

**Council Meeting: October 30, 2007**

SUBJECT: Issuance of SMaRT Station® Revenue Bonds in the Amount of \$8.3 Million to Supplement the Funding for the Replacement of Materials Recovery Equipment at the SMaRT Station

REPORT IN BRIEF

Staff is recommending that the City Council adopt a resolution which authorizes, including all official documents and actions, the issuance of Sunnyvale Financing Authority SMaRT Station Revenue Bonds (the “2007 Bonds”) in an amount not to exceed \$8.3 million to supplement the funding for the replacement of materials recovery facility equipment at the SMaRT Station.

It is further recommended that financing be obtained through the issuance of traditional fixed rate bonds placed directly with a bank or other financial institution selected through a competitive bid process. The 2007 Bonds would be repaid over a period not to exceed fourteen years, terminating in 2021 to match the term of the SMaRT Station Second Memorandum of Understanding (the “MOU”). The 2007 Bonds will be authorized at an interest rate that will not exceed 5.25%. It is estimated, based on current market conditions, that the 2007 Bonds will be issued at an interest rate of approximately 4.3%.

BACKGROUND

On July 24, 2007, the City Council awarded a contract to Monterey Mechanical Company in an amount not to exceed \$14,297,580 for the replacement of the SMaRT Station Materials Recovery Facility (MRF) processing system equipment (the “Project”) (RTC #07-199). The total project budget, including the construction contract, engineering, oversight, and contingency, is \$14,661,768. As part of its action on July 24, 2007, Council authorized staff to proceed with the issuance of debt to provide funding for the balance of the project if needed.

EXISTING POLICY

Fiscal Policies: 7.1I.: Enterprise Fund Policies

Policy 7.1I.1b.1: Capital improvements associated with the existing infrastructure of a utility should be primarily funded from two sources: rate revenue and debt financing.

Policy 7.11.1b.5: Bonded debt financing should be used for capital improvements as appropriate to:

- Make cost recovery of an asset more consistent with its useful life
- Equitably assign cost over multiple generations of customers who use the assets
- Smooth near-term rate impacts of the project

DISCUSSION

The total project cost is \$14,661,768. Currently, \$5,175,000 in cash is available in the FY 2007/2008 SMaRT Station Capital Equipment Replacement Fund. The total supplemental funding needed for completion of the project is \$9,486,768.

The three cities that participate in the SMaRT Station, have agreed to divide the remaining construction cost on the same basis as identified for the original construction costs for the SMaRT Station defined by the MOU. Under this structure, Mountain View is responsible for 23.45% of the share, Palo Alto 21.27%, and Sunnyvale 55.28%. The City of Mountain View has elected to pay its portion of \$2,224,647 in cash. The Cities of Sunnyvale and Palo Alto have decided to finance their portions using debt. Sunnyvale's share is \$5,244,285 and Palo Alto's share is \$2,017,836, equal to an aggregate amount of \$7,262,121.

Proposed Financing Approach

This transaction has several complicating issues. The transaction is relatively small in size, the credit reflects the involvement of another agency (Palo Alto), and tax-exempt bonds issued for the Project will be subject to alternative minimum tax ("AMT").

Financing will be structured through bonds using a similar credit structure used for the 2003 refunding transaction (the "2003 Bonds"). The Sunnyvale Financing Authority will issue the 2007 Bonds on parity with the 2003 Bonds under a supplemental trust indenture. The City will then pay the Authority the debt service on the bonds under an Installment Sale Agreement between the City and the Authority.

Under this approach, the 2007 Bonds will represent a composite credit in which the City of Sunnyvale's share of debt service will be payable from Sunnyvale solid waste revenues and the City of Palo Alto's share will be payable as an obligation under the SMaRT Station MOU.

Staff evaluated two basic approaches to the debt financing for the Project: the issuance of fixed rate bonds that are publicly offered and fixed rate bonds that are directly placed with a bank or other financial institution. Given the relatively small size of the 2007 Bonds and other complicating features, staff is

recommending that the 2007 Bonds be directly placed with a bank after the completion of a competitive process.

This approach is cost-effective under the circumstances in that the issuance costs are minimized as there is no need for an official statement, underwriter, bond ratings and bond insurance. Furthermore, interest rates on a private placement have been competitive with the public market, allowing for a lower all-in total interest cost of the transaction.

Staff is recommending that the bank be selected through a competitive process with selection to be based on the proposed interest rate and any additional costs required by the bank. The bank may agree to lock in the rate for a period of time or it may propose a formula by which a rate can be set (and verified) at the time of pricing.

The proposed 2007 Bond issue is a particularly attractive direct placement candidate as the credit is already established with solid underlying ratings (A1/A+), the participating cities have strong credibility in the marketplace and the final maturity (2021) is relatively short.

The direct placement option can be implemented in a much shorter time frame than a publicly offered bond issue. Once the bank is selected, the entire transaction will take approximately two to four weeks. By contrast, a publicly offered transaction typically requires approximately 2 ½ to 3 months. The primary time saver comes from not having to prepare an official statement which, in the case of the 2007 Bonds, would entail considerable disclosure as both the Cities of Sunnyvale and Palo Alto are involved. Moreover, there would be no need to prepare rating presentations, pre-marketing and the usual two-week period between sale and closing.

Documents to be Approved by the City *Resolution*

Staff is recommending that the City Council adopt a resolution which authorizes the issuance of Sunnyvale Financing Authority SMaRT Station Revenue Bonds and approves an Installment Sale Agreement with the Authority.

Installment Sale Agreement

The Installment Sale Agreement details the obligations between the City of Sunnyvale and the Sunnyvale Financing Authority for payment of and security for the debt (revenues from the City's solid waste system and payments to be received from Palo Alto). This Agreement also includes financial covenants, detailed definitions, and other miscellaneous provisions.

The attached Installment Sale Agreement is in its substantially final form, with only final details needing completion. Staff is requesting the Council approve

this document in this form, with the understanding that if the sale exceeds the caps set in this action, staff will return to the Council for approval.

Additional documents to be entered into by the Sunnyvale Financing Authority will be the subject of a separate action.

Contracts

Under the City Manager's award authority, staff has contracted with the law firm of Jones Hall to serve as Bond Counsel in an amount not to exceed \$35,000 plus expenses. The Bond Counsel is responsible for drafting legal documents ensuring that the bonds are issued in compliance with all applicable state and federal laws. The Bond Counsel also delivers an opinion that the 2007 Bonds are legally issued under California law, and that the interest paid on the 2007 Bonds is exempt from Federal income tax under the Federal tax code. Jones Hall is a leading bond counsel firm in the State serving local governments throughout California. The firm has served as bond counsel on the 2003 Solid Waste Revenue Bonds, the 2001 Water and Wastewater Bonds, the City's Variable Rate Certificates of Participation for the Government Center Site Acquisition Project, and the Mello-Roos financing for the Downtown Parking Project.

Additionally, a contract in an amount not to exceed \$40,000 plus expenses has been awarded under the City Manager's award authority to Ross Financial to serve as Financial Advisor for the proposed 2007 Bonds. The Financial Advisor is responsible for developing the bond structure, running cash flow analyses, and overseeing the bond pricing and confirming its fairness. Ross Financial is a San Francisco based financial advisory firm that is focused solely on municipal bonds. Its principal, Peter Ross, has more than twenty-five years experience in the municipal bond market, having served in the capacities of bond counsel, underwriter and financial advisor over the course of his career. Ross Financial served as Financial Advisor in connection with the City's 2001 Water and Wastewater Revenue Bonds and the 2003 Bonds. In addition, the firm performs work for many prominent municipalities in California, including the Cities of San Jose, San Francisco, and Burbank as well as the Santa Clara Valley Transportation Authority, SamTrans and Peninsula Corridor Joint Powers Board.

TEFRA Hearing

Under Federal tax law, the 2007 Bonds are considered tax exempt "private activity bonds." The 1982 Federal Tax Equity and Fiscal Responsibility Act requires that one of the conditions of issuance of the 2007 Bonds is a notice to be published 14 days prior to a public hearing on the issue. Notice of the TEFRA hearing was published in the San Jose Mercury News on October 15.

FISCAL IMPACT

In the current market, the direct placement approach offers interest rates that are competitive with publicly offered debt but with significantly lower transaction costs. The City can implement the direct placement approach without the need for ratings, bond insurance, an underwriter, disclosure counsel or an official statement. Additionally, as there is no disclosure work, expenses for the Financial Advisor are also less. The following table compares the estimated issuance costs associated with a publicly offered bond issue \$8.3 and one that is directly placed:

| Item | Public Offering | Direct Placement | Savings |
|--------------------|-----------------|------------------|------------------|
| Bond insurance | \$55,000 | -- | \$55,000 |
| Underwriter | 40,000 | -- | 40,000 |
| Rating Agencies | 20,000 | -- | 20,000 |
| Financial Advisor | 55,000 | 40,000 | 15,000 |
| Bond Counsel | 40,000 | 35,000 | 5,000 |
| Disclosure Counsel | 30,000 | -- | 30,000 |
| Printer | 2,500 | -- | 2,500 |
| Trustee/Counsel | 3,000 | 3,000 | 0 |
| Miscellaneous | 5,000 | 2,000 | 3,000 |
| Total | 250,500 | \$80,000 | \$170,500 |

The Bank may charge a fee for its counsel which should not run more than \$15,000-\$20,000. These fees will be paid from bond proceeds. Beyond that, there should be no additional costs.

The estimated financial impacts of the debt service for the Project were reflected in the long-term financial plans for the Solid Waste and SMaRT Station funds as well as in the Adopted Budget and solid waste rates for Fiscal Year 2007/08 and were reviewed at the May 24, 2007 Budget Workshop. Additionally, the impacts were discussed in the Report to Council on utility rate adjustments.

PUBLIC CONTACT

Public contact was made through posting of the City Council agenda on the City’s official notice bulletin board, posting of the agenda and report on the City web page. This report is also available at the Sunnyvale Public Library and the City Clerk’s Office.

In addition, notice of the public hearing in connection with the Project and the 2007 Bonds was published in the San Jose Mercury News on October 15, 2007.

The partner cities, Mountain View and Palo Alto, have been part of the project process and their respective councils concur with the recommendation to proceed with the project and have agreed to pay their share of the project cost as detailed in this report.

ALTERNATIVES

1. Adopt the resolution approving:
 - The issuance and sale of Sunnyvale Financing Authority 2007 Solid Waste Revenue Bonds through the direct placement with a bank after a competitive process, with a principal amount not to exceed \$8,300,000 (including \$100,000 in issuance costs) , a maturity not to exceed 14 years, and an interest rate not to exceed 5.25%.
 - The Installment Sale Agreement between the City of Sunnyvale and the Sunnyvale Financing Authority.
2. Do not adopt the resolution and direct staff to return with an alternative proposal to do a traditional public offering.

RECOMMENDATION

Staff recommends Alternative 1: Adopt the resolution approving:

- The issuance and sale of Sunnyvale Financing Authority 2007 Solid Waste Revenue Bonds through the direct placement with a bank after a competitive process, with a principal amount not to exceed \$8,300,000 (including \$100,000 in issuance costs), a maturity not to exceed 14 years, and an interest rate not to exceed 5.25%.
- The Installment Sale Agreement between the City of Sunnyvale and the Sunnyvale Financing Authority.

Reviewed by:

Mary J. Bradley Director of Finance

Prepared by: Timothy J. Kirby, Revenue Systems Supervisor

Approved by:

Amy Chan
City Manager

ATTACHMENTS

1. Resolution Authorizing Documents and Official Actions Relating to the Installment Sale Financing of Certain Improvements to the SMaRT Station, and Related Matters.
2. Draft Installment Sale Agreement

CITY OF SUNNYVALE, CALIFORNIA

RESOLUTION NO. ____

**A RESOLUTION AUTHORIZING DOCUMENTS AND OFFICIAL ACTIONS
RELATING TO THE INSTALLMENT SALE FINANCING OF CERTAIN
IMPROVEMENTS TO THE SMaRT STATION, AND RELATED MATTERS**

RESOLVED, by the City Council of the City of Sunnyvale, California (the "City"), as follows:

WHEREAS, the City entered into a Second Memorandum of Understanding Among the Cities of Mountain View, Palo Alto and Sunnyvale Relating to the Construction and Operation of a Materials Recovery and Transfer Station and the Long Term Disposal of Municipal Solid Waste at Kirby Canyon, dated as of June 9, 1992 (the "Memorandum of Understanding"); and

WHEREAS, the Memorandum of Understanding sets forth the contractual rights and obligations of each of the parties to the Memorandum of Understanding for the financing, construction and operation of Sunnyvale Materials Recovery and Transfer Station (the "SMaRT® Station"); and

WHEREAS, the City of Mountain View and City of Palo Alto are referred to herein individually, as a "Participant, and collectively, as the "Participants; and

WHEREAS, the SMaRT Station serves as the transfer station for solid waste generated with the jurisdictions of the City and the Participants; and

WHEREAS, under the Memorandum of Understanding, the City assumed responsibility for the construction, ownership and operation of the SMaRT Station; and

WHEREAS, the City issued its Solid Waste Revenue Refunding Bonds, Series 2003 in the principal amount of \$20,575,000 (the "2003 Bonds") under an Indenture of Trust, dated as of January 1, 2003, between U.S. Bank National Association (the "Trustee") and the City (the "2003 Indenture"); and

WHEREAS, the City has determined that it is necessary to finance the costs of replacing materials recovery facility equipment at the SMaRT Station (the "Improvements"); and

WHEREAS, the City of Mountain View has determined to pay cash for its proportional share of the Improvements, and the City and the City of Palo Alto ("Palo Alto") have determined to finance their proportionate shares of the Improvements (such financed portion of the Improvements beings referred to herein as the "2007 Project"); and

WHEREAS, the 2003 Bonds were issued by the City to refund solid waste revenue bonds issued by the Authority on December __, 1992, the proceeds of which were used to acquire and construct the SMaRT Station; and

WHEREAS, the Sunnyvale Financing Authority (the "Authority") has been formed for the purpose of assisting the City in the financing of public capital improvements, and in order to finance the construction of the 2007 Project the Authority proposes to issue its Solid Waste Revenue Bonds, Series 2007, in the maximum principal amount of \$8,300,000 (the "Series 2007 Bonds") under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law"); and

WHEREAS, the Series 2007 Bonds will be issued under an Indenture of Trust, dated as of November 1, 2007, between the "Trustee and the Authority (the "2007 Indenture"); and

WHEREAS, in order to provide revenues which are sufficient to pay debt service on the Series 2007 Bonds, the Authority proposes to sell the 2007 Project to the City under an Installment Sale Agreement, dated as of November 1, 2007, between the City and the Authority (the "Installment Sale Agreement") for a purchase price to be paid by the City in semiannual installments during the term of the Series 2007 Bonds; and

WHEREAS, the obligations of the City under the Installment Sale Agreement will be payable exclusively from the revenues of the Solid Waste System (as defined in the Installment Sale Agreement), including payments to be made by the City of Palo Alto ("Participant Revenues") pursuant to the Second Memorandum of Understanding, on a parity with the obligations of the City under the 2003 Indenture; and

WHEREAS, the City Council has conducted a noticed public hearing on the issuance of the Bonds, as required by Section 147(f) of the Internal Revenue Code of 1986, as amended; and

NOW, THEREFORE, it is hereby ORDERED and DETERMINED, as follows:

Section 1. Approval of Financing Plan; Authorization of Series 2007 Bonds. The City Council hereby approves the financing plan described in the recitals of this Resolution. To that end, the City Council hereby approves the issuance of the Series 2007 Bonds by the Authority under the Bond Law and the 2007 Indenture in the maximum principal amount of \$8,300,000 for the purpose of providing funds to finance the 2007 Project.

Section 2. Approval of Installment Sale Agreement. The City Council hereby approves the Installment Sale Agreement, under which the Authority agrees to sell the completed 2007 Project to the City for a purchase price to be paid in semiannual installment payments. As provided in the Installment Sale Agreement, the installment payments thereunder shall be payable from and secured by a pledge of and lien on the Pledged Revenues of the Solid Waste System on a basis which is on a parity with the obligations of the City under the 2003 Indenture.

The Installment Sale Agreement is hereby approved in substantially the form on file with the City Clerk, together with any changes therein or additions thereto deemed advisable

by City Manager or the Finance Director. The City Manager and Director of Finance are hereby separately authorized and directed for and in the name and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest and affix the seal of the City to, the final form of each of the Installment Sale Agreement, and such execution shall be conclusive evidence of the approval of the final form thereof.

Section 3. Purposes. The Series 2007 Bonds are proposed to be issued to finance the costs of the 2007 Project, the funding of a reserve fund for the Series 2007 Bonds and the payment of costs of issuance incurred in connection with the issuance of the Series 2007 Bonds.

Section 4. Sale of Series 2007 Bonds. The Bond Purchase Contract, between the Authority and a purchaser to be selected through a competitive process to be conducted by Ross Financial, the City's financial advisor (the "Purchaser"), in substantially the form on file with the City Clerk and made a part hereof as though set forth in full herein, is hereby approved by the City Council; subject to the requirement that the purchase price of the Series 2007 Bonds may not be less than par, the interest rate borne by the Series 2007 Bonds may not exceed five and a quarter percent (5 & ¼%), and the principal amount of the Series 2007 Bonds shall not exceed \$8,300,000. The City Council hereby approves the negotiated sale of the Series 2007 Bonds to the Purchaser pursuant to such Bond Purchase Contract.

Section 5. Further Authority. The officers of this City are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 6. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

I, the undersigned City Clerk of the City of Sunnyvale, hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted by the City Council of the City at a meeting thereof on the 30th day of October, 2007, by the following vote of the members thereof:

AYES, and in favor thereof: Council Members

NOES: Council Members

ABSENT: Council Members

City Clerk

INSTALLMENT SALE AGREEMENT

Dated as of November 1, 2007

between the

SUNNYVALE FINANCING AUTHORITY,
as Seller

and the

CITY OF SUNNYVALE,
as Purchaser

Relating to
[\$Principal Amount]
Sunnyvale Financing Authority
Solid Waste Revenue Bonds, Series 2007

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INSTALLMENT SALE AGREEMENT

This INSTALLMENT SALE AGREEMENT (this "Agreement"), dated as of November 1, 2007, is between the SUNNYVALE FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority"), as seller, and the CITY OF SUNNYVALE, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), as purchaser.

B A C K G R O U N D :

1. The City entered into a Second Memorandum of Understanding Among the Cities of Mountain View, Palo Alto and Sunnyvale Relating to the Construction and Operation of a Materials Recovery and Transfer Station and the Long Term Disposal of Municipal Solid Waste at Kirby Canyon, dated as of June 9, 1992 (the "Memorandum of Understanding").

2. The Memorandum of Understanding sets forth the contractual rights and obligations of each of the parties to the Memorandum of Understanding for the financing, construction and operation of Sunnyvale Materials Recovery and Transfer Station (the "SMaRT® Station").

3. The City of Mountain View and the City of Palo Alto ("Palo Alto") are referred to herein collectively as the "Participants".

4. The SMaRT Station serves as the transfer station for solid waste generated with the jurisdictions of the City and the Participants.

5. Under the Memorandum of Understanding, the City assumed responsibility for the construction, ownership and operation of the SMaRT Station.

6. The City issued its Solid Waste Revenue Refunding Bonds, Series 2003 in the principal amount of \$20,575,000 (the "2003 Bonds") under an Indenture of Trust, dated as of January 1, 2003, between U.S. Bank National Association (the "Trustee") and the City (the "2003 Indenture").

7. The City has determined that it is necessary to finance the costs of replacing materials recovery facility equipment at the SMaRT Station (the "Improvements").

8. The City of Mountain View has determined to pay cash for its proportional share of the Improvements, and the City and the City of Palo Alto ("Palo Alto") have determined to finance their proportionate shares of the Improvements (such financed portion of the Improvements beings referred to herein as the "2007 Project").

9. The 2003 Bonds were issued by the City to refund solid waste revenue bonds issued by the Authority on December __, 1992, the proceeds of which were used to acquire and construct the SMaRT Station.

10. The Authority has been formed for the purpose of assisting the City in the financing of public capital improvements, and in order to provide financing for the 2007 Project the Authority and the City have entered into this Installment Sale Agreement, under which the Authority will acquire, construct and improve the 2007 Project and sell the completed 2007 Project to the City in consideration of the agreement by the City to pay the purchase price thereof in semiannual installment payments.

11. For the purpose of obtaining funds to finance the 2007 Project in accordance with the terms hereof and of the Indenture of Trust, dated as of November 1, 2007, between U.S. Bank National Association (the "Trustee") and the Authority (the "Indenture"), the Authority has authorized the issuance of its Sunnyvale Financing Authority Solid Waste Revenue Bonds, Series 2007 in the aggregate principal amount of \$[Principal Amount] (the "Bonds") under the Indenture and under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law").

12. The obligations of the City under this Installment Sale Agreement will be payable exclusively from the revenues of the Solid Waste System (as defined herein), and payments to be made by the City of Palo Alto ("Participant Revenue") pursuant to the certain Second Memorandum of Understanding, on a parity with the obligations of the City under the 2003 Indenture.

A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Authority formally agree as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement have the respective meanings given such terms in this Section 1.1. Capitalized terms in this Agreement and not otherwise defined in this Section 1.1 have the respective meanings given them in Appendix A to the Indenture.

"Additional Payments" means the amounts payable by the City under Section 4.8.

"Average Annual Debt Service" means the total aggregate Debt Service for the entire period during which the Bonds are Outstanding divided by the number of Fiscal Years or portions thereof during which the Bonds are Outstanding.

"Bonds" means the 2003 Bonds, this Installment Sale Agreement and any Parity Bonds issued hereafter.

“Charges” means fees, tolls, assessments, rates and charges prescribed by the Council for the services and facilities of the Solid Waste System furnished by the City to the residents of the City, and industrial and commercial entities located within the City.

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

“Debt Service” means, during any period of computation, the amount obtained for such period by totaling the following amounts:

(a) The principal amount of all Outstanding Serial Bonds payable by their terms in such period;

(b) The principal amount of all Outstanding Term Bonds scheduled to be paid or redeemed by operation of mandatory Sinking Fund Installments in such period; and

(c) The interest which would be due during such period on the aggregate principal amount of Bonds which would be Outstanding in such period if the Bonds are paid or redeemed as scheduled.

“Event of Default” means any of the events specified in Section 6.1.

“Gross Revenues” means, for any period of computation, all gross charges received for, and all other gross income and revenues derived by the City from, the ownership or operation of the Solid Waste System or otherwise arising from the Solid Waste System during such period, including but not limited to (a) all Charges received by the City for use of the Solid Waste System, and (b) all receipts derived from the investment of the Solid Waste Management Fund held by the City. In addition, for purposes of calculating Gross Revenues, (a) to the extent that the City appropriates funds into a rate stabilization reserve account for the Solid Waste System, a deduction will be made from Gross Revenues in the Fiscal Year during which the transfer occurred, and (b) to the extent that the City appropriates funds from a rate stabilization reserve account for the Solid Waste System into the Solid Waste Fund, the City may count the funds so transferred as Gross Revenues in the Fiscal Year in which the transfer occurs.

“Independent Accountant” means any certified public accountant or firm of certified public accountants appointed and paid by the Authority or the City, and who, or each of whom-

(a) is in fact independent and not under domination of the Authority or the City;

(b) does not have any substantial interest, direct or indirect, in the Authority or the City;
and

(c) is not connected with the Authority or the City as an officer or employee of the Authority or the City but who may be regularly retained to make annual or other audits of the books of or reports to the Authority or the City.

“Independent Consultant” means any financial or engineering consultant (including without limitation any Independent Certified Public Accountant) with an established reputation in the field of municipal finance or firm of such consultants appointed and paid by the City, and who, or each of whom-

(a) is in fact independent and not under domination of the City;

(b) does not have any substantial identity of interest, direct or indirect, with the City;
and

(c) is not and no member of which is connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or other audits of the books of or reports to the City.

“Installment Payment Date” means, with respect to any Interest Payment Date, the 5th Business Day immediately preceding such Interest Payment Date.

“Interest Requirement” means, as of any particular date of calculation, the amount equal to any unpaid interest then due and payable, plus an amount which will on the next succeeding Interest Payment Date be equal to the interest to become due and payable on the Bonds on such next succeeding Interest Payment Date.

“Maintenance and Operation Costs” means the reasonable and necessary costs spent or incurred by the City for maintaining and operating the Solid Waste System or the SMaRT Station, as the case may be, calculated in accordance with sound accounting principles, and all reasonable and necessary expenses of management and repair and other expenses to maintain and preserve the Solid Waste System and the SMaRT Station in good repair and working order, and including all reasonable and necessary administrative costs of the City attributable to the Solid Waste System and the SMaRT Station and the Bonds, such as salaries and wages and the necessary contribution to retirement of employees, overhead, insurance, taxes (if any), expenses, compensation and indemnification of the Trustee, and fees of auditors, accountants, attorneys or engineers, and including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of the Bonds or this Indenture, but excluding depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature.

“Maximum Annual Debt Service” means, as of the date of calculation, the maximum amount of Debt Service for the current or any future Fiscal Year.

“Memorandum of Understanding” means that certain Second Memorandum of Understanding Among the Cities of Mountain View, Palo Alto and Sunnyvale Relating to the Construction and Operation of a Materials Recovery and Transfer Station and the Long Term Disposal of Municipal Solid Waste at Kirby Canyon, dated as of June 9, 1992, as amended from time to time in accordance with its terms.

"Net Revenues" means, with respect to the Solid Waste System, for any period of computation, the amount of the Gross Revenues received from the Solid Waste System during such period, less the amount of Maintenance and Operation Costs of the Solid Waste System becoming payable during such period.

"Parity Bonds" means all bonds, notes or other obligations (including without limitation long-term contracts, loans, sub-leases or other legal financing arrangements) of the City payable from and secured by a pledge of and lien upon any of the Net Revenues issued or incurred pursuant to Section 5.9.

"Parity Bonds Instrument" means the resolution, trust indenture or installment sale agreement adopted, entered into or executed and delivered by the City, and under which Parity Bonds are issued.

"Participant" means the City of Palo Alto.

"Pledged Revenues" means (i) Net Revenues; plus (ii) SMaRT Station Participant Debt Service Payments.

"Proportionate Share" means, for Palo Alto, 27.79%.

"Qualified Project Costs" means land costs and capital expenditures for Qualified Solid Waste Disposal Facilities paid with respect to the SMaRT Station.

"Qualified Solid Waste Disposal Facilities" means any property or portion thereof used for the collection, storage, treatment, utilization, processing or final disposal of Solid Waste within the meaning of Section 142(a)(6) of the Code.

"Qualified Surety Bond" means any irrevocable standby or direct-pay letter of credit or surety bond issued by a commercial bank or insurance company and deposited with the Trustee pursuant to Section 5.05 of the Indenture, provided that all of the following requirements are met at the time of acceptance thereof by the Trustee: (a) the long-term credit rating of such bank or insurance company is "AA" or "Aa" or better from each rating agency which then maintains a rating on the Bonds; (b) such letter of credit or surety bond has a term of at least twelve (12) months; (c) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released pursuant to Section 5.05 of the Indenture and (d) the Trustee is authorized pursuant to the terms of such letter of credit or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Bond Fund for the purpose of making payments required pursuant to Section 5.05(b) of the Indenture.

"SMaRT Station" means the Sunnyvale Materials Recovery and Transfer (SMaRT) Station.

"SMaRT Station Fund" means the fund of that name established and maintained by the City.

“SMaRT Station Participant Revenues” means all moneys received by the City under the Memorandum of Understanding from Palo Alto, and from other public entities whose inhabitants are served pursuant to contracts with the City.

“SMaRT Station Participant Debt Service Payments” means payments received by the City from the Participant under Section III. 6 of the Memorandum of Understanding to satisfy Palo Alto’s obligations to pay their Proportionate Share of Debt Service.

“Solid Waste” means property which is useless, unused, unwanted or discarded solid material which has no market or other value at the place where it is located and in the form in which it is when it is identified as waste and as to which no person is willing to purchase such property at any price, and, in the context of a facility which disposes of solid waste by reconstituting, converting or otherwise recycling it into material which is not waste if, on the date of issuance of the Series 2007 Bonds, it constitutes at least 65 percent, by weight or volume, of the total materials introduced into the recycling process.

“Solid Waste Management Fund” means the fund of that name established and held by the City.

“Solid Waste Revenues” means: (i) Gross Revenues, plus (ii) SMaRT Station Participant Revenues.

“Solid Waste System” means the existing solid waste refuse collection and disposal system of the City, exclusive of the SMaRT Station.

“Subordinate Bonds Instrument” means the resolution, trust indenture or installment sale agreement adopted, entered into or executed and delivered by the City, and under which Subordinate Bonds are issued.

“Sunnyvale’s Proportionate Share” means: (i) when used with respect to Debt Service or debt service on other obligations of the City, 72.21% of Debt Service on the Series 2003 Bonds, plus the City’s proportionate share of debt service on any obligations issued to finance improvements to the Solid Waste System or the SMaRT Station, and secured by a pledge of Net Revenues, such proportionate share to be determined at the time of issuance of such obligations; and (ii) when used with respect to Maintenance and Operations Costs of the SMaRT Station, amounts payable by the City under Section IV.3.D. of the Memorandum of Understanding.

“Tax Regulations” means temporary and permanent regulations promulgated under the Code.

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 Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

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

- (a) Due Organization and Existence. The City is a municipal corporation and chartered city duly organized and validly existing under the laws of the State of California, has full legal right, power and authority under said laws to enter into this Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the City Council of the City has duly authorized the execution and delivery of this Agreement.
- (b) Due Execution. The representatives of the City executing this Agreement are fully authorized to execute the same.
- (c) Valid, Binding and Enforceable Obligations. This Agreement has been duly authorized, executed and delivered by the City and constitutes the legal, valid and binding agreement of the City enforceable against the City in accordance with its terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.
- (d) No Conflicts. The execution and delivery of this Agreement, 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 adversely affect the consummation of the transactions contemplated by this Agreement or the financial condition, assets, properties or operations of the City, including but not limited to the performance of the City's obligations under this Agreement.

- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement, or the 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 Agreement, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement, or the financial conditions, assets, properties or operations of the City, including but not limited to the payment and performance of the City's obligations under this Agreement.
- (g) Prior Indebtedness. The City has not issued or incurred any obligations which are currently outstanding having any priority in payment out of the Gross Revenues or the Pledged Revenues over the payment of the Installment Payments as provided herein.

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

- (a) Due Organization and Existence. The Authority is a joint exercise of powers authority organized and existing under the laws of the State of California, and has power to enter into this Agreement and the Indenture and to perform the duties and obligations imposed on it hereunder and thereunder. The Board of Directors of the Authority has duly authorized the execution and delivery of this Agreement and the Indenture.

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

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

ARTICLE III

ISSUANCE OF BONDS; CONSTRUCTION OF 2007 PROJECT

SECTION 3.1. *The Bonds.* The Authority shall cause the Series 2007 Bonds to be issued under the Indenture in the aggregate principal amount of \$[Principal Amount]. The Trustee shall deposit the proceeds of sale of the Bonds received by it on the Closing Date in accordance with the Indenture. The City hereby approves the Indenture, the assignment thereunder to the Trustee of certain rights of the Authority, and the issuance of the Bonds.

SECTION 3.2. *Deposit and Application of Funds.* The proceeds received by the Trustee from the sale of the Series 2007 Bonds to the Original Purchaser will be deposited in the respective funds and accounts, and in the respective amounts, as set forth in Section 3.02 of the Indenture.

SECTION 3.3. *Acquisition and Construction of the 2007 Project.* The Authority hereby agrees with due diligence to supervise and provide for, or cause to be supervised and provided for, the acquisition, construction and installation of the 2007 Project in accordance with the plans and specifications, purchase orders, construction contracts and other documents relating thereto and approved by the City under all applicable requirements of law. All contracts for, and all work relating to, the acquisition, construction and installation of the 2007 Project are subject to all applicable provisions of law relating to the acquisition and construction of public works by the City. The Authority expects that the 2007 Project will be completed on or before February 1, 2009. The failure of the Authority to complete the 2007 Project by that date does not constitute an Event of Default or a grounds for termination hereof, nor does any such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Installment Payments when due hereunder.

SECTION 3.4. *Appointment of City as Agent.* The Authority hereby appoints the City as its agent to carry out all phases of the acquisition, construction and installation of the 2007 Project under and in accordance with the provisions hereof. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Authority regarding the acquisition, construction and installation of the 2007 Project. As agent of the Authority hereunder, the City shall enter into, administer and enforce all purchase orders or other contracts relating to the 2007 Project. Payment of 2007 Project Costs will be made by the

City from amounts held by the Trustee in the 2007 Project Fund in accordance with the provisions of this Agreement and the provisions of the Indenture.

SECTION 3.5. *Plans and Specifications.* The City has the right to specify the exact scope, nature and identification of the 2007 Project and the respective components thereof. Before any payment is made for the 2007 Project or any component thereof from amounts on deposit in the 2007 Project Fund, the City must prepare detailed plans and specifications relating thereto. The City may from time to time amend any such plans and specifications, and thereby change or modify the description of the 2007 Project or any component thereof.

SECTION 3.6. *Certificate of Completion.* Upon the completion of the 2007 Project, but in any event not later than 30 days following such completion, an Authorized Representative of the City shall execute and deliver to the Authority and the Trustee a Written Certificate of the City which (a) states that the construction of the 2007 Project has been substantially completed, (b) identifies the total 2007 Project Costs thereof, and (c) identifies the amounts, if any, to be reserved in the 2007 Project Fund for payment of future 2007 Project Costs.

ARTICLE IV

SALE OF 2007 PROJECT; INSTALLMENT PAYMENTS

SECTION 4.1. *Sale of 2007 Project.* The Authority hereby sells the 2007 Project to the City, and the City hereby purchases the 2007 Project from the Authority, upon the terms and conditions set forth in this Agreement.

SECTION 4.2. *Term.* The Term of this Agreement commences on the Closing Date, and ends on December 1, 2021, or such later or earlier date on which the Bonds cease to be Outstanding under and within the meaning of the Indenture.

SECTION 4.3. *Title.* Title to the 2007 Project, and each component thereof, will be deemed conveyed by the Authority to and vested in the City upon the completion of the acquisition, construction and installation thereof. The Authority and the City will execute, deliver and cause to be recorded any and all documents reasonably required by the City to consummate the transfer of title to the 2007 Project.

SECTION 4.4. *Installment Payments.*

(a) Obligation to Pay. The City hereby agrees to pay to the Authority, as the purchase price of the 2007 Project hereunder, the aggregate principal amount of \$[Principal Amount] together with interest (calculated on the basis of a 360-day year of twelve 30-day months) on the unpaid principal balance thereof, payable in semiannual Installment Payments in the respective amounts and on the respective Interest Payment Dates specified in Appendix A.

The City shall deposit the Installment Payment coming due and payable on any Interest Payment Date with the Trustee, as assignee of the Authority under the Indenture, on the related

Installment Payment Date in an amount which, together with amounts then held by the Trustee in the Installment Payment Fund, is equal to the full amount of such Installment Payment. The Installment Payments are secured by and payable solely from the sources specified in Section 4.5.

(b) Effect of Prepayment. If the City prepays all remaining Installment Payments in full under Section 7.2 or Section 7.3, the City's obligations under this Agreement will thereupon cease and terminate, including but not limited to the City's obligation to pay Installment Payments therefor under this Section 4.4; *provided, however,* that the City's obligations to compensate and indemnify the Trustee under Sections 4.8 and 5.2 will survive such prepayment. If the City prepays the Installment Payments in part but not in whole under Section 7.2 or Section 7.3, the principal component of each succeeding Installment Payment will be reduced as provided in such Sections, and the interest component of each remaining Installment Payment will be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Bonds thereby redeemed under the applicable provisions of Section 4.01 of the Indenture.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required under this Section 4.4 and Section 4.8, the payment in default will continue as an obligation of the City until 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 interest set forth on the Series 2007 Bonds.

(d) Assignment. Certain rights of the Authority, including but not limited to the right of the Authority to receive payment of the Installment Payments, have been assigned by the Authority to the Trustee in trust under the Indenture, for the benefit of the Owners of the Bonds, and the City hereby consents to such assignment. The Authority hereby directs the City, and the City hereby agrees, to pay to the Trustee at its Trust Office, all payments payable by the City under this Section 4.4 and all amounts payable by the City under Article VII.

SECTION 4.5. *Pledge of Pledged Revenues.*

(a) The City hereby transfers, places a charge upon, assigns and sets over to the Trustee, for the benefit of the Owners, that portion of the Pledged Revenues which is necessary to pay the Installment Payments in any Fiscal Year, and to cure any deficiency in the Reserve Account, and such portion of the Pledged Revenues is hereby irrevocably pledged to the punctual payment of the Installment Payments. The Pledged Revenues shall not be used for any other purpose while any of the Series 2007 Bonds remain Outstanding, except that out of Pledged Revenues there may be apportioned and paid such sums for such purposes, as are expressly permitted by this Article. Said pledge shall constitute a first, direct and exclusive charge and lien on the Pledged Revenues for the payment of the Installment Payments in accordance with the terms thereof, on a parity with the Series 2003 Bonds.

(b) The Pledged Revenues constitute a trust fund for the security and payment of the Installment Payments. The general fund of the City is not liable and the credit or taxing power of the City is not pledged for the payment of the Installment Payments. The Installment Payments are not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance, upon any of its property, or upon any of its income, receipts, or revenues except the Pledged Revenues.

SECTION 4.6. *Receipt and Deposit of Revenues.* The City covenants and agrees that all Solid Waste Revenues and Participant Revenues, when and as received, will be deposited by the City in the Solid Waste Management Fund and the SMaRT Station Fund, as appropriate, and will be accounted for through and held in trust in said Funds, and the City shall only have such beneficial right or interest in any of such money as in this Installment Sale Agreement provided. All such Solid Waste Revenues shall be transferred, disbursed, allocated and applied solely to the uses and purposes hereinafter in this Article set forth, and shall be accounted for separately and apart from all other money, funds, accounts or other resources of the City.

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

The obligations of the City to pay the Installment Payments from the Pledged Revenues and to perform and observe the other agreements contained herein are absolute and unconditional and are not subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by the Authority or the Trustee of any obligation to the City or otherwise with respect to the Solid Waste System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Authority or the Trustee. Until all of the Installment Payments, all of the Additional Payments and all other amounts coming due and payable hereunder are fully paid or prepaid, the City (a) will not suspend or discontinue payment of any Installment Payments, Additional Payments or such other amounts, (b) will perform and observe all other agreements contained in this Agreement, and (c) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Solid Waste System, failure to complete the acquisition and construction of the 2007 Project by the estimated completion date thereof, sale of the Solid Waste System, the taking by eminent domain of title to or temporary use of any component of the Solid Waste System, commercial frustration of purpose, any change in the tax or law other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Authority or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture or this Agreement.

The foregoing provisions of this Section 4.7 do not release the Authority from the performance of any of the agreements on its part contained herein or in the Indenture, and if the Authority fails to perform any such agreements, the City may institute such action against the Authority as the City deems necessary to compel performance, so long as such action does not abrogate the obligations of the City contained in the preceding paragraph. The City may, however, at its cost and expense and in its name or in the name of the Authority, prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect the City's rights hereunder, and in

such event the Authority shall cooperate fully with the City and shall take such action necessary to effect the substitution of the City for the Authority in such action or proceeding if the City may request.

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

- (a) to the Authority, all costs and expenses incurred by the Authority to comply with the provisions of this Agreement and the Indenture; and
- (b) to the Trustee upon request therefor, all of its costs and expenses payable as a result of the performance of and compliance with its duties hereunder or under the Indenture or any related documents;
- (c) to the Authority and the Trustee, all amounts required to indemnify the Authority and the Trustee under Section 5.2 hereof and Section 8.07 of the Indenture;
- (d) all costs and expenses of auditors, engineers and accountants for professional relating to the Solid Waste System or the Bonds; and
- (e) all excess investment earnings payable under Section 5.13(c).

The Additional Payments are payable from, but are not secured by a pledge or lien upon, the Net Revenues. The rights of the Trustee and the Authority under this Section 4.8, and the obligations of the City under this Section 4.8, shall survive the termination of this Agreement.

ARTICLE V

COVENANTS OF THE CITY

SECTION 5.1. *Disclaimer of Warranties.* The Trustee makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the 2007 Project or any component thereof, or any other representation or warranty with respect to the 2007 Project or any component thereof. In no event is the Authority liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Agreement or the Indenture for the existence, furnishing, functioning or use of the 2007 Project.

SECTION 5.2. *Release and Indemnification Covenants.* The City agrees to indemnify the Authority, the Trustee and their respective officers, agents, successors and assigns, against 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 or about the Solid Waste System by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Agreement or the Indenture, (c) any act or

omission of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Solid Waste System, and (d) any act or omission of any lessee of the City with respect to the Solid Waste System. No indemnification is made under this Section 5.2 or elsewhere in this Agreement for willful misconduct or negligence under this Agreement by the Authority or the Trustee or their respective officers, agents, employees, successors or assigns. The provisions of this Section 5.2 shall survive the expiration of the Term of this Agreement.

SECTION 5.3. *Sale or Eminent Domain of Solid Waste System.* Except as provided herein, the City covenants that the Solid Waste System will not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole if such encumbrance, sale, lease, pledge, charge or other disposition would materially impair the ability of the City to pay the Installment Payments or the principal of or interest on any Parity Bonds, or would materially adversely affect its ability to comply with the terms of the 2003 Indenture, this Agreement or any Parity Bonds Instrument. The City may not enter into any agreement which impairs the operation of the Solid Waste System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments, Debt Service of the 2003 Bonds or any Parity Bonds, or which otherwise would impair the rights of the Bond Owners or the Trustee with respect to the Net Revenues.

If any substantial part of the Solid Waste System is sold or taken in eminent domain proceedings, the payment therefor shall either (a) be used for the acquisition or construction of improvements to the Solid Waste System, or (b) be applied at the election of the City to (i) redeem the 2003 Bonds under Section 2.02(b) of the 2003 Indenture, (ii) prepay the Installment Payments on the next available prepayment date under Section 7.3, or (iii) redeem any Parity Bonds in accordance with the related Parity Bonds Instrument.

SECTION 5.4. *Insurance.* The City shall at all times maintain with responsible insurers all such insurance on the Solid Waste System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the Solid Waste System. The City shall apply any amounts collected from insurance against accident to or destruction of any portion of the Solid Waste System, at its option, either (a) to repair or rebuild such damaged or destroyed portion of the Solid Waste System, or (b) to redeem the 2003 Bonds under Section 2.02(b) of the 2003 Indenture, prepay the Installment Payments on the next available prepayment date under Section 7.3, and redeem any Parity Bonds in accordance with the related Parity Bonds Instrument, all on a pro rata basis.

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, the Authority, the Trustee and the Owners of the Bonds.

Any policy of insurance required under this Section 5.4 may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance.

SECTION 5.5. *Records and Accounts.* The City shall keep proper books of record and accounts of the Solid Waste System in which complete and correct entries are made of all transactions relating to the Solid Waste System. Said books shall, upon prior request, be subject

to the reasonable inspection of the Owners of not less than 10% of the Outstanding Bonds, or their representatives authorized in writing, upon not less than 2 Business Days' prior notice to the City.

The City shall cause the books and accounts of the Solid Waste System to be audited annually by an Independent Accountant not more than nine months after the close of each Fiscal Year, and shall make a copy of such report available for inspection by the Bond Owners at the office of the City and at the Trust Office of the Trustee. Such report may be part of a combined financial audit or report covering all or part of the City's finances.

SECTION 5.6. *Enforcement of Memorandum of Understanding.* The City shall take all steps necessary to comply with, and to enforce the obligations of the Participants under, the Memorandum of Understanding

SECTION 5.7. *Rates and Charges.* (a) The City shall fix, prescribe, revise and collect Charges for the Solid Waste System during each Fiscal Year which are at least sufficient after making allowances for contingencies and error in the estimates, to produce Gross Revenues which are sufficient to pay the following amounts in the following order:

(i) all Maintenance and Operation Costs of the Solid Waste System and Sunnyvale's Proportionate Share of Maintenance and Operation Costs of the SMaRT Station estimated by the City to become due and payable in such Fiscal Year;

(ii) Sunnyvale's Proportionate Share of Debt Service on the Bonds;

(iii) all other payments required for compliance with this Installment Sale Agreement and the instruments pursuant to which any Parity Bonds relating to the Solid Waste System shall have been issued; and

(iv) all payments required to meet any other obligations of the City which are charges, liens, encumbrances upon or payable from the Gross Revenues.

(b) The City shall fix, prescribe, revise and collect Charges for the Solid Waste System during each Fiscal Year which are sufficient to yield Net Revenues of the Solid Waste System at least equal to one hundred twenty percent (120%) of Sunnyvale's Proportionate Share of Debt Service.

SECTION 5.8. *Superior and Subordinate Obligations.* The City may not issue or incur any additional bonds or other obligations during the Term of this Agreement having any priority in payment of principal or interest out of the Gross Revenues or the Net Revenues over the Installment Payments. Nothing herein limits or affects the ability of the City to issue or incur (a) Parity Bonds under Section 5.8, or (b) obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established hereunder.

SECTION 5.9. *Issuance of Parity Bonds.* In addition to the Series 2003 Bonds and this Installment Sale Agreement, the City may, by Parity Bonds Instrument, issue or incur other loans, advances or indebtedness payable from Net Revenues to provide financing for the Solid

Waste System, in such principal amount as shall be determined by the City. The City may issue or incur any such Parity Bonds subject to the following specific conditions which are hereby made conditions precedent to the issuance and delivery of such Parity Bonds:

(a) The City shall be in compliance with all covenants set forth in this Installment Sale Agreement.

(b) The Net Revenues of the Solid Waste System, calculated on sound accounting principles, as shown by the books of the City for the latest Fiscal Year or any twelve (12) month period selected by the City occurring during the 18 months prior to the adoption of the Parity Bonds Instrument pursuant to which such Parity Bonds are issued, as shown by the books of the City, plus, at the option of the City, any or all of the items hereinafter in this paragraph designated (i) and (ii), shall at least equal One Hundred Twenty percent (120%) of Sunnyvale's Proportionate Share of Maximum Annual Debt Service, with Maximum Annual Debt Service calculated on all Bonds to be Outstanding immediately subsequent to the issuance of such Parity Bonds which have a lien on Net Revenues of the Solid Waste System. The items any or all of which may be added to such Net Revenues for the purpose of issuing or incurring Parity Bonds hereunder are the following:

(i) An allowance for Net Revenues from any additions to or improvements or extensions of the Solid Waste System to be made with the proceeds of such Parity Bonds, and also for Net Revenues from any such additions, improvements or extensions which have been made from moneys from any source but in any case which, during all or any part of such Fiscal Year or such twelve (12) month period, were not in service, all in an amount equal to ninety percent (90%) of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first thirty-six (36) month period in which each addition, improvement or extension is respectively to be in operation, all as shown in the written report of an Independent Consultant engaged by the City; and

(ii) An allowance for earnings arising from any increase in the Charges which has become effective prior to the incurring of such additional indebtedness but which, during all or any part of such Fiscal Year or such twelve (12) month period, was not in effect, in an amount equal to the 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 twelve (12) month period, all as shown in the written report of an Independent Consultant engaged by the City.

(c) The Parity Bonds Instrument providing for the issuance of such Parity Bonds under this Section 5.9 shall provide that:

(i) The proceeds of such Parity Bonds shall be applied to the acquisition, construction, improvement, financing or refinancing of additional facilities, improvements or extensions of existing facilities within the Solid Waste System, or otherwise for facilities, improvements or property which the City

determines are of benefit to the Solid Waste System, or for the purpose of refunding any Bonds in whole or in part, including all costs (including costs of issuing such Parity Bonds and including capitalized interest on such Parity Bonds during any period which the City deems necessary or advisable) relating thereto;

(ii) Interest on such Parity Bonds shall be payable on an Interest Payment Date;

(iii) The principal of such Parity Bonds shall be payable on October 1 in any year in which principal is payable; and

(iv) Money or a Qualified Surety Bond, in an amount equal to the Reserve Requirement, shall be deposited in a reserve account for such Parity Bonds from the proceeds of the sale of such Parity Bonds or otherwise.

SECTION 5.10. *Operation of Solid Waste System in Efficient and Economical Manner.* The City covenants and agrees to operate the Solid Waste System in an efficient and economical manner and to operate, maintain and preserve the Solid Waste System in good repair and working order.

SECTION 5.11. *Compliance with 2003 Indenture.* The City shall observe and perform all of the obligations imposed on it under the 2003 Indenture. The City shall not take any action which constitutes an event of default under and as defined in the 2003 Indenture, or any action which, if not cured, with the passage of time would constitute an event of default under and as defined in the 2003 Indenture.

SECTION 5.12. *Assignment and Amendment Hereof.* The Authority and the City may at any time amend or modify any of the provisions of this Agreement, but only: (a) with the prior written consents of the Owners of a majority in aggregate principal amount of the Outstanding Bonds; or (b) without the consent of the Trustee or any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City contained in this Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;
- (ii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, to conform to the original intention of the City and the Authority;
- (iii) to modify, amend or supplement this Agreement in such manner as to assure that the interest on the Bonds remains excluded from gross income under the Code;
- (iv) in any other respect whatsoever as the Authority and the City deem necessary or desirable, if in the opinion of Bond Counsel such

modifications or amendments do not materially adversely affect the interests of the Owners of the Bonds.

No such modification or amendment may (a) extend or have the effect of extending any Installment Payment Date or reducing any Installment Payment, without the express consent of the Owners of the affected Bonds, or (b) modify any of the rights or obligations of the Trustee without its written assent thereto.

SECTION 5.13. *Tax Covenants.*

a) Qualified Solid Waste Disposal Exempt Facility Bonds. The City shall assure that the proceeds of the Series 2007 Bonds are used in a manner such that the Series 2007 Bonds will satisfy the requirements of section 142(a)(6) of the Code (including the Regulations thereunder) relating to qualified solid waste disposal facilities.

b) 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 any of the Series 2007 Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

c) Rebate Requirement. The City shall take any and all actions necessary to assure compliance with section 148(f) of the 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 Series 2007 Bonds.

d) No Arbitrage. The City shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Series 2007 Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Series 2007 Bonds would have caused the Series 2007 Bonds to be "arbitrage bonds" within the meaning of section 148 of the Code.

e) Maintenance of Tax-Exemption. The City shall take all actions necessary to assure the exclusion of interest on the Series 2007 Bonds from the gross income of the owners of the Series 2007 Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Series 2007 Bonds.

f) Governmental Ownership. The Series 2007 Bonds, upon issuance and delivery, shall be considered "private activity bonds" within the meaning of the Code and the SMaRT Station shall, at all times, be owned by a governmental unit as ownership is defined in Section 142(b)(1)(B) of the Code, except any lease to a non-governmental person shall not exceed 20 years.

g) Limitation on Issuance Costs. The City covenants that, from the proceeds of the Series 2007 Bonds and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Series 2007 Bonds will be used for costs of issuance of the Series 2007 Bonds, all within the meaning of section 147(g)(1) of the Code.

h) Limitation of Expenditure of Proceeds. The City represents that not less than 95 percent of the net proceeds of the Series 2007 Bonds (within the meaning of section 150(a)(3) of the Code) were paid for Qualified Project Costs.

i) Limitation on Land. The City represents that less than twenty-five percent (25%) of the proceeds of the Series 2007 Bonds will be used, directly or indirectly, for the acquisition of land.

j) Existing Facilities Limit. The City represents that no proceeds of the Series 2007 Bonds will be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in section 145(d) of the Code) with respect to such building equal or exceed 15 percent of the portion of the cost of acquiring such building (and equipment) financed with bond proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds of the Series 2007 Bonds.

k) Certain Uses Prohibited. The City represents that no proceeds of the Series 2007 Bonds will be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises, and no portion of the proceeds of the Series 2007 Bonds will be used for an office unless (i) the office is located on the premises of the facilities constituting the SMaRT Station and (ii) not more than a de minimus amount of the functions to be performed at such office is not related to the day-to-day operations of the SMaRT Station.

SECTION 5.14. *Continuing Disclosure*. The City hereby covenants and agrees that it will deliver to the Owners of the Series 2007 Bonds, on an annual basis, a copy of the disclosure documents prepared for the 2003 Bonds.

ARTICLE VI

EVENTS OF DEFAULT

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

- (a) Failure by the City to pay any Installment Payment when due and payable hereunder.
- (b) Failure by the City to pay any Additional Payment when due and payable hereunder, and the continuation of such failure for a period of 30 days.

- (c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding clauses (a) or (b), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee; *provided, however*, that if the City notifies the Authority and the Trustee that in its reasonable opinion the failure stated in the notice can be corrected, but not within such 30-day period, such failure will not constitute an event of default hereunder if the City commences to cure such failure within such 30 day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.
- (d) 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.
- (e) The occurrence of any event of default under and as defined in the 2003 Indenture or any Parity Bonds Instrument.

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

- (a) Declare all principal components of the unpaid Installment Payments, together with accrued interest thereon at the Overdue Rate from the immediately preceding Interest Payment Date on which payment was made, to be immediately due and payable, whereupon the same shall immediately become due and payable.

The Trustee shall rescind and annul such declaration and its consequences if, before any judgment or decree for the payment of the moneys due has been obtained or entered, (i) the City deposits with the Trustee a sum sufficient to pay all principal components of the Installment Payments coming due prior to such declaration and all matured interest components (if any) of the Installment Payments, with interest on such overdue principal and interest components calculated at the Overdue Rate, and (ii) the City pays the reasonable expenses of the Trustee (including any fees and expenses of its attorneys), and (iii) any and all other defaults known to the Trustee (other than in the payment of the principal and interest components of the Installment Payments due and payable solely by reason of such declaration) have been made good. No such rescission and annulment will extend to or shall affect any subsequent default, or impair or exhaust any right or power consequent thereon.

- (b) Take whatever action at law or in equity may appear necessary or desirable to collect the Installment Payments then due or thereafter to become due during the Term of this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.
- (c) As a matter of right, in connection with the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and the Bond Owners hereunder, cause the appointment of a receiver or receivers of the Gross Revenues and other amounts pledged hereunder, with such powers as the court making such appointment may confer.

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

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

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

SECTION 6.6. *Trustee and Bond Owners to Exercise Rights.* Such rights and remedies as are given to the Authority under this Article VI have been assigned by the Authority to the Trustee under the Indenture, to which assignment the City hereby consents. Such rights and remedies will be exercised by the Trustee and the Owners of the Bonds as provided in the Indenture.

ARTICLE VII

PREPAYMENT OF INSTALLMENT PAYMENTS

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

- (a) sufficient to pay all such Installment Payments, including the principal and interest components thereof, when due under Section 4.4(a), or
- (b) invested in whole or in part in non-callable Federal Securities in such amount as will, in the opinion of an Independent Accountant (which opinion is addressed and delivered to the Trustee), together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay all such Installment Payments when due under Section 4.4(a) or when due on any optional prepayment date under Section 7.2, as the City instructs at the time of said deposit.

If the City makes a security deposit under this Section for the payment of all remaining Installment Payments, all obligations of the City hereunder, and the pledge of Net Revenues and all other security provided by this Agreement for said obligations, will thereupon cease and terminate, excepting only the obligation of the City to make, or cause to be made, all Installment Payments from the security deposit. The security deposit will be deemed to be and will constitute a special fund for the payment of the Installment Payments in accordance with the provisions hereof.

SECTION 7.2. *Optional Prepayment.* The City may exercise its option to prepay the principal components of the Installment Payments in whole or in part on any date on or after October 1, 2016. The City may exercise such option by payment of a prepayment price equal to the sum of (a) the aggregate principal components of the Installment Payments to be prepaid, and (b) the interest component of the Installment Payment required to be paid on or accrued to such date. The Trustee shall deposit the prepayment price in the Installment Payment Fund to be applied to the redemption of Bonds under Section 4.01(a) of the Indenture. If the City prepays the Installment Payments in part but not in whole, the principal components will be prepaid among such maturities and in such integral multiples of \$5,000 as the City designates in written notice to the Trustee.

SECTION 7.3. *Mandatory Prepayment From Proceeds of Insurance, Sale or Condemnation.* The City shall prepay the Installment Payments on any date, in whole, or in part among maturities on a pro rata basis in any integral multiple of \$5,000, from and to the extent of any proceeds of insurance, sale or condemnation awards with respect to the Solid Waste System theretofore paid to the Trustee for such purpose under Sections 5.3 or 5.4. The City and the Authority hereby agree that such proceeds, to the extent remaining after payment of any delinquent Installment Payments, will be deposited in the Installment Payment Fund and credited towards the City's obligations under this Section 7.3.

SECTION 7.4. *Credit for Amounts on Deposit.* If the City prepays the Installment Payments in full under this Article VII, such that the Indenture is discharged by its terms as a result of the prepayment, and upon payment in full of all Additional Payments and other amounts then due and payable hereunder, all available amounts then on deposit in the funds and accounts established under the Indenture will be credited towards the amounts then required to be so prepaid.

ARTICLE VIII

MISCELLANEOUS

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

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

*If to the City
or the Authority:*

City of Sunnyvale
650 West Olive Avenue
Sunnyvale, California 94086
Attention: Director of Finance
Fax: (408) 730-7398

If to the Trustee:

U.S. Bank, National Association
Corporate Trust Dept.
One California Street, Suite 2100
San Francisco, California 94111
Fax: (415) 273-4590

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the Authority 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.

**SUNNYVALE FINANCING AUTHORITY, as
Seller**

By _____
Executive Director

ATTEST:

By _____
Secretary

CITY OF SUNNYVALE, as Purchaser

By _____
City Manager

ATTEST:

By _____
City Clerk

APPENDIX A

SCHEDULE OF INSTALLMENT PAYMENTS

| <u>Installment Payment Date</u> ⁽¹⁾ | <u>Principal Component</u> | <u>Interest Component</u> | <u>Total Payment</u> |
|--|--------------------------------|-------------------------------|--------------------------|
|--|--------------------------------|-------------------------------|--------------------------|

- (1) Installment Payment Dates are the fifth (5th) Business Day immediately preceding each Interest Payment Date shown in the table.

APPENDIX B

DESCRIPTION OF IMPROVEMENTS

[to come]