installment Payments” means the installment payments of interest and principal scheduled to be paid by the District under and pursuant to the Contracts. The term “2021 Installment Payments” means the mandatory sinking fund payments set forth in Exhibit B hereto scheduled to be paid by the District under and pursuant to this Installment Purchase Agreement.

### Installment Purchase Agreement

The term “Installment Purchase Agreement” means this Installment Purchase Agreement, by and between the District and the Corporation, dated as of October 1, 2021, as originally executed and as it may from time to time be amended or supplemented in accordance herewith.

### Insurance Consultant

The term “Insurance Consultant” means any nationally recognized independent actuary, insurance company or broker that has actuarial personnel knowledgeable with respect to insurance carried, by, required for and available to special districts operating facilities similar to the Water Enterprise, including a pooled self-insurance program in which premiums are established on the basis of the recommendation of an actuary of national reputation. The Lender hereby approves of the Association of California Water Agencies Joint Powers Insurance Authority as meeting this definition of Insurance Consultant.

### Law

The term “Law” means the California Water District Law of the State of California (being Division 13 of the Water Code of the State of California, as amended) and all laws amendatory thereof or supplemental thereto.

### Maximum Annual Debt Service

The term “Maximum Annual Debt Service” means the greatest amount of Debt Service with respect to the Parity Obligations to which reference is made coming due in any Fiscal Year including the Fiscal Year in which the calculation is made or any subsequent Fiscal Year.

### Material Adverse Effect

The term “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 District, an Enterprise or both Enterprises, (b) the ability of the District to carry out its business in the manner conducted as of the date of this Installment Purchase Agreement or to meet or perform its obligations under this Installment Purchase Agreement on a timely basis, or the (c) the validity or enforceability of this Installment Purchase Agreement.

### Material Litigation

The term “Material Litigation” means any action, suit, proceeding, inquiry or investigation against the District in any court or before any arbitrator of any kind or before or by any Governmental Authority, of which the District has notice or knowledge and which, (i) if determined adversely to the District, may have a Material Adverse Effect, (ii) seeks to restrain or enjoin any of the transactions contemplated hereby, or (iii) may adversely affect the ability of the District to perform its obligations under this Installment Purchase Agreement.

### Net Proceeds

The term “Net Proceeds” means insurance proceeds or an eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers), paid with respect to an Enterprise, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

### Net Revenues

The term “Net Revenues” means for any Fiscal Year the sum of (a) the Water Enterprise Net Revenues for such Fiscal Year, (b) the Sewer Enterprise Net Revenues for such Fiscal Year and (c) the Property Tax Revenues allocated to the District for such Fiscal Year.

### Note 2018A

The term “Note 2018A” means the Promissory Note executed and delivered by the District on July 10, 2018, in the original principal amount of \$2,294,000 pursuant to the 2018 Loan Agreement.

### Note 2018B

The term “Note 2018B” means the Promissory Note executed and delivered by the District on July 10, 2018, in the original principal amount of \$863,534.51 pursuant to the 2018 Loan Agreement.

### Operation and Maintenance Costs

The term “Operation and Maintenance Costs” means the Sewer Enterprise Operation and Maintenance Costs and the Water Enterprise Operation and Maintenance Costs.

### Parity Obligations

The Term “Parity Obligations” means the 2021 Installment Payments, each 2018 Note together with the corresponding 2018 Loan Payments thereon, and all other bonds, notes, loan agreements, installment purchase agreements, leases, or other obligations of the District payable from and secured by a pledge of and lien upon any of the Net Revenues incurred on a parity with the 2021 Installment Payments and each of the 2018 Notes, together with the related 2018 Loan Payments thereon, issued or incurred in accordance with Section 6.15 hereof.

### Parity Obligations Documents

The term “Parity Obligations Documents” means, collectively, the indenture of trust, trust agreement, installment purchase agreement, loan agreement or other document authorizing the issuance of any Parity Obligations or any securities which evidence Parity Obligations.

### Parity Obligation Payment Date

The term “Parity Obligation Payment Date” means 2021 Installment Payment Dates, the Loan Payment Dates and any other payment date for Parity Obligations (other than the 2021 Installment Payments and each 2018 Note and the related 2018 Loan Payments).

### Project

The term “Project” means any additions, betterments, extensions or improvements to the Water Enterprise and/or Sewer Enterprise designated by the Board of Directors of the District as a Project, the acquisition and construction of which is to be paid for or refinanced by the proceeds of any Contracts or Bonds. The “Project” to be financed from the proceeds of the 2021 Installment Purchase Agreement means the prepayment of the installment payments due under the 2018 Installment Purchase Agreement and the Project described in Exhibit B hereto and as may be modified in conformance with Section 3.03 hereof.

### Property Tax Revenues

The term “Property Tax Revenues” means all property tax revenues as defined in Revenue and Taxation Code Section 95 required to be allocated to the District.

### Purchase Price

The term “Purchase Price” means the principal amount plus interest thereon owed by the District to the Corporation under the terms hereof as provided in Section 4.01.

### Rate Covenant Stabilization Fund

The term “Rate Covenant Stabilization Fund” means either (a) the Sewer Enterprise Rate Covenant Stabilization Fund or (b) the Water Enterprise Rate Covenant Stabilization Fund.

### Rate Covenant Stabilization Funds

The term “Rate Covenant Stabilization Funds” means, collectively, the Sewer Enterprise Rate Covenant Stabilization Fund and the Water Enterprise Rate Covenant Stabilization Fund.

### Revenues

The term “Revenues” means the sum of (a) the Water Enterprise Revenues, (b) the Sewer Enterprise Revenues and (c) the Property Tax Revenues.

### Revenue Fund

The term “Revenue Fund” means the fund by that name established pursuant to Section 5.02 hereof.

### Sewer Enterprise

The term “Sewer Enterprise” means, collectively, the entire sewer collection, transmission, treatment and disposition of wastewater and sewage system now owned or operated by the District, and all other properties, structures or works hereafter acquired and constructed by the District and determined to be a part of the Sewer Enterprise, including, but not limited to, any and all properties and assets, real and personal, tangible and intangible, of the District, now or hereafter existing, used or pertaining to the collection, transmission, treatment and disposition system, including all pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, transmission storage, treatment, transmission and disposition of wastewater, and any necessary lands, rights of way and other real or personal property useful in connection therewith, and all additions, extensions, expansions, improvements and betterments thereto and equipments thereof; *provided, however*, that to the extent the District is not the sole owner of an asset or property, only the District’s ownership interest in such asset or property shall be considered to be part of the Sewer Enterprise.

### Sewer Enterprise Net Revenues

The term “Sewer Enterprise Net Revenues” means, for any Fiscal Year, the Sewer Enterprise Revenues for such Fiscal Year less the Sewer Enterprise Operation and Maintenance Costs for such Fiscal Year.

### Sewer Enterprise Operation and Maintenance Costs

The term “Sewer Enterprise Operation and Maintenance Costs” means the reasonable and necessary costs and expenses paid or incurred by the District for maintaining and operating the Sewer Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including but not limited to (a) costs of electricity and other forms of energy supplied to the Sewer Enterprise, (b) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Sewer Enterprise in good repair and working order, (c) the reasonable administrative costs of the District attributable to the operation and maintenance of the Sewer Enterprise, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, and (d) all other reasonable and necessary costs of the District or charges required to

be paid by it comply with the terms of this Installment Purchase Agreement or any Contract or of to any resolution or indenture authorizing the issuance of any Bonds or of such Bonds, but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature and all costs or expenses incurred by or on behalf of the District.

#### Sewer Enterprise Proportionate Share

The term “Sewer Enterprise Proportionate Share” means the amount of the Purchase Price of the Project allocable to the Sewer Enterprise divided by the total amount of the Purchase Price of the Project.

#### Sewer Enterprise Rate Covenant Stabilization Fund

The term “Sewer Enterprise Rate Covenant Stabilization Fund” means the fund by that name established and maintained pursuant to Section 6.03(d) hereof.

#### Sewer Enterprise Revenues

The term “Sewer Enterprise Revenues” means all gross income and revenue received or receivable by the District from the ownership and operation of the Sewer Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including all rates, fees, charges (including connection fees), insurance proceeds and condemnation awards received by the District and all other income and revenue howsoever derived by the District from the Sewer 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 sewer facilities, (ii) grants that are designated by the grantor for a specific Sewer Enterprise purpose (and are therefore not available for general operational purposes), (iii) customers’ sewer related deposits subject to refund until such deposits have become the property of the District, (iv) the proceeds of any ad valorem property taxes, and (v) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the District for the purpose of paying special assessment bonds or special tax obligations of the District relating to the Sewer Enterprise, are not Revenues and are not subject to the lien hereof. Notwithstanding the foregoing, there shall be deducted from Sewer Enterprise Revenues any amounts (of Sewer Enterprise Revenues) transferred into the Sewer Enterprise Rate Covenant Stabilization Fund, and there shall be added to Sewer Enterprise Revenues any amounts transferred out of the Sewer Enterprise Rate Covenant Stabilization Fund and into the Revenue Fund. Sewer Enterprise Revenues may only be used to pay the Sewer Enterprise Proportionate Share.

#### Subordinate Debt

The term “Subordinate Debt” means indebtedness or other obligations (including but not limited to loans, leases and installment sale agreements) hereafter issued or incurred and secured by a pledge of and lien on Net Revenues subordinate to the pledge and lien securing the Parity Obligations.

### Taxable Rate

The term “Taxable Rate” means 3.0% per annum.

### 2018 Loan Agreement

The term “2018 Loan Agreement” means the Loan Agreement dated as of July 1, 2018, by and between the District and Compass Bank.

### 2018 Loan Payments

The term “2018 Loan Payments” means all payments required to be paid by the District on the 2018 Notes pursuant to the 2018 Loan Agreement.

### 2018 Note; 2018 Notes

The term “2018 Note” means either Note 2018A or Note 2018B. The term “2018 Notes” means, collectively, Note 2018A and Note 2018B.

### Water Enterprise

The term “Water Enterprise” means, collectively, the entire water collection, storage, treatment, transmission and distribution system now owned or operated by the District, and all other properties, structures or works hereafter acquired and constructed by the District and determined to be a part of the Water Enterprise, including, but not limited to, any and all properties and assets, real and personal, tangible and intangible, of the District, now or hereafter existing, used or pertaining to the collection, storage, treatment, transmission and distribution system, including all contractual rights to water supply and transmission, as well as all pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, storage, treatment, transmission and distribution of water, and any necessary lands, rights of way and other real or personal property useful in connection therewith, and all additions, extensions, expansions, improvements and betterments thereto and equipments thereof; *provided, however*, that to the extent the District is not the sole owner of an asset or property, only the District’s ownership interest in such asset or property shall be considered to be part of the Water Enterprise.

### Water Enterprise Net Revenues

The term “Water Enterprise Net Revenues” means, for any Fiscal Year, the Water Enterprise Revenues for such Fiscal Year less the Water Enterprise Operation and Maintenance Costs for such Fiscal Year.

### Water Enterprise Operation and Maintenance Costs

The term “Water Enterprise Operation and Maintenance Costs” means the reasonable and necessary costs and expenses paid or incurred by the District for maintaining and operating the Water Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including but not limited to (a) costs of acquisition of water, including all associated treatment and delivery costs, to be used by the Water Enterprise, (b) costs of electricity and other forms of energy

supplied to the Water Enterprise, (c) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Water Enterprise in good repair and working order, (d) the reasonable administrative costs of the District attributable to the operation and maintenance of the Water Enterprise, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, and (e) all other reasonable and necessary costs of the District or charges required to be paid by it to comply with the terms of this Installment Purchase Agreement or any Contract or of any resolution or indenture authorizing the issuance of any Bonds or of such Bonds, but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature and all costs or expenses incurred by or on behalf of the District.

#### Water Enterprise Proportionate Share

The term “Water Enterprise Proportionate Share” means the amount of the Purchase Price of the Project allocable to the Water Enterprise divided by the total amount of the Purchase Price of the Project.

#### Water Enterprise Rate Covenant Stabilization Fund

The term “Water Enterprise Rate Covenant Stabilization Fund” means the fund by that name established and maintained pursuant to Section 6.03(d) hereof.

#### Water Enterprise Revenues

The term “Water Enterprise Revenues” means all gross income and revenue received or receivable by the District from the ownership and operation of the Water Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including all rates, fees, charges (including connection fees), insurance proceeds and condemnation awards received by the District and all other income and revenue howsoever derived by the District from the Water 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 water facilities, (ii) grants that are designated by the grantor for a specific Water Enterprise purpose (and are therefore not available for general operational purposes), (iii) customers’ water related deposits or any other water related deposits subject to refund until such deposits have become the property of the District, (iv) the proceeds of any ad valorem property taxes, and (v) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the District for the purpose of paying special assessment bonds or special tax obligations of the District relating to the Water Enterprise, are not Revenues and are not subject to the lien hereof. Notwithstanding the foregoing, there shall be deducted from Water Enterprise Revenues any amounts (of Water Enterprise Revenues) transferred into the Water Enterprise Rate Covenant Stabilization Fund, and there shall be added to Water Enterprise Revenues any amounts transferred out of the Water Enterprise Rate Covenant Stabilization Fund and into the Revenue Fund. Water Enterprise Revenues may only be used to pay the Water Enterprise Proportionate Share.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES: OPINIONS OF COUNSEL

SECTION 2.01.      Representations by the District. The District makes the following representations:

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

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

(c)      By proper action, the District has duly authorized the execution, delivery and due performance of this Installment Purchase Agreement and this Installment Purchase Agreement constitutes the legal, valid and binding agreement of the District enforceable against the District in accordance with its terms.

(d)      The District will not take or, to the extent within its power, permit any action to be taken which results in the interest paid for the installment purchase of the Project under the terms of this Installment Purchase Agreement being included in the gross income of the Corporation or its assigns for purposes of federal or State of California income taxation.

(e)      The District has determined that it is necessary and proper for District uses and purposes within the terms of the Law that the District acquire the Project in the manner provided for in this Installment Purchase Agreement, in order to provide essential services and facilities to persons residing in the District.

(f)      No consent, approval, authorization, order, filing, registration, qualification, election or referendum, of or by any court or governmental agency or public body whatsoever is required in connection with the delivery or sale of the 2021 Installment Payments or the consummation of the other transactions effected or contemplated herein or hereby. The District gives no representation or warranty with regard to compliance with Blue Sky or similar securities requirements.

(g)      The execution and delivery of this Installment Purchase Agreement, the consummation of the transactions therein and herein contemplated, including the Project, and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the District is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this

Installment Purchase Agreement or the financial condition, assets, properties or operations of the District.

(h) The District acknowledges that (i) Capital One Public Funding, LLC, as the Lender, is acting solely for its own loan account and not as a fiduciary for the District or in the capacity of broker, dealer, municipal securities underwriter or municipal advisor, (ii) the Lender has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the District (including to any financial advisor or placement agent engaged by the District) with respect to the structuring of the financing or the execution and delivery of this Installment Purchase Agreement, (iii) the Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934, as amended, to the District with respect to the transactions relating to the structuring of the financing or the execution and delivery of this Installment Purchase Agreement and the discussions, undertakings, and procedures leading thereto, (iv) the Lender has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to the District's financial advisor or placement agent, or the correctness of any legal interpretation made by counsel to any other party, including, but not limited to counsel to the District's financial advisor or placement agent, with respect to any such matters, (v) each of the District, its financial advisor and its placement agent has sought and shall seek and obtain financial, legal (including securities law), tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters) with respect to the financing effectuated through this Installment Purchase Agreement from its financial, legal, and other advisors (and not from the Lender or its affiliates nor the Lender's legal counsel Kronick, Moskovitz, Tiedemann & Girard) to the extent that the District, its financial advisor or its placement agent desires to, should, or needs to obtain such advice; and (vi) the transactions between the District and the Lender are arm's length, commercial transactions in which the Lender is acting and has acted solely as a principal and for its own interest, and the Lender has not made recommendations to the District with respect to the transactions relating to this Installment Purchase Agreement.

(i) There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the District after reasonable investigation, threatened against or affecting the District or the assets, properties or operations of the District which, if determined adversely to the District or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Installment Purchase Agreement, or upon the ability of the District to make 2021 Installment Payments hereunder.

(j) The District is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Installment Purchase Agreement, or the financial condition, assets, properties or operations of the District.

(k) Other than the 2018 Loan Agreement, there are no outstanding bonds, notes, loans, leases, installment purchase agreements or other obligations that have any security interest in or claim upon the Net Revenues as of the date of this Installment Purchase Agreement.

(l) The financial statements of the District for the year ended June 30, 2020, supplied to the Lender (i) were prepared in accordance with generally accepted accounting principles, consistently applied, and (ii) fairly present the District's financial condition as of the date of the statements. Other than as described in such financial statements or otherwise disclosed to the Lender, there has been no material adverse change in the District's financial condition subsequent to June 30, 2020.

(m) The District reasonably believes that sufficient funds can be obtained to make all 2021 Installment Payments and all other amounts required to be paid pursuant to this Installment Purchase Agreement.

(n) The District has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any of its bonds, notes, or other debt obligations.

(o) During the term of this Installment Purchase Agreement, the Project will be used by the District only for the purpose of performing one or more governmental or proprietary functions of the District consistent with the permissible scope of the District's authority.

(p) The District does not enjoy any rights of immunity on the grounds of sovereign immunity in respect of its obligations under the Installment Purchase Agreement or otherwise with respect to the 2021 Installment Payments. To the extent the District has or hereafter may acquire under any applicable law any rights to immunity from legal proceedings on the grounds of sovereignty, the District hereby waives, to the extent permitted by law, such rights to immunity for itself in respect of its obligations arising under or related to the Installment Purchase Agreement or otherwise with respect to the 2021 Installment Payments.

SECTION 2.02. Representations and Warranties by the Corporation. The Corporation makes the following representations and warranties:

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

(b) The execution and delivery of this Installment Purchase Agreement and the consummation of the transactions herein contemplated will not violate any provision of law, any order of any court or other agency of government, or any indenture, material agreement or other instrument to which the Corporation is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Corporation.

Except as provided herein, the Corporation will not assign this Installment Purchase Agreement, its right to receive 2021 Installment Payments from the District, or its duties and

obligations hereunder to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in this Section 2.02.

SECTION 2.03. Opinion of General Counsel for the District and the Corporation. Concurrently with the execution and delivery of this Installment Purchase Agreement, general counsel for the District and the Corporation shall provide the opinion or opinions to the effect that:

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

(b) This Installment Purchase Agreement has been duly approved by the Board of Directors of the District and executed by the authorized officers of the District.

(c) This Installment Purchase Agreement and the Assignment Agreement have been duly approved by the Board of Directors of the Corporation and executed by authorized officers of the Corporation.

(d) There is no litigation pending or threatened affecting this Installment Purchase Agreement or the Revenues.

### ARTICLE III

#### SALE AND REPURCHASE OF THE PROJECT

SECTION 3.01. The 2021 Project. The Corporation agrees to acquire, construct, install and equip the 2021 Project and to provide funds for and assist the District in acquiring property and easements which are necessary for the construction and installation of the 2021 Project. The Corporation hereby appoints the District as its agent to carry out all phases of the acquisition, construction, installation and equipping of the 2021 Project and the District, as agent of the Authority, assumes all rights, duties, responsibilities and liabilities of the Corporation regarding the construction, installation and equipping of the 2021 Project, except as limited herein. The District, as agent of the Corporation, may enter into any purchase order, construction management agreement, architecture or engineering contract or construction contract required for the design, acquisition, construction, installation and completion of the 2021 Project. The Corporation hereby assigns to the District all rights and powers to enforce in its own name or the name of the Corporation such purchase orders or contracts as are required for design, acquisition, construction, installation, purchase and completion of the 2021 Project, which enforcement may be by auction at law or in equity; provided that the assignment made by the Corporation herein shall not prevent the Corporation, or its assignee, from asserting such rights and powers in its own behalf.

SECTION 3.02. Purchase of the Project by the District; Appointment of District as Agent of the Corporation. District hereby agrees to repurchase from the Corporation the Project and the Corporation hereby agrees to sell to the District the Project at the Purchase Price and on the terms and conditions hereinafter set forth.

SECTION 3.03. Substitution of the Project. The District may substitute other property or facilities of the Sewer Enterprise and/or the Water Enterprise for those components of

the 2021 Project listed in Exhibit A hereto, but only if the District first obtains the consent of the Lender and files with the Corporation a statement of the District;

(a) identifying the property, facilities or combination thereof, to be substituted and the components of the 2021 Project that they will replace; and

(b) stating that the estimated costs of the substituted property, facilities or combination thereof is not less than the cost of the components of the 2021 Project being replaced.

#### ARTICLE IV

#### INSTALLMENT PAYMENTS

SECTION 4.01. Purchase Price. The District hereby agrees to pay to Corporation, as the Purchase Price of the Project hereunder, the aggregate principal amount of \$[7,529,510.00], together with interest. Interest shall be calculated on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable hereunder is computed using this method.

SECTION 4.02. 2021 Installment Payments. The District shall, subject to any rights of optional prepayment provided in Article VII, pay the Corporation the Purchase Price in mandatory sinking fund payments constituting the 2021 Installment Payments in the amounts and on the 2021 Installment Payment Dates as set forth in Exhibit B hereto.

On or before April 1 and October 1 of each year commencing April 1, 2022 through and including October 1, 2036, the District shall, from the moneys in the Revenue Fund pay to the Lender at the payment address set forth in Section 10.10 hereof, the 2021 Installment Payment due on the respective dates shown on Exhibit B, each such payment to be made by wire or other form of electronic payment in accordance with written instructions provided by Lender or, with Lender's consent, by such other commercially reasonable method of payment.

Each 2021 Installment Payment shall be paid to the Corporation in lawful money of the United States of America. In the event the District fails to make any of the payments required to be made by it under this Section 4.02, such payment shall continue as an obligation of the District until such amount shall have been fully paid and the District agrees to pay the same with interest accruing thereon at the rate of interest then applicable to the remaining unpaid principal balance of the 2021 Installment Payments if paid in accordance with their terms.

The obligation of the District to make the 2021 Installment Payments is absolute and unconditional, and until such time as the Purchase Price shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article IX), the District will not discontinue or suspend any 2021 Installment Payments required to be made by it under this section when due, whether or not the Project or any part thereof is operating or operable or has been completed, 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 or otherwise and

shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

Upon the occurrence of an Event of Default, the interest component of the 2021 Installment Payments shall be calculated at the Default Rate. Upon a Determination of Taxability, from and after the occurrence of an the related Event of Taxability, the interest component of the Installment Payments shall be calculated at the Taxable Rate. In each case, the schedule of Lease Payments set forth in Exhibit B shall be revised to reflect the applicable rate.

## ARTICLE V

### SECURITY

SECTION 5.01.      Pledge of Net Revenues. All Parity Obligations, including the 2021 Installment Payments, shall be secured by a lien on and pledge of Net Revenues, and within such lien priority, such Parity Obligations shall be of equal rank without preference, priority or distinction of any Parity Obligations over any other Parity Obligations. The District does hereby grant such lien on and pledge of Net Revenues to secure Parity Obligations.

SECTION 5.02.      Revenues; Establishment of Revenue Fund.

(a)      In order to carry out and effectuate the pledge and lien contained herein, the District agrees and covenants that all Revenues shall be received by the District in trust hereunder and shall be deposited when and as received in a special fund designated as the “Revenue Fund,” which fund is hereby established and which fund the District agrees and covenants to maintain and to hold separate and apart from other funds so long as any Parity Obligation remain unpaid.

(b)      All Revenues in the Revenue Fund shall be set aside or be used by the District in the following order of priority:

(1)      The District shall, from the moneys in the Revenue Fund, pay (i) all Operation and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operation and Maintenance Costs, the payment of which is not then immediately required) as they become due and payable.

(2)      All Net Revenues remaining in the Revenue Fund (after payment of all Maintenance and Operation Costs) on each Parity Obligation Payment Date, shall be transferred by the District from the Revenue Fund and allocated to the following respective accounts (each of which the District shall establish and maintain within the Revenue Fund), the following amounts in the following order of priority, the requirements of each such account (including the funding of any deficiencies in any such account resulting from insufficient Net Revenues necessary to make any earlier required deposit) at the time of deposit to be satisfied before any transfer is made to any account subsequent in priority:

(i)      Interest Account. On each Parity Obligation Payment Date, the District shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to equal the amount of interest becoming due and payable on such Parity Obligation Payment Date on all

outstanding Parity Obligations. No deposit need be made into the Interest Account if the amount contained therein is at least equal to the interest becoming due and payable upon all outstanding Parity Obligations on such Parity Obligation Payment Date. All moneys in the Interest Account shall be used and withdrawn by the District solely for the purpose of paying interest on the Parity Obligations as it shall become due and payable (including accrued interest on any Parity Obligations purchased or redeemed prior to maturity pursuant to this Installment Sale Agreement). In the event that the amounts on deposit in the Interest Account on any Parity Obligation Payment Date are insufficient for any reason to pay the aggregate amount of interest then coming due and payable on the outstanding Parity Obligations, the District shall apply such amounts to the payment of interest on each of the outstanding Parity Obligations on a pro rata basis.

(ii) Principal Account. On each Parity Obligation Payment Date on which the principal of Parity Obligations is payable, the District shall deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Parity Obligations coming due and payable on such Parity Obligation Payment Date and the amount of principal becoming due and payable on any mandatory sinking account payment due on all outstanding Parity Obligations, if any. All moneys in the Principal Account shall be used and withdrawn by the District solely for the purpose of paying the principal of the Parity Obligations at the maturity date or upon early redemption, as the case may be. In the event that the amounts on deposit in the Principal Account on any Parity Obligation Payment Date are insufficient for any reason to pay the aggregate amount of principal then coming due and payable on the outstanding Parity Obligations, the District shall apply such amounts to the payment of principal on each of the outstanding Parity Obligations on a pro rata basis.

(iii) Redemption Account. The District shall establish and maintain a Redemption Account, amounts in which shall be used and withdrawn by the District solely for the purpose of paying the principal, interest and premium (if any) on the Principal Components to be redeemed, as applicable.

(iv) Reserve Accounts. Payments required to replenish any debt service reserve accounts established for Parity Obligations shall be made in accordance with the terms hereof and such Parity Obligations Documents, without preference or priority, and in the event of any insufficiency of such moneys, ratably without any discrimination or preference.

(v) Subordinate Debt Repayment. Payments relating to principal and interest on or with respect to Subordinate Debt in accordance with the terms of such Subordinate Debt, without preference or priority, and in the event of any insufficiency of such moneys, ratably based on the respective principal amounts (including any accreted value) without any discrimination or preference.

(vi) Subordinate Debt Reserve Accounts. To make payments required with respect to Subordinate Debt to replenish reserve accounts established therefor in accordance with the terms of such Subordinate Debt, without preference or priority, and in the event of any insufficiency of such moneys, ratably based on the respective principal amounts (including any accreted value) without any discrimination or preference.

(3) All remaining money in the Revenue Fund after making the payments under (2)(i) through (vi) may be used for any lawful purpose of the District, including, but not limited to, any costs of capital improvements to the Sewer Enterprise and/or the Water Enterprise, as applicable.

SECTION 5.03. Investments. All moneys held by the District in the Revenue Fund shall be invested in Federal Securities, the Local Agency Investment Fund, the San Diego Treasurer's Pooled Money Fund and/or money market mutual funds as authorized pursuant to and the investment earnings thereon shall remain on deposit in such fund, except as otherwise provided herein.

## ARTICLE VI

### COVENANTS OF THE DISTRICT

SECTION 6.01. Operation and Maintenance of the Enterprises. The District will maintain and preserve each of the Enterprises in good repair and working order at all times and will operate each Enterprise in an efficient and economical manner and will pay all Maintenance and Operation Costs of each Enterprise as they become due and payable.

SECTION 6.02. Against Sale or Other Disposition of Property. The District will not sell, lease, or otherwise dispose of either Enterprise or any part thereof essential to the proper operation of such Enterprise or to the maintenance of the Revenues. The District will not enter into any agreement or lease that impairs the operation of the either Enterprise or any part thereof necessary to secure adequate Revenues for the payment of the Parity Obligations or that would otherwise impair the rights of the District with respect to the Revenues or the operation of either Enterprise. Any real or personal property that has become nonoperative or that is not needed for the efficient and proper operation of the either Enterprise, or any material or equipment that has become worn out, may be sold at not less than the fair market value thereof. The District shall deposit the proceeds of such sale in the Revenue Fund.

SECTION 6.03. Rates, Fees, and Charges.

(a) The District will, at all times while any Parity Obligation remains outstanding, fix, prescribe and collect rates, fees and charges in connection with the Enterprises so as to yield Revenues at least sufficient, after making reasonable allowances for contingencies and errors in the estimates, to pay the following amounts in the order set forth below:

(1) All Maintenance and Operation Costs of the Enterprises;

(2) The Debt Service payments and all other payments (including payments under reimbursement agreements) with respect to all Parity Obligations as they become due and payable;

(3) All amounts, if any, required to restore the balance in any reserve accounts established for Parity Obligations in accordance with the terms of such Parity Obligations Documents, without preference or priority; and

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

(b) Furthermore, the District shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by each Enterprise during each Fiscal Year which are sufficient to yield estimated Net Revenues which are at least equal to one hundred twenty-five percent (125%) of the aggregate amount of Debt Service on all Parity Obligations payable from Net Revenues coming due and payable during such Fiscal Year. The District may make adjustments, from time to time, in its rates, fees and charges as it deems necessary, but shall not reduce its rates, fees and charges below those in effect unless the Net Revenues resulting from such reduced rates, fees and charges shall at all times be sufficient to meet the requirements set forth in this paragraph.

(c) If the District violates the covenants set forth in subsections (a) or (b) hereof, such violation shall not, in and of itself, be a default under any Parity Obligation and shall not give rise to a declaration of an Event of Default so long as (i) Net Revenues (calculated without taking into account any amounts transferred into the Revenue Fund from the Rate Covenant Stabilization Funds pursuant to subsection (d) below), are at least equal to one hundred five percent (105%) of Maximum Annual Debt Service coming due and payable during such Fiscal Year, and (ii) within 120 days after the date such violation is discovered, the District either (y) transfers enough moneys from the Rate Covenant Stabilization Fund sufficient to yield estimated Net Revenues which are at least equal to one hundred twenty-five percent (125%) of the aggregate amount of Debt Service on all Parity Obligations payable from Net Revenues coming due and payable during such Fiscal Year in compliance with subsection (b) hereof, or (z) hires an Independent Financial Consultant to review the revenues and expenses of the Enterprises, and abides by such consultant's recommendations to revise the schedule of rates, fees, expenses and charges, and to revise any Operation and Maintenance Costs insofar as practicable, and to take such other actions as are necessary so as to produce Net Revenues to cure such violation of subsections (a) or (b) hereof for future compliance; provided, however, that, if the District does not, or cannot, transfer from either or both of the Rate Covenant Stabilization Funds the amount necessary to comply with subsection (b) hereof, or otherwise cure such violation within six (6) months after the date such violation is discovered, the Parity Obligations shall thereafter accrue interest at the Default Rate and an Event of Default shall be deemed to have occurred under the applicable section of the Parity Obligations Documents.

(d) There are hereby created separate funds to be known as the "Sewer Enterprise Rate Covenant Stabilization Fund" and the "Water Enterprise Rate Covenant Stabilization Fund," to be held and maintained by the District. The Rate Covenant Stabilization Funds are not pledged

to secure payment of the Parity Obligations. Amounts in the Rate Covenant Stabilization Funds shall be applied solely for the uses and purposes set forth in this subsection (d). The District shall have the right to deposit into the Rate Covenant Stabilization Funds from time to time any amount of funds which are legally available therefor; provided that deposits for each Fiscal Year may be made until (but not after) one hundred twenty (120) days following the end of such Fiscal Year.

For the purpose of computing the amount of Revenues for any Fiscal Year for purposes of the preceding subsection (a), or the amount of Net Revenues for any Fiscal Year for purposes of the preceding subsection (b), the District shall be permitted to transfer amounts on deposit in either of both of the Rate Covenant Stabilization Funds to the Revenue Fund, such transfers to be made until (but not after) one hundred twenty (120) days after the end of such Fiscal Year. In addition, the District shall be permitted to withdraw amounts on deposit in either or both Rate Covenant Stabilization Funds for any other lawful purpose.

SECTION 6.04. Collection of Rates and Charges. The District will have in effect at all times rules and regulations requiring each consumer or customer utilizing the facilities of either Enterprise to pay the rates, fees and charges applicable to such use or benefit received. Except in connection with the receipt of federal or State funding, the District will not permit any part of either Enterprise or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State of California and any city, county, district, political subdivision, public corporation or agency of any thereof).

SECTION 6.05. Tax Covenants. The District hereby covenants that, notwithstanding any other provision of this Installment Purchase Agreement, it will make no use of the proceeds of the Installment Purchase Agreement or of any other amounts, regardless of the source, or of any property or take any action, or refrain from taking any action, that would cause the Installment Purchase Agreement to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”).

The District will not use or permit the use of the Project or any portion thereof by any person other than a governmental unit as such term is used in Section 141 of the Code, in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of the portion of the 2021 Installment Payments constituting interest under Section 103 of the Code.

The District will not make any use of the proceeds from the sale of the Project or any other funds of the District, or take or omit to take any other action, that would cause the obligation provided herein to be “federally guaranteed” within the meaning of Section 149(b) of the Code or “private activity bonds” within the meaning of Section 141 of the Code. To that end, so long as any 2021 Installment Payments are unpaid, the District, with respect to such proceeds and such other funds, will comply with all requirements of such Sections and all regulations of the United States Department of the Treasury issued thereunder and under Section 103 of the Internal Revenue Code of 1954, as amended, to the extent such requirements are, at the time, applicable and in effect.

The District will assure the filing of an information report for the 2021 Installment Payments in compliance with Section 149 (e) of the Tax Code.

The District has complied with the Code, with respect to the 2021 Installment Payments, and the District 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 2021 Installment Payments.

The 2021 Installment Payments are eligible for designation as “qualified tax-exempt obligations” under Section 265(b)(3) of the Tax Code.

SECTION 6.06. Maintenance and Operation of the Enterprises. The District will maintain and preserve the Enterprises in good repair and working order at all times and will operate the Enterprises in an efficient and economical manner and will pay all Sewer Enterprise Operation and Maintenance Costs as they become due and payable.

SECTION 6.07. Payment of Claims. The District will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien on the Revenues or the funds or accounts created hereunder or on any funds in the hands of the District pledged to pay the Parity Obligations which might impair the security of the 2021 Installment Payments.

SECTION 6.08. Competitive Facilities. Except for any facilities of the Sewer Enterprise and the Water Enterprise as of the date hereof, the District will not, to the extent permitted by law, acquire, maintain or operate and will not, to the extent permitted by law and within the scope of its powers, permit any other public or private agency, authority, city, special district, or political subdivision or any person whomsoever to acquire, maintain or operate within the sphere of influence of the District any Sewer Enterprise and/or Water Enterprise competitive with the Sewer Enterprise and/or Water Enterprise, as applicable; provided, however, that the District may, with the written consent of the Lender first had and obtained, assign all or a portion of the Water Enterprise to another entity provided such entity assumes the obligations of the District hereunder.

SECTION 6.09. Insurance.

(a) The District will procure and maintain insurance on the Enterprises 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 Enterprises) as are usually insurable in accordance with industry standards with respect to similar enterprises.

In the event of any damage to or destruction of an Enterprise or the Enterprises 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 such Enterprise or the Enterprises, as applicable. The District shall cause such repair, reconstruction or replacement to begin promptly after such damage or destruction shall occur and to continue and to be properly completed as expeditiously as possible, and shall pay out of the proceeds of such insurance all costs and expenses in connection with such repair, reconstruction or replacement so that the same

shall be completed and such Enterprise or the Enterprises, as applicable, shall be free and clear of all liens and claims. If the proceeds received by reason of any such loss shall exceed the costs of such repair, reconstruction or replacement, the excess shall be applied to prepay the 2021 Installment Payments and any other Parity Obligations, on a pro rata basis, in the manner provided in Section 7.01 hereof and in the instruments authorizing such Parity Obligations.

Alternatively, if the proceeds of such insurance are sufficient to enable the District to retire all outstanding Parity Obligations, the District may elect not to repair, reconstruct or replace the damaged or destroyed portion of such Enterprise or the Enterprises, as applicable, and thereupon such proceeds shall be applied to the prepayment of such Parity Obligations and to the payment of all other amounts due hereunder, and as otherwise required by the documents pursuant to which other Parity Obligations were issued.

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

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

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

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

**SECTION 6.10. Eminent Domain.** If all or any part of the Enterprises shall be taken by eminent domain proceedings, the resulting Net Proceeds thereof shall be applied as follows:

(a) If (1) the District delivers to the Lender a Certificate of the District showing (i) the estimated loss of annual Net Revenues, if any, suffered or to be suffered by the District by reason of such eminent domain proceedings, (ii) a general description of the additions, betterments, extensions or improvements proposed to be acquired by the District 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 District to meet its obligations hereunder will not be substantially impaired (which determination shall be final and conclusive); then the District shall promptly proceed with the acquisition of such additions, betterments, extensions or improvements substantially in accordance with such Certificate of the District and such Net Proceeds shall be applied for the payment of the costs of such acquisition, and any balance of such Net Proceeds not required by the District for such purpose shall be applied to prepay the 2018 Notes and any other Parity Obligations, on a pro rata basis, in the manner provided in Section 7.01 hereof and in the instruments authorizing such other Parity Obligations.

(b) If the foregoing conditions are not met, then such Net Proceeds shall be applied to prepay the Principal Components of the 2021 Installment Payments and the principal amounts of any other Parity Obligations, on a pro rata basis, in the manner provided in Section 7.01 hereof and in the instruments authorizing such other Parity Obligations.

SECTION 6.11. Additional Information. The District agrees to furnish to the Lender, promptly, from time to time, such information regarding the operations, financial condition and property of the District and the Enterprises as the Lender may reasonably request.

SECTION 6.12. Compliance with Law and Contracts. The District will faithfully comply with, keep, observe, and perform all valid and lawful obligations or regulations now or hereafter imposed on its operation of the Enterprises by contract, or prescribed by any law of the United States of America or of the State of California, or by any officer, board, or commission having jurisdiction or control.

SECTION 6.13. Punctual Payment. The District will punctually pay the principal and interest to become due on the 2021 Installment Payments, in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by it, and will not rescind this Installment Purchase Agreement for any cause.

SECTION 6.14. Protection of Security and Rights of the Lender. The District will preserve and protect the security of the 2021 Installment Payments and the rights of the Lender and will warrant and defend the Lender's rights against all claims and demands of all persons. From and after the Closing Date, the 2021 Installment Payments shall be incontestable by the District.

SECTION 6.15. Parity Obligations.

(a) So long as any Parity Obligation is outstanding, the District shall not issue or incur any obligations payable from Revenues or Net Revenues senior or superior to the payment of Debt Service on such Parity Obligation. The District may at any time issue or incur Parity Obligations payable from Net Revenues on a parity with the 2021 Installment Payments in such principal amount as shall be determined by the District 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 without taking into account any amounts transferred into the Revenue Fund from the Rate Covenant Stabilization Funds pursuant to Section 6.03 hereof), either (i) as shown in the audited financial statements of the District for the most recent Fiscal Year for which an audit is available, or (ii) as shown by the books of the District for any more recent twelve (12) month period selected by the District, as verified by an Authorized Representative of the District, plus in either case (at the option of the District) the Additional Revenues, shall be at least equal to one hundred twenty-five percent (125%) of the amount of Maximum Annual Debt Service on all outstanding Parity Obligations and the Parity Obligations to be issued calculated on a combined basis; and

(3) Except with respect to the 2021 Installment Payments, and at the District's sole discretion, there may be established from the proceeds of such Parity Obligations a reserve fund for the security of such Parity Obligations, in an amount equal set forth in the applicable Parity Obligation Document.

The provisions of subsection (2) of this Section 6.15(a) shall not apply to any Parity Obligations if, and to the extent that (i) all of the proceeds of such Parity Obligations (other than proceeds applied to pay costs of issuing such Parity Obligations and to make the reserve fund deposit required pursuant to subsection (3) of this Section) shall be deposited in an irrevocable escrow held in cash or invested in Federal Securities for the purpose of paying the principal of and interest and premium (if any) on such outstanding Parity Obligations, and (ii) at the time of the incurring of such Parity Obligations, the District certifies in writing that maximum annual debt service on such Parity Obligations will not exceed Maximum Annual Debt Service on the outstanding Parity Obligations being refunded, and (iii) the final maturity of such Parity Obligations is not later than the final maturity of the Parity Obligations being refunded.

(b) In order to maintain the parity relationship of debt service payments on all Parity Obligations permitted hereunder, the District covenants that all payments in the nature of principal and interest or reserve account replenishment with respect to any Parity Obligations, will be structured to occur semi-annually on April 1 and October 1, in each year as such payments are due with respect to the Debt Service payments, and reserve account replenishment with respect to any Parity Obligations will be structured to occur within one year, and to otherwise structure the terms of such Parity Obligations to ensure that they are in all respects payable on a parity with the Debt Service payments on all Parity Obligations, and not prior thereto.

(c) The District may issue or incur Subordinate Debt; provided, however, that Net Revenues (calculated without taking into account any amounts transferred into the Revenue Fund from the Rate Covenant Stabilization Funds pursuant to Section 6.03 hereof), either (i) as shown in the audited financial statements of the District for the most recent Fiscal Year for which an audit is available, or (ii) as shown by the books of the District for any more recent twelve (12) month period selected by the District, as verified by an Authorized Representative of the District, plus in either case (at the option of the District) the Additional Revenues, shall be at least equal to one hundred ten percent (110%) of the amount of Maximum Annual Debt Service on all outstanding Parity Obligations and the maximum annual debt service on the Subordinate Debt to be issued.

SECTION 6.16. Against Encumbrances. The District hereby covenants and agrees that it shall not incur any obligations that are secured by a pledge and lien on the Net Revenues that is senior to the pledge and lien on the Net Revenues contained herein. The District will not make any pledge of or place any lien on the Net Revenues except as provided herein. The District may pledge Net Revenues to secure Parity Obligations issued in accordance with Section 6.15 hereof. The District may at any time, or from time to time, issue evidences of indebtedness for any lawful purpose that are payable from and secured by a pledge of and lien on Net Revenues that is subordinate in all respects to the pledge of and lien on the Net Revenues provided herein.

SECTION 6.17. Further Assurances. The District will adopt, make, execute and deliver any and all further resolutions, instruments, and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the Lender of the rights and benefits provided to it herein.

SECTION 6.18. Financial Reports. Promptly upon receipt by the District and in no event later than one hundred eighty (180) days after the close of each Fiscal Year (unless otherwise agreed in writing by the Lender), the District will furnish, or cause to be furnished, to the Lender an audit report of an Independent Certified Public Accountant with respect to such Fiscal Year, of the District, including the Water Enterprise, for said Fiscal Year.

At the same time as the District provides the audit to the Lender, the District shall also provide to the Lender a statement as to whether Net Revenues for such Fiscal Year were equal to at least 1.25 times the Debt Service for such Fiscal Year, calculated as provided in Section 6.03 hereof and a certification that no Event of Default has occurred and is continuing hereunder. In addition, the District shall deliver to the Lender, not later than thirty (30) days after its adoption (unless otherwise agreed in writing by the Lender), a copy of the District's adopted budget for the then current Fiscal Year. The District shall also deliver to the Lender a copy of any update to the District's budget adopted for a Fiscal Year with thirty (30) days of the adoption of such updated budget. If available the District shall also provide the Lender with internally-prepared quarterly updates within 45 days of the end of each fiscal quarter.

SECTION 6.19. Observance of Laws and Regulations. The District will well and truly keep, observe and perform or cause to be kept, observed and performed all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired and enjoyed by the District, including the District's right to exist and carry on business as a California special district, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

SECTION 6.20. Budget. The District hereby covenants to take such action as may be necessary to include all 2021 Installment Payments and all other amounts due hereunder in its annual budget and to make the necessary annual appropriations for all such 2021 Installment Payments and all other amount due hereunder.

SECTION 6.21.      Notices. The District shall provide to the Lender:

(a) Immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default under this Installment Purchase Agreement, together with a detailed statement by an Authorized Representative of the steps being taken by the District to cure the effect of such Event of Default.

(b) Prompt written notice (i) of any action, suit or proceeding or any investigation, inquiry or similar proceeding by or before any court or other governmental authority, domestic or foreign, against the District or either Enterprise or the Revenues which involve claims equal to or in excess of \$250,000 or that seeks injunctive relief, or (ii) of any loss or destruction of or damage to any portion of either Enterprise in excess of \$250,000.

(c) Prompt written notice of any Material Litigation, Material Adverse Effect or any investigation, inquiry or similar proceeding by any Governmental Authority with respect to any matter that relates to or could materially impact Revenues.

(d) Promptly upon notice thereof, any termination or cancellation of any insurance policy which the District is required to maintain, or any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting the District property in excess of an aggregate of \$250,000.

(e) With reasonable promptness, such other information respecting the District, the Enterprise, and the operations, affairs and financial condition of the District as the Lender may from time to time reasonably request.

SECTION 6.22.      Financial Obligation Disclosure. If the District enters into a continuing disclosure undertaking (a “Continuing Disclosure Agreement”) pursuant to SEC Rule 15c2 12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the “Rule”), and the District is required to file with the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system or its successor (“EMMA”) notice of any accommodation, waiver, amendment, modification of terms or other similar events reflecting financial difficulties in connection with this Installment Purchase Agreement and related documents, in each case including a full copy thereof or a description of the material terms thereof (each such posting, an “EMMA Posting”), the District shall provide the Lender a copy of the proposed EMMA Posting for review. The District agrees to omit from any EMMA Posting the following information relating to the Lender pursuant to the request of the Lender: unredacted sensitive or confidential information about the Lender or its affiliates; address and account information of the Lender or any affiliates; e mail addresses, telephone numbers, or fax numbers; or names and signatures of officers, employees and signatories of the Lender or its affiliates. The District acknowledges and agrees that the Lender and its affiliates are not responsible for the District’s or any other entity’s (including, but not limited to, any broker-dealer’s) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with the Rule, any Continuing Disclosure Agreement or any applicable securities or other laws, including but not limited to those relating to the Rule.

## ARTICLE VII

### PREPAYMENT OF 2021 INSTALLMENT PAYMENTS

#### SECTION 7.01. Prepayment.

(a) Optional Prepayment. The District may not prepay all or any part of the principal portion of the 2021 Installment Payments due before October 1, 2029. The District may prepay all of the principal portion of the 2021 Installment Payments due on or after October 1, 2029 on any Installment Payment Date, from any available funds at a prepayment price equal to the principal portion of the 2021 Installment Payments to be prepaid, together with the interest portion of such 2021 Installment Payments to the prepayment date.

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

(b) Mandatory Sinking Fund Prepayment. The Purchase Price of the Project is subject to mandatory sinking fund prepayment on each Installment Payment Date as set forth in Exhibit B hereto.

SECTION 7.02. Method of Prepayment. Before making any prepayment pursuant to Section 7.01(a), the District shall give written notice to the Corporation and the Lender specifying the date on which the prepayment will be paid, which date shall be not less than thirty (30) nor more than forty-five (45) days from the date such notice is given. Such prepayment notice may be made conditional upon receipt of funds by the District for such prepayment.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES OF THE CORPORATION

SECTION 8.01. Events of Default and Acceleration of Maturities. The following shall constitute Events of Default hereunder:

(a) if default shall be made in the due and punctual payment of any 2021 Installment Payment or any Contract or Bond when and as the same shall become due and payable;

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

(c) if the District shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without the consent of the District seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein,

or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of the District or of the whole or any substantial part of its property;

then and in each and every such case during the continuance of such Event of Default specified in clause (c) above, the Corporation shall, and for any other such Event of Default the Corporation may, by notice in writing to the District, declare the entire principal amount of the unpaid 2021 Installment Payments and the accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything contained herein to the contrary notwithstanding. This subsection however, is subject to the condition that if at any time after the entire principal amount of the unpaid 2021 Installment Payments and the accrued interest thereon shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered the District shall deposit with the Corporation a sum sufficient to pay the unpaid principal amount of the 2021 Installment Payments or the unpaid payment of any other Parity Obligation referred to in clause (a) above due prior to such declaration and the accrued interest thereon, with interest on such overdue installments, at the rate or rates applicable to the remaining unpaid principal balance of the 2021 Installment Payments or such Parity Obligations if paid in accordance with their terms, and the reasonable expenses of the Corporation, and any and all other defaults known to the Corporation (other than in the payment of the entire principal amount of the unpaid 2021 Installment Payments and the accrued interest thereon due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Corporation or provision deemed by the Corporation to be adequate shall have been made therefor, then and in every such case the Corporation, by written notice to the District, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

The District or the Corporation shall immediately notify the Lender of an Event of Default.

SECTION 8.02. Action on Default or Termination. Upon the occurrence of an Event of Default (as that term is defined in this Installment Purchase Agreement), the Default Rate shall apply and in each and every such case during the continuance of such Event of Default anything in this Installment Purchase Agreement to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, the Lender shall be entitled, upon notice in writing to the Corporation, to control and direct the enforcement of all rights and remedies granted to the Corporation under this Installment Purchase Agreement, including, without limitation, acceleration of the unpaid 2021 Installment Payments as described in this Installment Purchase Agreement and the right to annul any declaration of acceleration.

SECTION 8.03. Application of Funds Upon Acceleration. Upon the date of the declaration of acceleration as provided in Section 8.01, all Revenues thereafter received shall be applied in the following order:

First, to the payment, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, of the fees, costs and expenses of the Corporation or the Lender, if any, and any other holder of Parity Obligations in carrying out the provisions of this article, including reasonable compensation to its accountants and counsel;

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

Third, to the payment pro rata of the entire principal amount of the 2021 Installment Payments and the unpaid principal amount of all Parity Obligations and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable to the 2021 Installment Payments and such Parity Obligations if paid in accordance with their respective terms.

SECTION 8.04. Other Remedies of the Corporation. The Corporation shall have the right:

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

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

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

SECTION 8.05. Non-Waiver. Nothing in this article or in any other provision hereof shall affect or impair the obligation of the District, which is absolute and unconditional, to pay the 2021 Installment Payments to the Corporation at the respective due dates or upon prepayment from the Net Revenues, the Revenue Fund and the other funds herein pledged for such payment, or shall affect or impair the right of the Corporation, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied herein.

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

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

SECTION 8.06. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Corporation 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 now or hereafter

existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by the Law or any other law.

## ARTICLE IX

### DISCHARGE OF OBLIGATIONS

#### SECTION 9.01. Discharge of Obligations. When

(a) all of the 2021 Installment Payments shall have become due and payable in accordance herewith or a written notice of the District to prepay all of the 2021 Installment Payments shall have been filed with the Corporation and the Lender; and

(b) there shall have been deposited with a trustee at or prior to the 2021 Installment Payment Dates or date (or dates) specified for prepayment, in trust for the benefit of the Corporation or the Lender and irrevocably appropriated and set aside to the payment of all or any portion of the 2021 Installment Payments, sufficient moneys and Federal Securities, the principal of and interest on which when due will provide money sufficient to pay all principal, prepayment premium, if any, and interest of such 2021 Installment Payments to their respective 2021 Installment Payment Dates or prepayment date or dates as the case may be; and

(c) if an opinion of bond counsel acceptable to the Corporation is filed with the Corporation to the effect that the actions authorized by and taken pursuant to this Article IX shall not adversely affect the tax exempt status of the interest portion of the 2021 Installment Payments, the rights, title and interest of the Corporation herein and the obligations of the District hereunder shall, with respect to all or such portion of the 2021 Installment Payments as have been so provided for, thereupon cease, terminate, become void and be completely discharged and satisfied (except for the right of a trustee and the obligation of the District to have such moneys and such Federal Securities applied to the payment of such 2021 Installment Payments). In such event, upon request of the District a trustee shall cause an accounting for such period or periods as may be requested by the District to be prepared and filed with the District and shall execute and deliver to the District all such instruments as may be necessary or desirable to evidence such total or partial discharge and satisfaction, as the case may be, and, in the event of a total discharge and satisfaction, the trustee shall pay over to the District, after payment of all amounts due the trustee pursuant to any trust agreement, as an overpayment of 2021 Installment Payments, all such moneys or such Federal Securities held by it pursuant hereto other than such moneys and such Federal Securities, as are required for the payment or prepayment of the 2021 Installment Payments, which moneys and Federal Securities shall continue to be held by the trustee in trust for the payment of the 2021 Installment Payments and shall be applied by the trustee to the payment of the 2021 Installment Payments of the District.

## ARTICLE X

### MISCELLANEOUS

SECTION 10.01. Liability of District Limited to Net Revenues. Notwithstanding anything contained herein, the District shall not be required to advance any moneys derived from

any source of income other than the Net Revenues, the Revenue Fund and the other funds provided herein for the payment of the 2021 Installment Payments or for the performance of any agreements or covenants required to be performed by it contained herein. The District may, however, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the District for such purpose.

The obligation of the District to make the 2021 Installment Payments is a special obligation of the District payable solely from such Net Revenues, Revenue Fund and other funds, and does not constitute a debt of the District 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 10.02. Benefits of Installment Purchase Agreement Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than the District, the Corporation or the Lender any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the District or the Corporation shall be for the sole and exclusive benefit of the other party.

SECTION 10.03. Successor and Lender is Deemed Included in all References to Predecessor. Whenever the District, the Corporation or the Lender is named or referred to herein, such reference shall be deemed to include the successor or assignee to the powers, duties and functions that are presently vested in the District, the Corporation or the Lender and all agreements and covenants required hereby to be performed by or on behalf of the District, the Corporation or the Lender shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 10.04. Waiver of Personal Liability. No director, officer or employee of the District shall be individually or personally liable for the payment of the 2021 Installment Payments, but nothing contained herein shall relieve any director, officer or employee of the District from the performance of any official duty provided by any applicable provisions of law or hereby.

SECTION 10.05. 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” and other words of similar import refer to this Installment Purchase Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

SECTION 10.06. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the District or the Corporation shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The District and the Corporation hereby declare that they would have executed this Installment Purchase Agreement, and each and every other article, section, paragraph, subdivision,

sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

SECTION 10.07.     Assignment. This Installment Purchase Agreement and any rights hereunder may be assigned by the Corporation or the Lender, as a whole or in part, without the necessity of obtaining the prior consent of the District.

SECTION 10.08.     Net Contract. This Installment Purchase Agreement shall be deemed and construed to be a net contract, and the District shall pay absolutely net during the term hereof the 2021 Installment Payments and all other payments required hereunder, free of any deductions and without abatement, diminution or set-off whatsoever.

SECTION 10.09.     California Law.     THIS INSTALLMENT PURCHASE AGREEMENT SHALL BE CONSTRUED AND GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

SECTION 10.10.     Notices. All written notices to be given hereunder shall be given by 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 District:                     Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, California 92004  
Attention: General Manager

If to the Corporation:                 Borrego Water District Public Facilities Corporation  
806 Palm Canyon Drive  
Borrego Springs, California 92004  
Attention: President

If to the Lender:                     Capital One Public Funding, LLC  
1307 Walt Whitman Road, 3<sup>rd</sup> Floor  
Melville, New York, 11747  
Attention: \_\_\_\_\_

SECTION 10.11.     Effective Date. This Installment Purchase Agreement shall become effective upon its execution and delivery, and shall terminate when the Purchase Price shall have been fully paid (or provision for the payment thereof shall have been made to the written satisfaction of the Corporation).

SECTION 10.12.     Execution in Counterparts. This Installment Purchase Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 10.13.     Indemnification of Corporation, the Lender. The District hereby agrees to indemnify and hold harmless the Corporation and the Lender 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 under the Assignment Agreement; provided that no indemnification will be made for willful misconduct or gross negligence hereunder or under the Assignment Agreement by the Corporation.

SECTION 10.14. Amendments Permitted.

(a) This Installment Purchase Agreement and the rights and obligations of the Corporation, the District and the Lender may be modified or amended at any time by an amendment hereto which shall become binding when the written consent of the Lender, shall have been filed with the Corporation and the District.

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

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

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

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

SECTION 10.15. Third Party Beneficiary. The Lender is made a party beneficiary hereunder with all rights of a third party beneficiary.

SECTION 10.16. Judicial Reference. The Corporation and the District hereby agree: (i) each proceeding or hearing based upon or arising out of, directly or indirectly, this Installment Purchase Agreement or any document related thereto, any dealings between the District and the Corporation related to the subject matter of this Installment Purchase Agreement or any related transactions, and/or the relationship that is being established between the District and the Corporation (hereinafter, a "Claim") shall be determined by a consensual general judicial reference (the "Reference") pursuant to the provisions of California Code of Civil Procedure Section 638 *et seq.*, as such statutes may be amended or modified from time to time; (ii) upon a written request, or upon an appropriate motion by either the Corporation or the District, as applicable, any pending action relating to any Claim and every Claim shall be heard by a single Referee (as defined below) who shall then try all issues (including any and all questions of law and questions of fact relating thereto), and issue findings of fact and conclusions of law and report a statement of decision. The Referee's statement of decision will constitute the conclusive determination of the Claim. The Corporation and the District agree that the Referee shall have the power to issue all legal and

equitable relief appropriate under the circumstances before the Referee; (iii) the Corporation and the District shall promptly and diligently cooperate with one another, as applicable, and the Referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of all Claims in accordance with the terms of this Section 10.16; (iv) either the Corporation or the District, as applicable, may file the Referee's findings, conclusions and statement with the clerk or judge of any appropriate court, file a motion to confirm the Referee's report and have judgment entered thereon (if the report is deemed incomplete by such court, the Referee may be required to complete the report and resubmit it); (v) the Corporation and the District, as applicable, will each have such rights to assert such objections as are set forth in California Code of Civil Procedure Section 638 et seq.; and (vi) all proceedings shall be closed to the public and confidential, and all records relating to the Reference shall be permanently sealed when the order thereon becomes final.

(a) Selection of Referee; Powers. The parties to the Reference proceeding shall select a single neutral referee (the "Referee"), who shall be a retired judge or justice of the courts of the State, or a federal court judge, in each case, with at least ten (10) years of judicial experience in civil matters. The Referee shall be appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts). If within ten (10) days after the request or motion for the Reference, the parties to the Reference proceeding cannot agree upon a Referee, then any party to such proceeding may request or move that the Referee be appointed by the Presiding Judge of the Los Angeles County Superior Court. The Referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this Section 10.16.

(b) Provisional Remedies and Self Help. No provision of this Section 10.16 shall limit the right of either the Corporation or the District, as the case may be, to (i) exercise such self-help remedies as might otherwise be available under applicable law, or (ii) obtain or oppose provisional or ancillary remedies, including without limitation injunctive relief, writs of possession, the appointment of a receiver, and/or additional or supplementary remedies from a court of competent jurisdiction before, after, or during the pendency of any Reference. The exercise of, or opposition to, any such remedy does not waive the right of the Corporation or the District to the Reference pursuant to this Section 10.16(b).

(c) Costs and Fees. Promptly following the selection of the Referee, the parties to such Reference proceeding shall each advance equal portions of the estimated fees and costs of the Referee. In the statement of decision issued by the Referee, the Referee shall award costs, including reasonable attorneys' fees, to the prevailing party, if any, and may order the Referee's fees to be paid or shared by the parties to such Reference proceeding in such manner as the Referee deems just.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have executed and attested this 2021 Installment Purchase Agreement by their officers thereunto duly authorized as of the day and year first written above.

BORREGO WATER DISTRICT

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President

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Vice President

BORREGO WATER DISTRICT PUBLIC  
FACILITIES CORPORATION

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President

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Secretary

*-Signature Page -  
Installment Purchase Agreement*

EXHIBIT A

DESCRIPTION OF PROJECT

The Project comprises the following described improvements to the District's Water Enterprise and Sewer Enterprise.

2018 PROJECT

WATER ENTERPRISE COMPONENTS

BWD Production Well Replacement - Investigation  
Transmission Main from Well 16 to ID1 900 Reservoir  
Frying Pan Road, N and S of T Anchor Drive (Phase 1)  
Pipeline for Santiago and ID5 (Phase 1)  
BWD Production Well Replacement - Construction  
Well 5 Water Directly to C.C. Reservoir (Phase 1)  
Slash M Rd. West to Country Club Tank  
Frying Pan Road, N and S of T Anchor Drive (Phase 2)  
Pipeline for Santiago and ID5 (Phase 2)  
BWD Production Well Replacement #2  
Well 5 Water Directly to C. C. Reservoir (Phase 2)  
B.S. Rd, Walking H Drive to County Club Road (Phase 1)  
B.S. Rd, Walking H Drive to County Club Road (Phase 1)  
Double O Road, N and S of T Anchor Dr  
BS Rd, Weather Vane Drive to Barrel Dr  
De Anza Dr. 1600 Block West from Yaqui Road

SEWER ENTERPRISE COMPONENTS

Sewer Force Main Replacement & American Legion Lateral  
Sewer Main Replacement at Club Circle (Phase 1)

2021 PROJECT

WATER ENTERPRISE COMPONENTS

Bending Elbow Pipeline  
Well 11 Rehabilitation  
Well 5 Rebuild  
Well 5-15  
Pipeline Replacement

SEWER ENTERPRISE COMPONENTS

LCDZ Sewerline Relocation

Construction of water and sewer facilities and repairs to the District's Water Enterprise and Sewer Enterprise, not listed above, including, but not limited to production well construction and replacement of and repairs to water and sewer infrastructure.

EXHIBIT B

PURCHASE PRICE

The Purchase Price shall be subject to mandatory sinking fund prepayment in the following 2021 Installment Payments, which are payable in the amounts and on the 2021 Installment Payment Dates as follows:

<u>2021 Installment Payment Date</u>	<u>2021 Principal Payment</u>	<u>2021 Interest Payments</u>	<u>Total Installment Payments</u>
April 1, 2022		\$	\$
October 1, 2022	\$		
April 1, 2023			
October 1, 2023			
April 1, 2024			
October 1, 2024			
April 1, 2025			
October 1, 2025			
April 1, 2026			
October 1, 2026			
April 1, 2027			
October 1, 2027			
April 1, 2028			
October 1, 2028			
April 1, 2029			
October 1, 2029			
April 1, 2030			
October 1, 2030			
April 1, 2031			
October 1, 2031			
April 1, 2032			
October 1, 2032			
April 1, 2033			
October 1, 2033			
April 1, 2034			
October 1, 2034			
April 1, 2035			
October 1, 2035			
April 1, 2036			
October 1, 2036			

The effective interest rate is 2.190%. Upon the occurrence of an Event of Default, the interest component of the 2021 Installment Payments shall be calculated at the Default Rate. Upon a Determination of Taxability, from and after the occurrence of an the related Event of Taxability, the interest component of the 2021 Installment Payments shall be calculated at the Taxable Rate. In each case, the schedule set forth above shall be revised to reflect the applicable rate..

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ASSIGNMENT AGREEMENT

by and among

BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION,

BORREGO WATER DISTRICT

and

CAPITAL ONE PUBLIC FUNDING, LLC

Dated as of October 1, 2021

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## ASSIGNMENT AGREEMENT

This Assignment Agreement is made and entered into as of October 1, 2021 by and among BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the “Corporation”), BORREGO WATER DISTRICT, a water district duly organized and validly existing under the laws of the State of California (the “District”) and CAPITAL ONE PUBLIC FUNDING, LLC, a bank (including its successors and assigns, the “Assignee”);

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

### SECTION 1. Assignment.

The Corporation, for good and valuable consideration in hand received, does hereby sell, assign and transfer to the Assignee, without recourse, all of its rights, title, and interest in the Installment Purchase Agreement, dated as of October 1, 2021, by and between the District and the Corporation, (the “Installment Purchase Agreement”) including the right to receive all 2021 Installment Payments from the District under the Installment Purchase Agreement, together with any and all of the other rights of the Corporation under the Installment Purchase Agreement as may be necessary to enforce payment of such 2021 Installment Payments when due or otherwise to protect the interests of the Assignee.

### SECTION 2. Acceptance.

The Assignee hereby accepts the foregoing assignment for the purpose of securing the right assigned to it to receive all such 2021 Installment Payments from the District under the Installment Purchase Agreement and the other rights assigned to it, subject to the terms and provisions of the Installment Purchase Agreement.

### SECTION 3. Release and Indemnification.

The District shall, to the extent permitted by law, indemnify and save the Assignee, and its respective officers, agents, directors and employees, harmless from and against all claims, losses, liabilities, costs, expenses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management or operation of, or from any work or thing done on, the Project, the Water System or the Sewer System by the District, including injury or damages to any persons or property arising therefrom, (b) any breach or default on the part of the District in the performance of any of its obligations under the Installment Purchase Agreement, or (c) any act of negligence of the District or of any of its agents, contractors, servants, employees or licensees with respect to the Project, the Water System or the Sewer System. No indemnification is made under this Section for willful misconduct or gross negligence by the Assignee or its officers, agents, directors or employees. The provisions of this Section shall continue in full force and effect, notwithstanding the termination of the Term of the Installment Purchase Agreement for any reason.

SECTION 4. Closing Conditions.

(a) The Assignee hereby enters into this Agreement in reliance upon its own due diligence and the representations and warranties of the District contained herein and the representations and warranties to be contained in the documents and instruments to be delivered on the Closing Date and upon the performance by the District and the Corporation of their respective obligations both on and as of the date hereof and as of the Closing Date. Accordingly, the obligations of the Assignee under this Assignment Agreement to purchase, to accept the assignment of and to pay for the 2021 Installment Payments shall be subject to the accuracy in all material respects of the representations and warranties of the District contained herein as of the date hereof and as of the Closing Date, to the accuracy in all material respects of the statements of the officers and other officials of the District and the Corporation made in any certificate or document furnished pursuant to the provisions hereof, to the performance by the District and the Corporation of their respective obligations to be performed hereunder, at or prior to the Closing Date, and also shall be subject to the following additional conditions:

(i) At the Closing Date, the Installment Purchase Agreement shall have been duly authorized, executed and delivered by the respective parties thereto, all in substantially the forms heretofore submitted to the Assignee, with only such changes as shall have been agreed to in writing by the Assignee, and shall be in full force and effect, and the Resolution shall be in full force and effect;

(ii) On the Closing Date, all necessary action of the District relating to the execution and delivery of the Installment Purchase Agreement will have been taken and will be in full force and effect and will not have been amended, modified or supplemented; and

(iii) At or prior to the Closing Date, the Assignee shall have received the following documents, in each case satisfactory in form and substance to the Assignee:

(A) Bond Opinion. The unqualified approving opinion of Best Best & Krieger LLP, bond counsel for the District (“Bond Counsel”), dated the Closing Date, addressed to the District, as to the validity and enforceability of the Installment Purchase Agreement and the tax-exempt status of the 2021 Installment Payments;

(B) Reliance Letter. A reliance letter from Bond Counsel permitting the Assignee to rely upon the approving opinion referred to in subparagraph (A), above;

(C) Supplemental Opinion. A supplemental opinion of Bond Counsel, dated the Closing Date and addressed to the Assignee, to the effect that:

(1) the 2021 Installment Payments are exempt from registration under the Securities Act of 1933, as amended, and the Installment Purchase Agreement is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended; and

(2) assuming due authorization, execution and delivery by the Assignee, this Assignment Agreement has been duly authorized, executed and delivered by the District and constitutes a legal, valid and binding agreement of the District, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, arrangement,

moratorium and other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles (regardless of whether such enforceability is considered in equity or at law), to the exercise of judicial discretion in appropriate cases, and to the limitations on legal remedies against school districts in the State of California and except that no opinion is expressed with respect to any indemnification or contribution provisions contained in this Assignment Agreement;

(D) Certificate of the District. A certificate signed by a duly authorized official of the District to the effect that (A) this Assignment Agreement and the Installment Purchase Agreement have been duly executed and delivered, (B) the representations, warranties and covenants of the District herein and therein are true and correct in all material respects as of the Closing Date, and (C) the District has complied with all the terms of the Installment Purchase Agreement to be complied with by the District prior to or concurrently with the Closing Date and such documents are in full force and effect;

(E) Resolutions.

(1) A certificate of the Secretary of the Board of Directors of the District or his or her designee, together with a fully executed copy of the Resolution No. 2021-09-01 of the Board of Directors of the District, to the effect that such copy is a true and correct copy of such Resolution;

(2) A certificate of the Secretary of the Board of Directors of the Corporation or his or her designee, together with a fully executed copy of the Resolution No. 2021-09-02 of the Board of Directors of the Corporation, to the effect that such copy is a true and correct copy of such Resolution;

(F) Assignment. An executed copy of this Assignment Agreement; and

(G) Certificate of Pacific Western Bank. A certificates signed by an office of Pacific Western Bank that the District's obligations under the Installment Purchase Agreement dated as of July 1, 2018, by and between the District and the Corporation have been satisfied or waived.

(H) Additional Documents. Such additional legal opinions, certificates, proceedings, instruments and other documents as Bond Counsel or the Assignee may reasonably request to evidence the truth and accuracy, as of the Closing Date, of the representations contained herein and the due performance or satisfaction by the District at or prior to such time of all agreements then to be performed and all conditions then to be satisfied.

(b) At or prior to the Closing Date, the District shall have received a letter from Assignee in the form attached as Attachment "A" hereto duly executed by an officer of Assignee who is duly authorized to execute such letter on behalf of Assignee.

SECTION 5. Representations and Warranties of the Corporation. The Corporation hereby represents and warrants to the Lender that, as of the date hereof:

(a) It has full right, title and interest and legal title in and to the Installment Purchase Agreement and the Installment Payments due under the Installment Purchase Agreement, in each instance free and clear of all claims, liens, security interests, encumbrances of any kind or character except the rights of the District under the Installment Purchase Agreement. The District has asserted no claims or defenses against the Corporation relating to the Installment Purchase Agreement. The Installment Purchase Agreement is and shall remain free of all claims (including any defenses or offset rights claimed by the District), liens, security interests, and encumbrances arising through any act or omission of the Corporation or any person claiming by, through, or under it.

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

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

(d) It has not previously assigned any right, title or interest the Corporation has in the Installment Purchase Agreement 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 Lender pursuant to this Assignment Agreement.

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

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

#### SECTION 6. Expenses.

The fees and disbursements of Bond Counsel, the fees and disbursements of the municipal advisor to the District, the cost of preparing the documents, and other miscellaneous expenses of the District incurred in connection with the execution of the Installment Purchase Agreement shall all be the obligation of the District. Except for the fees of its counsel, the Assignee shall have no responsibility for any expenses associated with the execution of the Installment Purchase Agreement, including, but not limited to, the expenses identified above as the obligation of the District.

#### SECTION 7. Assignment to Assignee; Effect; Restrictions on Assignments.

The District understands and agrees that, upon the execution and delivery of this Assignment Agreement (which is occurring simultaneously with the execution and delivery hereof), all right, title and interest of the Corporation in and to this Installment Purchase Agreement will be sold, assigned and transferred to the Assignee (all such rights assigned pursuant to the Assignment Agreement, the "Assigned Rights"). The District hereby consents to such sale, assignment and transfer. The Corporation hereby directs the District, and the District hereby agrees, to pay the Assignee all payments payable by the District under the Installment Purchase Agreement. Whenever in the Installment Purchase Agreement any reference is made to the

Corporation and such reference concerns any Assigned Rights, such reference shall be deemed to refer to the Assignee.

The Assigned Rights, and all proceeds therefrom, may be further participated, assigned and reassigned in whole or in part to one or more assignees or subassignees by the Assignee (including, but not limited to, in connection with the creation of fractional interests with institutional investors so long as such assignment complies with applicable State law), without the necessity of obtaining the consent of the District; provided, that any such participation, assignment, transfer or conveyance (i) shall be made only to (a) affiliates of the Assignee, (b) banks, insurance companies, or other financial institutions, or (c) a trust, partnership, custodial arrangement or similar entity for the Owner or its assignees to sell or assign participation interests in the Installment Purchase Agreement to an entity listed in (a) or (b), (ii) shall not result in more than 35 owners of the Assigned Rights or the creation of any interest in the Assigned Rights in an aggregate principal component that is less than \$100,000 (or the then aggregate unpaid principal component of 2021 Installment Payments) and (iii) shall not require the District to make 2021 Installment Payments, send notices or otherwise deal with respect to matters arising under the Installment Purchase Agreement with or to more than one trustee, owner, servicer or other fiduciary or agent or entity (herein referred to as the "Servicer") and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in the Assigned Rights are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single Servicer to act on their behalf with respect to the Assigned Rights, including with respect to the exercise of rights and remedies on behalf of such owners upon the occurrence of an Event of Default hereunder. The Corporation (including the initial Assignee pursuant to the Assignment Agreement) and the District hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 7 shall apply to the first and subsequent assignees and subassignees of any of the Assigned Rights (or any interest therein).

No assignment, transfer or conveyance permitted by this Section 7 that changes the Servicer or its payment instructions or mailing address shall be effective until the District shall have received a written notice of assignment that discloses the name, payment instructions and address of each such assignee; provided, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests evidencing interests in the Assigned Rights, it shall thereafter be sufficient that the District receives notice of the name, payment instructions and address of such bank or trust company that acts as the Servicer. During the Term of the Installment Purchase Agreement, the District shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. The District shall retain all such notices as a register of all Assignees and shall make all payments to the Assignee or Servicer designated in such register. The District shall not have the right to, and shall not, assert against the initial Assignee or any subsequent Assignee any claim, counterclaim or other right that the District may have against the Corporation. If the Assignee notifies the District of its intent to assign the Assigned Rights (or any interest therein) to a different Servicer, the District agrees that it shall execute and deliver to the requesting Assignee a notice and acknowledgment of assignment in form reasonably required by such Assignee within five (5) business days after its receipt of such request.

The District hereby acknowledges and agrees that (i) the Assignee has not been in the chain of title of the Project, does not operate, control or have possession of the Property or the Project

and has no control over the work performed by any vendor with respect to the Property or the Project, and (ii) the Assignee has no obligation with respect the installation, operation, use, storage or maintenance of the Project.

[Remainder of this page intentionally left blank.]

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

BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION

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

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

BORREGO WATER DISTRICT

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

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

CAPITAL ONE PUBLIC FUNDING, LLC, as Assignee

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

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

*- Signature Page -  
Assignment Agreement*

## **ATTACHMENT “A”**

### **LENDER CERTIFICATE**

Dated: October 1, 2021

Capital One Public Funding, LLC, Melville, New York (“COPF”), hereby certifies as follows with regard to the Installment Purchase Agreement dated as of October 1, 2021 (the “Loan Obligation”), between the Borrego Water District (the “District”) and the Borrego Water District Public Facilities Corporation and assigned to COPF:

1. COPF has full power and authority to carry on its business as now conducted, deliver this Lender Certificate, and make the representations and certifications contained herein.

2. COPF is a lender that regularly extends credit by purchasing obligations in the form of state and local government obligations such as the Loan Obligation; has knowledge and experience in financial and business matters that make it capable of evaluating the District, the Loan Obligation, and the risks associated with its purchase of the Loan Obligation; has the ability to bear the economic risk of extending the credit evidenced by the Loan Obligation; and is a limited liability company, controlled by a bank, engaged in the primary business of extending credit and making loans to state and local governments and non-profit entities and has total assets in excess of \$1 billion. COPF is not acting as a broker, dealer, municipal securities underwriter, municipal advisor, or fiduciary in connection with its purchase of the Loan Obligation.

3. COPF has conducted its own investigation of the financial condition of the District, the purpose for which the Loan Obligation is being executed and delivered, and the security for the payment of the principal and interest with respect to the Loan Obligation and has obtained such information regarding the Loan Obligation and the District and its operations, financial condition, and financial prospects as COPF deems necessary to make an informed decision with respect to its extension of credit through the purchase of the Loan Obligation.

4. COPF is purchasing the Loan Obligation as a vehicle for making a commercial loan for its own loan account with the present intention of holding the Loan Obligation to maturity or earlier prepayment, provided that COPF retains the right at any time to dispose of the Loan Obligation, but agrees that any such sale, transfer, or distribution by COPF shall be made in accordance with applicable law and the provisions of the Loan Obligation and related documents to (a) an affiliate of COPF or (b) one or more banks, insurance companies, or other financial institutions or their affiliates in minimum amounts of \$100,000.

COPF and its assignees further retain the right to sell or assign participation interests in the Loan Obligation to one or more entities listed in (a) or (b) of this Section 4, provided that any participation, custodial, or similar agreement under which multiple ownership interests are created in the Loan Obligation 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 to act on their behalf with respect to the rights and interests of the registered owner of the Loan Obligation, including with respect to the exercise of rights and remedies of the registered owner on behalf of such owners upon the occurrence of an event of default under the Loan Obligation.

5. COPF acknowledges that (a) the Loan Obligation (i) has not been registered under the Securities Act of 1933, as amended, (ii) has not been registered or otherwise qualified for sale under the securities laws of any state, and (iii) will not be listed on any securities exchange and (b) there is no established market for the Loan Obligation and that none is likely to develop. COPF understands and acknowledges that (a) its purchase of the Loan Obligation is not intended to be subject to the requirements of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended, and (b) in connection with COPF's purchase of the Loan Obligation, the District has not prepared or caused to be prepared, any official statement, private placement memorandum, or other offering document.

6. COPF is acting solely for its own loan account and not as a fiduciary for the District or in the capacity of broker, dealer, placement agent, municipal securities underwriter, municipal advisor, or fiduciary. COPF has not provided, and will not provide, financial, legal (including securities law), tax, accounting, or other advice to or on behalf of the District (including to any municipal advisor or any placement agent engaged by the District) with respect to the structuring, issuance, sale, or delivery of the Loan Obligation. COPF has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934, as amended, to the District with respect to the transactions relating to the structuring, issuance, sale, or delivery of the Loan Obligation and the discussions, undertakings, and procedures leading thereto. Each of the District, its municipal advisor (if any), and its placement agent has sought and shall seek and obtain financial, legal (including securities law), tax, accounting, and other advice (including as it relates to structure, timing, terms, and similar matters and compliance with legal requirements applicable to such parties) with respect to the Loan Obligation from its own financial, legal, tax, and other advisors (and not from the undersigned or its affiliates) to the extent that the District, its municipal advisor (if any), or its placement agent desires to, should, or needs to obtain such advice. COPF expresses no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to the District's municipal advisor (if any) or placement agent, or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to the District's municipal advisor (if any) or placement agent, with respect to any such matters. The transactions between the District and COPF are arm's-length, commercial transactions in which COPF is acting and has acted solely as a principal and for its own interest, and COPF has not made recommendations to the District with respect to the transactions relating to the Loan Obligation.

IN WITNESS WHEREOF, Capital One Public Funding, LLC, has caused this Lender Certificate to be executed by its officer thereunto duly authorized, all as of the day and year first above written.

**CAPITAL ONE FUNDING, LLC**

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

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

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

BORREGO WATER DISTRICT  
JOINT MEETING WITH  
BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION

SEPTEMBER 14, 2021  
AGENDA ITEM III.A

September 10, 2021

TO: Board of Directors, Borrego Water District Public Facilities Corporation

FROM: Geoffrey Poole, General Manager/Jessica Clabaugh, Finance Officer

SUBJECT: Resolution No. 2021-09-02 of the Board of Directors of Borrego Water District Public Facilities Corporation Authorizing Execution and Delivery by the Corporation of an Installment Purchase Agreement and an Assignment Agreement and Approving Certain Other Actions with Respect Thereto – N. O'Brien, BB&K & L. Carpenter, FRA

**RECOMMENDED ACTION:**

Approve Resolution No. 2021-09-02

**ITEM EXPLANATION:**

This item is another action needed for the financing to prepay the installment payments due to PWB and to fund capital improvement projects.

**FISCAL IMPACT**

Prepay the principal portion of the installment payments due to PWB under the 2018 Installment Purchase Agreement of \$4,431,000, resulting in a savings of \$568,000 NPV. Finance approximately \$2.9M of new money for capital improvement projects for the water and sewer enterprise (less fees and charges to third parties).

**ATTACHMENTS**

Resolution 2021-09-02  
Installment Agreement  
Assignment Agreement

**RESOLUTION NO. 2021-09-02**

**RESOLUTION OF THE BOARD OF DIRECTORS OF BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION AUTHORIZING EXECUTION AND DELIVERY BY THE CORPORATION OF AN INSTALLMENT PURCHASE AGREEMENT AND AN ASSIGNMENT AGREEMENT AND APPROVING CERTAIN OTHER ACTIONS WITH RESPECT THERETO**

**WHEREAS**, the Borrego Water District Public Facilities Corporation (the “Corporation”) was organized and exists for the purposes, among others, of participating with the Borrego Water District (the “District”) in the financing of projects for the collection, treatment and distribution of water, purchasing and leasing real and personal property in connection with such projects, and assisting the District in financing, acquiring and constructing such projects; and

**WHEREAS**, the Corporation previously entered into an Installment Purchase Agreement dated as of July 1, 2018 (the “2018 Installment Purchase Agreement”), by and between the Borrego Water District (the “District”) and the Corporation to finance certain improvements to its water enterprise (the “Water Enterprise”) and sewer enterprise (the “Sewer Enterprise” and, together with the Water Enterprise, the “Enterprises”); and

**WHEREAS**, the Board of Directors of the District has determined that it is in the best interest of the District and the property owners and residents served by the District’s Enterprises that the District prepay the installment payments due under the 2018 Installment Purchase Agreement and finance certain improvements to the Enterprises (together, the “Project”); and

**WHEREAS**, in order to accomplish the financing of the Project, it is necessary that the District and the Corporation enter into an Installment Purchase Agreement (the “2021 Installment Purchase Agreement”) and that the Corporation, the District and Capital One Public Funding, as the assignee (the “Assignee”) of the Corporation’s rights under the 2021 Installment Purchase Agreement, enter into an assignment agreement to provide for such assignment (the “2021 Assignment Agreement”), each hereinafter more particularly described, and that certain other action be taken and authorized; and

**WHEREAS**, as the result of the passage of SB 450 that became effective on January 1, 2018, Section 5852.1 of the Government Code of the State of California (“Section 5852.1”) provides that the Board of Directors obtain from an underwriter, financial advisor or private lender and disclose, in a meeting open to the public, prior to authorization of the Installment Purchase Agreement, good faith estimates of: (a) the true interest cost of the 2021 Installment Payment Rights, (b) the finance charge of the 2021 Installment Payment Rights, meaning the sum of all fees and charges paid to third parties, (c) the amount of proceeds of the 2021 Installment Payment Rights received less the finance charge described above and any reserves or capitalized interest paid or funded with proceeds of the 2021 Installment Payment Rights and (d) the sum total of all 2021 Installment Payments calculated to the final maturity of the 2021 Installment Payments plus the fees and charges paid to third parties not paid with the proceeds of the 2021 Installment Payment Rights; and

**WHEREAS**, in accordance with Section 5852.1, the Board of Directors has obtained such good faith estimates from the Municipal Advisor, and such estimates are disclosed in Exhibit A attached hereto (the “SB 450 Summary”); and

**WHEREAS**, the Board of Directors of the Corporation (the “Board”) has determined that the execution and delivery by the Corporation of the 2021 Installment Purchase Agreement and 2021 Assignment Agreement will be consistent with and in the furtherance of the purposes for which the Corporation was organized and exists and will be in the best interest of the District and its water users; and

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION AS FOLLOWS:**

SECTION 1. Approval of 2021 Installment Purchase Agreement. The 2021 Installment Purchase Agreement presented at this meeting to be entered into by and between the District and the Corporation, which provide generally for (a) financing the Project, (b) the appointment of the District by the Corporation as its agent for purposes of undertaking the Project, (c) the purchase by the District from the Corporation of the Project, and (d) the payment by the District to the Corporation from the Net Revenues of the District of Installment Payments (each as defined in the 2021 Installment Purchase Agreement), is approved, and the President and Secretary of the Board of Directors of the Corporation (the “President” and “Secretary”) are authorized to execute, acknowledge and deliver said agreement on behalf of the Corporation.

SECTION 2. Approval of 2021 Assignment Agreement. The 2021 Assignment Agreement to be entered into by and among the Corporation, the District and the Assignee, which provides generally for the assignment by the Corporation to the Assignee of certain of its rights under the 2021 Installment Purchase Agreement, including but not limited to, the right to receive Installment Payments from the District is approved, and the President and the Secretary are authorized to execute, acknowledge and deliver said agreement on behalf of the Corporation.

SECTION 3. Modifications. The approval of said agreements given by this Resolution shall apply to any modification or amendment of any of said agreements which is agreed upon and approved by the General Manager of the District and Best Best & Krieger LLP, as General Counsel and Bond Counsel to the District, as being necessary to carry out the provisions thereof and the authorizations and direction provided in this Resolution.

SECTION 4. Further Action. The President, Secretary and the other officers of the Corporation are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the execution and delivery of the agreements approved hereby and to otherwise effectuate the purpose of this Resolution, and such actions previously taken by such officers are hereby ratified and confirmed.

SECTION 5. Effective Date. This Resolution shall take effect upon adoption.

**PASSED AND ADOPTED** by said Board on this 14th day of September, 2021 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

STATE OF CALIFORNIA            )

)

COUNTY OF SAN DIEGO         )

I, \_\_\_\_\_, Secretary of the Board of Directors of the Borrego Water District Public Facilities Corporation, do hereby certify that the foregoing is a true and correct copy of a resolution passed and adopted by the Board of Directors of the Borrego Water District Public Facilities Corporation at a meeting of said Board held on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Secretary of the Board of Directors of the  
Borrego Water District Public Facilities  
Corporation

## EXHIBIT A

### SB 450 SUMMARY

Set forth below are **good faith estimates** of Fieldman, Rolapp & Associates, Inc., the municipal advisor, as required under Section 5852.1 of the California Government Code (the “Code”). **The following estimates have no bearing on, and should not be misconstrued as, any not-to-exceed financial parameters authorized by resolution.**

(a) The true interest cost of the 2021 Installment Payment Rights is estimated at 2.19%, calculated as provided in Section 5852.1(a)(1)(A) of the Code.

(b) The finance charge of the 2021 Installment Payment Rights, including all fees and charges paid to third parties, is estimated at \$98,500.

(c) Proceeds of the 2021 Installment Payment Rights is \$7,529,510 less the finance charges set forth in (b) above, is equal to \$7,431,010.

(d) The sum total of all 2021 Installment Payments calculated as provided in Section 5852.1(a)(1)(D) of the Code is estimated at \$8,915,671.

The foregoing are estimates and the final costs will depend on market conditions and can be expected to vary from the estimated amounts set forth above.

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2021 INSTALLMENT PURCHASE AGREEMENT

by and between

BORREGO WATER DISTRICT

and

BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION

Dated as of October 1, 2021

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2021 INSTALLMENT PURCHASE AGREEMENT

This 2021 INSTALLMENT PURCHASE AGREEMENT, made and entered into as of October 1, 2021 (the “Installment Purchase Agreement”), by and between BORREGO WATER DISTRICT, a water district duly organized and existing under and by virtue of the laws of the State of California (the “District”), and BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the “Corporation”).

W I T N E S S E T H:

WHEREAS, the District is authorized by Division 13 of the Water Code of the State of California (the “Law”), including but not limited to Section 35565, to, among other powers, provide water and sewer services for the beneficial use or uses of the District, its inhabitants, or the owners of rights to water in the District (“Services”); and

WHEREAS, the District is also authorized by the Law, including but not limited to Section 35565.2 and Section 35600, to sell real and personal property and to acquire real and personal property in order to achieve its public purposes of providing Services within the District; and

WHEREAS, the District previously entered into an Installment Purchase Agreement dated as of July 1, 2018 (the “2018 Installment Purchase Agreement”), by and between the District and the Corporation to finance certain improvements (the “2018 Project”) to its water enterprise (the “Water Enterprise”) and sewer enterprise (the “Sewer Enterprise” and, together with the Water Enterprise, the “Enterprises”); and

WHEREAS, the Board of Directors of the District has determined that it is in the best interest of the District and the property owners and residents served by the District’s Enterprises that the District prepay the installment payments due under the 2018 Installment Purchase Agreement for the 2018 Project and finance certain improvements to the Enterprises (the “2021 Project” and with the 2018 Project, the “Project”) as described in Exhibit A attached hereto; and

WHEREAS, in order to accomplish the financing of the Project, it is necessary that the District enter into the Installment Purchase Agreement with the Corporation; and

WHEREAS, the District and the Corporation desire to provide for the Corporation to assign this Installment Purchase Agreement to Capital One Public Funding, LLC (the “Lender”), in consideration of the Lender paying to the Corporation an amount sufficient to finance the Project and to pay costs of the financing including special counsel fees, municipal advisor fees and other expenses in connection therewith; and

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

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Installment Purchase Agreement do exist, have happened and have been performed in regular and

due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Installment Purchase Agreement;

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

## ARTICLE I

### DEFINITIONS

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

#### Accountant's Report

The term "Accountant's Report" means a report signed by an Independent Certified Public Accountant.

#### Additional Revenues

The term "Additional Revenues" means, with respect to the issuance of any Parity Obligations (other than the 2018 Notes and the 2021 Installment Payments), any or all of the following amounts:

(a) An allowance for Net Revenues from any additions or improvements to or extensions of an Enterprise or the Enterprises which, during all or any part of the most recently completed Fiscal Year or for any more recent consecutive twelve (12) month period selected by the District, were not in service, in an amount equal to ninety percent (90%) of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first thirty-six (36) month period in which each addition, improvement or extension is respectively to be in operation, all as shown by the certificate or opinion of an Authorized Representative or Independent Engineer.

(b) An allowance for Net Revenues arising from any increase in the charges made for service from an Enterprise which has become effective (or adopted but not yet effective) prior to the incurring of such Parity Obligations but which, during all or any part of the most recently completed Fiscal Year or for any more recent consecutive twelve (12) month period selected by the District, was not in effect, 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 such Fiscal Year or twelve (12) month period, all as shown by the certificate or opinion of an Authorized Representative or Independent Financial Consultant.

### Assignment Agreement

The term “Assignment Agreement” means that certain Assignment Agreement by and between the Corporation and the Lender dated as of the date hereof, as supplemented or amended from time to time.

### Authorized Representative

The term “Authorized Representative” means the District’s President, Vice-President, and General Manager or any other person designated as an Authorized Representative of the District by a Certificate of the District signed by its President or General Manager and filed with the Lender.

### Lender

The term “Lender” means initially Capital One Public Funding, LLC, or its successors or assigns, as assignee of the Corporation.

### Closing Date

The term “Closing Date” means the date that the Corporation, or the Lender, delivers to the District the Purchase Price.

### Code

The term “Code” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury regulations.

### Contracts

The term “Contracts” means the 2018 Loan Agreement, this Installment Purchase Agreement and any amendments and supplements hereto, and all contracts of the District authorized and executed by the District, the payments under which are on parity with the Installment Payments and which are secured by a pledge and lien on the Net Revenues.

### Corporation

The term “Corporation” means Borrego Water District Public Facilities Corporation, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California.

### Cost of Delivery

The term “Cost of Delivery” means all items of expense directly or indirectly payable by or reimbursable to the Corporation or the District and related to the authorization, execution and delivery of this Installment Purchase Agreement and the Assignment Agreement, including, but not related to, costs of preparation and reproduction of documents, legal fees and charges, fees and expenses of consultants and professionals, and any other charge, cost or fee in connection with the

execution and delivery of this Installment Purchase Agreement, including, but not limited to, the fees of CDIAC and the Lender's counsel.

### Debt Service

The term "Debt Service" means, for any Fiscal Year, the sum of (1) the interest falling due during such Fiscal Year on all Parity Obligations that 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 that mature at times and in such amounts as are necessary to pay the interest to which such amounts are pledged), (2) the principal amount of all serial Parity Obligations (that are outstanding under the documents or agreements pursuant to which they were issued) falling due by their terms during such Fiscal Year, and (3) the minimum amount of term Parity Obligations (that 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, (A) 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 Code, the most recently published The Bond Buyer Bond Revenue Index (or comparable index if no longer published) plus one hundred fifty (150) basis points, or (y) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities, plus one hundred fifty (150) basis points, and (B) for purposes of calculating the Debt Service on any Parity Obligation requiring a balloon payment at maturity, such interest shall be assumed to be a rate equal to the greater of (i) the actual rate on the date of calculation, or (ii) six percent (6%), and the principal shall be assumed to be fully amortized, solved for substantially level debt service, over a period of fifteen (15) years from the date of calculation.

### Default Rate

The term "Default Rate" means the interest rate due on the unpaid portion of any Installment Payment due pursuant to Section 4.02 hereof. Such Default Rate shall also be applicable upon the occurrence and continuation of an Event of Default pursuant to Section 8.01 and shall to be equal to the interest rate applicable to the principal portion of Installment Payments, plus four percent (4%); provided, however, that such Default Rate shall be a minimum of eight percent (8%).

### Determination of Taxability

The term "Determination of Taxability" means and shall be deemed to have occurred on the first to occur of the following:

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

(ii) on the date when the Lender notifies the District that it has received a written opinion from Bond Counsel to the effect that an Event of Taxability has occurred, which notice shall be accompanied by a copy of such opinion of Bond Counsel, unless, within 180 days after receipt by the District of such notification and copy of such opinion from the Lender, the District shall deliver to the Lender a ruling or determination letter issued to or on behalf of the District by the Commissioner or any District Director of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the District shall be 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 any review or audit or upon any other ground whatsoever, an Event of Taxability has occurred; or

(iv) on that date when the District shall receive notice from the Lender that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed the interest component of the Installment Payments as includable in the gross income of the Lender due to the occurrence of an Event of Taxability;

*provided*, however, that no Determination of Taxability shall occur under subparagraph (iii) or subparagraph (iv) above unless the District 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; provided further, however, that upon demand from the Lender, the District shall reimburse the Lender for any payments, including any taxes, interest, penalties or other charges, such Lender shall be obligated to make as a result of the Determination of Taxability.

#### District

The term “District” means Borrego Water District, a water district duly organized and existing under and by virtue of the laws of the State of California.

#### Enterprises; Enterprise

The term “Enterprises” means, collectively, the Sewer Enterprise and the Water Enterprise. The term “Enterprise” means the Sewer Enterprise or the Water Enterprise, as applicable.

#### Event of Default

The term “Event of Default” means an event described in Section 8.01.

### Event of Taxability

The term “Event of Taxability” means the taking of any action by the District, or the failure to take any action by the District, or the making by the District of any misrepresentation in this Installment Purchase Agreement or the certificate regarding federal arbitrage which has been executed and delivered by the District in connection with this Installment Purchase Agreement, which has the effect of causing the interest component of the Installment Payments to be includable, in whole or in part, in the gross income of the Lender for federal income tax purposes.

### Federal Securities

The term “Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; and (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are fully, unconditionally and directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

### Fiscal Year

The term “Fiscal Year” means the period beginning on July 1 of each year and ending on the last day of June of the next succeeding year, or any other twelve-month period selected and designated as the official Fiscal Year of the District.

### Generally Accepted Accounting Principles

The term “Generally Accepted Accounting Principles” means the generally accepted accounting principles as presented and recommended by the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

### General Manager

The term “General Manager” means the General Manager of the District.

### Governmental Authority

The term “Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central Lender, 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.

### Independent Certified Public Accountant

The term “Independent Certified Public Accountant” means any firm of certified public accountants appointed by the District, and each of whom is independent pursuant to the Statement on Auditing Standards No. 1 of the American Institute of Certified Public Accountants.

### Installment Payment Date; 2021 Installment Payment Dates

The term “Installment Payment Date” means any date on which Installment Payments are scheduled to be paid by the District under and pursuant to any Contract. The term “2021 Installment Payment Date” means April 1 and October 1 of each year commencing on April 1, 2022.

### Installment Payments; 2021 Installment Payments

The term “Installment Payments” means the installment payments of interest and principal scheduled to be paid by the District under and pursuant to the Contracts. The term “2021 Installment Payments” means the mandatory sinking fund payments set forth in Exhibit B hereto scheduled to be paid by the District under and pursuant to this Installment Purchase Agreement.

### Installment Purchase Agreement

The term “Installment Purchase Agreement” means this Installment Purchase Agreement, by and between the District and the Corporation, dated as of October 1, 2021, as originally executed and as it may from time to time be amended or supplemented in accordance herewith.

### Insurance Consultant

The term “Insurance Consultant” means any nationally recognized independent actuary, insurance company or broker that has actuarial personnel knowledgeable with respect to insurance carried, by, required for and available to special districts operating facilities similar to the Water Enterprise, including a pooled self-insurance program in which premiums are established on the basis of the recommendation of an actuary of national reputation. The Lender hereby approves of the Association of California Water Agencies Joint Powers Insurance Authority as meeting this definition of Insurance Consultant.

### Law

The term “Law” means the California Water District Law of the State of California (being Division 13 of the Water Code of the State of California, as amended) and all laws amendatory thereof or supplemental thereto.

### Maximum Annual Debt Service

The term “Maximum Annual Debt Service” means the greatest amount of Debt Service with respect to the Parity Obligations to which reference is made coming due in any Fiscal Year including the Fiscal Year in which the calculation is made or any subsequent Fiscal Year.

### Material Adverse Effect

The term “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 District, an Enterprise or both Enterprises, (b) the ability of the District to carry out its business in the manner conducted as of the date of this Installment Purchase Agreement or to meet or perform its obligations under this Installment Purchase Agreement on a timely basis, or the (c) the validity or enforceability of this Installment Purchase Agreement.

### Material Litigation

The term “Material Litigation” means any action, suit, proceeding, inquiry or investigation against the District in any court or before any arbitrator of any kind or before or by any Governmental Authority, of which the District has notice or knowledge and which, (i) if determined adversely to the District, may have a Material Adverse Effect, (ii) seeks to restrain or enjoin any of the transactions contemplated hereby, or (iii) may adversely affect the ability of the District to perform its obligations under this Installment Purchase Agreement.

### Net Proceeds

The term “Net Proceeds” means insurance proceeds or an eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers), paid with respect to an Enterprise, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

### Net Revenues

The term “Net Revenues” means for any Fiscal Year the sum of (a) the Water Enterprise Net Revenues for such Fiscal Year, (b) the Sewer Enterprise Net Revenues for such Fiscal Year and (c) the Property Tax Revenues allocated to the District for such Fiscal Year.

### Note 2018A

The term “Note 2018A” means the Promissory Note executed and delivered by the District on July 10, 2018, in the original principal amount of \$2,294,000 pursuant to the 2018 Loan Agreement.

### Note 2018B

The term “Note 2018B” means the Promissory Note executed and delivered by the District on July 10, 2018, in the original principal amount of \$863,534.51 pursuant to the 2018 Loan Agreement.

### Operation and Maintenance Costs

The term “Operation and Maintenance Costs” means the Sewer Enterprise Operation and Maintenance Costs and the Water Enterprise Operation and Maintenance Costs.

### Parity Obligations

The Term “Parity Obligations” means the 2021 Installment Payments, each 2018 Note together with the corresponding 2018 Loan Payments thereon, and all other bonds, notes, loan agreements, installment purchase agreements, leases, or other obligations of the District payable from and secured by a pledge of and lien upon any of the Net Revenues incurred on a parity with the 2021 Installment Payments and each of the 2018 Notes, together with the related 2018 Loan Payments thereon, issued or incurred in accordance with Section 6.15 hereof.

### Parity Obligations Documents

The term “Parity Obligations Documents” means, collectively, the indenture of trust, trust agreement, installment purchase agreement, loan agreement or other document authorizing the issuance of any Parity Obligations or any securities which evidence Parity Obligations.

### Parity Obligation Payment Date

The term “Parity Obligation Payment Date” means 2021 Installment Payment Dates, the Loan Payment Dates and any other payment date for Parity Obligations (other than the 2021 Installment Payments and each 2018 Note and the related 2018 Loan Payments).

### Project

The term “Project” means any additions, betterments, extensions or improvements to the Water Enterprise and/or Sewer Enterprise designated by the Board of Directors of the District as a Project, the acquisition and construction of which is to be paid for or refinanced by the proceeds of any Contracts or Bonds. The “Project” to be financed from the proceeds of the 2021 Installment Purchase Agreement means the prepayment of the installment payments due under the 2018 Installment Purchase Agreement and the Project described in Exhibit B hereto and as may be modified in conformance with Section 3.03 hereof.

### Property Tax Revenues

The term “Property Tax Revenues” means all property tax revenues as defined in Revenue and Taxation Code Section 95 required to be allocated to the District.

### Purchase Price

The term “Purchase Price” means the principal amount plus interest thereon owed by the District to the Corporation under the terms hereof as provided in Section 4.01.

### Rate Covenant Stabilization Fund

The term “Rate Covenant Stabilization Fund” means either (a) the Sewer Enterprise Rate Covenant Stabilization Fund or (b) the Water Enterprise Rate Covenant Stabilization Fund.

### Rate Covenant Stabilization Funds

The term “Rate Covenant Stabilization Funds” means, collectively, the Sewer Enterprise Rate Covenant Stabilization Fund and the Water Enterprise Rate Covenant Stabilization Fund.

### Revenues

The term “Revenues” means the sum of (a) the Water Enterprise Revenues, (b) the Sewer Enterprise Revenues and (c) the Property Tax Revenues.

### Revenue Fund

The term “Revenue Fund” means the fund by that name established pursuant to Section 5.02 hereof.

### Sewer Enterprise

The term “Sewer Enterprise” means, collectively, the entire sewer collection, transmission, treatment and disposition of wastewater and sewage system now owned or operated by the District, and all other properties, structures or works hereafter acquired and constructed by the District and determined to be a part of the Sewer Enterprise, including, but not limited to, any and all properties and assets, real and personal, tangible and intangible, of the District, now or hereafter existing, used or pertaining to the collection, transmission, treatment and disposition system, including all pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, transmission storage, treatment, transmission and disposition of wastewater, and any necessary lands, rights of way and other real or personal property useful in connection therewith, and all additions, extensions, expansions, improvements and betterments thereto and equipments thereof; *provided, however*, that to the extent the District is not the sole owner of an asset or property, only the District’s ownership interest in such asset or property shall be considered to be part of the Sewer Enterprise.

### Sewer Enterprise Net Revenues

The term “Sewer Enterprise Net Revenues” means, for any Fiscal Year, the Sewer Enterprise Revenues for such Fiscal Year less the Sewer Enterprise Operation and Maintenance Costs for such Fiscal Year.

### Sewer Enterprise Operation and Maintenance Costs

The term “Sewer Enterprise Operation and Maintenance Costs” means the reasonable and necessary costs and expenses paid or incurred by the District for maintaining and operating the Sewer Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including but not limited to (a) costs of electricity and other forms of energy supplied to the Sewer Enterprise, (b) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Sewer Enterprise in good repair and working order, (c) the reasonable administrative costs of the District attributable to the operation and maintenance of the Sewer Enterprise, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, and (d) all other reasonable and necessary costs of the District or charges required to

be paid by it comply with the terms of this Installment Purchase Agreement or any Contract or of to any resolution or indenture authorizing the issuance of any Bonds or of such Bonds, but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature and all costs or expenses incurred by or on behalf of the District.

#### Sewer Enterprise Proportionate Share

The term “Sewer Enterprise Proportionate Share” means the amount of the Purchase Price of the Project allocable to the Sewer Enterprise divided by the total amount of the Purchase Price of the Project.

#### Sewer Enterprise Rate Covenant Stabilization Fund

The term “Sewer Enterprise Rate Covenant Stabilization Fund” means the fund by that name established and maintained pursuant to Section 6.03(d) hereof.

#### Sewer Enterprise Revenues

The term “Sewer Enterprise Revenues” means all gross income and revenue received or receivable by the District from the ownership and operation of the Sewer Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including all rates, fees, charges (including connection fees), insurance proceeds and condemnation awards received by the District and all other income and revenue howsoever derived by the District from the Sewer 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 sewer facilities, (ii) grants that are designated by the grantor for a specific Sewer Enterprise purpose (and are therefore not available for general operational purposes), (iii) customers’ sewer related deposits subject to refund until such deposits have become the property of the District, (iv) the proceeds of any ad valorem property taxes, and (v) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the District for the purpose of paying special assessment bonds or special tax obligations of the District relating to the Sewer Enterprise, are not Revenues and are not subject to the lien hereof. Notwithstanding the foregoing, there shall be deducted from Sewer Enterprise Revenues any amounts (of Sewer Enterprise Revenues) transferred into the Sewer Enterprise Rate Covenant Stabilization Fund, and there shall be added to Sewer Enterprise Revenues any amounts transferred out of the Sewer Enterprise Rate Covenant Stabilization Fund and into the Revenue Fund. Sewer Enterprise Revenues may only be used to pay the Sewer Enterprise Proportionate Share.

#### Subordinate Debt

The term “Subordinate Debt” means indebtedness or other obligations (including but not limited to loans, leases and installment sale agreements) hereafter issued or incurred and secured by a pledge of and lien on Net Revenues subordinate to the pledge and lien securing the Parity Obligations.

### Taxable Rate

The term “Taxable Rate” means 3.0% per annum.

### 2018 Loan Agreement

The term “2018 Loan Agreement” means the Loan Agreement dated as of July 1, 2018, by and between the District and Compass Bank.

### 2018 Loan Payments

The term “2018 Loan Payments” means all payments required to be paid by the District on the 2018 Notes pursuant to the 2018 Loan Agreement.

### 2018 Note; 2018 Notes

The term “2018 Note” means either Note 2018A or Note 2018B. The term “2018 Notes” means, collectively, Note 2018A and Note 2018B.

### Water Enterprise

The term “Water Enterprise” means, collectively, the entire water collection, storage, treatment, transmission and distribution system now owned or operated by the District, and all other properties, structures or works hereafter acquired and constructed by the District and determined to be a part of the Water Enterprise, including, but not limited to, any and all properties and assets, real and personal, tangible and intangible, of the District, now or hereafter existing, used or pertaining to the collection, storage, treatment, transmission and distribution system, including all contractual rights to water supply and transmission, as well as all pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, storage, treatment, transmission and distribution of water, and any necessary lands, rights of way and other real or personal property useful in connection therewith, and all additions, extensions, expansions, improvements and betterments thereto and equipments thereof; *provided, however*, that to the extent the District is not the sole owner of an asset or property, only the District’s ownership interest in such asset or property shall be considered to be part of the Water Enterprise.

### Water Enterprise Net Revenues

The term “Water Enterprise Net Revenues” means, for any Fiscal Year, the Water Enterprise Revenues for such Fiscal Year less the Water Enterprise Operation and Maintenance Costs for such Fiscal Year.

### Water Enterprise Operation and Maintenance Costs

The term “Water Enterprise Operation and Maintenance Costs” means the reasonable and necessary costs and expenses paid or incurred by the District for maintaining and operating the Water Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including but not limited to (a) costs of acquisition of water, including all associated treatment and delivery costs, to be used by the Water Enterprise, (b) costs of electricity and other forms of energy

supplied to the Water Enterprise, (c) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Water Enterprise in good repair and working order, (d) the reasonable administrative costs of the District attributable to the operation and maintenance of the Water Enterprise, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, and (e) all other reasonable and necessary costs of the District or charges required to be paid by it to comply with the terms of this Installment Purchase Agreement or any Contract or of any resolution or indenture authorizing the issuance of any Bonds or of such Bonds, but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature and all costs or expenses incurred by or on behalf of the District.

#### Water Enterprise Proportionate Share

The term “Water Enterprise Proportionate Share” means the amount of the Purchase Price of the Project allocable to the Water Enterprise divided by the total amount of the Purchase Price of the Project.

#### Water Enterprise Rate Covenant Stabilization Fund

The term “Water Enterprise Rate Covenant Stabilization Fund” means the fund by that name established and maintained pursuant to Section 6.03(d) hereof.

#### Water Enterprise Revenues

The term “Water Enterprise Revenues” means all gross income and revenue received or receivable by the District from the ownership and operation of the Water Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including all rates, fees, charges (including connection fees), insurance proceeds and condemnation awards received by the District and all other income and revenue howsoever derived by the District from the Water 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 water facilities, (ii) grants that are designated by the grantor for a specific Water Enterprise purpose (and are therefore not available for general operational purposes), (iii) customers’ water related deposits or any other water related deposits subject to refund until such deposits have become the property of the District, (iv) the proceeds of any ad valorem property taxes, and (v) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the District for the purpose of paying special assessment bonds or special tax obligations of the District relating to the Water Enterprise, are not Revenues and are not subject to the lien hereof. Notwithstanding the foregoing, there shall be deducted from Water Enterprise Revenues any amounts (of Water Enterprise Revenues) transferred into the Water Enterprise Rate Covenant Stabilization Fund, and there shall be added to Water Enterprise Revenues any amounts transferred out of the Water Enterprise Rate Covenant Stabilization Fund and into the Revenue Fund. Water Enterprise Revenues may only be used to pay the Water Enterprise Proportionate Share.

ARTICLE II

REPRESENTATIONS AND WARRANTIES: OPINIONS OF COUNSEL

SECTION 2.01.      Representations by the District. The District makes the following representations:

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

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

(c)      By proper action, the District has duly authorized the execution, delivery and due performance of this Installment Purchase Agreement and this Installment Purchase Agreement constitutes the legal, valid and binding agreement of the District enforceable against the District in accordance with its terms.

(d)      The District will not take or, to the extent within its power, permit any action to be taken which results in the interest paid for the installment purchase of the Project under the terms of this Installment Purchase Agreement being included in the gross income of the Corporation or its assigns for purposes of federal or State of California income taxation.

(e)      The District has determined that it is necessary and proper for District uses and purposes within the terms of the Law that the District acquire the Project in the manner provided for in this Installment Purchase Agreement, in order to provide essential services and facilities to persons residing in the District.

(f)      No consent, approval, authorization, order, filing, registration, qualification, election or referendum, of or by any court or governmental agency or public body whatsoever is required in connection with the delivery or sale of the 2021 Installment Payments or the consummation of the other transactions effected or contemplated herein or hereby. The District gives no representation or warranty with regard to compliance with Blue Sky or similar securities requirements.

(g)      The execution and delivery of this Installment Purchase Agreement, the consummation of the transactions therein and herein contemplated, including the Project, and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the District is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this

Installment Purchase Agreement or the financial condition, assets, properties or operations of the District.

(h) The District acknowledges that (i) Capital One Public Funding, LLC, as the Lender, is acting solely for its own loan account and not as a fiduciary for the District or in the capacity of broker, dealer, municipal securities underwriter or municipal advisor, (ii) the Lender has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the District (including to any financial advisor or placement agent engaged by the District) with respect to the structuring of the financing or the execution and delivery of this Installment Purchase Agreement, (iii) the Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934, as amended, to the District with respect to the transactions relating to the structuring of the financing or the execution and delivery of this Installment Purchase Agreement and the discussions, undertakings, and procedures leading thereto, (iv) the Lender has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to the District's financial advisor or placement agent, or the correctness of any legal interpretation made by counsel to any other party, including, but not limited to counsel to the District's financial advisor or placement agent, with respect to any such matters, (v) each of the District, its financial advisor and its placement agent has sought and shall seek and obtain financial, legal (including securities law), tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters) with respect to the financing effectuated through this Installment Purchase Agreement from its financial, legal, and other advisors (and not from the Lender or its affiliates nor the Lender's legal counsel Kronick, Moskovitz, Tiedemann & Girard) to the extent that the District, its financial advisor or its placement agent desires to, should, or needs to obtain such advice; and (vi) the transactions between the District and the Lender are arm's length, commercial transactions in which the Lender is acting and has acted solely as a principal and for its own interest, and the Lender has not made recommendations to the District with respect to the transactions relating to this Installment Purchase Agreement.

(i) There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the District after reasonable investigation, threatened against or affecting the District or the assets, properties or operations of the District which, if determined adversely to the District or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Installment Purchase Agreement, or upon the ability of the District to make 2021 Installment Payments hereunder.

(j) The District is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Installment Purchase Agreement, or the financial condition, assets, properties or operations of the District.

(k) Other than the 2018 Loan Agreement, there are no outstanding bonds, notes, loans, leases, installment purchase agreements or other obligations that have any security interest in or claim upon the Net Revenues as of the date of this Installment Purchase Agreement.

(l) The financial statements of the District for the year ended June 30, 2020, supplied to the Lender (i) were prepared in accordance with generally accepted accounting principles, consistently applied, and (ii) fairly present the District's financial condition as of the date of the statements. Other than as described in such financial statements or otherwise disclosed to the Lender, there has been no material adverse change in the District's financial condition subsequent to June 30, 2020.

(m) The District reasonably believes that sufficient funds can be obtained to make all 2021 Installment Payments and all other amounts required to be paid pursuant to this Installment Purchase Agreement.

(n) The District has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any of its bonds, notes, or other debt obligations.

(o) During the term of this Installment Purchase Agreement, the Project will be used by the District only for the purpose of performing one or more governmental or proprietary functions of the District consistent with the permissible scope of the District's authority.

(p) The District does not enjoy any rights of immunity on the grounds of sovereign immunity in respect of its obligations under the Installment Purchase Agreement or otherwise with respect to the 2021 Installment Payments. To the extent the District has or hereafter may acquire under any applicable law any rights to immunity from legal proceedings on the grounds of sovereignty, the District hereby waives, to the extent permitted by law, such rights to immunity for itself in respect of its obligations arising under or related to the Installment Purchase Agreement or otherwise with respect to the 2021 Installment Payments.

SECTION 2.02. Representations and Warranties by the Corporation. The Corporation makes the following representations and warranties:

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

(b) The execution and delivery of this Installment Purchase Agreement and the consummation of the transactions herein contemplated will not violate any provision of law, any order of any court or other agency of government, or any indenture, material agreement or other instrument to which the Corporation is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Corporation.

Except as provided herein, the Corporation will not assign this Installment Purchase Agreement, its right to receive 2021 Installment Payments from the District, or its duties and

obligations hereunder to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in this Section 2.02.

SECTION 2.03. Opinion of General Counsel for the District and the Corporation. Concurrently with the execution and delivery of this Installment Purchase Agreement, general counsel for the District and the Corporation shall provide the opinion or opinions to the effect that:

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

(b) This Installment Purchase Agreement has been duly approved by the Board of Directors of the District and executed by the authorized officers of the District.

(c) This Installment Purchase Agreement and the Assignment Agreement have been duly approved by the Board of Directors of the Corporation and executed by authorized officers of the Corporation.

(d) There is no litigation pending or threatened affecting this Installment Purchase Agreement or the Revenues.

### ARTICLE III

#### SALE AND REPURCHASE OF THE PROJECT

SECTION 3.01. The 2021 Project. The Corporation agrees to acquire, construct, install and equip the 2021 Project and to provide funds for and assist the District in acquiring property and easements which are necessary for the construction and installation of the 2021 Project. The Corporation hereby appoints the District as its agent to carry out all phases of the acquisition, construction, installation and equipping of the 2021 Project and the District, as agent of the Authority, assumes all rights, duties, responsibilities and liabilities of the Corporation regarding the construction, installation and equipping of the 2021 Project, except as limited herein. The District, as agent of the Corporation, may enter into any purchase order, construction management agreement, architecture or engineering contract or construction contract required for the design, acquisition, construction, installation and completion of the 2021 Project. The Corporation hereby assigns to the District all rights and powers to enforce in its own name or the name of the Corporation such purchase orders or contracts as are required for design, acquisition, construction, installation, purchase and completion of the 2021 Project, which enforcement may be by auction at law or in equity; provided that the assignment made by the Corporation herein shall not prevent the Corporation, or its assignee, from asserting such rights and powers in its own behalf.

SECTION 3.02. Purchase of the Project by the District; Appointment of District as Agent of the Corporation. District hereby agrees to repurchase from the Corporation the Project and the Corporation hereby agrees to sell to the District the Project at the Purchase Price and on the terms and conditions hereinafter set forth.

SECTION 3.03. Substitution of the Project. The District may substitute other property or facilities of the Sewer Enterprise and/or the Water Enterprise for those components of

the 2021 Project listed in Exhibit A hereto, but only if the District first obtains the consent of the Lender and files with the Corporation a statement of the District;

(a) identifying the property, facilities or combination thereof, to be substituted and the components of the 2021 Project that they will replace; and

(b) stating that the estimated costs of the substituted property, facilities or combination thereof is not less than the cost of the components of the 2021 Project being replaced.

#### ARTICLE IV

##### INSTALLMENT PAYMENTS

SECTION 4.01. Purchase Price. The District hereby agrees to pay to Corporation, as the Purchase Price of the Project hereunder, the aggregate principal amount of \$[7,529,510.00], together with interest. Interest shall be calculated on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable hereunder is computed using this method.

SECTION 4.02. 2021 Installment Payments. The District shall, subject to any rights of optional prepayment provided in Article VII, pay the Corporation the Purchase Price in mandatory sinking fund payments constituting the 2021 Installment Payments in the amounts and on the 2021 Installment Payment Dates as set forth in Exhibit B hereto.

On or before April 1 and October 1 of each year commencing April 1, 2022 through and including October 1, 2036, the District shall, from the moneys in the Revenue Fund pay to the Lender at the payment address set forth in Section 10.10 hereof, the 2021 Installment Payment due on the respective dates shown on Exhibit B, each such payment to be made by wire or other form of electronic payment in accordance with written instructions provided by Lender or, with Lender's consent, by such other commercially reasonable method of payment.

Each 2021 Installment Payment shall be paid to the Corporation in lawful money of the United States of America. In the event the District fails to make any of the payments required to be made by it under this Section 4.02, such payment shall continue as an obligation of the District until such amount shall have been fully paid and the District agrees to pay the same with interest accruing thereon at the rate of interest then applicable to the remaining unpaid principal balance of the 2021 Installment Payments if paid in accordance with their terms.

The obligation of the District to make the 2021 Installment Payments is absolute and unconditional, and until such time as the Purchase Price shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article IX), the District will not discontinue or suspend any 2021 Installment Payments required to be made by it under this section when due, whether or not the Project or any part thereof is operating or operable or has been completed, 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 or otherwise and

shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

Upon the occurrence of an Event of Default, the interest component of the 2021 Installment Payments shall be calculated at the Default Rate. Upon a Determination of Taxability, from and after the occurrence of an the related Event of Taxability, the interest component of the Installment Payments shall be calculated at the Taxable Rate. In each case, the schedule of Lease Payments set forth in Exhibit B shall be revised to reflect the applicable rate.

## ARTICLE V

### SECURITY

SECTION 5.01.      Pledge of Net Revenues. All Parity Obligations, including the 2021 Installment Payments, shall be secured by a lien on and pledge of Net Revenues, and within such lien priority, such Parity Obligations shall be of equal rank without preference, priority or distinction of any Parity Obligations over any other Parity Obligations. The District does hereby grant such lien on and pledge of Net Revenues to secure Parity Obligations.

SECTION 5.02.      Revenues; Establishment of Revenue Fund.

(a)      In order to carry out and effectuate the pledge and lien contained herein, the District agrees and covenants that all Revenues shall be received by the District in trust hereunder and shall be deposited when and as received in a special fund designated as the “Revenue Fund,” which fund is hereby established and which fund the District agrees and covenants to maintain and to hold separate and apart from other funds so long as any Parity Obligation remain unpaid.

(b)      All Revenues in the Revenue Fund shall be set aside or be used by the District in the following order of priority:

(1)      The District shall, from the moneys in the Revenue Fund, pay (i) all Operation and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operation and Maintenance Costs, the payment of which is not then immediately required) as they become due and payable.

(2)      All Net Revenues remaining in the Revenue Fund (after payment of all Maintenance and Operation Costs) on each Parity Obligation Payment Date, shall be transferred by the District from the Revenue Fund and allocated to the following respective accounts (each of which the District shall establish and maintain within the Revenue Fund), the following amounts in the following order of priority, the requirements of each such account (including the funding of any deficiencies in any such account resulting from insufficient Net Revenues necessary to make any earlier required deposit) at the time of deposit to be satisfied before any transfer is made to any account subsequent in priority:

(i)      Interest Account. On each Parity Obligation Payment Date, the District shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to equal the amount of interest becoming due and payable on such Parity Obligation Payment Date on all

outstanding Parity Obligations. No deposit need be made into the Interest Account if the amount contained therein is at least equal to the interest becoming due and payable upon all outstanding Parity Obligations on such Parity Obligation Payment Date. All moneys in the Interest Account shall be used and withdrawn by the District solely for the purpose of paying interest on the Parity Obligations as it shall become due and payable (including accrued interest on any Parity Obligations purchased or redeemed prior to maturity pursuant to this Installment Sale Agreement). In the event that the amounts on deposit in the Interest Account on any Parity Obligation Payment Date are insufficient for any reason to pay the aggregate amount of interest then coming due and payable on the outstanding Parity Obligations, the District shall apply such amounts to the payment of interest on each of the outstanding Parity Obligations on a pro rata basis.

(ii) Principal Account. On each Parity Obligation Payment Date on which the principal of Parity Obligations is payable, the District shall deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Parity Obligations coming due and payable on such Parity Obligation Payment Date and the amount of principal becoming due and payable on any mandatory sinking account payment due on all outstanding Parity Obligations, if any. All moneys in the Principal Account shall be used and withdrawn by the District solely for the purpose of paying the principal of the Parity Obligations at the maturity date or upon early redemption, as the case may be. In the event that the amounts on deposit in the Principal Account on any Parity Obligation Payment Date are insufficient for any reason to pay the aggregate amount of principal then coming due and payable on the outstanding Parity Obligations, the District shall apply such amounts to the payment of principal on each of the outstanding Parity Obligations on a pro rata basis.

(iii) Redemption Account. The District shall establish and maintain a Redemption Account, amounts in which shall be used and withdrawn by the District solely for the purpose of paying the principal, interest and premium (if any) on the Principal Components to be redeemed, as applicable.

(iv) Reserve Accounts. Payments required to replenish any debt service reserve accounts established for Parity Obligations shall be made in accordance with the terms hereof and such Parity Obligations Documents, without preference or priority, and in the event of any insufficiency of such moneys, ratably without any discrimination or preference.

(v) Subordinate Debt Repayment. Payments relating to principal and interest on or with respect to Subordinate Debt in accordance with the terms of such Subordinate Debt, without preference or priority, and in the event of any insufficiency of such moneys, ratably based on the respective principal amounts (including any accreted value) without any discrimination or preference.

(vi) Subordinate Debt Reserve Accounts. To make payments required with respect to Subordinate Debt to replenish reserve accounts established therefor in accordance with the terms of such Subordinate Debt, without preference or priority, and in the event of any insufficiency of such moneys, ratably based on the respective principal amounts (including any accreted value) without any discrimination or preference.

(3) All remaining money in the Revenue Fund after making the payments under (2)(i) through (vi) may be used for any lawful purpose of the District, including, but not limited to, any costs of capital improvements to the Sewer Enterprise and/or the Water Enterprise, as applicable.

SECTION 5.03. Investments. All moneys held by the District in the Revenue Fund shall be invested in Federal Securities, the Local Agency Investment Fund, the San Diego Treasurer's Pooled Money Fund and/or money market mutual funds as authorized pursuant to and the investment earnings thereon shall remain on deposit in such fund, except as otherwise provided herein.

## ARTICLE VI

### COVENANTS OF THE DISTRICT

SECTION 6.01. Operation and Maintenance of the Enterprises. The District will maintain and preserve each of the Enterprises in good repair and working order at all times and will operate each Enterprise in an efficient and economical manner and will pay all Maintenance and Operation Costs of each Enterprise as they become due and payable.

SECTION 6.02. Against Sale or Other Disposition of Property. The District will not sell, lease, or otherwise dispose of either Enterprise or any part thereof essential to the proper operation of such Enterprise or to the maintenance of the Revenues. The District will not enter into any agreement or lease that impairs the operation of the either Enterprise or any part thereof necessary to secure adequate Revenues for the payment of the Parity Obligations or that would otherwise impair the rights of the District with respect to the Revenues or the operation of either Enterprise. Any real or personal property that has become nonoperative or that is not needed for the efficient and proper operation of the either Enterprise, or any material or equipment that has become worn out, may be sold at not less than the fair market value thereof. The District shall deposit the proceeds of such sale in the Revenue Fund.

SECTION 6.03. Rates, Fees, and Charges.

(a) The District will, at all times while any Parity Obligation remains outstanding, fix, prescribe and collect rates, fees and charges in connection with the Enterprises so as to yield Revenues at least sufficient, after making reasonable allowances for contingencies and errors in the estimates, to pay the following amounts in the order set forth below:

(1) All Maintenance and Operation Costs of the Enterprises;

(2) The Debt Service payments and all other payments (including payments under reimbursement agreements) with respect to all Parity Obligations as they become due and payable;

(3) All amounts, if any, required to restore the balance in any reserve accounts established for Parity Obligations in accordance with the terms of such Parity Obligations Documents, without preference or priority; and

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

(b) Furthermore, the District shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by each Enterprise during each Fiscal Year which are sufficient to yield estimated Net Revenues which are at least equal to one hundred twenty-five percent (125%) of the aggregate amount of Debt Service on all Parity Obligations payable from Net Revenues coming due and payable during such Fiscal Year. The District may make adjustments, from time to time, in its rates, fees and charges as it deems necessary, but shall not reduce its rates, fees and charges below those in effect unless the Net Revenues resulting from such reduced rates, fees and charges shall at all times be sufficient to meet the requirements set forth in this paragraph.

(c) If the District violates the covenants set forth in subsections (a) or (b) hereof, such violation shall not, in and of itself, be a default under any Parity Obligation and shall not give rise to a declaration of an Event of Default so long as (i) Net Revenues (calculated without taking into account any amounts transferred into the Revenue Fund from the Rate Covenant Stabilization Funds pursuant to subsection (d) below), are at least equal to one hundred five percent (105%) of Maximum Annual Debt Service coming due and payable during such Fiscal Year, and (ii) within 120 days after the date such violation is discovered, the District either (y) transfers enough moneys from the Rate Covenant Stabilization Fund sufficient to yield estimated Net Revenues which are at least equal to one hundred twenty-five percent (125%) of the aggregate amount of Debt Service on all Parity Obligations payable from Net Revenues coming due and payable during such Fiscal Year in compliance with subsection (b) hereof, or (z) hires an Independent Financial Consultant to review the revenues and expenses of the Enterprises, and abides by such consultant's recommendations to revise the schedule of rates, fees, expenses and charges, and to revise any Operation and Maintenance Costs insofar as practicable, and to take such other actions as are necessary so as to produce Net Revenues to cure such violation of subsections (a) or (b) hereof for future compliance; provided, however, that, if the District does not, or cannot, transfer from either or both of the Rate Covenant Stabilization Funds the amount necessary to comply with subsection (b) hereof, or otherwise cure such violation within six (6) months after the date such violation is discovered, the Parity Obligations shall thereafter accrue interest at the Default Rate and an Event of Default shall be deemed to have occurred under the applicable section of the Parity Obligations Documents.

(d) There are hereby created separate funds to be known as the "Sewer Enterprise Rate Covenant Stabilization Fund" and the "Water Enterprise Rate Covenant Stabilization Fund," to be held and maintained by the District. The Rate Covenant Stabilization Funds are not pledged

to secure payment of the Parity Obligations. Amounts in the Rate Covenant Stabilization Funds shall be applied solely for the uses and purposes set forth in this subsection (d). The District shall have the right to deposit into the Rate Covenant Stabilization Funds from time to time any amount of funds which are legally available therefor; provided that deposits for each Fiscal Year may be made until (but not after) one hundred twenty (120) days following the end of such Fiscal Year.

For the purpose of computing the amount of Revenues for any Fiscal Year for purposes of the preceding subsection (a), or the amount of Net Revenues for any Fiscal Year for purposes of the preceding subsection (b), the District shall be permitted to transfer amounts on deposit in either of both of the Rate Covenant Stabilization Funds to the Revenue Fund, such transfers to be made until (but not after) one hundred twenty (120) days after the end of such Fiscal Year. In addition, the District shall be permitted to withdraw amounts on deposit in either or both Rate Covenant Stabilization Funds for any other lawful purpose.

SECTION 6.04. Collection of Rates and Charges. The District will have in effect at all times rules and regulations requiring each consumer or customer utilizing the facilities of either Enterprise to pay the rates, fees and charges applicable to such use or benefit received. Except in connection with the receipt of federal or State funding, the District will not permit any part of either Enterprise or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State of California and any city, county, district, political subdivision, public corporation or agency of any thereof).

SECTION 6.05. Tax Covenants. The District hereby covenants that, notwithstanding any other provision of this Installment Purchase Agreement, it will make no use of the proceeds of the Installment Purchase Agreement or of any other amounts, regardless of the source, or of any property or take any action, or refrain from taking any action, that would cause the Installment Purchase Agreement to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”).

The District will not use or permit the use of the Project or any portion thereof by any person other than a governmental unit as such term is used in Section 141 of the Code, in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of the portion of the 2021 Installment Payments constituting interest under Section 103 of the Code.

The District will not make any use of the proceeds from the sale of the Project or any other funds of the District, or take or omit to take any other action, that would cause the obligation provided herein to be “federally guaranteed” within the meaning of Section 149(b) of the Code or “private activity bonds” within the meaning of Section 141 of the Code. To that end, so long as any 2021 Installment Payments are unpaid, the District, with respect to such proceeds and such other funds, will comply with all requirements of such Sections and all regulations of the United States Department of the Treasury issued thereunder and under Section 103 of the Internal Revenue Code of 1954, as amended, to the extent such requirements are, at the time, applicable and in effect.

The District will assure the filing of an information report for the 2021 Installment Payments in compliance with Section 149 (e) of the Tax Code.

The District has complied with the Code, with respect to the 2021 Installment Payments, and the District 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 2021 Installment Payments.

The 2021 Installment Payments are eligible for designation as “qualified tax-exempt obligations” under Section 265(b)(3) of the Tax Code.

SECTION 6.06.      Maintenance and Operation of the Enterprises. The District will maintain and preserve the Enterprises in good repair and working order at all times and will operate the Enterprises in an efficient and economical manner and will pay all Sewer Enterprise Operation and Maintenance Costs as they become due and payable.

SECTION 6.07.      Payment of Claims. The District will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien on the Revenues or the funds or accounts created hereunder or on any funds in the hands of the District pledged to pay the Parity Obligations which might impair the security of the 2021 Installment Payments.

SECTION 6.08.      Competitive Facilities. Except for any facilities of the Sewer Enterprise and the Water Enterprise as of the date hereof, the District will not, to the extent permitted by law, acquire, maintain or operate and will not, to the extent permitted by law and within the scope of its powers, permit any other public or private agency, authority, city, special district, or political subdivision or any person whomsoever to acquire, maintain or operate within the sphere of influence of the District any Sewer Enterprise and/or Water Enterprise competitive with the Sewer Enterprise and/or Water Enterprise, as applicable; provided, however, that the District may, with the written consent of the Lender first had and obtained, assign all or a portion of the Water Enterprise to another entity provided such entity assumes the obligations of the District hereunder.

SECTION 6.09.      Insurance.

(a) The District will procure and maintain insurance on the Enterprises 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 Enterprises) as are usually insurable in accordance with industry standards with respect to similar enterprises.

In the event of any damage to or destruction of an Enterprise or the Enterprises 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 such Enterprise or the Enterprises, as applicable. The District shall cause such repair, reconstruction or replacement to begin promptly after such damage or destruction shall occur and to continue and to be properly completed as expeditiously as possible, and shall pay out of the proceeds of such insurance all costs and expenses in connection with such repair, reconstruction or replacement so that the same

shall be completed and such Enterprise or the Enterprises, as applicable, shall be free and clear of all liens and claims. If the proceeds received by reason of any such loss shall exceed the costs of such repair, reconstruction or replacement, the excess shall be applied to prepay the 2021 Installment Payments and any other Parity Obligations, on a pro rata basis, in the manner provided in Section 7.01 hereof and in the instruments authorizing such Parity Obligations.

Alternatively, if the proceeds of such insurance are sufficient to enable the District to retire all outstanding Parity Obligations, the District may elect not to repair, reconstruct or replace the damaged or destroyed portion of such Enterprise or the Enterprises, as applicable, and thereupon such proceeds shall be applied to the prepayment of such Parity Obligations and to the payment of all other amounts due hereunder, and as otherwise required by the documents pursuant to which other Parity Obligations were issued.

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

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

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

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

**SECTION 6.10. Eminent Domain.** If all or any part of the Enterprises shall be taken by eminent domain proceedings, the resulting Net Proceeds thereof shall be applied as follows:

(a) If (1) the District delivers to the Lender a Certificate of the District showing (i) the estimated loss of annual Net Revenues, if any, suffered or to be suffered by the District by reason of such eminent domain proceedings, (ii) a general description of the additions, betterments, extensions or improvements proposed to be acquired by the District 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 District to meet its obligations hereunder will not be substantially impaired (which determination shall be final and conclusive); then the District shall promptly proceed with the acquisition of such additions, betterments, extensions or improvements substantially in accordance with such Certificate of the District and such Net Proceeds shall be applied for the payment of the costs of such acquisition, and any balance of such Net Proceeds not required by the District for such purpose shall be applied to prepay the 2018 Notes and any other Parity Obligations, on a pro rata basis, in the manner provided in Section 7.01 hereof and in the instruments authorizing such other Parity Obligations.

(b) If the foregoing conditions are not met, then such Net Proceeds shall be applied to prepay the Principal Components of the 2021 Installment Payments and the principal amounts of any other Parity Obligations, on a pro rata basis, in the manner provided in Section 7.01 hereof and in the instruments authorizing such other Parity Obligations.

SECTION 6.11. Additional Information. The District agrees to furnish to the Lender, promptly, from time to time, such information regarding the operations, financial condition and property of the District and the Enterprises as the Lender may reasonably request.

SECTION 6.12. Compliance with Law and Contracts. The District will faithfully comply with, keep, observe, and perform all valid and lawful obligations or regulations now or hereafter imposed on its operation of the Enterprises by contract, or prescribed by any law of the United States of America or of the State of California, or by any officer, board, or commission having jurisdiction or control.

SECTION 6.13. Punctual Payment. The District will punctually pay the principal and interest to become due on the 2021 Installment Payments, in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by it, and will not rescind this Installment Purchase Agreement for any cause.

SECTION 6.14. Protection of Security and Rights of the Lender. The District will preserve and protect the security of the 2021 Installment Payments and the rights of the Lender and will warrant and defend the Lender's rights against all claims and demands of all persons. From and after the Closing Date, the 2021 Installment Payments shall be incontestable by the District.

SECTION 6.15. Parity Obligations.

(a) So long as any Parity Obligation is outstanding, the District shall not issue or incur any obligations payable from Revenues or Net Revenues senior or superior to the payment of Debt Service on such Parity Obligation. The District may at any time issue or incur Parity Obligations payable from Net Revenues on a parity with the 2021 Installment Payments in such principal amount as shall be determined by the District 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 without taking into account any amounts transferred into the Revenue Fund from the Rate Covenant Stabilization Funds pursuant to Section 6.03 hereof), either (i) as shown in the audited financial statements of the District for the most recent Fiscal Year for which an audit is available, or (ii) as shown by the books of the District for any more recent twelve (12) month period selected by the District, as verified by an Authorized Representative of the District, plus in either case (at the option of the District) the Additional Revenues, shall be at least equal to one hundred twenty-five percent (125%) of the amount of Maximum Annual Debt Service on all outstanding Parity Obligations and the Parity Obligations to be issued calculated on a combined basis; and

(3) Except with respect to the 2021 Installment Payments, and at the District's sole discretion, there may be established from the proceeds of such Parity Obligations a reserve fund for the security of such Parity Obligations, in an amount equal set forth in the applicable Parity Obligation Document.

The provisions of subsection (2) of this Section 6.15(a) shall not apply to any Parity Obligations if, and to the extent that (i) all of the proceeds of such Parity Obligations (other than proceeds applied to pay costs of issuing such Parity Obligations and to make the reserve fund deposit required pursuant to subsection (3) of this Section) shall be deposited in an irrevocable escrow held in cash or invested in Federal Securities for the purpose of paying the principal of and interest and premium (if any) on such outstanding Parity Obligations, and (ii) at the time of the incurring of such Parity Obligations, the District certifies in writing that maximum annual debt service on such Parity Obligations will not exceed Maximum Annual Debt Service on the outstanding Parity Obligations being refunded, and (iii) the final maturity of such Parity Obligations is not later than the final maturity of the Parity Obligations being refunded.

(b) In order to maintain the parity relationship of debt service payments on all Parity Obligations permitted hereunder, the District covenants that all payments in the nature of principal and interest or reserve account replenishment with respect to any Parity Obligations, will be structured to occur semi-annually on April 1 and October 1, in each year as such payments are due with respect to the Debt Service payments, and reserve account replenishment with respect to any Parity Obligations will be structured to occur within one year, and to otherwise structure the terms of such Parity Obligations to ensure that they are in all respects payable on a parity with the Debt Service payments on all Parity Obligations, and not prior thereto.

(c) The District may issue or incur Subordinate Debt; provided, however, that Net Revenues (calculated without taking into account any amounts transferred into the Revenue Fund from the Rate Covenant Stabilization Funds pursuant to Section 6.03 hereof), either (i) as shown in the audited financial statements of the District for the most recent Fiscal Year for which an audit is available, or (ii) as shown by the books of the District for any more recent twelve (12) month period selected by the District, as verified by an Authorized Representative of the District, plus in either case (at the option of the District) the Additional Revenues, shall be at least equal to one hundred ten percent (110%) of the amount of Maximum Annual Debt Service on all outstanding Parity Obligations and the maximum annual debt service on the Subordinate Debt to be issued.

SECTION 6.16.      Against Encumbrances. The District hereby covenants and agrees that it shall not incur any obligations that are secured by a pledge and lien on the Net Revenues that is senior to the pledge and lien on the Net Revenues contained herein. The District will not make any pledge of or place any lien on the Net Revenues except as provided herein. The District may pledge Net Revenues to secure Parity Obligations issued in accordance with Section 6.15 hereof. The District may at any time, or from time to time, issue evidences of indebtedness for any lawful purpose that are payable from and secured by a pledge of and lien on Net Revenues that is subordinate in all respects to the pledge of and lien on the Net Revenues provided herein.

SECTION 6.17.      Further Assurances. The District will adopt, make, execute and deliver any and all further resolutions, instruments, and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the Lender of the rights and benefits provided to it herein.

SECTION 6.18.      Financial Reports. Promptly upon receipt by the District and in no event later than one hundred eighty (180) days after the close of each Fiscal Year (unless otherwise agreed in writing by the Lender), the District will furnish, or cause to be furnished, to the Lender an audit report of an Independent Certified Public Accountant with respect to such Fiscal Year, of the District, including the Water Enterprise, for said Fiscal Year.

At the same time as the District provides the audit to the Lender, the District shall also provide to the Lender a statement as to whether Net Revenues for such Fiscal Year were equal to at least 1.25 times the Debt Service for such Fiscal Year, calculated as provided in Section 6.03 hereof and a certification that no Event of Default has occurred and is continuing hereunder. In addition, the District shall deliver to the Lender, not later than thirty (30) days after its adoption (unless otherwise agreed in writing by the Lender), a copy of the District's adopted budget for the then current Fiscal Year. The District shall also deliver to the Lender a copy of any update to the District's budget adopted for a Fiscal Year with thirty (30) days of the adoption of such updated budget. If available the District shall also provide the Lender with internally-prepared quarterly updates within 45 days of the end of each fiscal quarter.

SECTION 6.19.      Observance of Laws and Regulations. The District will well and truly keep, observe and perform or cause to be kept, observed and performed all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired and enjoyed by the District, including the District's right to exist and carry on business as a California special district, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

SECTION 6.20.      Budget. The District hereby covenants to take such action as may be necessary to include all 2021 Installment Payments and all other amounts due hereunder in its annual budget and to make the necessary annual appropriations for all such 2021 Installment Payments and all other amount due hereunder.

SECTION 6.21.      Notices. The District shall provide to the Lender:

(a) Immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default under this Installment Purchase Agreement, together with a detailed statement by an Authorized Representative of the steps being taken by the District to cure the effect of such Event of Default.

(b) Prompt written notice (i) of any action, suit or proceeding or any investigation, inquiry or similar proceeding by or before any court or other governmental authority, domestic or foreign, against the District or either Enterprise or the Revenues which involve claims equal to or in excess of \$250,000 or that seeks injunctive relief, or (ii) of any loss or destruction of or damage to any portion of either Enterprise in excess of \$250,000.

(c) Prompt written notice of any Material Litigation, Material Adverse Effect or any investigation, inquiry or similar proceeding by any Governmental Authority with respect to any matter that relates to or could materially impact Revenues.

(d) Promptly upon notice thereof, any termination or cancellation of any insurance policy which the District is required to maintain, or any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting the District property in excess of an aggregate of \$250,000.

(e) With reasonable promptness, such other information respecting the District, the Enterprise, and the operations, affairs and financial condition of the District as the Lender may from time to time reasonably request.

SECTION 6.22.      Financial Obligation Disclosure. If the District enters into a continuing disclosure undertaking (a “Continuing Disclosure Agreement”) pursuant to SEC Rule 15c2 12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the “Rule”), and the District is required to file with the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system or its successor (“EMMA”) notice of any accommodation, waiver, amendment, modification of terms or other similar events reflecting financial difficulties in connection with this Installment Purchase Agreement and related documents, in each case including a full copy thereof or a description of the material terms thereof (each such posting, an “EMMA Posting”), the District shall provide the Lender a copy of the proposed EMMA Posting for review. The District agrees to omit from any EMMA Posting the following information relating to the Lender pursuant to the request of the Lender: unredacted sensitive or confidential information about the Lender or its affiliates; address and account information of the Lender or any affiliates; e mail addresses, telephone numbers, or fax numbers; or names and signatures of officers, employees and signatories of the Lender or its affiliates. The District acknowledges and agrees that the Lender and its affiliates are not responsible for the District’s or any other entity’s (including, but not limited to, any broker-dealer’s) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with the Rule, any Continuing Disclosure Agreement or any applicable securities or other laws, including but not limited to those relating to the Rule.

ARTICLE VII

PREPAYMENT OF 2021 INSTALLMENT PAYMENTS

SECTION 7.01.      Prepayment.

(a)      Optional Prepayment. The District may not prepay all or any part of the principal portion of the 2021 Installment Payments due before October 1, 2029. The District may prepay all of the principal portion of the 2021 Installment Payments due on or after October 1, 2029 on any Installment Payment Date, from any available funds at a prepayment price equal to the principal portion of the 2021 Installment Payments to be prepaid, together with the interest portion of such 2021 Installment Payments to the prepayment date.

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

(b)      Mandatory Sinking Fund Prepayment. The Purchase Price of the Project is subject to mandatory sinking fund prepayment on each Installment Payment Date as set forth in Exhibit B hereto.

SECTION 7.02.      Method of Prepayment. Before making any prepayment pursuant to Section 7.01(a), the District shall give written notice to the Corporation and the Lender specifying the date on which the prepayment will be paid, which date shall be not less than thirty (30) nor more than forty-five (45) days from the date such notice is given. Such prepayment notice may be made conditional upon receipt of funds by the District for such prepayment.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF THE CORPORATION

SECTION 8.01.      Events of Default and Acceleration of Maturities. The following shall constitute Events of Default hereunder:

(a)      if default shall be made in the due and punctual payment of any 2021 Installment Payment or any Contract or Bond when and as the same shall become due and payable;

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

(c)      if the District shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without the consent of the District seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein,

or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of the District or of the whole or any substantial part of its property;

then and in each and every such case during the continuance of such Event of Default specified in clause (c) above, the Corporation shall, and for any other such Event of Default the Corporation may, by notice in writing to the District, declare the entire principal amount of the unpaid 2021 Installment Payments and the accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything contained herein to the contrary notwithstanding. This subsection however, is subject to the condition that if at any time after the entire principal amount of the unpaid 2021 Installment Payments and the accrued interest thereon shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered the District shall deposit with the Corporation a sum sufficient to pay the unpaid principal amount of the 2021 Installment Payments or the unpaid payment of any other Parity Obligation referred to in clause (a) above due prior to such declaration and the accrued interest thereon, with interest on such overdue installments, at the rate or rates applicable to the remaining unpaid principal balance of the 2021 Installment Payments or such Parity Obligations if paid in accordance with their terms, and the reasonable expenses of the Corporation, and any and all other defaults known to the Corporation (other than in the payment of the entire principal amount of the unpaid 2021 Installment Payments and the accrued interest thereon due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Corporation or provision deemed by the Corporation to be adequate shall have been made therefor, then and in every such case the Corporation, by written notice to the District, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

The District or the Corporation shall immediately notify the Lender of an Event of Default.

SECTION 8.02. Action on Default or Termination. Upon the occurrence of an Event of Default (as that term is defined in this Installment Purchase Agreement), the Default Rate shall apply and in each and every such case during the continuance of such Event of Default anything in this Installment Purchase Agreement to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, the Lender shall be entitled, upon notice in writing to the Corporation, to control and direct the enforcement of all rights and remedies granted to the Corporation under this Installment Purchase Agreement, including, without limitation, acceleration of the unpaid 2021 Installment Payments as described in this Installment Purchase Agreement and the right to annul any declaration of acceleration.

SECTION 8.03. Application of Funds Upon Acceleration. Upon the date of the declaration of acceleration as provided in Section 8.01, all Revenues thereafter received shall be applied in the following order:

First, to the payment, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, of the fees, costs and expenses of the Corporation or the Lender, if any, and any other holder of Parity Obligations in carrying out the provisions of this article, including reasonable compensation to its accountants and counsel;

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

Third, to the payment pro rata of the entire principal amount of the 2021 Installment Payments and the unpaid principal amount of all Parity Obligations and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable to the 2021 Installment Payments and such Parity Obligations if paid in accordance with their respective terms.

SECTION 8.04. Other Remedies of the Corporation. The Corporation shall have the right:

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

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

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

SECTION 8.05. Non-Waiver. Nothing in this article or in any other provision hereof shall affect or impair the obligation of the District, which is absolute and unconditional, to pay the 2021 Installment Payments to the Corporation at the respective due dates or upon prepayment from the Net Revenues, the Revenue Fund and the other funds herein pledged for such payment, or shall affect or impair the right of the Corporation, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied herein.

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

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

SECTION 8.06. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Corporation 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 now or hereafter

existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by the Law or any other law.

## ARTICLE IX

### DISCHARGE OF OBLIGATIONS

#### SECTION 9.01. Discharge of Obligations. When

(a) all of the 2021 Installment Payments shall have become due and payable in accordance herewith or a written notice of the District to prepay all of the 2021 Installment Payments shall have been filed with the Corporation and the Lender; and

(b) there shall have been deposited with a trustee at or prior to the 2021 Installment Payment Dates or date (or dates) specified for prepayment, in trust for the benefit of the Corporation or the Lender and irrevocably appropriated and set aside to the payment of all or any portion of the 2021 Installment Payments, sufficient moneys and Federal Securities, the principal of and interest on which when due will provide money sufficient to pay all principal, prepayment premium, if any, and interest of such 2021 Installment Payments to their respective 2021 Installment Payment Dates or prepayment date or dates as the case may be; and

(c) if an opinion of bond counsel acceptable to the Corporation is filed with the Corporation to the effect that the actions authorized by and taken pursuant to this Article IX shall not adversely affect the tax exempt status of the interest portion of the 2021 Installment Payments, the rights, title and interest of the Corporation herein and the obligations of the District hereunder shall, with respect to all or such portion of the 2021 Installment Payments as have been so provided for, thereupon cease, terminate, become void and be completely discharged and satisfied (except for the right of a trustee and the obligation of the District to have such moneys and such Federal Securities applied to the payment of such 2021 Installment Payments). In such event, upon request of the District a trustee shall cause an accounting for such period or periods as may be requested by the District to be prepared and filed with the District and shall execute and deliver to the District all such instruments as may be necessary or desirable to evidence such total or partial discharge and satisfaction, as the case may be, and, in the event of a total discharge and satisfaction, the trustee shall pay over to the District, after payment of all amounts due the trustee pursuant to any trust agreement, as an overpayment of 2021 Installment Payments, all such moneys or such Federal Securities held by it pursuant hereto other than such moneys and such Federal Securities, as are required for the payment or prepayment of the 2021 Installment Payments, which moneys and Federal Securities shall continue to be held by the trustee in trust for the payment of the 2021 Installment Payments and shall be applied by the trustee to the payment of the 2021 Installment Payments of the District.

## ARTICLE X

### MISCELLANEOUS

SECTION 10.01. Liability of District Limited to Net Revenues. Notwithstanding anything contained herein, the District shall not be required to advance any moneys derived from

any source of income other than the Net Revenues, the Revenue Fund and the other funds provided herein for the payment of the 2021 Installment Payments or for the performance of any agreements or covenants required to be performed by it contained herein. The District may, however, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the District for such purpose.

The obligation of the District to make the 2021 Installment Payments is a special obligation of the District payable solely from such Net Revenues, Revenue Fund and other funds, and does not constitute a debt of the District 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 10.02. Benefits of Installment Purchase Agreement Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than the District, the Corporation or the Lender any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the District or the Corporation shall be for the sole and exclusive benefit of the other party.

SECTION 10.03. Successor and Lender is Deemed Included in all References to Predecessor. Whenever the District, the Corporation or the Lender is named or referred to herein, such reference shall be deemed to include the successor or assignee to the powers, duties and functions that are presently vested in the District, the Corporation or the Lender and all agreements and covenants required hereby to be performed by or on behalf of the District, the Corporation or the Lender shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 10.04. Waiver of Personal Liability. No director, officer or employee of the District shall be individually or personally liable for the payment of the 2021 Installment Payments, but nothing contained herein shall relieve any director, officer or employee of the District from the performance of any official duty provided by any applicable provisions of law or hereby.

SECTION 10.05. 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” and other words of similar import refer to this Installment Purchase Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

SECTION 10.06. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the District or the Corporation shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The District and the Corporation hereby declare that they would have executed this Installment Purchase Agreement, and each and every other article, section, paragraph, subdivision,

sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

SECTION 10.07. Assignment. This Installment Purchase Agreement and any rights hereunder may be assigned by the Corporation or the Lender, as a whole or in part, without the necessity of obtaining the prior consent of the District.

SECTION 10.08. Net Contract. This Installment Purchase Agreement shall be deemed and construed to be a net contract, and the District shall pay absolutely net during the term hereof the 2021 Installment Payments and all other payments required hereunder, free of any deductions and without abatement, diminution or set-off whatsoever.

SECTION 10.09. California Law. THIS INSTALLMENT PURCHASE AGREEMENT SHALL BE CONSTRUED AND GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

SECTION 10.10. Notices. All written notices to be given hereunder shall be given by 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 District:                      Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, California 92004  
Attention: General Manager

If to the Corporation:                Borrego Water District Public Facilities Corporation  
806 Palm Canyon Drive  
Borrego Springs, California 92004  
Attention: President

If to the Lender:                      Capital One Public Funding, LLC  
1307 Walt Whitman Road, 3<sup>rd</sup> Floor  
Melville, New York, 11747  
Attention: \_\_\_\_\_

SECTION 10.11. Effective Date. This Installment Purchase Agreement shall become effective upon its execution and delivery, and shall terminate when the Purchase Price shall have been fully paid (or provision for the payment thereof shall have been made to the written satisfaction of the Corporation).

SECTION 10.12. Execution in Counterparts. This Installment Purchase Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 10.13. Indemnification of Corporation, the Lender. The District hereby agrees to indemnify and hold harmless the Corporation and the Lender 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 under the Assignment Agreement; provided that no indemnification will be made for willful misconduct or gross negligence hereunder or under the Assignment Agreement by the Corporation.

SECTION 10.14. Amendments Permitted.

(a) This Installment Purchase Agreement and the rights and obligations of the Corporation, the District and the Lender may be modified or amended at any time by an amendment hereto which shall become binding when the written consent of the Lender, shall have been filed with the Corporation and the District.

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

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

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

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

SECTION 10.15. Third Party Beneficiary. The Lender is made a party beneficiary hereunder with all rights of a third party beneficiary.

SECTION 10.16. Judicial Reference. The Corporation and the District hereby agree: (i) each proceeding or hearing based upon or arising out of, directly or indirectly, this Installment Purchase Agreement or any document related thereto, any dealings between the District and the Corporation related to the subject matter of this Installment Purchase Agreement or any related transactions, and/or the relationship that is being established between the District and the Corporation (hereinafter, a "Claim") shall be determined by a consensual general judicial reference (the "Reference") pursuant to the provisions of California Code of Civil Procedure Section 638 *et seq.*, as such statutes may be amended or modified from time to time; (ii) upon a written request, or upon an appropriate motion by either the Corporation or the District, as applicable, any pending action relating to any Claim and every Claim shall be heard by a single Referee (as defined below) who shall then try all issues (including any and all questions of law and questions of fact relating thereto), and issue findings of fact and conclusions of law and report a statement of decision. The Referee's statement of decision will constitute the conclusive determination of the Claim. The Corporation and the District agree that the Referee shall have the power to issue all legal and

equitable relief appropriate under the circumstances before the Referee; (iii) the Corporation and the District shall promptly and diligently cooperate with one another, as applicable, and the Referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of all Claims in accordance with the terms of this Section 10.16; (iv) either the Corporation or the District, as applicable, may file the Referee's findings, conclusions and statement with the clerk or judge of any appropriate court, file a motion to confirm the Referee's report and have judgment entered thereon (if the report is deemed incomplete by such court, the Referee may be required to complete the report and resubmit it); (v) the Corporation and the District, as applicable, will each have such rights to assert such objections as are set forth in California Code of Civil Procedure Section 638 et seq.; and (vi) all proceedings shall be closed to the public and confidential, and all records relating to the Reference shall be permanently sealed when the order thereon becomes final.

(a) Selection of Referee; Powers. The parties to the Reference proceeding shall select a single neutral referee (the "Referee"), who shall be a retired judge or justice of the courts of the State, or a federal court judge, in each case, with at least ten (10) years of judicial experience in civil matters. The Referee shall be appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts). If within ten (10) days after the request or motion for the Reference, the parties to the Reference proceeding cannot agree upon a Referee, then any party to such proceeding may request or move that the Referee be appointed by the Presiding Judge of the Los Angeles County Superior Court. The Referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this Section 10.16.

(b) Provisional Remedies and Self Help. No provision of this Section 10.16 shall limit the right of either the Corporation or the District, as the case may be, to (i) exercise such self-help remedies as might otherwise be available under applicable law, or (ii) obtain or oppose provisional or ancillary remedies, including without limitation injunctive relief, writs of possession, the appointment of a receiver, and/or additional or supplementary remedies from a court of competent jurisdiction before, after, or during the pendency of any Reference. The exercise of, or opposition to, any such remedy does not waive the right of the Corporation or the District to the Reference pursuant to this Section 10.16(b).

(c) Costs and Fees. Promptly following the selection of the Referee, the parties to such Reference proceeding shall each advance equal portions of the estimated fees and costs of the Referee. In the statement of decision issued by the Referee, the Referee shall award costs, including reasonable attorneys' fees, to the prevailing party, if any, and may order the Referee's fees to be paid or shared by the parties to such Reference proceeding in such manner as the Referee deems just.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have executed and attested this 2021 Installment Purchase Agreement by their officers thereunto duly authorized as of the day and year first written above.

BORREGO WATER DISTRICT

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President

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Vice President

BORREGO WATER DISTRICT PUBLIC  
FACILITIES CORPORATION

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President

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Secretary

*-Signature Page -  
Installment Purchase Agreement*

EXHIBIT A

DESCRIPTION OF PROJECT

The Project comprises the following described improvements to the District's Water Enterprise and Sewer Enterprise.

2018 PROJECT

WATER ENTERPRISE COMPONENTS

BWD Production Well Replacement - Investigation  
Transmission Main from Well 16 to ID1 900 Reservoir  
Frying Pan Road, N and S of T Anchor Drive (Phase 1)  
Pipeline for Santiago and ID5 (Phase 1)  
BWD Production Well Replacement - Construction  
Well 5 Water Directly to C.C. Reservoir (Phase 1)  
Slash M Rd. West to Country Club Tank  
Frying Pan Road, N and S of T Anchor Drive (Phase 2)  
Pipeline for Santiago and ID5 (Phase 2)  
BWD Production Well Replacement #2  
Well 5 Water Directly to C. C. Reservoir (Phase 2)  
B.S. Rd, Walking H Drive to County Club Road (Phase 1)  
B.S. Rd, Walking H Drive to County Club Road (Phase 1)  
Double O Road, N and S of T Anchor Dr  
BS Rd, Weather Vane Drive to Barrel Dr  
De Anza Dr. 1600 Block West from Yaqui Road

SEWER ENTERPRISE COMPONENTS

Sewer Force Main Replacement & American Legion Lateral  
Sewer Main Replacement at Club Circle (Phase 1)

2021 PROJECT

WATER ENTERPRISE COMPONENTS

Bending Elbow Pipeline  
Well 11 Rehabilitation  
Well 5 Rebuild  
Well 5-15  
Pipeline Replacement

SEWER ENTERPRISE COMPONENTS

LCDZ Sewerline Relocation

Construction of water and sewer facilities and repairs to the District's Water Enterprise and Sewer Enterprise, not listed above, including, but not limited to production well construction and replacement of and repairs to water and sewer infrastructure.

EXHIBIT B

PURCHASE PRICE

The Purchase Price shall be subject to mandatory sinking fund prepayment in the following 2021 Installment Payments, which are payable in the amounts and on the 2021 Installment Payment Dates as follows:

<u>2021 Installment Payment Date</u>	<u>2021 Principal Payment</u>	<u>2021 Interest Payments</u>	<u>Total Installment Payments</u>
April 1, 2022		\$	\$
October 1, 2022	\$		
April 1, 2023			
October 1, 2023			
April 1, 2024			
October 1, 2024			
April 1, 2025			
October 1, 2025			
April 1, 2026			
October 1, 2026			
April 1, 2027			
October 1, 2027			
April 1, 2028			
October 1, 2028			
April 1, 2029			
October 1, 2029			
April 1, 2030			
October 1, 2030			
April 1, 2031			
October 1, 2031			
April 1, 2032			
October 1, 2032			
April 1, 2033			
October 1, 2033			
April 1, 2034			
October 1, 2034			
April 1, 2035			
October 1, 2035			
April 1, 2036			
October 1, 2036			

The effective interest rate is 2.190%. Upon the occurrence of an Event of Default, the interest component of the 2021 Installment Payments shall be calculated at the Default Rate. Upon a Determination of Taxability, from and after the occurrence of an the related Event of Taxability, the interest component of the 2021 Installment Payments shall be calculated at the Taxable Rate. In each case, the schedule set forth above shall be revised to reflect the applicable rate..

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ASSIGNMENT AGREEMENT

by and among

BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION,

BORREGO WATER DISTRICT

and

CAPITAL ONE PUBLIC FUNDING, LLC

Dated as of October 1, 2021

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## ASSIGNMENT AGREEMENT

This Assignment Agreement is made and entered into as of October 1, 2021 by and among BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the “Corporation”), BORREGO WATER DISTRICT, a water district duly organized and validly existing under the laws of the State of California (the “District”) and CAPITAL ONE PUBLIC FUNDING, LLC, a bank (including its successors and assigns, the “Assignee”);

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

### SECTION 1. Assignment.

The Corporation, for good and valuable consideration in hand received, does hereby sell, assign and transfer to the Assignee, without recourse, all of its rights, title, and interest in the Installment Purchase Agreement, dated as of October 1, 2021, by and between the District and the Corporation, (the “Installment Purchase Agreement”) including the right to receive all 2021 Installment Payments from the District under the Installment Purchase Agreement, together with any and all of the other rights of the Corporation under the Installment Purchase Agreement as may be necessary to enforce payment of such 2021 Installment Payments when due or otherwise to protect the interests of the Assignee.

### SECTION 2. Acceptance.

The Assignee hereby accepts the foregoing assignment for the purpose of securing the right assigned to it to receive all such 2021 Installment Payments from the District under the Installment Purchase Agreement and the other rights assigned to it, subject to the terms and provisions of the Installment Purchase Agreement.

### SECTION 3. Release and Indemnification.

The District shall, to the extent permitted by law, indemnify and save the Assignee, and its respective officers, agents, directors and employees, harmless from and against all claims, losses, liabilities, costs, expenses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management or operation of, or from any work or thing done on, the Project, the Water System or the Sewer System by the District, including injury or damages to any persons or property arising therefrom, (b) any breach or default on the part of the District in the performance of any of its obligations under the Installment Purchase Agreement, or (c) any act of negligence of the District or of any of its agents, contractors, servants, employees or licensees with respect to the Project, the Water System or the Sewer System. No indemnification is made under this Section for willful misconduct or gross negligence by the Assignee or its officers, agents, directors or employees. The provisions of this Section shall continue in full force and effect, notwithstanding the termination of the Term of the Installment Purchase Agreement for any reason.

SECTION 4. Closing Conditions.

(a) The Assignee hereby enters into this Agreement in reliance upon its own due diligence and the representations and warranties of the District contained herein and the representations and warranties to be contained in the documents and instruments to be delivered on the Closing Date and upon the performance by the District and the Corporation of their respective obligations both on and as of the date hereof and as of the Closing Date. Accordingly, the obligations of the Assignee under this Assignment Agreement to purchase, to accept the assignment of and to pay for the 2021 Installment Payments shall be subject to the accuracy in all material respects of the representations and warranties of the District contained herein as of the date hereof and as of the Closing Date, to the accuracy in all material respects of the statements of the officers and other officials of the District and the Corporation made in any certificate or document furnished pursuant to the provisions hereof, to the performance by the District and the Corporation of their respective obligations to be performed hereunder, at or prior to the Closing Date, and also shall be subject to the following additional conditions:

(i) At the Closing Date, the Installment Purchase Agreement shall have been duly authorized, executed and delivered by the respective parties thereto, all in substantially the forms heretofore submitted to the Assignee, with only such changes as shall have been agreed to in writing by the Assignee, and shall be in full force and effect, and the Resolution shall be in full force and effect;

(ii) On the Closing Date, all necessary action of the District relating to the execution and delivery of the Installment Purchase Agreement will have been taken and will be in full force and effect and will not have been amended, modified or supplemented; and

(iii) At or prior to the Closing Date, the Assignee shall have received the following documents, in each case satisfactory in form and substance to the Assignee:

(A) Bond Opinion. The unqualified approving opinion of Best Best & Krieger LLP, bond counsel for the District (“Bond Counsel”), dated the Closing Date, addressed to the District, as to the validity and enforceability of the Installment Purchase Agreement and the tax-exempt status of the 2021 Installment Payments;

(B) Reliance Letter. A reliance letter from Bond Counsel permitting the Assignee to rely upon the approving opinion referred to in subparagraph (A), above;

(C) Supplemental Opinion. A supplemental opinion of Bond Counsel, dated the Closing Date and addressed to the Assignee, to the effect that:

(1) the 2021 Installment Payments are exempt from registration under the Securities Act of 1933, as amended, and the Installment Purchase Agreement is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended; and

(2) assuming due authorization, execution and delivery by the Assignee, this Assignment Agreement has been duly authorized, executed and delivered by the District and constitutes a legal, valid and binding agreement of the District, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, arrangement,

moratorium and other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles (regardless of whether such enforceability is considered in equity or at law), to the exercise of judicial discretion in appropriate cases, and to the limitations on legal remedies against school districts in the State of California and except that no opinion is expressed with respect to any indemnification or contribution provisions contained in this Assignment Agreement;

(D) Certificate of the District. A certificate signed by a duly authorized official of the District to the effect that (A) this Assignment Agreement and the Installment Purchase Agreement have been duly executed and delivered, (B) the representations, warranties and covenants of the District herein and therein are true and correct in all material respects as of the Closing Date, and (C) the District has complied with all the terms of the Installment Purchase Agreement to be complied with by the District prior to or concurrently with the Closing Date and such documents are in full force and effect;

(E) Resolutions.

(1) A certificate of the Secretary of the Board of Directors of the District or his or her designee, together with a fully executed copy of the Resolution No. 2021-09-01 of the Board of Directors of the District, to the effect that such copy is a true and correct copy of such Resolution;

(2) A certificate of the Secretary of the Board of Directors of the Corporation or his or her designee, together with a fully executed copy of the Resolution No. 2021-09-02 of the Board of Directors of the Corporation, to the effect that such copy is a true and correct copy of such Resolution;

(F) Assignment. An executed copy of this Assignment Agreement; and

(G) Certificate of Pacific Western Bank. A certificates signed by an office of Pacific Western Bank that the District's obligations under the Installment Purchase Agreement dated as of July 1, 2018, by and between the District and the Corporation have been satisfied or waived.

(H) Additional Documents. Such additional legal opinions, certificates, proceedings, instruments and other documents as Bond Counsel or the Assignee may reasonably request to evidence the truth and accuracy, as of the Closing Date, of the representations contained herein and the due performance or satisfaction by the District at or prior to such time of all agreements then to be performed and all conditions then to be satisfied.

(b) At or prior to the Closing Date, the District shall have received a letter from Assignee in the form attached as Attachment "A" hereto duly executed by an officer of Assignee who is duly authorized to execute such letter on behalf of Assignee.

SECTION 5. Representations and Warranties of the Corporation. The Corporation hereby represents and warrants to the Lender that, as of the date hereof:

(a) It has full right, title and interest and legal title in and to the Installment Purchase Agreement and the Installment Payments due under the Installment Purchase Agreement, in each instance free and clear of all claims, liens, security interests, encumbrances of any kind or character except the rights of the District under the Installment Purchase Agreement. The District has asserted no claims or defenses against the Corporation relating to the Installment Purchase Agreement. The Installment Purchase Agreement is and shall remain free of all claims (including any defenses or offset rights claimed by the District), liens, security interests, and encumbrances arising through any act or omission of the Corporation or any person claiming by, through, or under it.

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

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

(d) It has not previously assigned any right, title or interest the Corporation has in the Installment Purchase Agreement 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 Lender pursuant to this Assignment Agreement.

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

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

#### SECTION 6. Expenses.

The fees and disbursements of Bond Counsel, the fees and disbursements of the municipal advisor to the District, the cost of preparing the documents, and other miscellaneous expenses of the District incurred in connection with the execution of the Installment Purchase Agreement shall all be the obligation of the District. Except for the fees of its counsel, the Assignee shall have no responsibility for any expenses associated with the execution of the Installment Purchase Agreement, including, but not limited to, the expenses identified above as the obligation of the District.

#### SECTION 7. Assignment to Assignee; Effect; Restrictions on Assignments.

The District understands and agrees that, upon the execution and delivery of this Assignment Agreement (which is occurring simultaneously with the execution and delivery hereof), all right, title and interest of the Corporation in and to this Installment Purchase Agreement will be sold, assigned and transferred to the Assignee (all such rights assigned pursuant to the Assignment Agreement, the "Assigned Rights"). The District hereby consents to such sale, assignment and transfer. The Corporation hereby directs the District, and the District hereby agrees, to pay the Assignee all payments payable by the District under the Installment Purchase Agreement. Whenever in the Installment Purchase Agreement any reference is made to the

Corporation and such reference concerns any Assigned Rights, such reference shall be deemed to refer to the Assignee.

The Assigned Rights, and all proceeds therefrom, may be further participated, assigned and reassigned in whole or in part to one or more assignees or subassignees by the Assignee (including, but not limited to, in connection with the creation of fractional interests with institutional investors so long as such assignment complies with applicable State law), without the necessity of obtaining the consent of the District; provided, that any such participation, assignment, transfer or conveyance (i) shall be made only to (a) affiliates of the Assignee, (b) banks, insurance companies, or other financial institutions, or (c) a trust, partnership, custodial arrangement or similar entity for the Owner or its assignees to sell or assign participation interests in the Installment Purchase Agreement to an entity listed in (a) or (b), (ii) shall not result in more than 35 owners of the Assigned Rights or the creation of any interest in the Assigned Rights in an aggregate principal component that is less than \$100,000 (or the then aggregate unpaid principal component of 2021 Installment Payments) and (iii) shall not require the District to make 2021 Installment Payments, send notices or otherwise deal with respect to matters arising under the Installment Purchase Agreement with or to more than one trustee, owner, servicer or other fiduciary or agent or entity (herein referred to as the "Servicer") and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in the Assigned Rights are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single Servicer to act on their behalf with respect to the Assigned Rights, including with respect to the exercise of rights and remedies on behalf of such owners upon the occurrence of an Event of Default hereunder. The Corporation (including the initial Assignee pursuant to the Assignment Agreement) and the District hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 7 shall apply to the first and subsequent assignees and subassignees of any of the Assigned Rights (or any interest therein).

No assignment, transfer or conveyance permitted by this Section 7 that changes the Servicer or its payment instructions or mailing address shall be effective until the District shall have received a written notice of assignment that discloses the name, payment instructions and address of each such assignee; provided, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests evidencing interests in the Assigned Rights, it shall thereafter be sufficient that the District receives notice of the name, payment instructions and address of such bank or trust company that acts as the Servicer. During the Term of the Installment Purchase Agreement, the District shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. The District shall retain all such notices as a register of all Assignees and shall make all payments to the Assignee or Servicer designated in such register. The District shall not have the right to, and shall not, assert against the initial Assignee or any subsequent Assignee any claim, counterclaim or other right that the District may have against the Corporation. If the Assignee notifies the District of its intent to assign the Assigned Rights (or any interest therein) to a different Servicer, the District agrees that it shall execute and deliver to the requesting Assignee a notice and acknowledgment of assignment in form reasonably required by such Assignee within five (5) business days after its receipt of such request.

The District hereby acknowledges and agrees that (i) the Assignee has not been in the chain of title of the Project, does not operate, control or have possession of the Property or the Project

and has no control over the work performed by any vendor with respect to the Property or the Project, and (ii) the Assignee has no obligation with respect the installation, operation, use, storage or maintenance of the Project.

[Remainder of this page intentionally left blank.]

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

BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION

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

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

BORREGO WATER DISTRICT

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

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

CAPITAL ONE PUBLIC FUNDING, LLC, as Assignee

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

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

*- Signature Page -  
Assignment Agreement*

## **ATTACHMENT “A”**

### **LENDER CERTIFICATE**

Dated: October 1, 2021

Capital One Public Funding, LLC, Melville, New York (“COPF”), hereby certifies as follows with regard to the Installment Purchase Agreement dated as of October 1, 2021 (the “Loan Obligation”), between the Borrego Water District (the “District”) and the Borrego Water District Public Facilities Corporation and assigned to COPF:

1. COPF has full power and authority to carry on its business as now conducted, deliver this Lender Certificate, and make the representations and certifications contained herein.

2. COPF is a lender that regularly extends credit by purchasing obligations in the form of state and local government obligations such as the Loan Obligation; has knowledge and experience in financial and business matters that make it capable of evaluating the District, the Loan Obligation, and the risks associated with its purchase of the Loan Obligation; has the ability to bear the economic risk of extending the credit evidenced by the Loan Obligation; and is a limited liability company, controlled by a bank, engaged in the primary business of extending credit and making loans to state and local governments and non-profit entities and has total assets in excess of \$1 billion. COPF is not acting as a broker, dealer, municipal securities underwriter, municipal advisor, or fiduciary in connection with its purchase of the Loan Obligation.

3. COPF has conducted its own investigation of the financial condition of the District, the purpose for which the Loan Obligation is being executed and delivered, and the security for the payment of the principal and interest with respect to the Loan Obligation and has obtained such information regarding the Loan Obligation and the District and its operations, financial condition, and financial prospects as COPF deems necessary to make an informed decision with respect to its extension of credit through the purchase of the Loan Obligation.

4. COPF is purchasing the Loan Obligation as a vehicle for making a commercial loan for its own loan account with the present intention of holding the Loan Obligation to maturity or earlier prepayment, provided that COPF retains the right at any time to dispose of the Loan Obligation, but agrees that any such sale, transfer, or distribution by COPF shall be made in accordance with applicable law and the provisions of the Loan Obligation and related documents to (a) an affiliate of COPF or (b) one or more banks, insurance companies, or other financial institutions or their affiliates in minimum amounts of \$100,000.

COPF and its assignees further retain the right to sell or assign participation interests in the Loan Obligation to one or more entities listed in (a) or (b) of this Section 4, provided that any participation, custodial, or similar agreement under which multiple ownership interests are created in the Loan Obligation 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 to act on their behalf with respect to the rights and interests of the registered owner of the Loan Obligation, including with respect to the exercise of rights and remedies of the registered owner on behalf of such owners upon the occurrence of an event of default under the Loan Obligation.

5. COPF acknowledges that (a) the Loan Obligation (i) has not been registered under the Securities Act of 1933, as amended, (ii) has not been registered or otherwise qualified for sale under the securities laws of any state, and (iii) will not be listed on any securities exchange and (b) there is no established market for the Loan Obligation and that none is likely to develop. COPF understands and acknowledges that (a) its purchase of the Loan Obligation is not intended to be subject to the requirements of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended, and (b) in connection with COPF's purchase of the Loan Obligation, the District has not prepared or caused to be prepared, any official statement, private placement memorandum, or other offering document.

6. COPF is acting solely for its own loan account and not as a fiduciary for the District or in the capacity of broker, dealer, placement agent, municipal securities underwriter, municipal advisor, or fiduciary. COPF has not provided, and will not provide, financial, legal (including securities law), tax, accounting, or other advice to or on behalf of the District (including to any municipal advisor or any placement agent engaged by the District) with respect to the structuring, issuance, sale, or delivery of the Loan Obligation. COPF has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934, as amended, to the District with respect to the transactions relating to the structuring, issuance, sale, or delivery of the Loan Obligation and the discussions, undertakings, and procedures leading thereto. Each of the District, its municipal advisor (if any), and its placement agent has sought and shall seek and obtain financial, legal (including securities law), tax, accounting, and other advice (including as it relates to structure, timing, terms, and similar matters and compliance with legal requirements applicable to such parties) with respect to the Loan Obligation from its own financial, legal, tax, and other advisors (and not from the undersigned or its affiliates) to the extent that the District, its municipal advisor (if any), or its placement agent desires to, should, or needs to obtain such advice. COPF expresses no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to the District's municipal advisor (if any) or placement agent, or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to the District's municipal advisor (if any) or placement agent, with respect to any such matters. The transactions between the District and COPF are arm's-length, commercial transactions in which COPF is acting and has acted solely as a principal and for its own interest, and COPF has not made recommendations to the District with respect to the transactions relating to the Loan Obligation.

IN WITNESS WHEREOF, Capital One Public Funding, LLC, has caused this Lender Certificate to be executed by its officer thereunto duly authorized, all as of the day and year first above written.

**CAPITAL ONE FUNDING, LLC**

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

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

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