PORTERVILLE CITY COUNCIL AGENDA
ADJOURNED MEETING - JULY 27, 2004
CITY HALL - 6:00 P.M.

Roll Call: City Council
Pledge of Allegiance
Invocation

ORAL COMMUNICATIONS

SCHEDULED MATTERS

1. Analysis of Loan Program Funding Options
   Re: Analysis of savings on the use of a California Infrastructure and Economic Development Bank (CIEDB) Loan compared to a Certificates of Participation (COP) issuance for $5.4 million to fund the various capital projects needed to comply with Regional Water Quality Control Board’s (RWQCB) Cease & Desist Order (CDO) 5-01-104 and Waster Discharge Requirements (WDR) 5-01-103; with a recommendation to authorize the Mayor to execute a resolution authorizing the City Manager to execute the “Enterprise Fund Installment Sale Agreement” in the amount of $5,356,000.

Adjourn to a Meeting of the Porterville Redevelopment Agency.

PORTERVILLE REDEVELOPMENT AGENCY AGENDA

Roll Call: Redevelopment Agency

ORAL COMMUNICATIONS

SCHEDULED MATTER

PRA-1. Casas Buena Vista Housing Group, LLC - Modification to Disposition and Development Agreement
   Re: Modifying Agreement to allow the Agency to lend the developer additional purchase price funds to fund the construction of remaining homes at Casas Buena Vista.

Adjourn to a Meeting of the Porterville City Council

ORAL COMMUNICATIONS

OTHER MATTERS/COUNCIL COMMENTS

ADJOURNMENT - to August 3, 2004

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Deputy City Clerk at (559) 782-7442. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.
SUBJECT: ANALYSIS OF LOAN PROGRAM FUNDING OPTIONS

SOURCE: Administrative Services

COMMENT: On July 20, 2004, staff prepared a report and provided attachments that, once executed, would finalize the Installment Sale Agreement between the City and the California Infrastructure and Economic Development Bank (CIEDB). At the meeting, some discussion took place regarding the decision to utilize the CIEDB program in lieu of Certificates of Participation to fund the $5.4 million in improvements at the Waste Water Treatment Plant to satisfy the requirements established by the Regional Water Quality Control Board.

The attached analysis shows a savings of approximately $1.8 million over the 30 year period of the loan. This takes into account the prevailing wage requirement on approximately 20% of the total project, and the nearly 200 basis point savings in interest. In summary, the debt service schedule for the CIEDB loan will provide annual savings of approximately $60,000.00, keeping the rates to the sewer users at the lowest levels possible.

RECOMMENDATION: That the City Council:

1. Authorize the Mayor to execute Exhibit A of the July 20th attachment, a resolution authorizing the City Manager to execute the “Enterprise Fund Installment Sale Agreement” in the amount of $5,356,000;

2. Authorize the named Department Heads or individuals to execute the various exhibits described in the July 20th staff report;

3. Authorize the Public Works Director to deliver by certified mail said “Sale Agreement” to the CIEDB principals for proper counter signatures and full execution.

ATTACHMENTS: Analysis
July 20th Agenda Item

[Signatures]

Item No. \

# COMPARATIVE COSTS FOR PORTERVILLE CIEDB LOAN VERSUS COP ISSUE FOR SEWER PROJECT

<table>
<thead>
<tr>
<th>ITEM</th>
<th>CIEDB</th>
<th>COP</th>
</tr>
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<tbody>
<tr>
<td>Annual Interest</td>
<td>2.98%</td>
<td>4.95%</td>
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<tr>
<td>Term</td>
<td>30</td>
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## ISSUANCE COSTS

- Loan Origination Fee: $45,526
- Bond Insurance: $111,600
- Underwriter Discount: $27,960
- Disclosure Counsel: $12,400
- Bond Rating (AMBAC): $10,000
- Printing: $10,000
- Trustee: $5,000
- Reserve: $14,260

| Total Issuance Cost                | $45,526 | $191,220 |

## CAPITAL COSTS

- Total Capital: $5,310,349
- Less Prevailing Wage Savings: $0

| Total Adjusted Capital             | $5,310,349 | $5,024,349 |

## TOTAL ANNUAL COMPONENT OF COST OVER TERM

- Annual Cost for Issuance (Total Over 30 Years): $23,975
- Annual Cost for Projects (Total Over 30 Years): $2,796,555
- Annual Trustee (Total Over 30 Years): $150,000
- Annual Maintenance (Total Over 30 Years): $295,567
- Less Interest Paid/(Earned): $18,000

| Subtotal                           | $3,134,097 | $4,950,873 |

## SUNK COSTS

- Initial Rate Study: $20,000
- Application Consultant: $25,000
- CIEDB Application Fee: $400

| TOTAL COST OVER 30 YEARS            | $3,179,497 | $4,996,273 |
| CIEDB SAVINGS                       | $1,816,777  |
SUBJECT: ACCEPTANCE OF ENTERPRISE FUND INSTALLMENT SALE AGREEMENT FROM CALIFORNIA INFRASTRUCTURE and ECONOMIC DEVELOPMENT BANK (CIEDB) WITH EXECUTION OF VARIOUS RESOLUTIONS and CERTIFICATIONS

SOURCE: Public Works Department - Engineering Division

COMMENT: The CIEDB presents for Council's action, the full financing agreement (CIEDB-B04-053) to fund the various capital projects needed to comply with Regional Water Quality Control Board's (RWQCB) Cease & Desist Order (CDO) 5-01-104 and Waster Discharge Requirements (WDR) 5-01-103.

Key elements of the "Agreement" are as follows:

- $5,356,000 Thirty (30) year loan at 2.98% interest.

- Loan agreement to take effect September 1, 2004 and is the first date that reimbursement request will be honored.

- Annual fee payments to begin March 16, 2005, and shall be made on or before every March 16.

- City shall provide the CIEDB with an annual audited financial statement of the City relating to the Enterprise, Gross Revenues, Net Revenues and the Enterprise fund for the preceding fiscal year.

- Capital projects shall be paid at prevailing wage.

- Use only "pre-qualified" contractors.

The above does not represent all that is included in the "Sale Agreement" but rather, represents a "snapshot" of key elements of the loan.

The following "Exhibits" require Council's authorization to execute or are provided as procedural documents:

- **Exhibit A** - A resolution requiring the Mayor's signature authorizing the City Manager to execute the Enterprise Fund Installment Sale Agreement.

Dir [signature] Appropriated/Funded CM [signature] Item No. [number]
• **Certificate of Resolution** stating that the City Manager is the duly qualified and acting City Clerk.

• **Exhibit B** - Certificate of the Chief Financial Officer stating that Susan Slayton is the duly qualified and acting Chief Financial Officer.

• **Exhibit C** - Conditions Precedent To Disbursement. No signatures required.

• **Exhibit D** - Description of projects and related funding. No signatures required.

• **Exhibit E** - Amortization schedule. No signatures required.

• **Exhibit F** - State contract requirements - No signatures required.

• **Exhibit G** - Tax certificate requiring the signature of the Chief Financial Officer, Susan Slayton.

• **Exhibit H** - Form of legal opinion to be signed by the City's legal counsel after the loan agreement has been executed.

**RECOMMENDATION:** That the City Council:

1. Authorize the Mayor to execute Exhibit A, a resolution authorizing the City Manager to execute the “Enterprise Fund Installment Sale Agreement” in the amount of $5,356,000;

2. Authorize the named Department Heads or individuals to execute the various exhibits described in this staff report; and

3. Authorize the Public Works Director to deliver by certified mail said “Sale Agreement” to the CIEDB principals for proper counter signatures and full execution.

**ATTACHMENTS:**

- Enterprise Fund Installment Sale Agreement
- Exhibit “A”
- Certificate of Resolution
- Exhibits “B” - “H” as noted above

Y:\Engineering\Council Items\CIEDB Loan Agreement Document.wpd
ENTERPRISE FUND INSTALLMENT SALE AGREEMENT

by and between the

CITY OF PORTERVILLE,

as Purchaser

and the

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK,

as Seller

Dated as of September 1, 2004

Agreement No. CIEDB-B04-053
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ENTERPRISE FUND INSTALLMENT SALE AGREEMENT

THIS ENTERPRISE FUND INSTALLMENT SALE AGREEMENT, is made and entered into as of September 1, 2004 (the “Agreement”), by and between the CITY OF PORTERVILLE, a charter city and municipal corporation duly organized and existing under the laws of the State of California, as purchaser (the “Purchaser”), and the CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (the “CIEDB”), duly organized and validly existing pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act, constituting Division 1 of Title 6.7 of the California Government Code (commencing at section 63000 thereof) as now in effect and as it may from time to time hereafter be amended (the “Act”), as seller.

WITNESSETH:

WHEREAS, the Purchaser adopted a resolution authorizing the purchase from the CIEDB of a Project, as defined herein, evidenced by this Enterprise Fund Installment Sale Agreement (the “Agreement”);

WHEREAS, the Purchaser hereby finds and determines that there will be significant public benefits accruing from such purchase;

WHEREAS, the CIEDB has issued tax-exempt bonds (“Proceeds Bonds” as defined in Section 1.01), the proceeds of which will be used to fund the Project;

WHEREAS, the CIEDB may pledge its rights under this Agreement to secure bonds (“Secured Bonds” as defined in Section 1.01), and Purchaser acknowledges that the issuance of both the Proceeds Bonds and the Secured Bonds impacts its rights and obligations as described herein, and Purchaser hereby agrees to adhere to the requirements contained in this Agreement necessary in order to maintain the tax-exempt status of the Proceeds Bonds;

WHEREAS, the Purchaser has the following obligations outstanding: the Installment Sale Agreement dated as of September 1, 1997 by and between the Porterville Public Financing Authority, as Seller and the City of Porterville, as Purchaser (as related to the 1997 Sewer System Refinancing Project) (the “1997 Agreement” as defined in Section 1.01 herein) and the Installment Sale Agreement dated as of September 1, 2002 by and between the Porterville Public Financing Authority, as Seller and the City of Porterville, as Purchaser (as related to the 2002 Sewer System Refinancing Project) (the “2002 Agreement” as defined in Section 1.01 herein.

WHEREAS, this Agreement will be subordinate to the 1997 Agreement and the 2002 Agreement; and

WHEREAS, all acts and proceedings required by law necessary to make this Agreement, when executed by the Purchaser and the CIEDB, the valid, legal and binding obligation of the Purchaser and the CIEDB, and to constitute this Agreement a legal, valid, and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution of this Agreement has been in all respects duly authorized;
NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. Unless the context clearly otherwise requires, the capitalized terms in this Agreement shall have the respective meanings set forth below.

"1997 Agreement" means the Installment Sale Agreement dated as of September 1, 1997 by and between the Porterville Public Financing Authority, as Seller and the City of Porterville, as Purchaser (as related to the 1997 Sewer System Refinancing Project).

"2002 Agreement" means the Installment Sale Agreement dated as of September 1, 2002 by and between the Porterville Public Financing Authority, as Seller and the City of Porterville, as Purchaser (as related to the 2002 Sewer System Refinancing Project).

"Act" means the Bergeson-Peace Infrastructure and Economic Development Bank Act, constituting Division 1 of Title 6.7 of the California Government Code (commencing at section 63000 thereof) as now in effect and as it may from time to time hereafter be amended.

"Additional Payments" means the payments made pursuant to Section 2.04(f).

"Agreement" means this Enterprise Fund Installment Sale Agreement, between the CIEDB and the Purchaser, as originally entered into and as amended pursuant to the provisions hereof.

"Business Day" means any day, Monday through Friday, which is not a legal holiday of the State or the trustee.

"Certificate of the Purchaser" means a request or certificate, in writing, signed by a duly authorized representative of the Purchaser.

"CIEDB" means the California Infrastructure and Economic Development Bank.

"CIEDB Annual Fee" means the fee payable to CIEDB pursuant to Section 2.04(f)(1).

"Code" means the Internal Revenue Code of 1986, as amended, or any successor statute thereto, and any regulations promulgated thereunder.

"Debt Service" means, for any Fiscal Year, the sum of: (1) the interest due and payable during such Fiscal Year under this Agreement, and all outstanding Parity Debt, assuming that principal thereof is paid as scheduled and that any mandatory sinking fund payments are made as scheduled; (2) that portion of the principal amount due thereunder maturing during such Fiscal Year; (3) that portion of the principal amount of all such debt required to be redeemed or paid (together with the redemption premiums, if any, thereof) during such Fiscal Year; (4) CIEDB
Annual Fee and any fees similar to the CIEDB Annual Fee payable during such Fiscal Year with respect to outstanding Parity Debt on a parity with such Parity Debt; and (5) Senior Debt Service.

Debt Service shall not include: (1) interest which is to be paid from amounts constituting capitalized interest; or (2) interest on or principal payable from the proceeds of any obligation required to remain unexpended and to be held in escrow, provided that (i) projected interest earnings on such proceeds, plus such amounts, if any, deposited by the Purchaser in an account created for that purpose, are sufficient to pay the interest due on such portion of the obligation so long as it is required to be held in escrow and (ii) the conditions for the release of such proceeds from escrow are substantially similar to those for the issuance of obligation.

“Effective Date” means September 1, 2004, the date on which this Agreement becomes fully executed, effective and binding on the Purchaser and the CIEDB.

“Enterprise” means any and all facilities of the Purchaser for the disposal or reuse of wastewater, including sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage, and any necessary lands, rights of way and other real or personal property useful in connection therewith.

“Enterprise Fund” means the sub-account of the Purchaser’s Sewer Fund established by the Purchaser and in which all Net Revenues are deposited after payment of Senior Debt and maintained by the Purchaser pursuant to Section 3.02 and in which the CIEDB has a security interest pursuant to the terms of this Agreement. The Purchaser’s Sewer Fund is an enterprise fund that is comprised of the following sub-funds: Sewer Operating Fund, Sewer Revolving Fund and Wastewater Treatment Plant Capital Reserve Fund.

“Event of Default” means any of the events described in Section 7.01.

“Fiscal Year” means any twelve month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve month period selected and designated by the Purchaser as its official fiscal year period.

“Gross Revenues” means all gross income and revenue by the Purchaser from the ownership and operation of the Enterprise, including, without limiting the generality of the foregoing (a) all income, rents, rates, fees, charges or other moneys derived from the services, facilities and commodities sold, furnished or supplied through the facilities of the Enterprise, (b) the earning on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to the law to the Enterprise, and (c) the proceeds derived by the Purchaser directly or indirectly from the sale, lease or other disposition of a part of the Enterprise as permitted in the Senior Debt Instruments provided, that the term “Gross Revenues” shall not include customers’ deposits or any other deposits subject to refund until such deposits have become the property of the Purchaser.
“Independent Accountant” means any certified public accountant or firm of certified public accountants duly licensed or registered or entitled to practice and practicing as such under the laws of the State, appointed by the Purchaser who, or each of whom:

(a) Is in fact independent and not under the control of the Purchaser or the CIEDB;

(b) Does not have any substantial interest, direct or indirect, in the Purchaser the CIEDB or the Project; and

(c) Is not connected with the Purchaser or the CIEDB as an officer or employee of the Purchaser or the CIEDB, but who may be regularly retained to make reports to the Purchaser or the CIEDB.

“Independent Consultant” means any consultant or firm of such consultants judged by the Purchaser to have experience in matters relating to the collection of Gross Revenues or other experience with respect to the financing of Enterprise projects, as appropriate, appointed and paid by the Purchaser who, or each of whom:

(a) Is in fact independent and not under the control of the Purchaser or the CIEDB;

(b) Does not have any substantial interest, direct or indirect, in the Purchaser or the CIEDB; and

(c) Is not connected with the Purchaser or the CIEDB as a member, officer or employee of the Purchaser, but who may be regularly retained to make reports to the Purchaser or the CIEDB.

“Installment Payments” means the principal and interest payments to be made by the Purchaser to the CIEDB in payment of the Purchase Price hereunder.

“Interest Payment Date” means March 16 of every year in which the Purchase Price remains unpaid.

“Maximum Annual Debt Service” means as of the date of calculation, the greatest total Debt Service payable in any Fiscal Year during which this Agreement is in effect.

“Net Revenues” means Gross Revenues less Operation and Maintenance Expenses.

“Operations and Maintenance Expenses” means all expenses and costs of management, operation, maintenance and repair of the Enterprise and all incidental costs, fees and expenses properly chargeable to the Enterprise (but excluding debt service or other similar payments on Senior Debt and Parity Debt or other obligations and depreciation and obsolescence charges or reserves therefore and amortization of intangibles and inter-fund transfers or other bookkeeping entries of a similar nature).
“Parity Debt” means any loan, bond, note, advance, installment sale agreement, capital lease or other evidence of indebtedness payable from and secured by a lien on the Net Revenues subordinate to the Senior Debt on a parity with the Installment Payments and Additional Payments, issued or incurred pursuant to and in accordance with the provisions of Section 2.08.

“Parity Debt Instrument” means any additional loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Purchaser payable from and secured by a lien on the Net Revenues which is on parity to this Agreement and issued or incurred pursuant to and in accordance with the provisions of Section 2.08 and Section 6.01.

“Parity Debt Service” means, for any Fiscal Year, the sum of: (1) the interest due and payable during such Fiscal Year for all outstanding Parity Debt, assuming that principal thereof is paid as scheduled and that any mandatory sinking fund payments on any Parity Debt are made as scheduled; (2) that portion of the principal amount due on all outstanding Parity Debt maturing during such Fiscal Year; (3) that portion of the principal amount of all such outstanding Parity Debt required to be redeemed or paid (together with the redemption premiums, if any, thereof) during such Fiscal Year; and (4) annual fees, if any, under Parity Debt.

Parity Debt Service shall not include: (1) interest on Parity Debt which is to be paid from amounts constituting capitalized interest; or (2) interest on or principal of Parity Debt payable from the proceeds of any Parity Debt required to remain unexpended and to be held in escrow pursuant to the terms of a Parity Debt Instrument, provided that (i) projected interest earnings on such proceeds, plus such amounts, if any, deposited by the Purchaser in an account created for that purpose, are sufficient to pay the interest due on such portion of the Parity Debt so long as it is required to be held in escrow and (ii) the conditions for the release of such proceeds from escrow are substantially similar to those for the issuance of Parity Debt.

“Project” means the public development facility to be sold by the CIEDB to the Purchaser pursuant to this Agreement, authorized by Government Code section 63010(q) and the Act and described in Exhibit D.

“Project Funds” mean the moneys provided by the CIEDB to the Purchaser, as agent for the CIEDB, pursuant to this Agreement to purchase and/or construct the Project for the CIEDB for sale to the Purchaser as set forth in Section 2.06.

“Proceeds Bonds” means bonds issued by the CIEDB the proceeds of which will be used, in whole or part, to fund the Project.

“Purchase Price” means the principal amount plus the interest thereon owed by the Purchaser to the CIEDB under the conditions and terms hereof for the payment of the costs of the Project and the incidental costs and expenses related thereto paid by the CIEDB.

“Purchaser” means the City of Porterville.

“Report” means a document in writing signed by an Independent Consultant or an Independent Accountant, and including:
(a) A statement that the person or firm making or giving such Report has read the pertinent provisions of this Agreement to which such Report relates;

(b) A brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and

(c) A statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable said consultant to express an informed opinion with respect to the subject matter referred to in the Report.

"Secured Bonds" means bonds of one or more series issued by the CIEDB to which certain rights of the CIEDB under this Agreement may be from time to time pledged directly or indirectly.

"Senior Debt" means the obligations evidenced by the Senior Debt Instruments and any additional loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Purchaser payable from and secured by a first lien on the Net Revenues which is senior to this Agreement and issued or incurred pursuant to and in accordance with the provisions of Section 2.07 and Section 6.01.

"Senior Debt Instruments" mean, collectively, the 1997 Agreement, the 2002 Agreement and any additional loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Purchaser payable from and secured by a lien on the Net Revenues which are senior to this Agreement and issued or incurred pursuant to and in accordance with the provisions of Section 2.07 and Section 6.01.

"Senior Debt Service" means, for any Fiscal Year, the amounts required to be paid pursuant to any Senior Debt Instrument prior to the amounts required to be paid under this Agreement.

"State" means the State of California.

"Subordinate Debt" means any loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Purchaser payable from and secured by a lien on Net Revenues which is subordinate to the Agreement.

"Subordinate Debt Instruments" means any additional loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Purchaser payable from and secured by a lien on the Net Revenues which are subordinate to this Agreement.

"Tax Certificate" means the tax certificate in the form set forth in Exhibit G executed and delivered by the Purchaser as of the Effective Date and setting forth certain conditions, covenants, expectations and elections of the Purchaser with respect to the purchase in accordance with the Code.

SECTION 1.02. Rules of Construction. Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, and
pronouns inferring the masculine gender shall include the feminine gender and vice versa. All references herein to particular articles or sections are references to articles or sections of this Agreement. The headings and Table of Contents herein are solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meanings, construction or effect.

ARTICLE II

TERMS OF SALE

SECTION 2.01. Authorization. The CIEDB, pursuant to its resolution previously adopted, hereby agrees to sell to the Purchaser and the Purchaser, pursuant to resolution previously adopted in form substantially similar to Exhibit A, hereby agrees to purchase from the CIEDB the Project under and subject to the terms of this Agreement. This Agreement constitutes a continuing agreement between the Purchaser and the CIEDB to secure the full and final payment of the Purchase Price, subject to the covenants, agreements, provisions and conditions herein contained.

SECTION 2.02. Design, Acquisition, Construction and Sale of the Project. The CIEDB hereby agrees to design, acquire and construct the Project for, and to sell the Project to, the Purchaser. In order to implement this provision, the CIEDB hereby appoints the Purchaser as its agent for the purpose of such design, acquisition and construction; and the Purchaser hereby agrees to enter into such engineering, design and construction contracts and purchase orders as may be necessary, as agent for the CIEDB, to provide the complete design, acquisition and construction of the Project. The Purchaser hereby agrees that as such agent it will cause the acquisition and construction of the Project to be diligently completed. The CIEDB hereby agrees to sell, and hereby sells, the Project to the Purchaser. The Purchaser hereby agrees to purchase, and hereby purchases, the Project from the CIEDB. Notwithstanding the foregoing, it is hereby expressly understood and agreed that the CIEDB shall be, except as expressly provided herein, under no liability of any kind or character whatsoever for the payment of any costs or expenses incurred by the Purchaser (whether as agent for the CIEDB or otherwise) for the engineering, design, acquisition or construction of the Project and that all such costs and expenses shall be paid by the Purchaser, regardless of whether Project Funds are sufficient to cover all such costs.

SECTION 2.03. Payment of Purchase Price; Term; Interest Rates.

(a) The Purchase Price to be paid by the Purchaser to the CIEDB hereunder is the sum of the principal amount of the Purchaser’s obligation hereunder plus the interest from the Effective Date over the term hereof, subject to prepayment as provided in Section 2.05. Interest shall accrue on the entire principal balance, whether or not disbursed, from the Effective Date.

(b) For purposes of this Agreement:

(1) The principal amount of the Purchase Price to be paid by the Purchaser to the CIEDB hereunder is five million three hundred fifty-six thousand dollars ($5,356,000).
(2) The term of this Agreement is thirty (30) years from the Effective Date.

(3) The interest rate is two and ninety-eight hundredths percent (2.98%) per annum.

(c) Installment Payments of principal and interest shall be as set forth in the amortization schedule of Exhibit E hereto.

(1) The interest only period shall be in effect through March 15, 2007. The first principal payment shall be due March 16, 2007.

(2) Interest only payments will be based upon the total principal component of the Purchase Price, including the amounts not disbursed, using an interest rate of two and ninety-eight hundredths percent (2.98%) per annum.

(3) Purchaser shall receive a credit against interest owed based upon the actual interest earned by the CIEDB at a rate of up to two and ninety-eight hundredths percent (2.98%) per annum on the undisbursed Project Funds.

(d) Commencing on the day following the end of the interest only period, the principal component of the Purchase Price shall be fully amortized over the remaining term of this Agreement. If any portion of the principal of the Purchase Price is prepaid in part pursuant to Section 2.05 hereof, the schedule of the principal payments shall be modified to reflect such partial prepayment.

(e) The obligation of the Purchaser to pay the Purchase Price by paying the Installment Payments and Additional Payments is, subject to Section 4.07, absolute and unconditional; and until such time as the Purchase Price shall have been paid in full (or provision for the payment thereof shall have been made as provided in Section 8.05), the Purchaser shall not discontinue or suspend any Installment Payments or Additional Payments required to be paid by it under this Agreement when due, whether or not the Project or any part thereof is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part; and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party to any agreement for any cause whatsoever.

SECTION 2.04. Disbursement of Project Funds; Additional Payments.

(a) Project Funds shall be disbursed solely upon receipt by the CIEDB of invoices documenting, to the satisfaction of the CIEDB, that the Purchaser has incurred costs that constitute both reasonable and necessary components of the Project and which are consistent with the cost categories, amounts and requirements described in Exhibit D hereto; provided, however, that no disbursements shall be approved until and unless the Purchaser has complied
with the conditions precedent to disbursement set forth in Exhibit C hereto. Except for preliminary costs, no cost shall be reimbursed if incurred prior to March 29, 2004. “Preliminary Costs,” as used in this paragraph, means architectural, engineering, surveying, soil and environmental testing and reports, studies (including environmental impact, rate and feasibility studies), CEQA reports, and similar costs incurred prior to commencement of acquisition or construction of the Project in an aggregate amount not exceeding twenty percent (20%) of the Project Funds. Preliminary costs shall be reimbursed if incurred in connection with the Project without regard to when incurred or paid. Preliminary costs do not include land acquisition, site preparation or similar costs incident to the commencement of construction.

(b) The total cumulative amount of such disbursements shall not exceed the total principal amount of the Purchase Price.

(c) Purchaser must both: (1) begin Project construction no later than twelve months after March 29, 2004; and (2) submit invoices to the CIEDB for the entire amount of the Project Funds no later than February 17, 2007. If the Purchaser fails to meet either of these conditions, the CIEDB may withhold any and all undisbursed Project Funds pursuant to Section 2.14 herein.

(d) Notwithstanding any contrary provisions of this Agreement or any related documents, under no circumstances will the CIEDB be obligated to make disbursements in excess of the lesser of (i) actual Project costs incurred in connection with the completion of the Project or (ii) five million three hundred fifty-six thousand dollars ($5,356,000).

(e) Interest shall be calculated on the basis of a 360-day year of twelve 30-day months. Any installment of principal or interest that is not paid when due shall continue to accrue interest at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law from and including the Interest Payment Date with respect to which such principal or interest is payable to but not including the date of actual payment.

(f) The Purchaser shall pay Additional Payments to the CIEDB as follows:

(1) A payment of the CIEDB Annual Fee on March 16 of each year during the term of this Agreement in an amount equal to three tenths of one percent (.3%) of the outstanding principal component of the remaining Installment Payments as set forth in Exhibit E; and

(2) Amounts in each year as shall be required by the CIEDB for the payment of extraordinary expenses of the CIEDB in connection with an Event of Default, the enforcement of this Agreement or any amendments hereto requested by the Purchaser, including all expenses, fees of accountants, trustees, attorneys, litigation costs, insurance premiums and all other extraordinary costs of the CIEDB. Extraordinary expenses and extraordinary costs are those expenses and costs related to this Agreement in excess of ordinary and customary expenses and costs incurred as part of the CIEDB Annual Fee pursuant to Section 2.04(f)(1). Such Additional Payments shall be billed by the CIEDB from time to time, together with a statement certifying that the amount so billed has been paid by, or will be paid by, the CIEDB for one or
more of the items above described, or that such amount is then payable by the CIEDB for such items; and

(3) Purchaser shall deposit the CIEDB Annual Fee with the CIEDB not later than March 16 of each year and Purchaser shall pay to the CIEDB the amount billed pursuant to subsection (2) within thirty (30) days after mailing of the bill by the CIEDB. Any amounts not promptly paid shall accrue interest at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

(g) A one-time sale origination fee in an amount equal to forty-five thousand five hundred twenty-six dollars ($45,526) shall be due and payable by the Purchaser on or before the first disbursement, and shall be payable from, Project Funds.

(h) All payments hereunder shall be payable by the Purchaser in immediately available funds which constitute lawful money of the United States of America. Such payments shall be secured, and amounts for the payment thereof shall be deposited with the CIEDB as set forth in Article III.

(i) Upon receipt of a written request for disbursement, the CIEDB will disburse Project Funds to the Purchaser no more than once a month and only after specific compliance with Exhibit C conditions precedent and only after the Purchaser presents evidence that a Project cost has been incurred. All requests for payment shall be accompanied by information and documentation as may be required by the CIEDB to determine the amount of Project Funds to be disbursed. In addition, all requests for payment shall be accompanied by a certification by the Purchaser that the Project Funds requested are for eligible Project costs, as defined in the Act, CIEDB guidelines and this Agreement, incurred in the amounts and for the purposes represented, and that the work or materials for which payment has been requested are satisfactory. The CIEDB will provide the Purchaser with a description of the documentation required for payment. Further, not more than ninety percent (90%) of each invoice payable from Project Funds designated for construction shall be disbursed until the CIEDB receives a recorded notice of completion for the Project or other evidence of completion satisfactory to the CIEDB and the Purchaser has met all conditions precedent to final disbursement set out in Exhibit C; provided however, if the Purchaser demonstrates to the satisfaction of the CIEDB that the Purchaser is obliged by law to make payments to certain construction contractors of one hundred percent (100%) of invoiced amounts or to establish a retention fund for final payment for certain contractors, the CIEDB shall disburse Project Funds in the amount required by law.

(j) The disbursement request shall specify one or more of the following for costs included in the disbursement request:

(1) Purchaser previously paid the costs and is requesting reimbursement;

(2) Purchaser will pay the costs directly upon receipt of funds from the CIEDB; or
(3) CIEDB is requested to pay the disbursement directly to the party owed the funds instead of Purchaser.

SECTION 2.05. Prepayment and Reduction in Project Funds.

(a) Purchaser may at any time request CIEDB’s approval for Purchaser to prepay all or a portion of the principal component of the Purchase Price. A request for reduction in the Project Funds is a request for a prepayment. The CIEDB shall promptly respond to any such request, and shall make every effort to accommodate the request, subject to the prepayment restrictions of the Secured Bonds.

(b) Notwithstanding subsection (a), Purchaser shall be authorized to prepay all or a portion of the principal amount of Purchase Price, as follows: (i) If the prepayment date is on or after ten years after the Effective Date but prior to eleven years after the Effective Date, the prepayment amount shall be one hundred two percent (102%) of the outstanding principal amount; (ii) if the prepayment date is on or after eleven years after the Effective Date but prior to twelve years after the Effective Date, the prepayment amount shall be one hundred one percent (101%) of the outstanding principal amount; and (iii) if the prepayment date is on or after twelve years after the Effective Date, the prepayment amount shall be one hundred percent (100%) of the outstanding principal amount, without premium. Purchaser shall notify the CIEDB at least sixty (60) days prior to the date fixed for any prepayment made pursuant to this subsection.

(c) Notwithstanding the prepayment provisions of this section, the Purchaser may, on any date, provide for the legal defeasance of the amount outstanding hereunder by providing amounts sufficient to pay, in full, the Purchase Price and Additional Payments when due, until the dates set forth in subsection (b).

(d) The Purchaser hereby covenants to notify the CIEDB at least forty-five (45) days before making any repayment or prepayment of this Agreement from the proceeds of any tax-exempt debt incurred by the Purchaser.

SECTION 2.06. Encumbrance of Project Funds. The CIEDB hereby encumbers the amount of five million three hundred fifty-six thousand dollars ($5,356,000) as Project Funds.

SECTION 2.07. Senior Debt. (a) The Purchaser may after the Effective Date issue or incur additional Senior Debt in such principal amount as shall be determined by the Purchaser subject to the requirements for additional obligations as set forth in all Senior Debt Instruments and the following specific conditions, which are hereby made conditions precedent to the issuance and delivery of such Senior Debt issued under this section, provided that to the extent that a Senior Debt Instrument conflicts with any of the requirements set forth in this Section 2.07, the more restrictive provision shall prevail:

(1) No Event of Default hereunder, under any Senior Debt Instrument, Parity Debt Instrument, Subordinate Debt Instrument or under any other instrument secured by Gross Revenues shall have occurred and be continuing, and the Purchaser shall otherwise be in compliance with all covenants set forth in this Agreement. and
(2) Net Revenues calculated on generally accepted accounting principles, and excluding any balances in any fund (other than the rate stabilization fund) at the beginning of the period of the computation, as shown by the books of the Purchaser for the latest Fiscal Year, or any more recent twelve month period selected by the Purchaser ending not more than sixty (60) days prior to the adoption of the resolution pursuant to which instrument such Senior Debt is issued or incurred, as shown by the books of the Purchaser, plus, at the option of the Purchaser, either or both of the items below designated in subsections (b)(1) and (b)(2), shall have amounted to at least one hundred twenty-five percent (125%) times the maximum annual debt service on existing and proposed Senior Debt and one hundred ten percent (110%) of Maximum Annual Debt Service, including the maximum annual debt service payable in any Fiscal Year on the proposed Senior Debt, as set forth in the Report of an Independent Accountant or Independent Consultant delivered to the CIEDB.

(b) Either or both of the following items may be added to Net Revenues for the purpose of applying the restriction contained in subsection (a)(2) above:

(1) An allowance for increased Gross Revenues from any additions to or improvements or extensions of the Enterprise to be made with the proceeds of such Senior Debt, and also for Gross Revenues from any such additions, improvements, or extensions which have been made from moneys from any source but which, during all or any part of such Fiscal Year or any more recent twelve month period, were not in service, all in an amount equal to ninety percent (90%) of the estimated additional average annual Gross Revenues to be derived from such additions, improvements, and extensions for the first thirty-six (36) month period following closing of the proposed Senior Debt, all as shown in the Report of an Independent Accountant or Independent Consultant delivered to the CIEDB; and/or

(2) An allowance for increased Gross Revenues arising from any increase in the charges made for service from the Enterprise which has become effective prior to the incurring of such Senior Debt but which, during all or any part of such Fiscal Year or any more recent twelve month period, was not in effect in an amount equal to one hundred percent (100%) of the amount by which Gross Revenues would have been increased if such increase to charges had been in effect during the whole of such time period and any period prior to the incurring of such Senior Debt, as shown in the Report of an Independent Accountant or Independent Consultant delivered to the CIEDB.

(c) For purposes of making the calculations set forth in subsection (a)(2):

(1) If any Senior Debt includes capital appreciation bonds, then the accreted value payment thereof shall be deemed a principal payment and interest that is compounded and paid as accreted value shall be deemed due on the scheduled redemption or payment date of such capital appreciation bond;

(2) If any Senior Debt includes interest payable pursuant to a variable interest rate formula, the variable interest rate portion of such Senior Debt for periods when the actual interest rate cannot yet be determined, shall be assumed to be the maximum interest rate under the Senior Debt.
(d) Any payment made from Net Revenues to initially fund any reserve fund required by Senior Debt incurred after the Effective Date can be made from Net Revenues only after payments are made pursuant to Section 3.03 herein.

(e) Payments on Senior Debt in any Fiscal Year must be scheduled prior to March 15th of each Fiscal Year.

SECTION 2.08. Parity Debt.

(a) The Purchaser may after the Effective Date issue or incur Parity Debt in such principal amount as shall be determined by the Purchaser subject to the requirements for additional obligations as set forth in all Parity Debt Instruments and the following specific conditions, which are hereby made conditions precedent to the issuance and delivery of such Parity Debt issued under this section, provided that to the extent that a Parity Debt Instrument conflicts with any of the requirements set forth in this Section 2.08, the more restrictive provision shall prevail:

(1) No Event of Default hereunder, under any Senior Debt Instrument, Parity Debt Instrument, Subordinate Debt Instrument or under any other instrument secured by Gross Revenues shall have occurred and be continuing, and the Purchaser shall otherwise be in compliance with all covenants set forth in this Agreement; and

(2) Net Revenues calculated on generally accepted accounting principles, and excluding any balances in any fund (other than the rate stabilization fund) at the beginning of the period of the computation, as shown by the books of the Purchaser for the latest Fiscal Year, or any more recent twelve month period selected by the Purchaser ending not more than sixty (60) days prior to the adoption of the resolution pursuant to which instrument such Parity Debt is issued or incurred, as shown by the books of the Purchaser, plus, at the option of the Purchaser, either or both of the items below designated in subsections (b)(1) and (b)(2), shall have amounted to at least 1.10 times the Maximum Annual Debt Service taking into consideration the maximum annual debt service payable in any Fiscal Year on the proposed Parity Debt, as set forth in the Report of an Independent Accountant or Independent Consultant delivered to the CIEDB.

(3) Principal and interest payments on all Parity Debt shall be due on or after March 16th of each Fiscal Year.

(b) Either or both of the following items may be added to Net Revenues for the purpose of applying the restriction contained in subsection (a)(2) above:

(1) An allowance for increased Gross Revenues from any additions to or improvements or extensions of the Enterprise to be made with the proceeds of such Parity Debt, and also for Gross Revenues from any such additions, improvements, or extensions which have been made from moneys from any source but which, during all or any part of such Fiscal Year or any more recent twelve month period, were not in service, all in an amount equal to ninety percent (90%) of the estimated additional average annual Gross Revenues to be derived
from such additions, improvements, and extensions for the first thirty-six (36) month period following closing of the proposed Parity Debt, all as shown in the Report of an Independent Accountant or Independent Consultant delivered to the CIEDB; and/or

(2) An allowance for increased Gross Revenues arising from any increase in the charges made for service from the Enterprise which has become effective prior to the incurring of such Parity Debt but which, during all or any part of such Fiscal Year or any more recent twelve month period, was not in effect in an amount equal to one hundred percent (100%) of the amount by which Gross Revenues would have been increased if such increase to charges had been in effect during the whole of such time period and any period prior to the incurring of such Parity Debt, as shown in the Report of an Independent Accountant or Independent Consultant delivered to the CIEDB.

(c) For purposes of making the calculations set forth in subsection (a)(2):

(1) If any Parity Debt includes capital appreciation bonds, then the accreted value payment thereof shall be deemed a principal payment and interest that is compounded and paid as accreted value shall be deemed due on the scheduled redemption or payment date of such capital appreciation bond;

(2) If any Parity Debt includes interest payable pursuant to a variable interest rate formula, the variable interest rate portion of such Parity Debt for periods when the actual interest rate cannot yet be determined, shall be assumed to be the maximum interest rate under the Parity Debt.

SECTION 2.09. Reserved.

SECTION 2.10. Purchaser’s Payment of Project Costs. The Purchaser agrees to pay any and all costs connected with the Project, including, without limitation, any and all Project costs as defined in the Act exceeding the CIEDB approved amount, and the Purchaser shall not be relieved of its obligation even if the CIEDB reduces the Purchase Price pursuant to any provision hereunder.

SECTION 2.11. Validity of Agreement. The validity of this Agreement shall not be dependent upon the completion of the Project or upon the performance by any person of his or her obligation with respect to the Project.

SECTION 2.12. Project Description. The Project shall be known as the Wastewater Treatment Facility Upgrade and Sludge Disposal Project. The Project is more particularly described in Exhibit D hereto.

SECTION 2.13. Reasonable Cost of Eligible Project. The reasonable cost of the eligible Project is estimated to be six million six hundred seventeen thousand five hundred seven dollars ($6,617,507, of which a portion valued at five million three hundred fifty-six thousand dollars ($5,356,000) shall be purchased hereunder, and the remainder shall be financed as set forth in Exhibit D hereto.
SECTION 2.14. Withholding of Project Funds.

(a) The CIEDB may withhold all or any portion of the Project Funds in the event that:

(1) The Purchaser has substantially violated any of the terms, provisions, conditions or commitments of this Agreement, or if an Event of Default has occurred; or

(2) The Purchaser is unable to demonstrate, to the satisfaction of the CIEDB, the ability to complete the Project or to maintain adequate progress toward completion thereof.

(b) In the event that Project Funds are withheld from the Purchaser, the CIEDB shall notify the Purchaser of the reasons and advise the Purchaser that the Purchaser has thirty (30) days in which to remedy the failure or violation.

(c) If Project Funds are withheld pursuant to this section, the Purchaser remains obligated to repay the entire amount of the Purchase Price but to the extent applicable, the Purchaser may request that the withheld amount be applied as a prepayment pursuant to Section 2.05.

ARTICLE III

PLEDGE OF REVENUES; APPLICATION OF FUNDS

SECTION 3.01. Pledge of Net Revenues and Enterprise Fund. The Installment Payments and Additional Payments and all Parity Debt shall be equally secured by a pledge of and subordinate lien on all of the Net Revenues, without preference or priority for series, issue, number, dated date, sale date, date of execution or date of delivery, subject and subordinate solely to the Senior Debt, and a senior lien on all amounts in the Enterprise Fund. The Net Revenues and all amounts in the Enterprise Fund shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Purchaser.

Neither the Installment Payments, the Additional Payments nor this Agreement is a debt of the CIEDB, the State or any of its political subdivisions (other than the Purchaser) and neither the CIEDB, the State nor any of its political subdivisions (other than the Purchaser) is liable thereon, nor in any event shall the Installment Payments or the Additional Payments be payable out of any funds or properties other than Net Revenues of the Purchaser and amounts in the Enterprise Fund as provided herein.

SECTION 3.02. Enterprise Fund; Payments. In order to carry out its obligation to pay the Installment Payments and Additional Payments, the Purchaser agrees and covenants that it shall maintain the Enterprise Fund. Net Revenues remaining after the payment of Senior Debt Service and payments, if any, to replenish the reserve fund required pursuant to any Senior Debt
Instrument shall be placed into the Enterprise Fund upon receipt and held in the Enterprise Fund until the amount in the Enterprise Fund is equal to the amounts needed for the payments described in Section 3.03. Any Net Revenue in excess of the Section 3.03 amounts shall be released from the lien of this Installment Sale Agreement and shall be available for any lawful purpose of the Purchaser. The Purchaser agrees and covenants to maintain the Enterprise Fund so long as any portion of the Purchase Price remains unpaid.

SECTION 3.03. Amounts Payable from the Enterprise Fund. The Purchaser shall promptly pay to the CIEDB the following amounts from the Enterprise Fund at the following times:

(a) CIEDB Payments.

(1) The principal and interest portion of the Installment Payments is due at the CIEDB by March 16 of each year, as set forth on the Exhibit E amortization schedule.

(2) Additional Payments. The Purchaser shall promptly pay to the CIEDB Additional Payments due pursuant to Section 2.04 (f).

(b) Parity Debt. The Purchaser shall promptly pay to the holder of any Parity Debt the amount of Parity Debt Service as that amount becomes due and payable, pursuant to Section 2.08(a)(3), on the Parity Debt.

SECTION 3.04. Commingling of Accounts. The CIEDB may commingle any amounts in any of the funds and accounts held hereunder with any other amounts held by the CIEDB for purposes of making any deposit or investment, provided that the CIEDB shall maintain separate accounting procedures for the investment of all funds held hereunder. The value of investments credited to such fund shall be calculated at the cost thereof (excluding accrued interest).

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

SECTION 4.01. Organization; Authority. The Purchaser is duly organized and existing as a municipal corporation under the laws of the State and has all necessary power and authority to enter into and perform its duties (including the authority to set rents, rates and charges and to pledge the Net Revenues) under this Agreement.

SECTION 4.02. Agreement Valid and Binding. This Agreement has been duly authorized, executed and delivered by the Purchaser and constitutes the legal, valid and binding obligation of the Purchaser, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors’ rights generally.

SECTION 4.03. No Conflict in Execution of Agreement. The execution and delivery by the Purchaser of this Agreement and compliance with the provisions hereof will not conflict
with or constitute a breach of or default under any law, administrative regulation, court decree, resolution, charter, by-law or any agreement to which the Purchaser is subject or by which it is bound or by which its properties may be affected.

SECTION 4.04. No Litigation. There is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened against the Purchaser to restrain or enjoin the execution or delivery of this Agreement, or in any way contesting or affecting the validity of this Agreement, or contesting the powers of the Purchaser to enter into or perform its obligations under this Agreement, including the pledge of Net Revenues.

SECTION 4.05. No Breach or Default. The Purchaser is not in breach of or in default under any applicable law or administrative regulation of the State or the United States, the Constitution of the State (including article XVI, section 18 thereof), any applicable judgment or decree, any agreement, indenture, bond, note, resolution, agreement or other instrument to which the Purchaser is a party or is otherwise subject which would have a material adverse impact on the Purchaser's ability to perform its obligations under this Agreement and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument.

SECTION 4.06. No Consent, Approval or Permission Necessary. No consent or approval of any trustee or holder of any indebtedness of the Purchaser, and no consent, permission, authorization, order or licenses 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 contemplated herein, except as have been obtained or made and as are in full force and effect.

SECTION 4.07. Pledged Funds; Limited Obligation. The Purchaser expects that in each Fiscal Year Net Revenues after the payment of Senior Debt Service will equal or exceed the current Fiscal Year's payments due under this Agreement, and such payments will be treated as paid from current Net Revenues. The Purchaser shall have no obligation to use any funds other than the Net Revenues and amounts in the Enterprise Fund, directly or indirectly, to pay principal of or interest on the Purchase Price and Additional Payments; nor are any funds other than the Net Revenues and amounts in the Enterprise Fund so pledged as security for the payment of the Installment Payments and Additional Payments.

SECTION 4.08. Pledge and Subordinate Lien. The pledge of the Net Revenues constitutes a valid pledge of and a subordinate lien on all of the Net Revenues subject only to the prior lien of the Senior Debt and constitutes a first lien on all amounts in the Enterprise Fund.

SECTION 4.09. Information Submitted to the CIEDB. The information relating to the Purchaser and its Enterprise submitted by the Purchaser to the CIEDB, including, but not limited to, all information in the application for Project Funds was true at the time submitted to CIEDB and as of the Effective Date, remains true and correct in all material respects; and such information did not and does not contain any untrue or misleading statement of a material fact or
omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made.

SECTION 4.10.  Financial Statements of the Purchaser.  The Purchaser’s financial statements furnished to the CIEDB have been prepared in conformity with generally accepted accounting principles and fairly present in all material respects the financial condition of the Purchaser as of the date thereof and the results of its operations for the period covered thereby. There has been no material adverse change in the business, condition (financial or otherwise) or operations of the Purchaser since the date of such financial statements.

SECTION 4.11.  Notification to the CIEDB.  The Purchaser agrees to notify the CIEDB, immediately, by telephone promptly confirmed in writing, if any representation made herein shall at any time so long as the Agreement is outstanding prove untrue or incorrect in any manner.

SECTION 4.12.  Licenses, Permits and Approvals for Operation of Enterprise.  The Purchaser has obtained or will obtain all licenses, permits and approvals from any governmental agency or authority having jurisdiction over the Purchaser now required for the operation of the Enterprise and will obtain all licenses, permits and approvals as required in the future.

SECTION 4.13.  Project Completion.

(a) The Project consists and will consist of the facilities described in Exhibit D and the Purchaser shall make no changes thereto or to the operation thereof which would affect the qualification of the Project as a “public development facility” within the meaning of the Act or the qualifications of the Project for tax-exempt financing under the Code.

(b) The Purchaser, upon completion of the Project, will have good and valid title to the Project sufficient to carry out the purposes of this Agreement.

(c) The Purchaser intends to utilize the Project or cause the Project to be utilized as a “public development facility” within the meaning of the Act.

(d) To the best of the Purchaser’s knowledge no officer or official of the CIEDB has any material interest whatsoever in the Project or in the transactions contemplated by this Agreement.

(e) All applicable local governmental agency, State and federal government certificates, approvals, permits and authorizations with respect to the construction of the Project have been obtained or will be obtained as soon as practicable.

SECTION 4.14.  Existing Senior and Parity Obligations.  As of the Effective Date, the only obligations senior to this Agreement are the 1997 Agreement and the 2002 Agreement; there is no obligation secured by the Purchaser’s Net Revenues on parity with this Agreement.
ARTICLE V

AFFIRMATIVE COVENANTS OF THE PURCHASER

SECTION 5.01.  **Punctual Payment.** The Purchaser will punctually pay, or cause to be paid, all payments required hereunder in strict conformity with the terms of this Agreement, and it will faithfully observe and perform all of the conditions, covenants and requirements of this Agreement.

SECTION 5.02.  **Payment of Claims.** The Purchaser from time to time will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies, which, if unpaid, might become liens or charges upon the properties owned by the Purchaser, including the Enterprise, or upon the Gross Revenues or any part thereof, or upon any funds in the hands of the CIEDB, or which might impair the security for the payment of the Installment Payments or Additional Payments. Nothing herein contained shall require the Purchaser to make any such payment so long as the Purchaser in good faith shall contest the validity of said claims.

SECTION 5.03.  **Books and Accounts: Financial Statements.**

(a)  The Purchaser will keep proper books of record and accounts in which complete and correct entries shall be made of all transactions relating to the Gross Revenues and Net Revenues. Such books of record and accounts shall at all times during business hours be subject to the inspection of the CIEDB or its designee.

To the extent that any continuing disclosure certificates provide the information required in subsections (b) through (e), the Purchaser may submit a copy of the continuing disclosure certificate instead of providing separate statements setting forth the required information.

(b)  The Purchaser will prepare and file with the CIEDB annually as soon as practicable, but in any event not later than two hundred ten (210) days after the close of each Fiscal Year, so long as this Agreement has not been discharged by the CIEDB, an audited financial statement of the Purchaser relating to the Enterprise, Gross Revenues, Net Revenues and the Enterprise Fund for the preceding Fiscal Year, prepared by an Independent Accountant. The Purchaser will furnish to the CIEDB such reasonable number of copies of such audited financial statements as may be required by the CIEDB for distribution (at the expense of the Purchaser).

(c)  Simultaneously with the delivery of the annual audited financial statements, the Purchaser will deliver to the CIEDB a Certificate of the Purchaser stating the following:

(1)  The number of Enterprise users as of the end of the Fiscal Year;

(2)  Calculation of the coverage ratios described in Section 5.06 and a certification that adopted rates and charges comply with the requirements of that section;
(3) Notification of the withdrawal of any Enterprise user generating four percent (4%) or more of Gross Revenues since the last reporting date;

(4) Any significant Enterprise facility retirements or expansions planned or undertaken since the last reporting date;

(5) Notification of any Senior Debt, Parity Debt or Subordinate Debt incurred since the last reporting date and certification that there has been no default or noncompliance under any obligation secured by Net Revenues;

(6) Certification that no Event of Default has occurred and no event has occurred which, with the passing of time or the giving of notice or of both, would constitute an Event of Default;

(7) Certification that the Purchaser is in compliance with the Tax Certificate, as set forth in Exhibit G;

(8) Certification that the Agricultural Management Agreement dated as of December 20, 2002, by and between the Purchaser and Robert Nuckols, either (i) has not been amended; or (ii) if amended, remains a qualified management contract acceptable to CIEDB; or (iii) has been terminated because a replacement property has been found pursuant to Section 5.25 herein; or (iv) has been terminated for other reasons acceptable to the CIEDB.

(9) Notification of any other event or circumstance that would materially affect completion of the Project and/or payment of the Purchase Price; and

(10) Such other information as may be reasonably required.

(d) The Purchaser shall, upon request, furnish to the CIEDB, in a format provided by the CIEDB, information concerning employment and other public benefits connected to the Project.

(e) The Purchaser shall notify the CIEDB forthwith upon the filing of a stop notice, litigation or any other legal proceeding which may impact the completion of the Project.

SECTION 5.04. Protection of Security and Rights.

(a) The Purchaser will preserve and protect the security for payment of the Installment Payments, Additional Payments and the rights of the CIEDB. From and after the Effective Date, the Agreement shall be incontestable by the Purchaser.

(b) Notwithstanding subsection (a) of Section 5.04, the Purchaser may contest the CIEDB’s interpretation of a particular section of this Agreement.

SECTION 5.05. Payments of Taxes and Other Charges. The Purchaser will pay and discharge, or cause to be paid and discharged, all taxes, service charges, assessments and other governmental charges, or charges in lieu thereof, which may hereafter be lawfully imposed upon
the Purchaser, the Enterprise or the Gross Revenue when the same shall become due. Nothing herein contained shall require the Purchaser to make any such payment so long as the Purchaser in good faith shall contest the validity of said taxes, assessments or charges. The Purchaser will duly observe and conform to all valid requirements of any governmental authority relative to the Enterprise or any part thereof.

SECTION 5.06. Maintenance of Net Revenues.

(a) The Purchaser will fix, charge and collect, or cause to be fixed, charged and collected, in each Fiscal Year, such rates and charges for the use of and for the service furnished by the Enterprise so that Net Revenues are in an amount which will be sufficient to be at least equal to one hundred ten percent (110%) of annual Debt Service for such Fiscal Year.

(b) If for any reason Net Revenues prove insufficient to comply with the requirements of subsection (a), the Purchaser agrees to increase Gross Revenues through increased rents, rates, fees, charges, and/or assessments not later than one hundred eighty (180) days following the date on which Net Revenues fail to meet those requirements. The Purchaser may make adjustments from time to time in such rents, rates, fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rents, rates, fees, and charges then in effect unless the Net Revenues from such reduced rents, rates, fees and charges will at all times be sufficient to meet the requirements of this section.

SECTION 5.07. Tax Covenant. The Purchaser recognizes that the Project Funds consist of proceeds of a tax-exempt financing program. In order to maintain the tax-exempt status of the financing, the Purchaser will not take any action, or fail to take any action, if such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Proceeds Bonds, and the Purchaser specifically agrees to comply with all terms and conditions contained in the Tax Certificate and to provide annual certification of its compliance.

Purchaser recognizes that among the Code requirements related to tax-exempt financing are requirements pertaining to any contract for the management or operation of any portion of the Project as set out more fully in the Tax Certificate.

The provisions of this Section 5.07 shall survive the discharge of the Purchaser’s obligations hereunder and shall apply to any trustee or other successor or assignee described in Section 8.02.

SECTION 5.08. Operation of Enterprise. The Purchaser will, so long as any portion of the Purchase Price is unpaid, maintain and operate the Enterprise in good condition, repair and working order, and will operate the Enterprise in an efficient and economical manner, and will pay all Operations and Maintenance Expenses as they become due and payable. The Purchaser shall ensure that all activities undertaken by the Purchaser with respect to the operation of the Enterprise are undertaken and accomplished in conformity with all applicable requirements of law.
SECTION 5.09. Assumption of Agreement. The obligations of the Purchaser under this Agreement may not be assumed by another entity except in connection with a transfer of the entire Enterprise by the Purchaser and only upon prior written approval of the CIEDB and receipt by the CIEDB of:

(1) an opinion of counsel experienced in matters relating to the tax-exempt status of interest on any obligations secured by this Agreement, and approved by the CIEDB, to the effect that such transfer would not cause interest on the obligations to be included in gross income for federal income tax purposes;

(2) a Report signed by an Independent Consultant or Independent Certified Accountant concluding that such transfer would not materially adversely affect the security for the Installment Payments, Additional Payments or the rights of the CIEDB; and

(3) evidence satisfactory to the CIEDB that the entity assuming the Purchaser’s obligation hereunder is eligible pursuant to the Act.

SECTION 5.10. Completion of Project; Construction Contracts.

(a) The Purchaser shall ensure that all activities undertaken with respect to the completion of the Project are undertaken and accomplished with due diligence and in conformity with all requirements of the Act and other applicable law.

(b) All construction contracts shall be let to the lowest responsible bidder at a fixed price subject to increase only for allowable extra work, change orders approved by the Purchaser, and damages or delays authorized by the laws of the State. The Purchaser shall not approve any change orders of the original construction contract amount without having funds committed for the increased Project costs.

(c) The Purchaser shall notify the CIEDB forthwith upon the filing of a stop notice, litigation or any other legal proceeding which may impact the completion of the Project.

SECTION 5.11. Reserved.

SECTION 5.12. Further Assurances. The Purchaser will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably required by the CIEDB as necessary or proper to carry out the intention or to facilitate the performance of this Agreement and for the better assuring and confirming unto the CIEDB of the rights and benefits provided in this Agreement.

SECTION 5.13. Agreement to Complete.

(a) The Purchaser agrees that it will acquire, construct or install the Project, and construct, acquire and install other facilities and real and personal property deemed by the Purchaser necessary for the operation of the Project. The Purchaser may supplement or amend the Project description with written approval from the CIEDB from time to time, provided that
no such supplement or amendment shall cause the Project or any portion thereof to fail to constitute a "project" within the meaning of the Act.

(b) At any time, upon request of the CIEDB, the Purchaser agrees to make available to the CIEDB for review and copying all then current plans and specifications for the Project. The Purchaser may identify any proprietary information in such plans and specifications and, to the extent legally permissible, the CIEDB agrees to keep such information confidential.

(c) As soon as the Project is completed, the Purchaser shall evidence such completion by providing a certificate to the CIEDB stating that (i) construction of the Project has been completed substantially in accordance with the final plans and specifications therefor and all labor, services, materials and supplies used in construction have been paid for, and (ii) all other facilities necessary in connection with the Project have been constructed, acquired and installed in accordance with the final plans and specifications therefor and all costs and expenses incurred in connection therewith have been paid. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights of the Purchaser against third parties for the payment of any amount not then due and payable which exist at the date of such certificate or which may subsequently exist.

SECTION 5.14. Collection of Rates, Fees and Charges. The Purchaser will have in effect at all times rules and regulations requiring each user of the Enterprise to pay the rates, fees and charges applicable to the services provided by the Enterprise to each user. The Purchaser will not permit any part of the Enterprise or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State and any city, county, district, political subdivision, public corporation or agency of any thereof); provided, that the Purchaser may without charge use the services provided by the Enterprise.

SECTION 5.15. Purchaser's General Responsibility. The Purchaser is solely responsible for the design, construction, operation and maintenance of the Project. Any review or approval of plans, specifications, bid documents or other construction documents by the CIEDB is solely for the purpose of proper administration of Project Funds by the CIEDB and shall not be deemed to relieve or restrict the Purchaser's responsibility or result in any duty, obligation or responsibility on the part of the CIEDB or the officers and agents thereof.

SECTION 5.16. Purchaser's Assurances and Commitments.

(a) Compliance with Laws and Regulations. The Purchaser shall at all times comply and require its contractors and subcontractors to comply with all applicable federal and State laws, rules and regulations, and all applicable local ordinances, specifically including, but not limited to, prevailing wage, environmental, procurement and safety laws, rules, regulations, and ordinances. Purchaser agrees that its failure to act in accordance with the provisions of this subsection (a) will not result in any duty, obligation or responsibility on the part of the CIEDB or the officers and agents thereof.
(b) **Archeological or Historical Resources.** Should a potential archeological or historical resource be discovered during construction, the Purchaser agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and the Purchaser has determined appropriate actions regarding preservation of the resource.

(c) **Construction Activities.** The Purchaser shall assure that adequate supervision and inspection of Project construction activities are maintained. The CIEDB reserves the right to conduct an audit of Purchaser’s construction expenditures during construction and for up to three years following receipt by CIEDB of notice of completion or other evidence of completion satisfactory to CIEDB. The CIEDB, at its discretion, may require the Purchaser to conduct an interim and/or a final audit at the Purchaser’s expense, such audit to be conducted by and a report prepared by an Independent Accountant.

**SECTION 5.17. Project Access.** The Purchaser shall assure that the CIEDB or its designee will have suitable access to the Project site at all reasonable times so long as the Purchase Price remains unpaid and shall include provisions assuring such access in all contracts and subcontracts relating to the Project.

**SECTION 5.18. Operation and Maintenance of the Project.** The Purchaser agrees to commence operation of the Project upon completion of construction. The Purchaser covenants and agrees that it will operate and maintain the Project in accordance with all governmental laws, ordinances, approvals, rules, regulations and requirements including, without limitation, such zoning, sanitary, pollution and safety ordinances and laws and such rules and regulations thereunder as may be binding upon the Purchaser. The Purchaser further covenants and agrees that it will maintain and operate the Project and will maintain and operate the same, now or hereafter at any time constituting part of the Project, in good repair, working order and condition, and that it will from time to time make or cause to be made all needful and proper replacements, repairs, renewals and improvements, in each case to the extent necessary so that the efficiency and value of the Project shall not be impaired.

**SECTION 5.19. Performance and Payment Bonds.**

(a) The Purchaser shall require its contractor to certify under penalty of perjury, and provide the Purchaser with a copy of such certification, which shall be available for the CIEDB’s inspection if requested, that it has obtained a bond or bonds by one or more authorized surety companies satisfactory to the Purchaser has been obtained; surety companies must be authorized to do business in California and have an agent for service of process in California. The Purchaser shall require that the Purchaser be named as an additional payee on the performance and payment bonds required herein and shall provide the CIEDB with a copy of the bonds to that effect.

(b) Said bond shall be in the amounts and for the following purposes: (i) an amount not less than one hundred percent (100%) of the total estimated cost of the Project construction contract amount conditioned upon the faithful performance of the terms of this Agreement including the maintenance of the work for a period of one year from the date of final acceptance of work or improvements by the Purchaser against any defective work or labor done,
or defective materials furnished, and (ii) an additional amount not less than one hundred percent (100%) of the estimated cost of the Project securing payment to the subcontractors and to persons renting equipment or furnishing labor or materials to them for the Project.

SECTION 5.20. Continuing Disclosure. Upon the request of the CIEDB, the Purchaser covenants to furnish certain financial and operating data pertaining to the Purchaser that may be required to either: (i) enable the CIEDB to issue any Secured Bonds; or (ii) enable any underwriter of any Secured Bonds to comply with Rule 15c2-12(b)(5) of the Securities and Exchange Commission.

SECTION 5.21. Notice of Event of Default. The Purchaser covenants that it will deliver to the CIEDB, immediately after the Purchaser shall have obtained knowledge of the occurrence of an Event of Default or a failure as described in Section 7.01(a)(2), the written statement of an authorized officer of the Purchaser setting forth the details of such Event of Default or failure and the action which the Purchaser proposes to take with respect thereto.

SECTION 5.22. Maintenance of Insurance. The Purchaser will procure and maintain or cause to be maintained insurance on the Enterprise with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the Enterprise) as are usually covered in connection with wastewater systems similar to the Enterprise. The Purchaser shall annually provide a Certificate of the Purchaser to the CIEDB certifying that such insurance is in effect. In the event of any damage to or destruction of the Enterprise caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the Enterprise. The Purchaser shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the Enterprise shall be free and clear of all claims and liens. If such net proceeds are sufficient to enable the Purchaser to pay all remaining unpaid Installment Payments and Additional Payments, the Purchaser may elect not to reconstruct, repair or replace the damaged or destroyed portion of the Enterprise, and thereupon such net proceeds shall be applied to the prepayment of Installment Payments and Additional Payments as provided herein.

SECTION 5.23. Compliance with State Contract Requirements. The Purchaser shall comply with all provisions contained in Exhibit F so long as any portion of the Purchase Price is unpaid.

SECTION 5.24. Compliance with Contracts. The Purchaser will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Enterprise and all other contracts affecting or involving the Enterprise to the extent that the Purchaser is a party thereto.

SECTION 5.25 Maintenance of Lease/Purchase Agreement. The Purchaser shall maintain the Lease/Purchase Agreement dated December 20, 2003, between Robert Nuckols and Gail Nuckols, as Lessors and the Purchaser, as Lessee, for the term of this Agreement or demonstrate to the CIEDB that an acceptable replacement property has been found.

(a) For the term of this Agreement, the Purchaser must either (i) maintain the current Agricultural Management Agreement dated as of December 20, 2002, by and between the Purchaser and Robert Nuckols; (ii) amend that contract to another qualified management contract acceptable to CIEDB; (iii) terminate the contract because a replacement property has been found pursuant to Section 5.25 herein; or (iv) terminate the contract for other reasons acceptable to the CIEDB.

(b) If any replacement land or additional land is acquired for use in the Project, any contract for the management and operation of the land must be a qualified management contract pursuant to the Code.

ARTICLE VI

NEGATIVE COVENANTS OF THE PURCHASER

SECTION 6.01. Limitation on Additional Obligations. The Purchaser hereby covenants that, until the Purchase Price has been paid in full and this Agreement has been discharged pursuant to Section 8.05, the Purchaser shall not after the date of this Agreement issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any loans, advances or obligations, which are in any case secured by a lien on all or any part of Net Revenues that is senior to or on a parity with the lien established hereunder for the security for the payment of the Installment Payments and Additional Payments, excepting only Parity Debt meeting the requirements of Section 2.08 herein and Senior Debt meeting the requirements of Section 2.07. Nothing herein is intended nor shall be construed in any way to prohibit or impose any limitations upon the issuance or incurrence by the Purchaser of Subordinate Debt or of obligations other than Parity Debt and Senior Debt.

SECTION 6.02. Disposition of Property. The Purchaser will not authorize the disposition of real or personal property constituting more than ten percent (10%) of the value of the Enterprise unless the Purchaser first obtains a Report, and provides a copy to the CIEDB, of an Independent Consultant concluding that such disposition will not substantially adversely affect the security for the payment of the Installment Payments and Additional Payments. The Purchaser shall not dispose of any portion of the Project while the Purchase Price is unpaid except for property that is not operating or is worn out and for the dedication of public streets and public and private utility easements.

SECTION 6.03. Nondiscrimination.

(a) During the performance of this Agreement, the Purchaser, any contractor and its subcontractors shall not deny the contracts' benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age or sex. The Purchaser, any contractor and its subcontractor shall insure that
the evaluation and treatment of employees and applicants for employment are free of such discrimination.

(b) The Purchaser, any contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any regulations promulgated thereunder.

(c) The Purchaser, any contractor and its subcontractors shall not knowingly give preferential treatment of any kind whatsoever in connection with any business transaction related to the construction or operation of the Project to any of its affiliates or to any business enterprise in which Purchaser has any financial interest, but in such business transactions shall deal at all times with such affiliates and enterprises on the same basis as though Purchaser were dealing with any other parties.

(d) The Purchaser, any contractor and its subcontractors shall, with respect to the Project described herein, give written notice of their obligations under this section to labor organizations representing employees of the Purchaser and any contractor or subcontractor performing construction on the Project which have a collective bargaining or other contract with the Purchaser, such contractor or subcontractor.

(e) The Purchaser, any contractor and its subcontractors shall include the provisions of this section in all subcontracts to perform work under this Agreement or any contract contemplated hereby.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

SECTION 7.01. Events of Default and Acceleration.

(a) Each of the following events shall constitute an Event of Default hereunder:

(1) Failure by the Purchaser to pay any Installment Payment or interest or prepayment premium (if any) or any Additional Payment pursuant to Section 3.03(a) when and as the same shall become due and payable;

(2) Failure by the Purchaser to observe and perform any of the covenants, agreements or conditions on its part contained in this Agreement, other than as referred to in the preceding subsection (1), for a period of sixty (60) days after written notice has been given to the Purchaser by the CIEDB, or to the Purchaser and the CIEDB, specifying such failure and requesting that such failure be remedied; provided, however, that if the failure stated in such notice can be corrected, but not within such sixty (60) day period, the CIEDB may
consent to an extension of such time if corrective action is instituted by the Purchaser within such sixty (60) day period and diligently pursued until such failure is corrected;

(3) The filing by the Purchaser of a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the Purchaser, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Purchaser or of the whole or any substantial part of its property;

(4) Any representation or other written statement made by the Purchaser contained in this Agreement, the application for financing or in any instrument furnished in compliance with or in reference thereto shall prove to have been incorrect in any material respect;

(5) An unexcused failure by the Purchaser to pay amounts due under any bond, note, installment sale agreement, capital lease or other agreement or instrument to which it is a party relating to the borrowing of money, if such unpaid amount shall exceed fifty thousand dollars ($50,000); or

(6) The occurrence of an event of default with respect to any Senior Debt, any Parity Debt or any Subordinate Debt which causes all principal of such Senior Debt, Parity Debt or Subordinate Debt to become due and payable immediately.

(b) If an Event of Default has occurred and is continuing, the CIEDB may (i) declare the principal of the Purchase Price, together with the accrued interest on all unpaid installments thereof, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything in this Agreement to the contrary notwithstanding, and (ii) exercise any other remedies available to the CIEDB in law or at equity. Immediately upon becoming aware of the occurrence of an Event of Default, the CIEDB shall give notice of such Event of Default to the Purchaser by telephone, teletypewriter, facsimile or other telecommunication device, promptly confirmed in writing. This provision, however, is subject to the condition that if, at any time after the principal of the Purchase Price shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Purchaser shall deposit with the CIEDB a sum sufficient to pay all installments of principal of the Purchase Price due prior to such declaration and all accrued interest thereon, with interest on such overdue Installment Payments at the rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law, and the reasonable expenses of the CIEDB (including but not limited to attorneys fees and costs), and any and all other defaults known to the CIEDB (other than in the payment of principal of and interest on the Purchase Price due and payable solely by reason of such declaration), including the payment of Additional Payments due and owing, shall have been made good or cured to the satisfaction of the CIEDB or provision deemed by the CIEDB to be adequate shall have been made therefor, then, and in every such case, the CIEDB may, by written notice to the Purchaser, rescind and annul such declaration and its consequences. However, no such rescission and
annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

SECTION 7.02. Remedies. Upon the occurrence of an Event of Default the CIEDB shall have the following rights, in addition to its rights under Section 7.01:

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

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

(c) By suit in equity to require the Purchasers and its members, officers and employees to account as the trustee of an express trust.

SECTION 7.03. Application of Funds upon Default. All amounts received by the CIEDB pursuant to any right given or action taken by the CIEDB under provisions of this Agreement, or otherwise held by the CIEDB upon the occurrence of an Event of Default, shall be applied by the CIEDB in the following order:

(a) First, to the payment of the costs and expenses of the CIEDB, including reasonable compensation to their agents and attorneys, including CIEDB employees, as set forth in Section 2.04(f)(2); and

(b) Second, to the payment of the whole amount of Installment Payments then due and unpaid, with interest on overdue Installment Payments at the rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law; provided, however, that in the event such amounts shall be insufficient to pay in full the amount of such Installment Payments, then such amounts shall be applied in the following order of priority:

(1) First, to the payment of all installments of interest on the Purchase Price then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full;

(2) Second, to the payment of principal of all installments of the Purchase Price then due and unpaid, other than principal having come due and payable solely by reason of acceleration pursuant to Section 7.01, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full;

(3) Third, to the payment of principal of the Purchase Price then due and unpaid and having come due and payable solely by reason of acceleration pursuant to Section 7.01, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full; and
(c) Third, to the payment to the CIEDB of other Additional Payments as described in Section 2.04(f)(1).

SECTION 7.04.  No Waiver.  Nothing in this Article VII or in any other provision of this Agreement shall affect or impair the obligation of the Purchaser, which is absolute and unconditional, to pay from the Net Revenues and other amounts pledged hereunder, all payments due hereunder, or affect or impair the right of action, which is also absolute and unconditional, of the CIEDB to institute suit to enforce such payment by virtue of the contract embodied in this Agreement.

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

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

SECTION 7.05.  Remedies Not Exclusive.  No remedy herein conferred upon or reserved to the CIEDB is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by law.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01.  Venue.  The CIEDB and the Purchaser hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California.

SECTION 8.02.  Assignment.  This Agreement may, at the CIEDB's discretion, be assigned by the CIEDB to a trustee or any other party for the purpose of securing the payment of any bonds, notes or other obligations issued by the CIEDB and secured by this Agreement and the Installment Payments and Additional Payments; and the Purchaser hereby consents to such assignment.

SECTION 8.03.  Benefits Limited to Parties.  Nothing in this Agreement, expressed or implied, is intended to give to any person other than the Purchaser, the CIEDB and any trustee for the Proceeds Bonds or Secured Bonds, any right, remedy or claim under or by reason of this
Agreement. All covenants, stipulations, promises or agreements contained in this Agreement by and on behalf of the Purchaser shall be for the sole and exclusive benefit of the CIEDB.

SECTION 8.04. Successor. Whenever in this Agreement either the Purchaser or the CIEDB is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the Purchaser or the CIEDB shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not. The trustee for the Proceeds Bonds will be the CIEDB’s initial assignee.

SECTION 8.05. Discharge of Agreement.

(a) If the Purchaser shall pay and discharge the entire indebtedness hereunder by paying or causing to be paid the principal of, interest and prepayment premium (if any) on the Purchase Price and Additional Payments, as and when the same become due and payable, then, at the election of the Purchaser, but only if all other amounts then due and payable hereunder shall have been paid or provision for their payment made, the pledge of and lien upon the Net Revenues and other funds provided for in this Agreement and all other obligations of the CIEDB and the Purchaser under this Agreement with respect to the Purchase Price shall cease and terminate, except only (i) the obligation of the Purchaser to pay or cause to be paid to the CIEDB, from the amounts so deposited with the CIEDB or such other fiduciary, all sums due with respect to this Agreement and all expenses and costs of the CIEDB, and (ii) the obligations of the Purchaser under Sections 5.07, 8.01 and 8.12. Notice of such election shall be filed with the CIEDB.

(b) All or any portion of unpaid principal installments of the Purchase Price shall, prior to their payment dates or dates of prepayment, be deemed to have been paid within the meaning of and with the effect expressed in this section (except that the Purchaser shall remain liable for such Purchase Price payment, but only out of such money or securities deposited with the trustee or other fiscal agent approved by the CIEDB for such payment), if (i) there shall have been deposited with the trustee or other fiscal agent approved by the CIEDB either money in an amount which shall be sufficient, or federal securities (as defined below) which are not subject to redemption prior to maturity except by the holder thereof (including any such federal securities issued or held in book entry form) or tax-exempt obligations of a state or a political subdivision thereof which have been defeased under irrevocable escrow instructions with federal securities, the interest on and principal of which when paid will provide money which, together with money, if any, deposited with the CIEDB, shall be sufficient to pay when due the Installment Payments of such portions thereof on and prior to their payment dates or their dates of prepayment, as the case may be, and the prepayment premiums, if any, applicable thereto, and (ii) an opinion of nationally recognized bond counsel acceptable to the CIEDB is filed with the CIEDB to the effect that the action taken pursuant to this section will not cause the interest on the Proceeds Bonds to be includable in gross income under the Code for federal income tax purposes. As used in this section, “federal securities” means United States of America Treasury bills, notes, bonds or certificates of indebtedness, or obligations of, or obligations guaranteed directly or indirectly by, the United States of America, or securities
evidencing ownership interests in such obligations or in specified portions of the interest on or principal of such obligations.

SECTION 8.06. Amendment. This Agreement may be amended by the parties in writing.

SECTION 8.07. Waiver of Personal Liability. No member, officer, agent or employee of the Purchaser shall be individually or personally liable for the payment of the principal of premium if any, or the interest under this Agreement; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

SECTION 8.08. Payment on Business Days. Whenever in this Agreement any amount is required to be paid on a day that is not a Business Day, such payment shall be required to be made on the Business Day immediately following such day and no further interest shall accrue.

SECTION 8.09. Notices. All written notices to be given under this Agreement shall be given by first-class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time, except that notices from the Purchaser to the CIEDB shall be given by registered mail, or by telecommunication confirmed in writing. Notice shall be effective forty-eight (48) hours after deposit in the United States mail, postage prepaid or, in the case of any notice to the CIEDB or in the case of personal delivery to any person, upon actual receipt at the address set forth below:

If to the CIEDB:

California Infrastructure and Economic Development Bank
Attn: Credit Support Manager, CIEDB B04-053
P.O. Box 2830
Sacramento, CA 95812-2830

If by overnight mail or personal delivery:

California Infrastructure and Economic Development Bank
Attn: Credit Support Manager, CIEDB B04-053
1001 I Street, 19th Floor
Sacramento, CA 95814

Or to such other address as may be designated in writing by the CIEDB.

If to the Purchaser:

City of Porterville
Attn: Public Works Director
291 North Main Street
Or to such other address as may be designated in writing by the Purchaser.

SECTION 8.10. Partial Invalidity. If any portion of this Agreement shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity and enforceability of the remaining portions of this Agreement.

SECTION 8.11. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State.

SECTION 8.12. Indemnification. The Purchaser shall, to the extent permitted by law, indemnify and hold harmless the CIEDB and its members, directors, officers, employees and agents, the trustee and underwriter and its members, directors, officers, employees and agents, from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever, including, but not limited to, losses, claims, damages, liabilities or expenses arising out of, resulting from or in any way connected with (1) this Agreement or the Enterprise, or the conditions, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation or construction of the Enterprise or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) information provided by the Purchaser which is used in the offering for sale of the Secured Bonds; or (4) any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance on or near, the Enterprise. The Purchaser shall, to the extent permitted by law, pay or reimburse the CIEDB and its members, directors, officers, employees and agents for the Purchaser’s pro rata share of any and all reasonable costs, reasonable attorneys’ fees, liabilities or expenses incurred in connection with investigating, defending against or otherwise in connection with any such losses, claims, damages, liabilities, expenses or actions. Notwithstanding anything to the contrary in this Agreement, the CIEDB, and its members, directors, officers, employees and agents shall not be entitled to payment, reimbursement or indemnification with respect to actions involving willful misconduct, default or negligence on the part of the CIEDB, or its members, directors, officers, employees and agents.

The provisions of this Section 8.12 shall survive the discharge of the Purchaser’s obligations hereunder and shall apply to any trustee or other successor or assignee described in Section 8.02.

SECTION 8.13. Contact Persons.

(a) The Executive Director of the CIEDB or such other person as designated in writing by the CIEDB shall manage this Agreement for the CIEDB and shall have authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment for work performed under this Agreement.

(b) The Purchaser Project manager shall be the Public Works Director or such other person as may be designated in writing by the Purchaser. The Purchaser Project manager
shall be the Purchaser's representative for the administration of this Agreement and shall have full authority to act on behalf of the Purchaser. The Public Works Director or such other person as designated by the City Manager may designate in writing another person or persons authorized to request disbursement of Project Funds. All communications given to the Purchaser Project manager shall be as binding as if given to the Purchaser.

SECTION 8.14. Effective Date; Execution. This Agreement shall become effective upon its execution and delivery. This Agreement may be executed and entered into in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

[The balance of this page is intentionally left blank.]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by the respective officers, all as of the day and year first above written.

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK, as seller

By_________________________________
    Stanton C. Hazelroth
    Executive Director

Attest

By_________________________________
    Blake Fowler
    Assistant Executive Director

CITY OF PORTERVILLE, as Purchaser

By_________________________________
    John Longley
    City Manager

Attest

By_________________________________
    Georgia Hawley
    Deputy City Clerk
EXHIBIT A

RESOLUTION NO. _________

A RESOLUTION OF THE CITY COUNCIL OF THE

CITY OF PORTERVILLE

AUTHORIZING THE EXECUTION
AND DELIVERY OF THE INSTALLMENT SALE AGREEMENT BY AND BETWEEN THE
CITY OF PORTERVILLE AND THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC
DEVELOPMENT BANK
AND APPROVING
CERTAIN OTHER MATTERS IN CONNECTION THEREWITH

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
PORTERVILLE, AS FOLLOWS:

Section 1. The City Manager is authorized and directed to execute and deliver the
Enterprise Fund Installment Sale Agreement (the "Agreement") proposed to be entered into by
the City of Porterville and the California Infrastructure and Economic Development Bank, dated
as of September 1, 2004, for and on behalf of the City of Porterville. As executed and delivered,
such documents shall be in substantially the form presented at this meeting, with such minor
additions thereto or minor changes therein as the officers executing such document shall require
or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. The City Manager, the Chief Financial Officer and Executive Secretary to
the City Manager are hereby each authorized and directed, in the name and on behalf of the City
of Porterville, to take any and all steps and to execute and deliver any and all certificates,
contracts and other documents which they might deem necessary or appropriate in order to
consummate the delivery of the Agreement and otherwise to effectuate the purposes of this
resolution; including the execution of a tax certificate, and such actions previously taken by the
employees of the City of Porterville are hereby ratified and confirmed.

Section 3. This resolution shall take effect from and after its passage, approval and
adoption.

PASSED, APPROVED and ADOPTED this _____ day of __________, _____ by the
following vote:

Ayes:
Noes:
Absent:
Abstain:
ATTEST

By: _______________________
   Georgia Hawley
   Deputy City Clerk
CERTIFICATION OF RESOLUTION

The undersigned hereby states and certifies:

(1) that I am the duly qualified and acting ______________________ of the City of Porterville (the Purchaser), and, as such, am familiar with the facts herein certified and am fully authorized to certify the same.

(2) Attached hereto is a true, correct and complete copy of the resolution of the governing body of the Purchaser authorizing the execution and delivery of the Enterprise Fund Installment Sale Agreement, dated as of September 1, 2004, by and between the Purchaser and the California Infrastructure and Economic Development Bank adopted at a meeting thereof duly held on the date set forth in such resolution, of which meeting all of the members of said governing body had due notice and at which a quorum was present and acting throughout.

(3) I further certify that I have carefully compared the attached copy of the resolution with the original minutes of said meeting on file and of record in my office; that said copy is a true, correct and complete copy of the original resolution duly adopted by said governing body at said meeting and entered in said minutes; and that said resolution has not been amended, modified or rescinded since its adoption and is in full force and effect as of the date hereof.

(4) I further certify that in accordance with Government Code section 54954.2, the agenda of the meeting contained a brief description of the resolution to be considered at the meeting, and a copy thereof was posted at least seventy-two (72) hours before the meeting in a location freely accessible to members of the public.

Dated: _________, ______

CITY OF PORTERVILLE

By ___________________________________
EXHIBIT B

CERTIFICATE OF THE

CHIEF FINANCIAL OFFICER of the CITY OF PORTERVILLE ("PURCHASER")

The undersigned hereby states and certifies:

(1) that I am the duly qualified and acting chief financial officer of the Purchaser, and, as such, am familiar with the facts herein certified and am fully authorized to certify the same.

(2) The financial data submitted by Purchaser in the application for financing (including supplements thereto) in connection with the Enterprise Fund Installment Sale Agreement ("Agreement"), dated as of September 1, 2004 by and between the Purchaser and the California Infrastructure and Economic Development Bank ("CIEDB") was true at the time submitted to CIEDB and as of the date of this certification, remains true and correct in all material respects, and such information did not and does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made.

(3) The Purchaser is not in breach of or in default under any bond indenture, loan agreement, note or other instrument to which it is a party.

(4) The Purchaser maintains workers' compensation insurance covering all Purchaser employees at the Project.

(5) The only obligations of the Purchaser secured by Net Revenues other than by this Agreement are the Installment Sale Agreement dated as of September 1, 1997 by and between the Porterville Public Financing Authority, as Seller and the City of Porterville, as Purchaser (as related to the 1997 Sewer System Refinancing Project) (the "1997 Agreement") and the Installment Sale Agreement dated as of September 1, 2002 by and between the Porterville Public Financing Authority, as Seller and the City of Porterville, as Purchaser (as related to the 2002 Sewer System Refinancing Project) (the "2002 Agreement"). There are no other obligations secured by Net Revenues.

(6) The Purchaser is in compliance with reserve fund requirements of the 1997 Agreement and the 2002 Agreement.

(7) The representations and warranties made in the Agreement are true and correct as if made on the date of this certificate.
Dated: __________, _____

City of Porterville

By _________________________________
EXHIBIT C

CONDITIONS PRECEDENT TO DISBURSEMENT

(a) **Initial Disbursement.** Disbursement for the CIEDB origination fee shall be made upon or prior to the initial disbursement. No other funds shall be disbursed pursuant to this Agreement until and unless Purchaser, in the good faith judgment of the CIEDB, has specifically complied with the following and provided a copy of the specified document satisfactory to the CIEDB:

(1) Opinion of legal counsel that Purchaser has the legal authority to enter into this Agreement and that the Agreement is a legal, binding and enforceable agreement of Purchaser in a form substantially similar to Exhibit H.

(2) Resolution and Certification of Resolution adopted by Purchaser in a form substantially similar to Exhibit A and Certification in a form substantially similar to page A-2 of Exhibit A.

(3) Certificate of the Purchaser’s chief financial officer in the form set out in Exhibit B.

(4) Evidence acceptable to the CIEDB of approval, conditional approval or clearance of conditions from the California Department of Fish and Game related to Section 711.2 et seq. of the California Fish and Game Code as that section pertains to the Negative Declaration specified in City Resolution 24-2002.

(5) Insurance certificates showing insurance as required by Section 5.22.

(6) Tax Certificate executed by Purchaser in a form substantially similar to Exhibit G.

(7) Certificate or opinion, satisfactory to the CIEDB, as described in section 4.08(c) of both the 1997 Agreement and the 2002 Agreement, concluding that the this Agreement meets the test for subordinate debt set out in those documents.

(b) **Preliminary Costs.** When all the requirements of section (a) herein are met in a manner satisfactory to the CIEDB, disbursement shall be allowed for the preliminary costs as specified in Exhibit D.

(c) **Construction Costs.** This Project has a number of components that will include the following: removal of wastewater treatment facility (“WWTF”) buried sludge, WWTF equipment replacement, pave sludge stockpile area, construct sludge drying beds, remove plums, land leveling, construct 30 acre percolation pond, installation of effluent irrigation pipeline and installation of new monitor wells.

The following documents must be provided for each component before funds shall be disbursed for costs attributable to that component. “Component” means the component of the
Project for which the Purchaser is requesting reimbursement. For costs other than the origination fee, and costs described in section (b) herein, no funds shall be disbursed pursuant to this Agreement until and unless Purchaser has, in the good faith judgment of the CIEDB, provided the CIEDB with all the documents required in section (a) herein and the following documents:

(1) A Certificate of the Purchaser’s Public Works Director or legal counsel that Purchaser has obtained any and all lands, rights-of-way, lot line adjustments, easements, and orders of possession, which are required for construction and operation of the Project.

(2) A Certificate of the Purchaser that all required permits have been obtained for the construction of the Project;

(3) A Certificate of the Purchaser’s Public Works Director or legal counsel that:

(A) All construction contracts and subcontracts necessary for Project construction have been awarded, and were awarded pursuant to competitive bidding and Purchaser procedures normally required for similar construction projects;

(B) Costs are consistent with the Exhibit D Project sources and uses chart;

(C) All prime contracts require the contractor to maintain appropriate builder’s risk insurance and name the Purchaser as an additional insured and loss payee, require the contractor to maintain liability insurance and name the Purchaser as an additional insured, and include the performance and payment bond provisions set forth in Section 5.19 of this Agreement and name the Purchaser as an additional payee;

(D) All construction contracts are let to the lowest responsible bidder at a fixed price subject to increase only for allowable extra work, change orders approved by Purchaser, and damages or delays authorized by the laws of the State. Purchaser shall not approve any change orders of the original construction contract amount without having funds committed for the increased Project costs;

(E) All construction contracts require payment of prevailing wage rates and compliance with Chapter 1 (commencing with section 1720) of Part 7 of Division 2 of the California Labor Code;

(F) All construction contracts require payment of workers’ compensation insurance by contractors and subcontractors;

(G) All construction contracts include the nondiscrimination provisions set forth in Section 6.03; and
(H) Purchaser utilized contractor pre-qualification forms developed by the Director of Industrial Relations as set forth in AB 574 (Chapter 972 of the Statutes of 1999) codified in Public Contract Code section 20101 et seq.

(I) Evidence of compliance with the California Environmental Quality Act (CEQA).

(d) Land Costs: When all the requirements of section (a) herein are met in a manner satisfactory to the CIEDB and Purchaser has submitted evidence of CEQA compliance insofar as related to purchase of land, disbursement shall be allowed for the cost of land as specified in Exhibit D

(e) The following documents must be provided for each Project component before funds shall be disbursed for costs attributable to that component. The final disbursement of Project Funds shall not be made until and unless Purchaser, in the good faith judgment of the CIEDB, has specifically complied with each and every one of the following for all Project components as described in Section (c) herein, and provided a copy of the specified document or certificate satisfactory to the CIEDB:

1. Recorded Project notice of completion or other evidence of completion;

2. Lien waivers for the Project component, or passage of the applicable statutory time periods for filing mechanics and other similar liens;

3. Certification that the Project component has been completed in accordance with the approved final plans and specifications, and that the completed Project is consistent with the definition of Project in this Agreement and is acceptable to the Purchaser and that the requirements of Section 5.13(c) have been met;

4. Certification of Recycled Content as set out in Section 6 of Exhibit F; and

5. Certification that the Purchaser component has obtained all licenses and permits (including operating permits), and approvals from any governmental agency or authority having jurisdiction over the Purchaser in connection with the Project, where applicable.
EXHIBIT D
DESCRIPTION AND PROJECT SOURCES AND USES

Project Title:

Wastewater Treatment Facility Upgrade and Sludge Disposal Project

Project Description:

Acquisition of land, land leveling, removal of plum trees and the installation of irrigation piping; construction of percolation ponds; construction of new sludge drying beds; construction of new monitoring wells; removal of buried sludge and proper sludge disposal; wastewater treatment facility equipment upgrades; and wastewater system and groundwater tests, studies and work plans.

Project Sources and Uses:

<table>
<thead>
<tr>
<th>Project Uses</th>
<th>CIEDB</th>
<th>Purchaser</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land &amp; Appraisal, Title and Escrow Fees</td>
<td>$574,100</td>
<td>$1,261,507</td>
<td>$1,835,607</td>
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<td>Construction of Percolation Ponds, Effluent Irrigation, Land Leveling, Pave Sludge Stockpile Area, Sludge Drying Beds, Monitoring Wells, Plum Tree Removal &amp; Buried Sludge Disposal</td>
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<tr>
<td>Consultant Fees for studies and plans</td>
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<tr>
<td>Wastewater Treatment Facility Equipment</td>
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<td><strong>$1,261,507</strong></td>
<td><strong>$6,617,507</strong></td>
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Any line item financed by CIEDB may be amended up to twenty percent (20%) upon the prior written approval of the CIEDB.

The CIEDB shall not be responsible for the payment of any cost overruns.

The Purchaser shall submit invoices only for expenses incurred. Expenses contained in the invoices shall be listed according to the categories contained in the above Project sources and uses. The CIEDB shall pay ninety percent (90%) of all invoices for construction costs submitted to the Purchaser prior to compliance with Exhibit C, section (e), conditions precedent to final disbursement; provided that if the Purchaser demonstrates to the satisfaction of the CIEDB that the Purchaser is obliged by law to make payments to certain construction contractors for one hundred percent (100%) of invoiced amounts or to establish a retention fund for final payment to certain contractors, the CIEDB shall disburse Project Funds in the amount required by law.
Purchaser shall not approve any change orders of the original construction contract amount without having funds committed for the increased Project costs.

Project costs not covered by this Agreement will be paid for by the City of Porterville.

No costs of the Project to be paid by CIEDB can be incurred prior to March 29, 2004 except:

Consultant Fees for studies and plans as set forth in the above Sources and Uses chart.
EXHIBIT E
AMORTIZATION SCHEDULE

Note: Section 2.03(c)(3) provides: Purchaser shall receive a credit against interest owed based upon the actual interest earned by the CIEDB at a rate of up to two and ninety-eight hundredths percent (2.98%) per annum on the undisbursed Project Funds.

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<tr>
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<th>Ending Balance</th>
<th>Principal Payment</th>
<th>Interest Payment</th>
<th>Total Principal &amp; Interest</th>
<th>Annual Fee</th>
<th>Total Payment</th>
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Total Payments: $5,356,000.00 $2,862,812.66 $8,218,812.56 $295,567.12 $8,514,379.78
EXHIBIT F

STATE CONTRACT REQUIREMENTS

SECTION 1. Record Establishment, Access and Retention.

(a) The Purchaser agrees that the CIEDB shall have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Purchaser agrees to provide the CIEDB with any relevant information requested and shall permit the access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Government Code section 8546.7. The Purchaser further agrees to maintain records concerning costs paid with State funds for three years following the CIEDB’s receipt of a notice of completion or payment of an invoice, whichever is later. In the event of an Agreement performance or payment dispute, the three-year minimum shall automatically be extended until the dispute is resolved.

(b) Upon inspection, the Purchaser shall promptly implement any corrective measures recommended by the CIEDB, its representatives, or the Bureau of State Audits (“BSA”) regarding the requirements of this section.

(c) The Purchaser shall keep all books, records, accounts and documents pertaining to this Agreement separate from other activities unrelated to this Agreement.

SECTION 2. Nondiscrimination Clause and Compliance Statement.

(a) By signing this Agreement, the Purchaser and its contractors agree that each shall not, during the performance of this Agreement, unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave or denial of pregnancy disability leave. The Purchaser and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Purchaser and its contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Purchaser and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
(b) The Purchaser shall include the nondiscrimination and compliance provisions as detailed in subsection (a) of this section, in all contracts to perform work under this Agreement.

SECTION 3. *Americans with Disabilities Act Certification.* By signing this Agreement, the Purchaser assures the CIEDB that it complies with the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

SECTION 4. *National Labor Relations Board Certification.* By signing this Agreement, the Purchaser does swear under the penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Purchaser within the immediately preceding two year period because of the Purchaser's failure to comply with an order of a federal court which orders the Purchaser to comply with an order of the National Labor Relations Board.

SECTION 5. *Certification of Drug Free Workplace.*

(a) By signing this Agreement, the Purchaser hereby certifies under penalty of perjury under the laws of the State of California that the Purchaser shall comply with the requirements of the Drug Free Workplace Act of 1990 (Government Code section 8350 et seq.) and shall provide a drug free workplace by:

(1) Publishing a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code section 8355(a).

(2) Establishing a Drug Free Awareness Program as required by Government Code section 8355(b), to inform employees about:

(A) The dangers of drug abuse in the workplace;

(B) The person's or organization's policy of maintaining a drug-free workplace;

(C) Any available counseling, rehabilitation and employee assistance programs; and,

(D) Penalties that may be imposed upon employees for drug abuse violations; and,

(3) Providing, as required by Government Code section 8355(c), that every employee who performs work under this Purchaser shall:

(A) Receive a copy of the Purchaser's drug-free policy statement; and,
(B) Agree to abide by the terms of the Purchaser's statement as a condition of employment under this Agreement.

(b) In addition to any other consequences specified in this Agreement, failure to comply with these requirements may result in the Purchaser being ineligible for award of any future State Contracts if the CIEDB determines that the Purchaser:

(1) Has made a false certification; or,

(2) Violates the certification by failing to carry out the requirements as noted above.

SECTION 6. Certification of Recycled Content. The Purchaser shall certify in writing, under penalty of perjury, the minimum, if not exact, percentage of recycled content of both post-consumer material and secondary material as defined in Public Contract Code sections 12161 and 12200, in materials, goods or supplies offered, or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in Public Contract Code sections 12161 and 12200. The Purchaser may certify that the product contains zero recycled content. The Recycle Certification shall be delivered to the CIEDB not more than thirty (30) calendar days following the date of the Notice of Completion.


(a) The Purchaser recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

(b) The Purchaser, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry, maintained by the California Employment Development Department.

SECTION 8. Welfare Recipients.

(a) The Purchaser shall give priority consideration in filling vacancies in positions funded by the Purchaser to qualified recipients of aid under Chapter 2 (commencing with section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code in accordance with Article 3.9 (commencing with section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(b) Nothing in this provision shall be construed to:

(1) Interfere with or create a violation of the terms of valid collective bargaining agreements;

(2) Require the Purchaser to hire an unqualified recipient of aid.
(3) Interfere with or create a violation of any federal affirmative action obligation of the Purchaser for hiring disabled veterans or veterans of the Vietnam era; or,

(4) Interfere with or create a violation of the requirements of Government Code section 12990.


(a) By signing this Agreement, the Purchaser agrees to comply with the provisions of section 1720 et seq. of the California Labor Code in the award of public works contracts and subcontracts involving the expenditure of funds provided in this Agreement, and to insure that its contractor and subcontractors meet the requirements of those enactments.

(b) The Purchaser shall comply with Labor Code provisions that include but are not limited to the following requirements: The Purchaser shall obtain, from the Director of the Department of Industrial Relations, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to execute the Agreement. The Purchaser shall either specify the general prevailing rates in bid and contract documents or include a statement in those documents that such information is available; take cognizance of any violations of prevailing wage law and notify the Department of Industrial Relations of such violations; require that the contractor and subcontractors keep adequate payroll and other records and withhold funds pending investigation of violations.

(c) The Purchaser shall require its contractor and subcontractors to adhere to prevailing wage requirements, including but not limited to the following requirements: contracts between the contractor and subcontractors must include provisions regarding prevailing wage; the contractor shall monitor subcontractors’ payment of prevailing wage by periodically reviewing certified payroll records and diligently taking corrective action if the subcontractors fail to pay prevailing wage; contractor and subcontractors shall maintain certified payroll records and time records. The contractor to whom a contract is awarded, and any subcontractor under him, shall not pay less than the specified prevailing wage; contractor and subcontractors are subject to penalties for violations of prevailing wage provisions.

(d) The Purchaser acknowledges that it has been informed by the CIEDB that the CIEDB may contract with the Department of Industrial Relations to conduct audits of some contracts to assure compliance with prevailing wage requirements. The Purchaser shall require its contractor and subcontractors to cooperate in an audit if requested to do so by the CIEDB and shall inform its contractor and subcontractors that spot audits are planned.
EXHIBIT G

TAX CERTIFICATE

This Tax Certificate is executed and delivered by the City of Porterville (the "Purchaser") in connection with the Enterprise Fund Installment Sale Agreement between the Purchaser and the California Infrastructure and Economic Development Bank (the "Seller"), dated as of September 1, 2004 (the "Obligation") in the amount of five million three hundred fifty-six thousand dollars ($5,356,000). The Purchaser certifies, covenants, warrants and represents as follows:

ARTICLE I. IN GENERAL

1.1 The Purchaser. The Purchaser is a charter city duly organized and existing under the laws of the State of California.

1.2 Purpose of Tax Certificate. The Seller has issued bonds (the "Bonds") that will be used to fund the Obligation. The Purchaser is delivering this Tax Certificate to the Seller with the understanding that the Seller will rely in part upon this Tax Certificate in obtaining an opinion from bond counsel that interest on the Bonds is excluded from gross income for federal income tax purposes under section 103 of the Code (as defined below).

1.3 Purpose of Financing. The Obligation is being issued to finance the Wastewater Treatment Facility Upgrade and Sludge Disposal Project on the Purchaser's property (the "Project"), as described in more detail in the application of the Purchaser to the CIEDB, dated October 30, 2003, including amendments thereto and in Exhibit D of the Obligation.

1.4 Definitions. Unless the context otherwise requires, the following capitalized terms have the following meanings:

"Code" means the Internal Revenue Code of 1986 (including amendments thereto).

"Current Revenues" has the meaning given thereto in Section 2.7 hereof.

"Governmental Unit" means any state, or political subdivision of a state, but excludes the United States and its agencies or instrumentalities.

"Investment Property" means any security or obligation, any annuity contract, or any other investment-type property, but does not include any Tax-Exempt Bond unless such obligation is a "specified private activity bond" within the meaning of section 57(a)(5)(C) of the Code.

"Nongovernmental Person" means any person or entity other than a Governmental Unit.

"Payment Account" has the meaning given thereto in Section 2.7 hereof.
"Preliminary Expenditures" means architectural, engineering, surveying, soil testing, studies (including environment impact, rate and feasibility studies), CEQA reports and similar costs paid with respect to the Project in an aggregate amount not exceeding twenty percent (20%) of the Obligation. However, Preliminary Expenditures do not include land acquisition, site preparation or similar costs incident to the commencement of construction.

"Tax-Exempt Bond" means any obligation the interest on which is excluded from gross income for federal income tax purposes pursuant to section 103 of the Code or section 103 of the Internal Revenue Code of 1954, as amended, and Title XIII of the Tax Reform Act of 1986, as amended, as well as stock in a regulated investment company to the extent at least ninety-five percent (95%) of income to the stockholder is treated as interest that is excludable from gross income under section 103 of the Code.

ARTICLE II. TAX LIMITATIONS

2.1 Expenditure of Proceeds. Proceeds of the Obligation shall be used exclusively for the following purposes: (i) architectural, engineering, surveying, soil testing, and similar costs paid with respect to the Project incurred prior to the commencement of construction and in an aggregate amount not exceeding twenty percent (20%) of the Obligation; (ii) capital expenditures originally paid by the Purchaser on or after the date hereof, (iii) interest on the Obligation through the later of three years after the date hereof or one year after the Project is placed in service, and (iv) initial operating expenses directly associated with the Project (in aggregate amount not exceeding five percent (5%) of the amount of the Obligation).

2.2 Governmental Bond Status. The Purchaser will not loan any of the proceeds of the Obligation to one or more Nongovernmental Persons. The Purchaser will not allow more than five percent (5%) of proceeds of the Obligation or more than five percent (5%) of the Project to be used directly or indirectly by any Nongovernmental Person, other than as a member of the general public. In addition, a Nongovernmental Person will be treated as "using" proceeds of the Obligation to the extent the Nonexempt Person:

(i) Borrows proceeds of the Obligation, or

(ii) Uses the Project (e.g., as owner, lessee, service provider, operator or manager).

2.3 Change in Use. The Purchaser reasonably expects to use all proceeds of the Obligation and all of the Project as set forth in Section 2.1 for the entire stated term to maturity of the Obligation. Absent written agreement by the Seller, the Purchaser in fact will use all proceeds of the Obligation and all of the Project as set forth in Section 2.1.

2.4 Federal Guarantee. The Purchaser will not directly or indirectly use or permit the use of any proceeds of the Obligation or take or omit to take any action that would cause the Bonds to be obligations that are "federally guaranteed" within the meaning of section 149(b) of the Code. In furtherance of this covenant, the Purchaser will not allow the payment of principal or interest with respect to the Obligation to be guaranteed (directly or indirectly) in
whole or in part by the United States or any agency or instrumentality thereof. The Purchaser will not use five percent (5%) or more of the proceeds of the Obligation to make or finance loans the payment of principal or interest with respect to which is guaranteed in whole or in part by the United States or any agency or instrumentality thereof.

2.5 No Refunding. Proceeds of the Obligation will not be used directly or indirectly to make principal, interest or premium payments with respect to any tax-exempt obligation.

2.6 No Hedge Bonds. The Purchaser reasonably expects that more than eighty-five percent (85%) of proceeds of the Obligation will be expended for the purposes of the Obligation within three years.

2.7 Installment Payments. “Payment Account” means the funds or accounts (or any portions of any funds or accounts) that will hold monies that are expected by the Purchaser to be used to pay debt service on the Obligation. "Current Revenues" means revenues which are both received by the Purchaser and utilized for the payment of debt service on the Obligation within a six month period. All amounts used to fund the Payment Account will be deemed to have been made from the Payment Account by using a last-in, first-out accounting method. Purchaser agrees that the amounts used to pay debt service shall be both received by the Purchaser and utilized for the payment of debt service on the Obligation within a thirty (30) day period. The Payment Account will be used primarily to achieve a proper matching of revenues and debt service within each year; a matching of revenues means that revenue and debt service come in and go out at approximately the same level and the Payment Account is cleared out to a very low balance at least one time during the year. Current Revenues in the Payment Account may be invested by the Purchaser without regard to yield.

2.8 No Other Replacement Proceeds. The Purchaser will not use any proceeds of the Obligation to replace funds of the Purchaser which are or will be used to acquire Investment Property reasonably expected to produce a yield that is materially higher than the yield on the Obligation.

2.9 No Expected Sale. It is not expected that the Project or any part thereof will be sold or otherwise disposed of so long as the Obligation is outstanding.

2.10 Tax Covenant. The Purchaser will not take any action, or fail to take any action, if such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Bonds pursuant to section 103 of the Code and specifically (i) the Purchaser will not directly or indirectly use or make any use of the proceeds of the Bonds or any other funds of the Purchaser or take or omit to take any action that would cause the Bonds or to be “arbitrage bonds” subject to federal income taxation by reason of section 148 of the Code or obligations subject to federal income taxation because they are “federally guaranteed” as provided in section 149(b) of the Code, as applicable; and (ii) to that end the Purchaser, with respect to the proceeds of the Bonds will comply with all requirements of such sections of the Code to the extent that such requirements are, at the time, applicable and in effect; provided, that if the Purchaser shall obtain an Opinion of Counsel nationally recognized in the area of the
exemption of interest from gross income under of the Code to the effect that any action required under this section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest evidenced and represented by the Bonds pursuant to section 103 of the Code, as applicable, the Purchaser may rely conclusively on such opinion in complying with the provisions hereof.

2.11 **Private Use.** No more than five percent (5%) of the Project (determined both on the basis of space and cost) shall be used for private use. Private use includes use in the trade or business of any nongovernmental persons, but does not include the portion of the proceeds properly allocable to facilities expected to be used by an organization described in section 501(c)(3) of the Code in a manner that does not constitute an unrelated trade or business of such organization, as defined in section 513(a) of the Code. For purposes of this section, the federal government is considered a nongovernmental person.

(a) For purposes of this section, private use shall include any contract for the management or operation of any portion of the Project unless each of the following conditions is met: (i) the term of such contract (including renewal options) does not exceed five years; (ii) the manager or operator under such contract is not compensated on the basis of a share of net profits; (iii) the compensation of the manager or operator is reasonable; (iv) the Purchaser must be able to cancel such contract without penalty or cause at the end of the third year of the contract; (v) neither the Purchaser nor the manager or operator may control more than twenty percent (20%) of the voting power of the other’s governing board; and (vi) other rules related to qualified management contracts as applicable.

(b) The service provider’s compensation for management or operation services rendered must be pursuant to one of the following four methods: (i) at least fifty percent (50%) of annual compensation is based on a periodic fixed fee; (ii) the compensation is based on a capitation fee or a combination of a capitation fee and a periodic fixed fee; (iii) in the case of certain contracts with a term not longer than three years, the compensation is based on a per-unit fee or a combination of a per-unit fee and periodic fixed fee and the contract is cancelable after two years; and (iv) in the case of certain contracts with a term not longer than two years, the compensation is based on a percentage of fees charged and the contract is cancelable after one year.

(c) The term “renewal option” as used in this Section, means a provision under which the service provider has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for one year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed).

(d) Without limitation, any contract for the management and operation of land related to the Project shall be a qualified management contract consistent with the Code.

**ARTICLE III. OTHER MATTERS**

3.1 **Expectations.** The undersigned is an authorized representative of the Purchaser acting for and on behalf of the Purchaser in executing this Tax Certificate. To the best of the knowledge and belief of the undersigned, there are no other facts, estimates or
circumstances that would materially change the expectations as set forth herein, and said expectations are reasonable.

3.2 Amendments. Notwithstanding any other provision of this Tax Certificate, the Purchaser may amend this Tax Certificate and thereby alter any actions allowed or required by this Tax Certificate if such amendment is signed by an authorized officer and is supported by formal written agreement by the CIEDB.

3.3 Survival of Defeasance. Notwithstanding any provision in this Tax Certificate to the contrary, the obligation to comply with all requirements contained in this Tax Certificate shall survive defeasance or prepayment of the Obligation.

Dated: ________________.

CITY OF PORTERVILLE

By __________________________

Susan Slayton
Chief Financial Officer
City of Porterville
Attn: Public Works Director
291 North Main Street
Porterville CA 93257

California Infrastructure and Economic Development Bank
Attn: Credit Support Manager, CIEDB B04-053
P.O. Box 2830
Sacramento, CA 95812-2830

Enterprise Fund Installment Sale Agreement, By and Between City of Porterville, as Purchaser and the California Infrastructure and Economic Development Bank, as Seller, Dated as of September 1, 2004, Agreement No. CIEDB B04-053 in an amount not to exceed five million three hundred fifty-six thousand dollars ($5,356,000), for the Wastewater Treatment Facility Upgrade and Sludge Disposal Project.

Ladies and Gentlemen:

In my capacity as counsel to the City of Porterville (the “Public Agency”) and in connection with the above described Enterprise Fund Installment Sale Agreement (the “Agreement”), I have examined the laws pertaining to the Public Agency; the original of the Agreement, signed by the Public Agency; the Public Agency’s resolution adopted XXX, 2002 (the “Resolution”); the charter of the Public Agency; the Installment Sale Agreement dated as of September 1, 1997 by and between the Porterville Public Financing Authority as Seller and the City of Porterville, as Purchaser (as related to the 1997 Sewer System Refinancing Project); the Installment Sale Agreement dated as of September 1, 2002 by and between the Porterville Public Financing Authority, as Seller and the City of Porterville, as Purchaser (as related to the 2002 Sewer System Refinancing Project) and such other information and documents as I considered necessary to render this opinion.

Based upon the foregoing, it is my opinion that:

H-1
(i) The Public Agency is a body public and corporate, and a public instrumentality of the State of California duly organized and validly existing pursuant to the laws of the State of California;

(ii) The Resolution and other actions of the Public Agency approving and authorizing the execution and delivery of the Agreement were duly adopted at a meeting of the governing body of the Public Agency which was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout;

(iii) The Public Agency has full right and lawful authority to execute and deliver the Agreement and the Agreement has been duly authorized and executed on behalf of the Public Agency and the Agreement is the legal, valid and binding obligation of the Public Agency enforceable in accordance with its respective terms, except as enforcement may be limited by bankruptcy, insolvency, moratorium, or similar laws, or by legal or equitable principles relating to or limiting creditors' rights generally;

(iv) To the best of my knowledge, after due inquiry, the execution and delivery of the Agreement and compliance with the provisions thereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute on the part of the Public Agency a breach of or default under any agreement or other instrument to which the Public Agency is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the Public Agency is subject; and

(v) To the best of my knowledge, after due inquiry, there is no action, suit, proceeding, inquiry or investigation before or by any court or public body pending or threatened against or affecting the Public Agency: 1) challenging or questioning the transactions contemplated by the Agreement or any other agreement, document or certificate related to such transactions; 2) challenging or questioning the creation, organization, existence or powers of the Public Agency; 3) seeking to enjoin or restrain the execution of the Agreement or the building of the Project defined in the Agreement or the collection of any of the Revenues pledged under the Agreement; 4) in any way questioning or affecting any of the rights, powers, duties or obligations of the Public Agency with respect to the Revenues pledged under the Agreement; 5) in any way questioning or affecting any authority for the execution of the Agreement or validity or enforceability of the Agreement; or 6) in any way questioning or affecting any other agreement or instrument concerning the Agreement to which the Public Agency is a party.

I do not render any opinion as to any federal or state securities or tax law. I am furnishing this letter solely for your benefit. This letter is not to be used, circulated, quoted or otherwise referred to for any other purpose.

The opinions expressed herein may be affected by actions taken or events occurring after the date hereof. The undersigned has not undertaken to determine or to inform any person whether any such subsequent actions or events are taken or occur.

Sincerely,

Counsel for the Public Agency
REDEVELOPMENT AGENCY AGENDA: JULY 27, 2004

SUBJECT: CASAS BUENA VISTA HOUSING GROUP LLC - MODIFICATIONS TO DISPOSITION AND DEVELOPMENT AGREEMENT

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - REDEVELOPMENT

COMMENT: In closed session on July 20, 2004, the Redevelopment Agency approved the following recommendations, but official action was not taken at that time. Therefore, the item is being brought back for Agency action.

Background

On May 4, 2004 in closed session, the Redevelopment Agency approved a modification to the Disposition and Development Agreement (DDA) with Casas Buena Vista Housing Group, LLC to allow an increase in the maximum number of lots per phase to be conveyed from 16 to 32. The Agency also authorized staff to exercise flexibility in the timing and number of building permits to be issued while still complying with the remaining conditions set forth in the DDA.

The reasoning for the increase in the number of lots conveyed was to be able to continue the sales momentum that has now been generated and secure conventional construction financing for the project. All ten homes in Phase 2 are in escrow before construction is complete, and there are at least 10 applicants waiting for the release of Phase 3 so that they can enter escrow and secure the purchase of a new home.

The next 32 lots (Phase 3) are currently in escrow, however, the developer has indicated to the Agency that in order for them to secure conventional financing, all of the remaining 62 lots would have to be released. With the low sales prices and profit margins and the required covenants for this affordable housing project, several conventional lenders were not willing to fund the project at all. The developer did receive positive support from IndyMac Bank which is willing to fund the remainder of the construction, but will only provide the funding if it has the commitment for all 62 lots.

Issues

Naturally, the Agency and the City would like to cooperate in any way possible to complete the development of this subdivision as soon as possible. However, staff is uncomfortable with this proposal since the Agency would then be in second position on the loans and many of the remedies and assurances in the DDA could not be fully exercised since the lender would be in first place in case of

Approp./Funded ________ CM ________ Item No. ______
foreclosure and would be obligated to make every effort to make themselves whole. The Agency would then have no assets, neither land or money, to meet their loan obligation to California Housing Finance Agency (CalHFA). If the bank is willing, the Agency could enter into an Intercreditor Agreement with them to guarantee that whoever takes over the property in case of a default would have to adhere to all of the covenants on the property.

However, the Agency would not be in a position to exercise an option to repurchase the property from the lender since the purchase price on the land is not due to the Agency until the time of sale to the homebuyer via a Deed of Trust and Promissory Note on the property.

**Proposed Modification**

In the original DDA, the developer was able to borrow $492,000 in CalHFA loan funds to fund the construction of Phase 1 with the option to roll these funds over to other phases. They are currently utilizing these funds to construct Phase 2 in addition to their $80,000 deposit that was to be returned to them at the completion of Phase 1. The $80,000 is helping to cover the funds that are still tied up in the model homes in Phase 1. The developer is paying the 3% interest on the Agency funds that is the amount being charged by CalHFA to the Agency. Staff and the developer agree that maintaining construction and sales momentum is critical to the project. In order to keep the momentum moving and still keep the Agency’s leverage and control of the property, staff is recommending that the Agency provide additional construction funds to loan to the developer at 3% interest that they would be able to continually roll over as homes are sold and then use to build the next group of homes. These funds would come from the purchase price being paid on each lot ($12,195) and possibly from the additional Redevelopment low and moderate income funds ($90,900) that had been designated for loan service for this project. This would reduce the developer’s lending cost and provide a greater degree of security to the Agency. It is also recommended that the developer continue to provide the $80,000 for construction on the remaining phases which will be returned to them at the end of the project.

One consequence of lending the developer additional funds is that the debt service on the HELP loan to CalHFA would be delayed. However, the loan is only due at the end of ten years and as long as the developer is paying the 3% interest on the money to cover the Agency’s interest liability, the change in the proforma is minimal. At this point in time, the proforma shows a deficit of approximately $175,000 in being able to meet the ten year loan payoff date (anticipated at time of DDA adoption at $84,644). However, this does not include the subsequent two years’ income from homeowners’ assistance loans, any profit sharing that may be realized from the project, or any Low and Moderate Income Housing Fund tax increment that will be generated by the project that could be dedicated to the loan
repayment. Pro formas have been developed to show these scenarios and the resulting reduced liability of the Agency (Attachment 1).

**Additional Opportunities**

A new issue has also developed that requires additional negotiations with the developer and possible modifications to the DDA. The new State Workforce Housing Incentive Grant Program will essentially reward the City for producing new affordable housing for low income households developed since January 1, 2004. In order to be eligible, the homes must have twenty year affordability covenants recorded on the property. Phase 2 and the remaining phases of Casas Buena Vista could be eligible for this program. The homes that are receiving Redevelopment homebuyer assistance of $17,000 each have forty five (45) year covenants and therefore meet the criteria. However, the forty nine homes that have $10,000 in homebuyer assistance available to them only have ten year covenants currently required. Staff would like to be able to modify the DDA in order to change the ten year covenants to twenty year covenants with the homebuyer restricted during the first ten year period to only selling to a low income buyer at an affordable housing cost (existing requirement) and for the second ten year period there would be a shared equity provision that would allow the homebuyer to sell to a non-income qualified buyer but would have to pay the Agency a small percentage (1-10% typical, proposed 1%) of the equity realized in the sale (would most likely be less than $1,000).

The incentive for changing the covenants is dramatic. The City will receive, at a minimum, between $1,500-$2,000 per bedroom developed for very low and low income households. With all remaining seventy two homes constructed in Casas Buena Vista, the City could realize over $300,000 in State Workforce Housing funds just from this project. There is a great deal of leeway in the eligible use of these funds as they are only required to be used for the construction or acquisition of capital assets that serve to benefit the community.

Since on July 6, 2004 the City Council approved an increase in the amount of the City’s First Time Low Income Homebuyer assistance to a maximum of $40,000, these additional funds are now available to supplement the other homebuyer assistance programs in Casas Buena Vista. With the increased assistance available to the homebuyers, more applicants should be qualified for purchase and also, it could be possible to increase the purchase price of the homes. This would help cover the dramatic increase in construction costs to the developer and also provide an increased possibility of the Agency realizing additional funds from shared profits with the developer that may be used to pay the remaining balance on the CalHFA loan at the end of the project.
Recommendation: That the Redevelopment Agency:

1. Approve the modifications to the Development and Disposition Agreement (DDA) that would allow the Agency to lend the developer the additional purchase price funds and the flexibility to lend the Redevelopment Low and Moderate Income Housing funds designated for debt service. These funds would be used to fund the construction of the remaining homes at Casas Buena Vista, in phases, subject to the homes being sold and the funds being available in the account to lend;

2. Approve the modification to the DDA that the developer's $80,000 remain in the project for use in construction of the homes until the end of the project at which time it would be returned to them;

3. Approve the modification to the DDA to increase the term of the affordability covenants to twenty years with shared equity provisions on the forty nine lots that are currently required to have a ten year covenant; and

4. Amend all Deeds of Trust, Loan Promissory Notes, and homebuyer loan documents to reflect these modifications to the DDA.

Attachment: 1. Summary of CalHFA Loan Balance Scenerios
### Summary of CalHFA Loan Balance Scenarios

<table>
<thead>
<tr>
<th>Scenario</th>
<th>March 12/13</th>
<th>March 13/14</th>
<th>March 14/15</th>
<th>March 15/16</th>
</tr>
</thead>
<tbody>
<tr>
<td>RDA lending construction funds, no tax increment, no profit sharing (homebuyer assistance revenue after the ten year term)</td>
<td>($177,096)</td>
<td>($125,373)</td>
<td>($60,246)</td>
<td>($57,045)</td>
</tr>
<tr>
<td>Include tax increment generated from the project of which 20% must be allocated to the Low and Moderate Income Housing Fund (March 05/06 - 20% of $25,000, March 06/07 thru March 13/14 - 20% of $60,000 annually)</td>
<td>($78,997)</td>
<td>($12,331)</td>
<td>$36,187</td>
<td>$62,881</td>
</tr>
<tr>
<td>Profit sharing scenario unknown at this point - possibly from $3,000 - $10,000 per house if sales prices increase to $110,000</td>
<td>could possibly be at $0 or even exceed revenue exceeding expenditures and debt service</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>