


Agenda Report Reviewed by:

City Manager: 

CITY OF SEBASTOPOL  
CITY COUNCIL  
AGENDA ITEM

**Meeting Date:** May 18, 2021  
**To:** Honorable Mayor and City Councilmembers  
**From:** Ana Kwong – Administrative Services Director  
**Subject:** Discussion and Consideration of Approval to Adopt Resolution of the City of Sebastopol Authorizing Entrance into a Lease Agreement Payable from the General Fund, Park in Lieu, Enterprise Fund and a Loan Agreement Payable from the Net Revenues of the Water System and Approving Related Documents

**Recommendation** That the City Council adopt the Resolution

**Funding:** Currently Budgeted: Yes  No  N/A   
Net General Fund Cost: 124-9971-6100/6200 \$57,285  
If Cost to Other Fund(s) 212-9971-6100/6200 \$29,383  
500/510-9971-6100/6200 \$124,874

Account Code/Costs authorized in City Approved Budget AK (verified by Administrative Services Department)

**INTRODUCTION/PURPOSE:**

The item is for the City Council to Discuss and Consider Approval and Adoption of Resolution of the City of Sebastopol Authorizing Entrance into a Lease Agreement Payable from the General Fund, Park in Lieu, Enterprise Fund and a Loan Agreement Payable from the Net Revenues of the Water System and Approving Related Documents

**BACKGROUND:**

In 2006, the City financed the acquisition, construction and improvement of various municipal improvement projects via entrance into a Lease Agreement, dated as of June 8, 2006 (the “2006 Lease”), with Municipal Finance Corporation, pursuant to which the City obtained an up-front rental payment for the lease of certain real property owned by the City, and thereafter agreed to pay semi-annual lease payments for the continued use and occupancy of the leased property. The City’s City Hall/Library and Fire Station act as leased property for the 2006 Lease. As of today, the 2006 Lease has \$1,082,358.81 outstanding, and matures on June 8, 2026. The current interest rate is 4.85%, and the 2006 Lease is callable on any payment date on or after June 8, 2021 at par.

Additionally, in 2014, the City financed the construction of the water well 7 water treatment system for arsenic removal via entrance into an Installment Sale Agreement, dated as of September 1, 2014 (the “2014 Agreement”), with Municipal Finance Corporation, pursuant to which the City purchased the project via semi-annual payments payable from the net revenues of the City’s water system. As of today, the 2014

Agreement has \$934,799.56 outstanding, and matures on September 30, 2034. The current interest rate is 4.10%, and the 2014 Agreement is callable on any payment date with a 2% premium.

**DISCUSSION:**

In March 2021, City Staff began discussions with Oppenheimer & Co. Inc. (“Oppenheimer”) regarding a refunding of the City’s 2006 Lease and 2014 Agreement. Due to a favorable interest rate environment, a refunding of the 2006 Lease could provide savings to the City’s general fund, and a refunding of the 2014 Agreement could provide savings to the City’s water system. The City decided to explore the refinancing of the 2006 Lease via entrance into a new lease agreement (the “2021 Lease”) and the refinancing of the 2014 Agreement via a new loan agreement payable from the water system (the “2021 Loan”). Both financings are being done via the private placement method of sale.

City staff began working with Oppenheimer as placement agent and Jones Hall as bond counsel. On April 6th, Oppenheimer distributed a Lender Request for Proposal to 16 banks, asking each bank to provide their terms for purchasing the 2021 Lease and 2021 Loan.

On April 29th, five banks provided proposals to serve as lender for the 2021 Lease and 2021 Loan. A summary of the interest rates provided is shown below:

	2021 Lease Interest Rate	2021 Loan Interest Rate
California Bank & Trust	1.44%	2.17%
First Foundation	1.98%	2.43%
Sterling National Bank	1.87%	2.27%
Truist Bank	1.10%	2.09%
Umpqua Bank	1.96%	2.48%

The different interest rates on the 2021 Lease and 2021 Loan reflect the different sources of repayment and the different proposed term/length of each agreement. On May 3rd, City Staff had a call with Oppenheimer and Jones Hall to discuss each lender proposal and compare the fiscal impacts. City Staff determined Truist Bank provides the lowest overall borrowing cost to the City for both the 2021 Lease and 2021 Loan and recommends approval by City Council.

**Economic Impact:**

The 2021 Lease provides significant savings to the City’s general fund and various of other funds, and the 2021 Loan provides significant savings to the City’s water fund. See Appendix A below for good Faith Estimates required by Government Code Section 5852.1 (SB 450). All of the savings’ estimates are net of costs of issuance related to the transaction (i.e., costs of issuance have been deducted prior to savings being shown).

**Appendix A**

2021 Lease Good Faith Estimates

The following information consists of estimates that have been provided by the placement agent to the City in good faith:

- A) True interest cost of the 2021 Lease: 1.10%
- B) Finance charge of the 2021 Lease (sum of all costs of issuance and fees/charges paid to third parties, assuming no municipal bond insurance policy is obtained): \$31,000
- C) Net proceeds to be received by the City (net of finance charges, reserves and capitalized interest, if any): \$1,108,606.01

D) Total payment amount on the 2021 Lease through maturity: \$1,057,090.40

2021 Loan Good Faith Estimates

The following information consists of estimates that have been provided by the placement agent to the City in good faith:

- A) True interest cost of the 2021 Loan: 2.09%
- B) Finance charge of the 2021 Loan (sum of all costs of issuance and fees/charges paid to third parties, assuming no municipal bond insurance policy is obtained): \$30,000
- C) Net proceeds to be received by the City (net of finance charges, reserves and capitalized interest, if any): \$990,807.25
- D) Total payment amount on the 2021 Loan through maturity: \$1,177,070.40

The current estimated savings are shown below:

2021 Lease

<i>Date</i>	<i>Prior Debt Service</i>	<i>Prior Net Cash Flow</i>	<i>Refunding Debt Service</i>	<i>Savings</i>	<i>Present Value to 06/07/2021 @ 1.8079108%</i>
6/30/2022	226,567.96	226,567.96	211,293.24	15,274.72	14,994.74
6/30/2023	226,567.96	226,567.96	211,292.36	15,275.60	14,727.29
6/30/2024	226,567.96	226,567.96	211,292.65	15,275.31	14,464.30
6/30/2025	226,567.96	226,567.96	211,293.25	15,274.71	14,205.71
6/30/2026	226,567.83	226,567.83	211,292.90	15,274.93	13,952.50
	<b>1,132,839.67</b>	<b>1,132,839.67</b>	<b>1,056,464.40</b>	<b>76,375.27</b>	<b>72,344.55</b>

Net Present Value Savings are approximately 6.68%.

2021 Loan

<i>Date</i>	<i>Prior Debt Service</i>	<i>Refunding Debt Service</i>	<i>Savings</i>	<i>Present Value to 06/07/2021 @ 1.8079108%</i>
6/30/2022	89,081.74	84,064.69	5,017.05	5,332.14
6/30/2023	89,081.74	84,064.49	5,017.25	5,231.32
6/30/2024	89,081.74	84,064.14	5,017.60	5,132.43
6/30/2025	89,081.74	84,064.91	5,016.83	5,034.22
6/30/2026	89,081.74	84,064.19	5,017.55	4,939.14
6/30/2027	89,081.74	84,064.35	5,017.39	4,844.92
6/30/2028	89,081.74	84,064.76	5,016.98	4,752.15
6/30/2029	89,081.74	84,064.78	5,016.96	4,661.37
6/30/2030	89,081.74	84,064.73	5,017.01	4,572.24
6/30/2031	89,081.74	84,064.94	5,016.80	4,484.47
6/30/2032	89,081.74	84,064.73	5,017.01	4,398.60
6/30/2033	89,081.74	84,064.38	5,017.36	4,314.35

6/30/2034	89,081.74	84,064.18	5,017.56	4,231.47
6/30/2035	89,081.76	84,064.39	5,017.37	4,149.73
	<u>1,247,144.38</u>	<u>1,176,903.66</u>	<u>70,240.72</u>	<u>66,078.55</u>

Net Present Value Savings are approximately 7.07%.

The 2021 Lease is structured in a similar fashion to the 2006 Lease, being a lease obligation of the City payable semi-annually from the General Fund for the lease of certain real property, except the 2021 Lease is proposed to be secured only by the Fire Station. Through the refunding, the City Hall/Library can be released.

The 2021 Loan’s structure is similar in nature to the 2014 Agreement, being secured by a pledge of the net revenues of the water system (i.e., the water system’s gross revenues, less operation and maintenance costs). The 2021 Loan will require 1.20x debt service coverage to be met by the City on an annual basis and includes a 1.20x additional bonds test for future parity obligations of the water system.

The fiscal year of final payment has not been extended for either the 2021 Lease or 2021 Loan. Assuming Council approval, both refinancing transactions are anticipated to close on June 8, 2021.

**PUBLIC COMMENT:**

As of the writing of this staff report, the City has not received any public comment. However, public comment from interested parties following the publication and distribution of this staff report will be provided to the City Council as supplemental materials before or at the meeting.

**PUBLIC NOTICE:**

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to schedule meeting date.

**FISCAL IMPACT:**

The 2021 Lease savings of \$15,025 will be shared between General Fund \$4,068, Park in Lieu \$2,087, Enterprise Fund \$8,870. The 2021 Loan savings of \$5,300 annually will benefit solely the Water Fund.

**RECOMMENDATION:**

Staff recommends that in order to complete the refunding proceedings, the City Council adopt the attached Resolution approving the refinancing and related documents and actions.

**Attachment(s):**

1. Resolution to approve Refinancing
2. Lease Agreement
3. Loan Agreement

RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL AUTHORIZING ENTRANCE INTO A LEASE AGREEMENT PAYABLE FROM THE GENERAL FUND AND VARIOUS OF OTHER FUNDS AND A LOAN AGREEMENT PAYABLE FROM THE NET REVENUES OF THE WATER SYSTEM, AND APPROVING RELATED DOCUMENTS**

**WHEREAS**, in 2006, the City of Sebastopol (the “City”) financed the acquisition, construction and improvement of various municipal improvement projects via entrance into a Lease Agreement, dated as of June 8, 2006 (the “2006 Lease”), with Municipal Finance Corporation, pursuant to which the City obtained an up-front rental payment for the lease of certain real property owned by the City, and thereafter agreed to pay semi-annual lease payments for the continued use and occupancy of the leased property; and

**WHEREAS**, in 2014, the City financed the construction of the water well 7 water treatment system for arsenic removal via entrance into an Installment Sale Agreement, dated as of September 1, 2014 (the “2014 Agreement”), with Municipal Finance Corporation, pursuant to which the City purchased the project via semi-annual payments payable from the net revenues of the City’s water system; and

**WHEREAS**, the City has determined that it is in its best interests at this time to refinance, in full, the 2006 Lease and thereby realize interest rate savings, and in order to provide funds for that purpose the City has determined to enter into a new Lease Agreement (the “Lease Agreement”) with Truist Bank or an affiliate (the “Bank”), pursuant to which the City will receive an up-front rental payment for the lease of certain real property owned by the City, constituting the City’s Fire Department building and site (in an amount sufficient to fully prepay the 2006 Lease), and thereafter make semi-annual lease payments for the continued use and occupancy of the leased property; and

**WHEREAS**, the City has determined that it is in its best interests at this time to refinance, in full, the 2014 Agreement and thereby realize interest rate savings, and in order to provide funds for that purpose the City has determined to enter into a new Loan Agreement (the “Loan Agreement”) with Bank pursuant to which the City will receive an up-front payment (in an amount sufficient to fully prepay the 2014 Agreement), and thereafter make semi-annual loan repayments from the net revenues of the City’s water system; and

**WHEREAS**, the City has previously adopted a debt management policy and determined that entrance into the Lease Agreement and the Loan Agreement is in compliance with the debt management policy; and

**WHEREAS**, the information required to be obtained and disclosed with respect to the Lease Agreement and the Loan Agreement by the City Council in accordance with Government Code Section 5852.1 is set forth in the staff report accompanying this Resolution; and

**WHEREAS**, the Council approves all of said transactions in furtherance of the public purposes of the City, and the Council wishes at this time to authorize all proceedings relating to the borrowing of funds from the Lender for the purposes specified in this Resolution;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Sebastopol as follows:

**Section 1. Approval of Lease Agreement.** The City Council hereby approves entrance into the Lease Agreement with the Bank in the maximum principal amount of not to exceed \$1,100,000, which shall be payable from the general funds and various of other funds of the City; provided, that the net present value savings shall be at least equal to 5.0%.

In furtherance of the foregoing, the City Council hereby approves the execution and delivery of the Lease Agreement on behalf of the City by the City Manager or his designnee (each, an "Authorized Officer"), in the form on file with the City Clerk together with any changes therein or additions thereto deemed advisable by the Authorized Officer executing the same, including to substitute an alternative lender for the Bank if for any reason Truist Bank is unable to consummate the transaction. The City Clerk may attest to the Lease Agreement, as necessary.

**Section 2. Approval of Loan Agreement.** The City Council hereby approves entrance into the Loan Agreement with the Bank in the maximum principal amount of not to exceed \$1,100,000, which shall be payable from and secured by a pledge of the net revenues of the water system as described therein; provided, that the net present value savings shall be at least equal to 5.0%.

In furtherance of the foregoing, the City Council hereby approves the execution and delivery of the Loan Agreement on behalf of the City by an Authorized Officer, in the form on file with the City Clerk together with any changes therein or additions thereto deemed advisable by the Authorized Officer executing the same, including to substitute an alternative lender for the Bank if for any reason Truist Bank is unable to consummate the transaction. The City Clerk may attest to the Loan Agreement, as necessary.

**Section 3. Official Actions.** The Mayor, City Manager/City Attorney, Assistant City Manager/City Clerk of the City are each authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, terminations, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved by this Resolution. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

**Section 4. Effective Date.** This Resolution shall take effect from and after the date of its passage and adoption.

\* \* \* \* \*

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Sebastopol on the 18th day of May, 2021, by the following called vote:

APPROVED: \_\_\_\_\_  
Una Glass  
Mayor, City of Sebastopol

**VOTE:**  
AYES:  
NOES:  
ABSENT:  
ABTAIN:

ATTEST: \_\_\_\_\_  
Mary Gourley, MMC, Assistant City Manager/City Clerk

APPROVED AS TO FORM: \_\_\_\_\_  
Larry McLaughlin, City Attorney

RECORDING REQUESTED BY:  
Stewart Title Guaranty Company

AND WHEN RECORDED  
RETURN TO:  
Jones Hall, A Professional Law Corporation  
475 Sansome Street, Suite 1700  
San Francisco, California 94111  
Attention: James A. Wawrzyniak, Jr.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX UNDER SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

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## LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease"), dated as of June 8, 2021, is between the PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA, a non-profit public financing corporation duly organized and existing under the laws of the State of California (the "Corporation"), and the CITY OF SEBASTOPOL, a municipal corporation duly organized and existing under the laws of the State of California (the "City").

### *B A C K G R O U N D :*

1. In 2006, the City financed the acquisition, construction and improvement of various municipal improvement projects via entrance into a Lease Agreement, dated as of June 8, 2006 (the "2006 Lease"), with Municipal Finance Corporation, pursuant to which the City obtained an up-front rental payment for the lease of certain real property owned by the City, and thereafter agreed to pay semi-annual lease payments for the continued use and occupancy of the leased property described therein.

2. In order to refinance and prepay, in full, the 2006 Lease, the City wishes to lease the real property constituting the City's Fire Department building and site, as such real property is more particularly described in Appendix A attached hereto and by this reference incorporated herein (the "Leased Property"), to the Corporation for an up-front rental payment which is sufficient to enable the City the refinance and prepay, in full, the 2006 Lease, and the Corporation has proposed to lease the Leased Property back to the City in consideration of the payment by the City of semiannual lease payments as the rental for the Leased Property (the "Lease Payments").

3. The Corporation will assign the Lease Payments to Truist Bank under an Assignment of Lease Agreement dated as of June 8, 2021, which has been recorded concurrently herewith in the Office of the Sonoma County Recorder.



## A G R E E M E N T :

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

### ARTICLE I

#### DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. *Definitions.* All terms defined in this Section 1.1 have the meanings herein specified for all purposes of this Lease.

“Assignee” means (a) initially, Truist Bank, as assignee of certain rights of the Corporation hereunder, and (b) any other entity to whom the rights of the Corporation are assigned hereunder.

“Assignment of Lease” means the Assignment of Lease Agreement dated as of June 8, 2021, between the Corporation as assignor and the Assignee as assignee, as originally executed or as thereafter amended under any duly authorized and executed amendments thereto.

“Bond Counsel” means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income under Section 103 of the Tax Code.

“Business Day” means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in the State of California.

“City” means the City of Sebastopol, a municipal corporation organized and existing under the laws of the State of California.

“Closing Date” means the date of execution and delivery of this Lease by the parties hereto, being June 8, 2021.

“Corporation” has the meaning given in the recitals.

“Event of Default” means any of the events of default as defined in Section 8.1.

“Federal Securities” means any direct general non-callable 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), or obligations the timely payment of principal of and interest on which are directly guaranteed by the United States of America.

“Fiscal Year” means each twelve-month period during the Term of this Lease commencing on July 1 in any calendar year and ending on June 30 in the next succeeding

calendar year, or any other twelve-month period selected by the City as its fiscal year period.

“Lease” means this Lease Agreement, dated as of June 8, 2021, between the Corporation and the City.

“Lease Payment Date” means June 1 and December 1 in each year, commencing December 1, 2021, and continuing to and including the date on which the Lease Payments are paid in full.

“Lease Payment” means all payments required to be paid by the City under Section 4.4, including any prepayment thereof under Sections 9.2 or 9.3.

“Leased Property” means the real property situated in the City of Sebastopol, County of Sonoma, which is more particularly described in Appendix A. In the event of the release of any property under Section 4.7, the description of the Leased Property shall be modified to reflect such release.

“Net Proceeds” means any insurance proceeds or 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 the Leased Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

“Permitted Encumbrances” means, as of any time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may permit to remain unpaid under Article VI of this Lease; (b) this Lease and the Assignment of Lease; (c) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (d) the exceptions disclosed in the title insurance policy with respect to the Leased Property issued as of the Closing Date by Stewart Title Guaranty; and (e) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the City certifies in writing will not materially impair the use of the Leased Property for its intended purposes.

“Rental Period” means each period during the Term of the Lease commencing on and including June 1 in each year and extending to and including the next succeeding May 31, except that the first Rental Period begins on the Closing Date and ends on May 31, 2022.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

“Term of this Lease” or “Term” means the time during which this Lease is in effect, as provided in Section 4.3.

SECTION 1.2. *Interpretation.*

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

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

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

## ARTICLE II

### COVENANTS, REPRESENTATIONS AND WARRANTIES

SECTION 2.1. *Covenants, Representations and Warranties of the City.* The City makes the following covenants, representations and warranties to the Corporation as of the date of the execution and delivery of this Lease:

- (a) Due Organization and Existence. The City is a municipal corporation duly organized and validly existing under the laws of the State of California, has full legal right, power and authority under the laws of the State of California to enter into this Lease and to carry out and consummate all transactions contemplated hereby, and by proper action the City has duly authorized the execution and delivery of this Lease.
- (b) Due Execution. The representatives of the City executing this Lease have been fully authorized to execute the same under a resolution duly adopted by the City Council of the City.
- (c) Valid, Binding and Enforceable Obligations. This Lease has been duly authorized, executed and delivered by the City and constitutes the legal, valid and binding agreements of the City enforceable against the City in accordance with its terms.
- (d) No Conflicts. The execution and delivery of this Lease, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions 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 City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease or the financial condition, assets, properties or operations of the City.

- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease, or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease or the financial conditions, assets, properties or operations of the City.

SECTION 2.2. *Covenants, Representations and Warranties of the Corporation*. The Corporation makes the following covenants, representations and warranties to the City as of the date of the execution and delivery of this Lease:

- (a) Due Organization and Existence. The Corporation is a corporation duly organized and existing under the laws of the State of California, has full legal right, power and authority to enter into this Lease and the Assignment of Lease and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the Corporation has duly authorized the execution and delivery of this Lease and the Assignment of Lease.
- (b) Due Execution. The representatives of the Corporation executing this Lease and the Assignment of Lease are fully authorized to execute the same under official action taken by the governing board of the Corporation.

- (c) Valid, Binding and Enforceable Obligations. This Lease and the Assignment of Lease have been duly authorized, executed and delivered by the Corporation and constitute the legal, valid and binding agreements of the Corporation, enforceable against the Corporation in accordance with their respective terms.
- (d) No Conflicts. The execution and delivery of this Lease and the Assignment of Lease, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions 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 Corporation is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease and the Assignment of Lease or the financial condition, assets, properties or operations of the Corporation.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Corporation, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease or the Assignment of Lease, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Corporation after reasonable investigation, threatened against or affecting the Corporation or the assets, properties or operations of the Corporation which, if determined adversely to the Corporation or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease or the Assignment of Lease, or upon the financial condition, assets, properties or operations of the Corporation, and the Corporation is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease or the Assignment of Lease or the financial conditions, assets, properties or operations of the Corporation.

## ARTICLE III

### DEPOSIT AND APPLICATION OF FUNDS

SECTION 3.1. *Deposit and Application of Funds.* As provided in the Assignment of Lease, the proceeds therefrom in the amount of \$\_\_\_\_\_ shall be applied on the Closing Date as follows:

(a) the Corporation shall wire \$\_\_\_\_\_ to City National Bank to prepay, in full, amounts due to City National Bank with respect to the 2006 Lease; and

(b) the Corporation shall use the remaining amount of \$\_\_\_\_\_ to pay the costs of the financing on behalf of the City, as such costs are detailed in a certificate of the City upon which the Corporation may conclusively rely.

## ARTICLE IV

### LEASE OF LEASED PROPERTY; LEASE PAYMENTS

SECTION 4.1. *Lease of Leased Property by City to Corporation.* The City hereby covenants that it has fee simple merchantable title to the Leased Property, free and clear of all recorded liens, encumbrances, easements, public rights-of-way, assessments, leases, taxes and any or all other interests, excepting only Permitted Encumbrances. For and in consideration of the deposit by the Corporation of the amounts specified in Section 3.1, the City hereby leases the Leased Property to the Corporation, and the Corporation hereby leases the Leased Property from the City, for a term which is coterminous with the Term of this Lease. No merger shall be effected by the City's lease of the Leased Property to the Corporation under this Section 4.1, and the Corporation's sublease of the Leased Property back to the City under Section 4.2.

SECTION 4.2. *Sublease of Leased Property by Corporation Back to City.* The Corporation hereby subleases the Leased Property back to the City, and the City hereby subleases the Leased Property from the Corporation. The Leased Property shall be subleased to the City under this Lease upon the terms and provisions hereof.

SECTION 4.3. *Term.* The Term of this Lease commences on the date of recordation of this Lease and ends on the date on which all of the Lease Payments have been paid in full. The provisions of this Section 4.3 are subject to the provisions of Section 6.2 relating to the taking in eminent domain of the Leased Property or any portion thereof.

SECTION 4.4. *Lease Payments.*

(a) Obligation to Pay. Subject to the provisions of Sections 6.2 and 6.3 and the provisions of Article IX, the City agrees to pay to the Corporation, its successors and assigns, the Lease Payments (denominated into components of principal and interest) in the respective amounts specified in Appendix B attached hereto (including any

supplements thereto) and by this reference incorporated herein, to be due and payable in immediately available funds on each of the respective Lease Payment Dates specified in Appendix B. The Lease Payments payable in any Rental Period with respect to the Leased Property shall be for the use of the Leased Property during such Rental Period. The interest components of the Lease Payments have been calculated based on an interest rate of \_\_\_% per annum, on the basis of a 360-day year of twelve 30-day months.

(b) Effect of Prepayment. If the City prepays all Lease Payments in full under Sections 9.2 or 9.3, the City's obligations under this Section will thereupon cease and terminate. If the City prepays the Lease Payments in part but not in whole under Section 9.3, the principal components of the remaining Lease Payments will be reduced on a pro rata basis; and the interest component of each remaining Lease Payment will be reduced on a pro rata basis.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section 4.4, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the rate of 8% per annum.

(d) Fair Rental Value. The Lease Payments coming due and payable during each Rental Period constitute the total rental for the Leased Property for such Rental Period, and will be paid by the City in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Leased Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments represent the fair rental value of the Leased Property. In making this determination, consideration has been given to the estimated fair market value of the Leased Property, the costs of financing the deposits required to be made under Section 3.1, other obligations of the City and the Corporation under this Lease, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the City and the general public.

(e) Source of Payments; Budget and Appropriation. The Lease Payments are payable from any source of legally available funds of the City, subject to the provisions of Sections 6.2, 6.3 and 9.1. The City has the right, at its election, to pay a portion of each Lease Payment from the revenues received by the City with respect to its water system or its wastewater system, in an amount which corresponds to the portion of the total costs which are expended pursuant to the 2006 Lease to finance the acquisition, construction and improvement of facilities which constitute a part of the water system or the wastewater system, respectively. Notwithstanding any such election by the City, the payment of such portion of the Lease Payments is not secured by a pledge of such revenues nor limited to said revenues, it being understood and agreed that the Lease Payments are payable from any source of legally available funds of the City, including but not limited to amounts on deposit in the General Fund of the City.

The City covenants to take such action as may be necessary to include all Lease Payments in each of its annual budgets during the Term of this Lease and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the City herein contained constitute duties imposed by law and it is the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out

and perform the covenants and agreements in this Lease agreed to be carried out and performed by the City.

(f) Assignment. The City understands and agrees that all Lease Payments have been assigned by the Corporation to the Assignee under the Assignment of Lease, and the City hereby assents to such assignment. The Corporation hereby directs the City, and the City hereby agrees, to pay to the Assignee all payments payable by the City under this Section 4.4 and all amounts payable by the City under Article IX.

SECTION 4.5. *Quiet Enjoyment*. Throughout the Term of this Lease, the Corporation will provide the City with quiet use and enjoyment of the Leased Property and the City will peaceably and quietly have and hold and enjoy the Leased Property, without suit, trouble or hindrance from the Corporation, except as expressly set forth in this Lease. The Corporation will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Corporation may lawfully do so. Notwithstanding the foregoing, the Corporation has the right to inspect the Leased Property as provided in Section 7.2.

SECTION 4.6. *Title*. At all times during the Term of this Lease, the City shall hold title to the Leased Property, including all additions which comprise fixtures, repairs, replacements or modifications thereto, subject to Permitted Encumbrances and subject to the provisions of Section 7.2.

Upon the termination of this Lease (other than under Section 8.2(b) hereof), all right, title and interest of the Corporation in and to the Leased Property shall be transferred to and vested in the City. Upon the payment in full of all Lease Payments allocable to the Leased Property, or upon the deposit by the City of security for such Lease Payments as provided in Section 9.1, all right, title and interest of the Corporation in and to the Leased Property shall be transferred to and vested in the City. The Corporation agrees to take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer of title.

SECTION 4.7. *Substitution and Release of Property*. The City may any time and from time to time, substitute and/or release all or a portion of the Leased Property (such former property, the "Released Property") from the Lease, with the prior written consent of the Assignee (which may not unreasonably be withheld) and upon satisfaction of all of the following requirements which are conditions precedent:

- (a) The City must certify to the Corporation and the Assignee that no Event of Default has occurred and is continuing;
- (b) The City must file with the Corporation and the Assignee, and cause to be recorded in the office of the Sonoma County Recorder an amendment to this Lease which deletes the Released Property from the description of the Leased Property; and
- (c) The City must file with the Corporation and the Assignee a written certificate of the City stating the City's determination that the estimated value of the real property which will remain leased under this Lease following such release is at least equal to the then-remaining principal payments due under this Lease.



Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Released Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Corporation and the City shall execute, deliver and cause to be recorded all documents required to discharge this Lease of record against the Released Property.

## **ARTICLE V**

### **MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS**

SECTION 5.1. *Maintenance, Utilities, Taxes and Assessments.* Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all improvement, repair and maintenance of the Leased Property shall be the responsibility of the City, and the City will pay for or otherwise arrange for the payment of all utility services supplied to the Leased Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Corporation agrees to provide only the Leased Property, as hereinbefore more specifically set forth. The City waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the City under the terms of this Lease.

The City will pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Corporation or the City affecting the Leased Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City is obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Corporation shall notify the City that, in its reasonable opinion, by nonpayment of any such items the interest of the Corporation in the Leased Property will be materially endangered or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event the City will promptly pay such taxes, assessments or charges or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation.

SECTION 5.2. *Modification of Leased Property.* The City has the right, at its own expense, to make additions, modifications and improvements to the Leased Property or any portion thereof. All additions, modifications and improvements to the Leased Property

will thereafter comprise part of the Leased Property and become subject to the provisions of this Lease. Such additions, modifications and improvements may not in any way damage the Leased Property, or cause the Leased Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Leased Property, upon completion of any additions, modifications and improvements made thereto under this Section, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements.

SECTION 5.3. *Public Liability and Property Damage Insurance.* The City shall maintain or cause to be maintained throughout the Term of this Lease a standard comprehensive general insurance policy or policies in protection of the Corporation, the City, the Assignee and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Leased Property. Such policy or policies must provide coverage in such liability limits and be subject to such deductibles as the City shall deem adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the proceeds of such liability insurance toward extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

SECTION 5.4. *Property Insurance.* The City will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, property insurance against loss or damage to all buildings situated on the Leased Property, in an amount at least equal to the replacement value of the insured buildings. Such insurance must, as nearly as practicable, cover loss or damage by all "special form" perils. Such insurance shall be subject to a deductible of not to exceed \$250,000. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the Net Proceeds of such insurance as provided in Section 6.1.

SECTION 5.5. *Rental Interruption Insurance.* The City will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Leased Property and the improvements situated thereon as a result of any of the hazards covered in the insurance required by Section 5.4, in an amount at least equal to the maximum Lease Payments coming due and payable during any future 24 month period. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the Net Proceeds of such insurance towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

SECTION 5.6. *Worker's Compensation Insurance.* If required by applicable California law, the City shall carry worker's compensation insurance covering all

employees on, in, near or about the Leased Property and, upon request, shall furnish to the Corporation certificates evidencing such coverage throughout the Term of this Lease.

SECTION 5.7. *Recordation Hereof; Title Insurance.* On or before the Closing Date, the City shall, at its expense, (a) cause this Lease, or a memorandum hereof or thereof in form and substance approved by Bond Counsel, to be recorded in the office of the Sonoma County Recorder with respect to the Leased Property, and (b) obtain a CLTA title insurance policy insuring the City's leasehold estate hereunder in the Leased Property, subject only to Permitted Encumbrances. The City will apply the Net Proceeds received under such title insurance policy to prepay the remaining Lease Payments under Section 9.3.

SECTION 5.8. *Insurance Net Proceeds; Form of Policies.* All insurance policies (or riders) required by this Article V shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State of California, and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least 10 days before the cancellation or revision becomes effective. Each insurance policy or rider required by this Article V must name the City and the Assignee as insured parties and the Assignee as loss payee and shall include a lender's loss payable endorsement for the benefit of the Assignee. Prior to the Closing Date, the City will deposit with the Assignee policies (and riders and endorsements, if applicable) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), the City will furnish to the Assignee evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V unless such insurance is no longer obtainable, in which event the City shall notify the Assignee of such fact.

SECTION 5.9. *Installation of City's Personal Property.* The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Leased Property. All such items shall remain the sole property of the City, in which the Corporation has no interest, and may be modified or removed by the City at any time. The City must repair and restore any and all damage to the Leased Property resulting from the installation, modification or removal of any such items. Nothing in this Lease prevents the City from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest may attach to any part of the Leased Property.

SECTION 5.10. *Liens.* The City will not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, other than as herein contemplated and except for such encumbrances as the City certifies in writing to the Corporation do not materially and adversely affect the leasehold estate in the Leased Property hereunder and for which the Assignee approves in writing, which approval may not be unreasonably withheld. Except as expressly provided in this Article V, the City will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any

time. The City will reimburse the Corporation for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

SECTION 5.11. *Advances.* If the City fails to perform any of its obligations under this Article V, the Corporation may take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as additional rental hereunder, with interest at the rate set forth in Section 4.4(c).

## ARTICLE VI

### DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1. *Application of Net Proceeds.* The Net Proceeds of any insurance award resulting from any damage to or destruction of the Leased Property by fire or other casualty, and the Net Proceeds of any taking of the Leased Property or any portion thereof in eminent domain proceedings, shall be paid to the Corporation to be applied as hereinafter set forth in this Section 6.1.

If the Leased Property is destroyed or damaged beyond repair at any time during the Term of this Lease, or if the Leased Property or any portion thereof is taken in eminent domain proceedings at any time during the Term of this Lease, the City shall as soon as practicable after such event, with the prior written consent of the Corporation, apply the Net Proceeds resulting therefrom either to: (a) repair the Leased Property to full use; (b) replace the Leased Property, at the City's sole cost and expense, with property of equal or greater value to the Leased Property immediately prior to the time of the such destruction or damage, such replacement Leased Property to be subject to the Corporation's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement; or (c) prepay the Lease Payments in accordance with Section 9.3. The City will notify the Corporation of which course of action it desires to take within 15 days after the occurrence of such destruction or damage. The Corporation may (but is not required to) in its own name or in the City's name execute and deliver proofs of claim, receive all such moneys, endorse checks and other instruments representing payment of such moneys, and adjust, litigate, compromise or release any claim against the issuer of any such policy, and the City hereby grants to the Corporation a power of attorney coupled with an interest to accomplish all or any of the foregoing. The Net Proceeds of all insurance payable with respect to the Leased Property shall be available to the City and shall be used to discharge the City's obligations under this Section.

SECTION 6.2. *Termination or Abatement Due to Eminent Domain.* If the Leased Property is taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease shall cease with respect thereto as of the day possession shall be so taken. If less than all of the Leased Property is taken permanently, or if the Leased Property is taken temporarily, under the power of eminent domain, (a) this Lease will continue in full force and effect with respect thereto and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (b) there will be a partial abatement of Lease

Payments allocated thereto, in an amount to be determined by the City with the prior written consent of the Corporation and the Assignee, such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property.

**SECTION 6.3. *Abatement Due to Damage or Destruction.*** The Lease Payments are subject to abatement during any period in which by reason of damage or destruction (other than by eminent domain which is hereinbefore provided for) there is substantial interference with the use and occupancy by the City of the Leased Property or any portion thereof. The amount of such abatement shall be determined by the City, with the prior written consent of the Corporation and the Assignee, such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portions of the Leased Property not damaged or destroyed. Such abatement will continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Lease will continue in full force and effect and the City waives any right to terminate this Lease by virtue of any such damage and destruction. Notwithstanding the foregoing, the Lease Payments are not subject to abatement under this Section 6.3 to the extent that the proceeds of hazard insurance or rental interruption insurance are available to pay Lease Payments which would otherwise be abated under this Section 6.3, it being hereby declared that such proceeds and amounts constitute a special fund for the payment of the Lease Payments.

## **ARTICLE VII**

### **OTHER COVENANTS OF THE CITY**

**SECTION 7.1. *Disclaimer of Warranties.*** THE CORPORATION MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE LEASED PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE CORPORATION IS NOT A MANUFACTURER OF ANY PORTION OF THE LEASED PROPERTY OR A DEALER THEREIN, THAT THE CITY LEASES THE LEASED PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event is the Corporation liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease for the existence, furnishing, functioning or use of the Leased Property by the City.

**SECTION 7.2. *Access to the Leased Property.*** The City agrees that the Corporation, and the Corporation's successors or assigns, has the right at all reasonable times to enter upon and to examine and inspect the Leased Property or any part thereof. The City further agrees that the Corporation, and the Corporation's successors or assigns shall have such rights of access to the Leased Property or any component thereof as may be reasonably necessary to cause the proper maintenance of the Leased Property if the City fails to perform its obligations hereunder. Neither the Corporation nor any of its assigns has any obligation to cause such proper maintenance.

SECTION 7.3. *Release and Indemnification Covenants.* The City hereby indemnifies the Corporation, the Assignee and their respective officers, agents, successors and assigns harmless from all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Leased Property by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease, (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Property, (d) any intentional misconduct or negligence of any sublessee of the City with respect to the Leased Property, (e) the acquisition, construction, improvement and equipping of the Leased Property, or (f) the clean-up of any hazardous materials or toxic wastes from the Leased Property, or the authorization of payment of the costs thereof. No indemnification is made under this Section or elsewhere in this Lease for willful misconduct or gross negligence under this Lease by the Corporation, the Assignee, or their respective officers, agents, employees, successors or assigns.

SECTION 7.4. *Assignment by the Corporation.* The Corporation's rights under this Lease, including the right to receive and enforce payment of the Lease Payments to be made by the City hereunder, have been assigned to the Assignee. The City hereby consents to such assignment. Whenever in this Lease any reference is made to the Corporation and such reference concerns rights which the Corporation has assigned to the Assignee, such reference shall be deemed to refer to the Assignee.

The Corporation and the Assignee may make additional assignments of their interests herein, but no such assignment will be effective as against the City unless and until the Corporation or the Assignee has filed with the City written notice thereof. The City shall pay all Lease Payments hereunder under the written direction of the Corporation or the assignee named in the most recent assignment or notice of assignment filed with the City. During the Term of this Lease, the City will keep a complete and accurate record of all such notices of assignment.

SECTION 7.5. *Assignment and Subleasing by the City.* This Lease may not be assigned by the City. The City may sublease the Leased Property, or any portion thereof, subject to all of the following conditions:

- (a) This Lease and the obligation of the City to make Lease Payments hereunder shall remain obligations of the City.
- (b) The City shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Corporation a true and complete copy of such sublease.
- (c) No such sublease by the City may cause the Leased Property to be used for a purpose other than as may be authorized under the provisions of the laws of the State of California.
- (d) The City shall furnish the Corporation with a written opinion of Bond Counsel stating that such sublease does not cause the interest components of the Lease Payments to become includable in gross

income for purposes of federal income taxation or to become subject to personal income taxation by the State of California.

SECTION 7.6. *Amendment of Lease Agreement.* This Lease may be amended by the City and the Corporation, but only with the prior written consent of the Corporation and Assignee (which may not unreasonably withhold its consent). Prior to the effective date of any such amendment, and as a condition precedent to the effectiveness thereof, the City at its expense shall obtain an opinion of Bond Counsel stating that such amendment will not adversely affect the exclusion from gross income of the interest component of the Lease Payments.

SECTION 7.7. *Tax Covenants.*

(a) Generally. The City will not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, the interest components of the Lease Payments to become includable in gross income for federal income tax purposes.

(b) Private Activity Bond Limitation. The City will ensure that the proceeds of the Lease Payments are not so used as to cause the City's obligations hereunder to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(c) Federal Guarantee Prohibition. The City will not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Lease Payments to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The City will not take, or permit or suffer to be taken, any action with respect to the proceeds of the Lease Payments which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Lease Payments to be "arbitrage bonds" within the meaning of Section 148(a) of the Tax Code.

(e) Small Issuer Exemption from Bank Nondeductibility Restriction. The City hereby designates this Lease for purposes of paragraph (3) of Section 265(b) of the Tax Code and represents that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Tax Code) from gross income for federal income tax purposes (excluding (i) private activity bonds, as defined in Section 141 of the Tax Code, except qualified 501(c)(3) bonds as defined in Section 145 of the Tax Code and (ii) current refunding obligations to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation), including this Lease, has been or will be issued by the City, including all subordinate entities of the City, during the calendar year 2021.

(f) Arbitrage Rebate. The City will take any and all actions necessary to assure compliance with Section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Lease Payments.

SECTION 7.8. *Annual Financial Statements.* The City shall cause its financial statements to be audited annually by an independent certified public accountant or firm of certified public accountants, and shall furnish a copy of such audited financial statements to the Assignee not more than 270 days after the close of each Fiscal Year.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

SECTION 8.1. *Events of Default Defined.* Any one or more of the following events constitutes an Event of Default hereunder:

- (a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in the preceding clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Corporation or the Assignee. However, if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30 day period, the Corporation and the Assignee shall not unreasonably withhold their consent to an extension of such time (for a period not to exceed 60 days) if corrective action is instituted by the City within such 30 day period and diligently pursued until the default is corrected.
- (c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

SECTION 8.2. *Remedies on Default.* Whenever any Event of Default has happened and is continuing, the Corporation may exercise any and all remedies available under law or granted under this Lease; *provided, however*, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof the Corporation may exercise any and all rights granted hereunder; *provided*, that no termination of this Lease shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Corporation may exercise any one or more of the following remedies:



- (a) Enforcement of Payments Without Termination. If the Corporation does not elect to terminate this Lease in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Corporation for any deficiency arising out of the re-leasing of the Leased Property, or, if the Corporation is unable to re-lease the Leased Property, then for the full amount of all Lease Payments to the end of the Term of this Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Corporation or any suit in unlawful detainer, or otherwise, brought by the Corporation for the purpose of effecting such re-entry or obtaining possession of the Leased Property or the exercise of any other remedy by the Corporation. The City hereby irrevocably appoints the Corporation as the agent and attorney-in-fact of the City to enter upon and re-lease the Leased Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Leased Property, to place such property in storage or other suitable place in the County of Sonoma for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Corporation from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Leased Property and the removal and storage of such property by the Corporation or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Lease constitute full and sufficient notice of the right of the Corporation to re-lease the Leased Property in the event of such re-entry without effecting a surrender of this Lease, and further agrees that no acts of the Corporation in effecting such re-leasing shall constitute a surrender or termination of this Lease irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Lease shall vest in the Corporation to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. The City agrees to surrender and quit possession of the Leased Property upon demand of the Corporation for the purpose of enabling the Leased Property to be re-let under this paragraph, and the City further waives the right to any rental obtained by the Corporation in excess of the Lease Payments and hereby conveys and releases such excess to the Corporation as compensation to the Corporation for its services in re-leasing the Leased Property.
- (b) Termination of Lease. If an Event of Default occurs and is continuing hereunder, the Corporation at its option may terminate this Lease and re-lease all or any portion of the Leased Property. If the Corporation terminates this Lease at its option and in the manner hereinafter

provided due to a default by the City (and notwithstanding any re-entry upon the Leased Property by the Corporation in any manner whatsoever or the re-leasing of the Leased Property), the City nevertheless agrees to pay to the Corporation all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Payments. Any surplus received by the Corporation from such re-leasing shall be applied by the Corporation to Lease Payments due under this Lease. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Corporation shall of itself operate to terminate this Lease, and no termination of this Lease on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Corporation shall have given written notice to the City of the election on the part of the Corporation to terminate this Lease. The City covenants and agrees that no surrender of the Leased Property, or of the remainder of the Term hereof or any termination of this Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Corporation by such written notice.

- (c) Proceedings at Law or In Equity. If an Event of Default occurs and continues hereunder, the Corporation may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

SECTION 8.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article VIII it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

SECTION 8.4. *Agreement to Pay Attorneys' Fees and Expenses.* If either party to this Lease defaults under any of the provisions hereof and the nondefaulting party should employ attorneys (including in-house legal counsel) or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys (including allocable costs and expenses of in-house legal counsel, if any) and such other expenses so incurred by the nondefaulting party.

SECTION 8.5. *No Additional Waiver Implied by One Waiver.* If any agreement contained in this Lease is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

SECTION 8.6. *Assignee to Exercise Rights.* Such rights and remedies as are given to the Corporation under this Article VIII have been assigned by the Corporation to the Assignee, to which assignment the City hereby consents. Such rights and remedies shall be exercised solely by the Assignee.

## ARTICLE IX

### PREPAYMENT OF LEASE PAYMENTS

SECTION 9.1. *Security Deposit.* Notwithstanding any other provision of this Lease, the City may on any date secure the payment of the Lease Payments in whole or in part by depositing with a fiduciary, in trust, an amount of cash which is either (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Appendix B, or (b) invested in whole in non-callable Federal Securities in an amount which is sufficient, in the opinion of an independent certified public accountant, together with interest to accrue thereon and together with any cash which is so deposited, to pay such Lease Payments when due under Section 4.4(a) or when due on any optional prepayment date under Section 9.2, as the City instructs at the time of said deposit. In the event of a security deposit under this Section with respect to all unpaid Lease Payments, (a) the Term of this Lease shall continue, (b) all obligations of the City under this Lease, and all security provided by this Lease for said obligations, shall thereupon cease and terminate, excepting only the obligation of the City to make, or cause to be made all of the Lease Payments from such security deposit, and (c) under Section 4.6, title to the Leased Property will vest in the City on the date of said deposit automatically and without further action by the City or the Corporation. Said security deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease.

SECTION 9.2. *Optional Prepayment.* The City may prepay the unpaid principal components of the Lease Payments, in whole but not in part, on any Lease Payment Date, at a prepayment price equal to the principal amount being prepaid, plus accrued interest thereon to the prepayment date, without premium.

The City shall give the Corporation and Assignee notice of its intention to exercise its option not less than 10 days in advance of the date of exercise.

SECTION 9.3. *Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain.* The City shall be obligated to prepay the unpaid principal components of the Lease Payments in whole or in part on any date, from and to the extent of any proceeds of insurance award or condemnation award with respect to the Leased Property to be used for such purpose under Section 6.1, without premium. The City and the Corporation hereby agree that such proceeds, to the extent remaining after payment of any delinquent Lease Payments, shall be credited towards the City's obligations under this Section 9.3.

**ARTICLE X**

**MISCELLANEOUS**

SECTION 10.1. *Notices.* Any notice, request, complaint, demand or other communication under this Lease shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below. Notice shall be effective either (a) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (b) in the case of personal delivery to any person, upon actual receipt. The Corporation, the City and the Assignee may, by written notice to the other parties, from time to time modify the address to which communications are to be given hereunder.

If to the City: City of Sebastopol  
P.O. Box 1776  
7120 Bodega Ave.  
Sebastopol, California 95472  
Attention: Finance Director

If to the Corporation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Assignee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION 10.2. *Binding Effect.* This Lease inures to the benefit of and is binding upon the Corporation, the City and their respective successors and assigns.

SECTION 10.3. *Severability.* If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

SECTION 10.4. *Net-net-net Lease.* This Lease is a “net-net-net lease” and the City hereby agrees that the Lease Payments are an absolute net return to the Corporation, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 10.5. *Further Assurances and Corrective Instruments.* The Corporation and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

SECTION 10.6. *Execution in Counterparts.* This Lease may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

SECTION 10.7. *Applicable Law.* This Lease is governed by and construed in accordance with the laws of the State of California.

SECTION 10.8. *Captions.* The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease.

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

**CITY OF SEBASTOPOL,**  
*as Lessor and Sublessee*

By \_\_\_\_\_  
Larry McLaughlin  
City Manager

Attest:

\_\_\_\_\_  
Mary Gourley  
City Clerk

**PUBLIC PROPERTY FINANCING  
CORPORATION OF CALIFORNIA,**  
*as Lessee and Sublessor*

By \_\_\_\_\_  
Bill Morton  
President

## **APPENDIX A**

### **DESCRIPTION OF THE LEASED PROPERTY**

The Leased Property consists of the following described land located in the City of Sebastopol, County of Sonoma, State of California, together with all buildings, facilities and other improvements which constitute real property and which are located thereon at any time during the Term of this Lease:

**APPENDIX B**

**SCHEDULE OF LEASE PAYMENTS**

<u>Lease Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Aggregate Lease Payment</u>
12/1/2021			
6/1/2022			
12/1/2022			
6/1/2023			
12/1/2023			
6/1/2024			
12/1/2024			
6/1/2025			
12/1/2025			
6/1/2026			
<b>TOTALS:</b>			

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## LOAN AGREEMENT

This LOAN AGREEMENT (this “Loan Agreement”), dated as of June 8, 2021, is between TRUIST BANK, a corporation duly organized and existing under the laws of the State of North Carolina (the “Lender”), as lender, and the CITY OF SEBASTOPOL, a general law city and municipal corporation duly organized and existing under the laws of the State of California (the “City”), as borrower.

### BACKGROUND:

1. The City owns and operates facilities and property in connection with the water supply services of the City (as further defined herein, the “Enterprise”).

2. In 2014, the City financed the construction of the water well 7 water treatment system for arsenic removal via entrance into an Installment Sale Agreement, dated as of September 1, 2014 (the “2014 Agreement”), with Municipal Finance Corporation, pursuant to which the City purchased the project via semi-annual payments payable from the net revenues of the Enterprise.

3. The City has determined that it is in its best interests at this time to refinance, in full, the 2014 Agreement and thereby realize interest rate savings, and in order to provide funds for that purpose, the City has determined to borrow funds from the Lender in the form of the Loan (as defined herein).

4. The City is authorized to borrow amounts for the purpose of refinancing the 2014 Agreement under the laws of the State of California, including the provisions of Articles 10 and 11 of Chapter 3, Part 1, Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code.

5. The repayment of the Loan will be payable from and secured by a pledge of, and payable from, the net revenues of the Enterprise as provided herein, on a parity with the pledge securing the 2015 Agreement (defined herein).

### AGREEMENT:

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

## ARTICLE I

### DEFINITIONS AND APPENDICES

SECTION 1.1. *Definitions.* All terms defined in this Section have the respective meanings herein specified for all purposes of this Loan Agreement. In addition, all terms defined in the recitals of this Loan Agreement and not otherwise defined in this Section shall have the respective meanings given such terms in the recitals hereof.



"2014 Agreement" has the meaning given it in the Recitals.

"2015 Agreement" means the Funding Agreement between the City and the California State Department of Public Health (Project Number 4910011-005P), executed and delivered in 2015.

"Additional Revenues" means, with respect to the issuance of any Parity Obligations, an allowance for Net Revenues arising from any increase in the charges made for service from the Enterprise which has become effective prior to the incurring of such Parity Obligations but which, during all or any part of the latest Fiscal Year or more recent period of 12 consecutive months, 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 such 12-month period, all as shown by the certificate or opinion of an independent certified public accountant selected by the City.

"Bond Counsel" means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income under Section 103 of the Tax Code.

"City" means the City of Sebastopol, a general law city and municipal corporation duly organized and existing under the laws of the State of California.

"Closing Date" means June 8, 2021, being the date of execution and delivery of this Loan Agreement by the parties hereto, as first set forth above.

"Determination of Taxability" means any action taken or omitted to be taken by the City that results in the interest components of the Loan Repayments becoming includable in the gross income of the Lender, with respect to which the Lender either (i) receives notice, in any form, from the Internal Revenue Service or (ii) reasonably determines, based on an opinion of counsel qualified in such matters that the interest components of the Loan Repayments are not excludable from the gross income of the recipient thereof.

"Enterprise" means the existing facilities and property owned by the City in connection with the water supply services of the City, together with all extensions thereof and improvements thereto hereafter acquired, constructed or installed by the City.

"Enterprise Fund" means the "Revenue Fund" which the City established pursuant to the 2014 Agreement and which the City will maintain pursuant to Section 3.6(a) for the receipt and deposit of Gross Revenues derived from the Enterprise.

"Event of Default" means any of the events of default as defined in Section 5.1.

"Federal Securities" means any direct general non-callable 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), or obligations the timely payment of principal of and interest on which are directly guaranteed by the United States of America.

“Fiscal Year” means the period of 12 months terminating on June 30 of any year, or any other annual period hereafter selected and designated by the City as its Fiscal Year in accordance with applicable law.

“Gross Revenues” means all gross charges received for, and all other gross income and receipts derived by the City from, the ownership and operation of the Enterprise, including but not limited to connection charges and earnings on the investment of any funds held by the City for the Enterprise; but excluding (a) the proceeds of any ad valorem property taxes levied for the purpose of paying bonded indebtedness of the City and (b) the proceeds of any special assessments or special taxes levied upon real property with any improvement district served by the City for the purpose of paying special assessment bonds or special tax obligations of the City and (c) any refundable deposits made to establish credit, and advances or contributions in aid of construction.

“Lender” means Truist Bank, a corporation organized and existing under the laws of the State of North Carolina, and its successors and assigns.

“Loan” means the loan which is made hereunder by the Lender to the City in the principal amount of \$ \_\_\_\_\_.

“Loan Agreement” means this Loan Agreement, as it may be amended in accordance with its terms.

“Loan Repayment Date” means June 1 and December 1 in each year, commencing December 1, 2021 and continuing to and including the date on which the Loan Repayments are paid in full.

“Loan Repayments” means all payments required to be paid by the City under Section 3.4, including any prepayment thereof under Sections 6.1 or 6.2.

“Maintenance and Operation Costs” means the reasonable and necessary costs paid by the City for maintaining and operating the Enterprise, including but not limited to all reasonable expenses of management and repair and all other costs and expenses necessary to maintain and preserve the Enterprise in good repair and working order, and including but not limited to all administrative costs of the City attributable to the Enterprise and the financing thereof, but in all cases excluding depreciation, replacement and obsolescence charges or reserves therefor and excluding amortization of intangibles or other bookkeeping entries of a similar nature (including non-cash pension-related charges).

“Maximum Annual Debt Service” means, as of the date of any calculation, the maximum sum obtained for the current or any future Fiscal Year during the Term by totaling the aggregate amount of (i) the Loan Repayments coming due in such Fiscal Year, and (ii) the principal and interest coming due and payable in such Fiscal Year on any Parity Obligations which are payable from the Net Revenues, including the principal amount coming due and payable by operation of mandatory sinking fund redemption. There shall be excluded from such calculation any principal of and interest on any obligations which have been defeased or discharged, or for the payment of which a security deposit has been posted.

“Net Revenues” means, for any period, an amount equal to all of the Gross Revenues received during such period, minus the amount required to pay all Maintenance and Operation Costs becoming payable during such period.

“Parity Obligations” means (a) the 2015 Agreement and (b) any bonds, notes or other obligations of the City payable from and secured by a pledge of and lien on the Net Revenues on a parity with the Loan Repayments.

“Taxable Date” means, with respect to any Determination of Taxability, the date on which the Lender either (i) receives notice, in any form, from the Internal Revenue Service or (ii) reasonably determines, based on an opinion of counsel qualified in such matters that the interest components of the Loan Repayments are not excludable from the gross income of the recipient thereof.

“Taxable Rate” means \_\_\_\_\_% per annum.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

“Term” means the time during which this Loan Agreement is in effect, as provided in Section 3.3.

SECTION 1.2. *Appendix*. The following Appendix is attached to, and by reference made a part of, this Loan Agreement:

APPENDIX A: The schedule of Loan Repayments to be paid by the City hereunder, showing the date and amount of each Loan Repayment.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

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

- (a) Due Organization and Existence. The City is a general law city and municipal corporation, duly organized and existing under the laws of the State of California.
- (b) Authorization. The laws of the State of California authorize the City to enter into this Loan Agreement, to enter into the transactions contemplated hereby, including but not limited to the refinancing of the 2014 Agreement, and to carry out its obligations hereunder, and the City Council of the City has duly authorized the execution and delivery of this Loan Agreement and the refinancing of the 2014 Agreement as provided herein.

- (c) No Violations. Neither the execution and delivery of this Loan Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, including but not limited to the 2014 Agreement or 2015 Agreement, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrances whatsoever upon any of the property or assets of the City, other than as set forth herein.
- (d) Prior Indebtedness. The City has not issued or incurred any obligations which are currently outstanding that are payable from the Gross Revenues or the Net Revenues on a priority basis with the payment of the Loan Repayments. Except for the 2014 Agreement (which will be paid and prepaid with the proceeds of the Loan) and the 2015 Agreement (which is payable from the Net Revenues on a parity basis), the City has not issued or incurred any obligations which are currently outstanding that are payable from the Gross Revenues or the Net Revenues on a parity basis with the payment of the Loan Repayments.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Loan Agreement, or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) 2014 Agreement. The principal and interest components of the 2014 Agreement have been paid in full as and when due as of the date hereof, and no event of default has occurred and is continuing under and as defined in the 2014 Agreement.

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

- (a) Due Organization and Existence. The Lender is a corporation duly organized and existing under the laws of its jurisdiction of formation; has power to enter into this Loan Agreement; is possessed of full power to make the Loan as provided herein; and has duly authorized the execution and delivery of this Loan Agreement.
- (b) Assignment. The Lender will not assign the Loan Repayments or its other rights under this Loan Agreement, except as provided under the terms of this Loan Agreement.

## ARTICLE III

### TERMS OF LOAN

SECTION 3.1. *Obligation to Make Loan; Amount of Loan.* The Lender hereby agrees to lend to the City, and the City hereby agrees to borrow from the Lender, the Loan in the principal amount of \$\_\_\_\_\_, under the terms and provisions set forth in this Loan Agreement. The Loan shall be made by the Lender to the City in immediately available funds on the Closing Date. The Loan shall be funded in a single installment, and shall be applied as set forth in Section 3.2.

SECTION 3.2. *Application of Loan Proceeds.* The Lender hereby agrees on the Closing Date to apply the proceeds of the Loan (being the amount of \$\_\_\_\_\_) as follows:

- (a) the Lender shall wire the amount of \$\_\_\_\_\_ to prepay, in full, amounts due to City National Bank with respect to the 2014 Agreement; and
- (b) the Lender shall wire the remaining amount of \$\_\_\_\_\_ in immediately available funds to the payment of costs of issuance related to the Loan, as such costs are detailed in a certificate of the City upon which the Corporation may conclusively rely.

SECTION 3.3. *Term.* The Term of this Loan Agreement commences on the Closing Date, and ends on the date on which the Loan is paid in full or provision for such payment is made as provided herein.

#### SECTION 3.4. *Loan Repayments.*

(a) Payment of Principal and Interest. Subject to the remainder of this Section, the City hereby agrees to repay the Loan in the aggregate principal amount of \$\_\_\_\_\_ together with interest (calculated at the rate of 2.09% on the basis of a 360-day year of twelve 30-day months) on the unpaid principal balance thereof. Such payments shall be made in the respective amounts and on the respective Loan Repayment Dates specified in Appendix A. In the event the City prepays the Loan in part, the Lender shall file an amended schedule with the City showing the amount of each Loan Repayment coming due thereafter.

(b) Prepayment. If the City prepays the Loan Repayments in full under Article VI, the City's obligations under this Loan Agreement shall thereupon cease and terminate, including but not limited to the City's obligation to pay Loan Repayments under this Section; subject however, to the provisions of Section 6.3 in the case of prepayment by application of a security deposit. If the City prepays the Loan in part but not in whole under Sections 6.1 or 6.2, the principal components of the remaining Loan Repayments shall be reduced on a pro rata basis (unless otherwise agreed by the parties).

(c) Default Rate. If an Event of Default shall occur and be continuing, the Loan Repayments shall bear interest at the rate of \_\_\_% per annum until such Event of Default

is cured or the Loan Repayments are paid in full under Section 5.2; provided, that such rate shall be \_\_\_% if, and for so long as, the Loan bears interest at the Taxable Rate.

(d) Taxable Rate. Upon the occurrence of a Determination of Taxability, the City shall pay to the Lender, within 30 days after the occurrence of such Determination of Taxability, the amount which, with respect to interest components of the Loan Repayments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest components of the Loan Repayments due and through the Taxable Date) that are imposed on the interest component of the Loan Repayments or the Lender as a result of the loss of the exclusion, will restore the Lender the same after-tax yield on the Loan that it would have realized had the exclusion not been lost. Additionally, the City agrees that commencing on the Taxable Date, interest shall accrue on the Loan at the Taxable Rate.

### SECTION 3.5. *Nature of the City's Obligations.*

(a) Special Obligation. The City's obligation to pay the Loan Repayments is a special obligation of the City limited solely to the Net Revenues of the Enterprise and certain amounts on deposit in the Enterprise Fund. Except as provided in subsection (b) of this Section, the City is not required to advance moneys derived from any source of income other than the Net Revenues and other sources specifically identified herein for the payment of the Loan Repayments, and no other funds or property of the City are liable for the payment of the Loan Repayments.

(b) Obligations Absolute. The obligation of the City to pay the Loan Repayments from the Net Revenues and the obligation of the City to perform and observe the other agreements contained herein, are absolute and unconditional and are not subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the City or the Lender of any obligation to the City or otherwise with respect to the Enterprise, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Lender. Until such time as all of the Loan Repayments have been fully paid or prepaid, the City:

- (i) will not suspend or discontinue payment of any Loan Repayments,
- (ii) will perform and observe all other agreements contained in this Loan Agreement, and
- (iii) will not terminate this Loan Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Enterprise, the sale of the Enterprise, the taking by eminent domain of title to or temporary use of any component of the Enterprise, commercial frustration of purpose, any change in the tax or other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Lender to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement.

SECTION 3.6. *Pledge and Application of Net Revenues and Enterprise Fund.*

(a) Establishment of Enterprise Fund. The City has previously established pursuant to the 2014 Agreement the "Enterprise Fund," which the City agrees to hold and maintain for the purposes and uses set forth herein during the Term of this Loan Agreement. The City shall deposit all Gross Revenues of the Enterprise in the Enterprise Fund promptly upon the receipt thereof, and from the Gross Revenues allocate sufficient amounts for the payment of Maintenance Operation Costs, as needed.

(b) Pledge. All of the Net Revenues on deposit in the Enterprise Fund are hereby irrevocably pledged to the punctual payment of the Loan Repayments and any Parity Obligations. The Net Revenues on deposit in the Enterprise Fund may not be used for any other purpose so long as the Loan Repayments remain unpaid; except that out of the Net Revenues there may be apportioned such sums, for such purposes, as are expressly permitted by this Section.

(c) Transfers to Make Loan Repayments. All Net Revenues will be held by the City in the Enterprise Fund in trust for the benefit of the Lender and the holder of any Parity Obligations and for the security of the Loan and any Parity Obligations. After accounting for Maintenance and Operation Costs coming due, the City shall withdraw from the Enterprise Fund and transfer to the Lender an amount of Net Revenues equal to the aggregate amount of the Loan Repayments and transfer to the appropriate payee thereof the debt service on any Parity Obligations when due and payable, on a parity basis among them.

(d) Other Uses Permitted. The City shall manage, conserve and apply the Net Revenues in such a manner that all deposits required to be made under the preceding provisions of this Section will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default has occurred and is continuing hereunder, the City may at any time and from time to time use and apply Net Revenues for (i) the acquisition and construction of improvements to the Enterprise, (ii) the prepayment of the Loan and any Parity Obligations, or (iii) any other lawful purpose of the City.

## ARTICLE IV

### COVENANTS OF CITY

SECTION 4.1. *Release and Indemnification Covenants.* To the extent permitted by law, the City shall indemnify the Lender and its officers, agents, successors and assigns harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of the following:

- (a) the use, maintenance, condition or management of, or from any work or thing done on or about the Enterprise by the City,
- (b) any breach or default on the part of the City in the performance of any of its obligations under this Loan Agreement,

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

No indemnification is made under this Section or elsewhere in this Loan Agreement for willful misconduct, gross negligence, or breach of duty under this Loan Agreement by the Lender, its officers, agents, employees, successors or assigns.

SECTION 4.2. *Sale or Eminent Domain of Enterprise.* Except as provided herein, the City covenants that the Enterprise will not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole if such encumbrance, sale, lease, pledge, charge or other disposition would materially impair the ability of the City to pay the Loan Repayments or any Parity Obligations, or would materially adversely affect its ability to comply with the terms of this Loan Agreement or the documents authorizing the issuance of any Parity Obligations. The City shall not enter into any agreement which impairs the operation of the Enterprise or any part of it necessary to secure adequate Net Revenues to pay the Loan Repayments or any Parity Obligations, or which otherwise would impair the rights of the Lender with respect to the Net Revenues. If any substantial part of the Enterprise is sold, the payment therefor must either (a) be used for the acquisition or construction of improvements and extensions or replacement facilities or (b) be applied to prepay outstanding obligations of the City relating to the Enterprise.

Any amounts received as awards as a result of the taking of all or any part of the Enterprise by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the City, shall either (a) be used for the acquisition or construction of improvements and extension of the Enterprise, or (b) be applied to prepay outstanding obligations of the City relating to the Enterprise.

SECTION 4.3. *Insurance.* The City shall at all times maintain with responsible insurers all such insurance on the Enterprise as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the Enterprise. If any useful part of the Enterprise is damaged or destroyed, such part shall be restored to usable condition. All amounts collected from insurance against accident to or destruction of any portion of the Enterprise shall be used to repair or rebuild such damaged or destroyed portion of the Enterprise, and to the extent not so applied, shall be applied on a pro rata basis to pay the Loan and any Parity Obligations in the manner provided in this Loan Agreement and in the documents authorizing such Parity Obligations. The City shall also maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the City and the Lender. Any insurance required to be maintained hereunder may be maintained by the City in the form of self-insurance or in the form of participation by the City in a program of pooled insurance.

SECTION 4.4. *Records and Accounts.* The City shall keep proper books of records and accounts of the Enterprise, separate from all other records and accounts, in which complete and correct entries are made of all transactions relating to the Enterprise. Said books shall, upon prior request, be subject to the reasonable inspection of the Lender.



The City shall cause the books and accounts of the Enterprise to be audited annually by an independent certified public accountant or firm of certified public accountants, not more than 270 days after the close of each Fiscal Year, and shall furnish a copy of such report to Lender. The audit of the accounts of the Enterprise may be included as part of a general City-wide audit.

The City shall cause to be published annually, not more than 270 days after the close of each Fiscal Year, a summary statement showing the amount of Gross Revenues and the disbursements from Gross Revenues and from other funds of the City in reasonable detail. The City shall furnish a copy of the statement and any other financial information relating to the City or the Enterprise, upon reasonable written request, to the Lender.

SECTION 4.5. *Rates and Charges.*

(a) Covenant Regarding Gross Revenues. The City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Enterprise during each Fiscal Year which are at least sufficient, after making allowances for contingencies and error in the estimates, to pay the following amounts in the following order:

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

(b) Covenant Regarding Net Revenues. In addition to the covenant set forth in the preceding clause (a) of this Section, the City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Enterprise during each Fiscal Year which are sufficient to yield Net Revenues which are at least equal to 120% of the Loan Repayments and any Parity Obligations which are payable from the Net Revenues, when and as the same come due and payable during such Fiscal Year.

SECTION 4.6. *No Priority for Additional Obligations.* The City may not issue or incur any bonds or other obligations having any priority in payment of principal or interest out of the Net Revenues over the Loan Repayments.

SECTION 4.7. *Issuance of Parity Obligations.* Except for obligations incurred to prepay or post a security deposit for the Loan in whole, the City may not issue or incur any Parity Obligations unless:

- (a) The City is not then in default under the terms of this Loan Agreement or the documents authorizing any Parity Obligations, and

- (b) The amount of such Net Revenues, calculated in accordance with sound accounting principles, as shown by the books of the City for the latest Fiscal Year or as shown by the books of the City for any more recent period of 12 consecutive months selected by the City, in either case verified by a certificate or opinion of an independent certified public accountant selected by the City, plus (at the option of the City) the Additional Revenues, are at least equal to 120% of the amount of Maximum Annual Debt Service; provided, however, that this subsection (b) does not apply to any issue of Parity Obligations the net proceeds of which are applied to refund this Loan Agreement or any Parity Obligations in whole or in part, so long as (i) the final maturity of such new Parity Obligation does not exceed the final maturity of the obligation being refunded, and (ii) the aggregate amount of debt service on such new Parity Obligation in each Fiscal Year does not exceed the amount of debt service which would otherwise come due and payable in such Fiscal Year on the obligation being refunded.

SECTION 4.8. *Assignment by the Lender.* The Lender has the right to make an assignment of all or a portion of its interests herein, without the prior consent of the City, to affiliates of the Lender or to banks, insurance companies or other financial institutions and other affiliates (including participation arrangements among such entities), but no such assignment will be effective as against the City unless and until the Lender files with the City written notice thereof. The City shall pay all Loan Repayments hereunder under the written direction of the Lender named in the most recent assignment or notice of assignment filed with the City. During the Term, the City shall keep a complete and accurate record of all such notices of assignment.

SECTION 4.9. *Assignment by City.* Neither the Loan nor this Loan Agreement may be assigned by the City, other than to a public agency which succeeds to the interests of the City in and to the Enterprise and which (by operation of law, by contract or otherwise) becomes legally bound to all of the terms and provisions hereof.

SECTION 4.10. *Amendment of this Loan Agreement.* This Loan Agreement may be amended by the City and the Lender by a written instrument evidencing such amendment.

SECTION 4.11. *Tax Covenants.*

(a) Generally. The City shall not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, the interest components of the Loan Repayments to become includable in gross income for federal income tax purposes.

(b) Private Activity Bond Limitation. The City shall assure that the proceeds of the Loan are not so used as to cause the Loan to satisfy the private business tests of section 141(b) of the Tax Code or the private loan financing test of section 141(c) of the Tax Code.

(c) Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Loan Repayments to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The City shall not take, or permit or suffer to be taken, any action with respect to the proceeds of the Loan Repayments which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Loan Repayments to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(e) Small Issuer Exemption from Bank Nondeductibility Restriction. The City hereby designates this Loan Agreement for purposes of paragraph (3) of Section 265(b) of the Tax Code and represents that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Tax Code) from gross income for federal income tax purposes (excluding (i) private activity bonds, as defined in Section 141 of the Tax Code, except qualified 501(c)(3) bonds as defined in Section 145 of the Tax Code and (ii) current refunding obligations to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation), including this Loan Agreement, has been or will be issued by the City, including all subordinate entities of the City, during the calendar year 2021.

(f) Arbitrage Rebate. The City shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Loan.

(g) Acquisition, Disposition and Valuation of Investments. Except as otherwise provided in the following sentence, the City covenants that all investments of amounts deposited in any fund or account created by or pursuant to this Loan Agreement, or otherwise containing gross proceeds of the Loan (within the meaning of Section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Loan Agreement or the Tax Code) at Fair Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code shall be valued at their present value (within the meaning of section 148 of the Tax Code).

For purposes of this subsection (g), the term “Fair Market Value” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Tax Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security – State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any

commingled investment fund in which the City and related parties do not own more than 10% beneficial interest therein if the return paid by the fund is without regard to the source of the investment.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

SECTION 5.1. *Events of Default Defined.* The following are Events of Default under this Loan Agreement:

- (a) Failure by the City to (i) pay any Loan Repayment or other payment required hereunder within 3 days after the date on which such Loan Repayment or other payment becomes due, or (ii) maintain insurance as provided in Section 4.3.
- (b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in the preceding clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Lender; *provided, however*, if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30-day period, the Lender may not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within such 30-day period and diligently pursued until the default is corrected.
- (c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.
- (d) The occurrence of any event of default under and as defined in any documents authorizing the issuance of any Parity Obligations that are issued and outstanding during the Term.

SECTION 5.2. *Remedies on Default.* Upon the occurrence and during the continuation of an Event of Default, the Lender may, at its option and without any further demand or notice:

- (a) declare all principal components of the unpaid Loan Repayments, together with accrued interest thereon from the immediately preceding Loan Repayment Date on which payment was made, to be

immediately due and payable, whereupon the same will immediately become due and payable; and

- (b) take whatever action at law or in equity may appear necessary or desirable to collect the Loan Repayments then due or thereafter to become due during the Term, or enforce performance and observance of any obligation, agreement or covenant of the City under this Loan Agreement.

The provisions of the preceding clause (a) are subject to the condition that if, at any time after the principal components of the unpaid Loan Repayments have been so declared due and payable under the preceding clause (a), and before any judgment or decree for the payment of the moneys due have been obtained or entered, the City deposits with the Lender a sum sufficient to pay all principal components of the Loan Repayments coming due prior to such declaration and all matured interest components (if any) of the Loan Repayments, with interest on such overdue principal and interest components calculated as set forth in Section 3.04(c), and a sum sufficient to pay all reasonable costs and expenses incurred by the Lender in the exercise of its rights and remedies hereunder, and any and all other defaults known to the Lender (other than in the payment of the principal and interest components of the Loan Repayments due and payable solely by reason of such declaration) have been made good, then, and in every such case, the Lender may, by written notice to the City, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

SECTION 5.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Lender is exclusive, and every such remedy is cumulative and in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default impairs any such right or power or operates as a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved to it in this Article V it is not necessary to give any notice, other than such notice as may be required in this Article V or by law.

SECTION 5.4. *Agreement to Pay Attorneys' Fees and Expenses.* If the City defaults under any of the provisions hereof and the Lender employs attorneys (including in-house counsel) or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the City herein contained, the City will on demand therefor pay to the Lender the reasonable fees of such attorneys (including those of in-house counsel) and such other expenses so incurred by the Lender.

SECTION 5.5. *No Additional Waiver Implied by One Waiver.* If any agreement contained in this Loan Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE VI

### PREPAYMENT OF LOAN

SECTION 6.1. *Optional Prepayment.* The City may prepay the unpaid principal components of the Loan, in whole but not in part, on any Loan Repayment Date on or after December 1, 2027, at a prepayment price equal to the principal amount being prepaid, plus accrued interest thereon to the prepayment date, without premium.

The City shall give the Lender notice of its intention to exercise its option not less than 10 days in advance of the date of exercise.

SECTION 6.2. *Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain.* The City shall prepay the unpaid principal balance of the Loan in whole on any date, or in part on any Loan Repayment Date, from and to the extent City determines to apply any proceeds of insurance award or condemnation award with respect to the Enterprise for such purpose under Sections 4.2 or 4.3 at a price equal to the principal amount to be prepaid, without premium. The City and the Lender hereby agree that such proceeds, to the extent remaining after payment of any delinquent Loan Repayments, shall be credited towards the City's obligations under this Section.

SECTION 6.3. *Security Deposit.* Notwithstanding any other provision of this Loan Agreement, the City may on any date secure the payment of Loan Repayments in whole (but not in part), by irrevocably depositing with a fiduciary an amount of cash which, together with other available amounts, is either:

- (a) sufficient to pay all such Loan Repayments, including the principal and interest components thereof, when due under Section 3.4(a), or
- (b) invested in whole or in part in Federal Securities in such amount as will, in the opinion of an independent certified public accountant, together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay all such Loan Repayments when due under Section 3.4(a) or, if such amounts are sufficient to prepay the Loan Repayments in full under Section 6.3, when due on any optional prepayment date under Section 6.1, as the City instructs at the time of the deposit.

In the event of a security deposit under this Section for the payment in full of all remaining Loan Repayments, the pledge of Net Revenues from the Enterprise and all other security provided by this Loan Agreement for said obligations, will cease and terminate, excepting only the obligation of the City to make, or cause to be made, all of Loan Repayments from such security deposit.

**ARTICLE VII**

**MISCELLANEOUS**

SECTION 7.1. *Notices.* Any notice, request, complaint, demand or other communication under this Loan Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (b) in the case of personal delivery to any person, upon actual receipt. The Lender or the City may, by written notice to the other party, from time to time modify the address to which communications are to be given hereunder.

*If to the City:* City of Sebastopol  
P.O. Box 1776  
7120 Bodega Ave.  
Sebastopol, California 95472  
Attention: Administrative Services Director

*If to the Lender:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION 7.2. *Binding Effect.* This Loan Agreement inures to the benefit of and is binding upon the Lender and the City and their respective successors and assigns.

SECTION 7.3. *Severability.* If any provision of this Loan Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

SECTION 7.4. *Net-net-net Contract.* This Loan Agreement is a “net-net-net” contract, and the City hereby agrees that the Loan Repayments are an absolute net return to the Lender, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 7.5. *Further Assurances and Corrective Instruments.* The Lender and the City shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Loan Agreement.

SECTION 7.6. *Execution in Counterparts.* This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 7.7. *Applicable Law.* This Loan Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 7.8. *Captions.* The captions or headings in this Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Loan Agreement.

IN WITNESS WHEREOF, the Lender has caused this Loan Agreement to be executed in its corporate name by its duly authorized officer and the City has caused this Loan Agreement to be executed in its name by its duly authorized officer, as of the date first above written.

**TRUIST BANK,**  
*as Lender*

By \_\_\_\_\_  
William B. DaSilva  
Vice President

**CITY OF SEBASTOPOL**

By \_\_\_\_\_  
Larry McLaughlin  
City Manager

Attest:

\_\_\_\_\_  
Mary Gourley  
City Clerk



**APPENDIX A**

**SCHEDULE OF LOAN REPAYMENTS**

<b>Loan Repayment Date</b>	<b>Loan Principal</b>	<b>Loan Interest</b>	<b>Total Loan Repayment</b>
12/1/2021			
6/1/2022			
12/1/2022			
6/1/2023			
12/1/2023			
6/1/2024			
12/1/2024			
6/1/2025			
12/1/2025			
6/1/2026			
12/1/2026			
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12/1/2033			
6/1/2034			
12/1/2034			
<b>TOTALS:</b>			