

Agenda draft

INSTALLMENT SALE AGREEMENT

Dated as of November 1, 2025

between the

SUNNYVALE FINANCING AUTHORITY,
as Seller

and the

CITY OF SUNNYVALE,
as Purchaser

Relating to
\$[Principal Amount]
Sunnyvale Financing Authority

Solid Waste Revenue Bonds, Series 2025

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INSTALLMENT SALE AGREEMENT

This INSTALLMENT SALE AGREEMENT (this "Agreement"), dated as of November 1, 2025, is between the SUNNYVALE FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority"), as seller, and the CITY OF SUNNYVALE, a municipal corporation and chartered city duly organized and existing under the Constitution of the State of California (the "City"), as purchaser.

BACKGROUND:

1. The City entered into a New Memorandum of Understanding Among the Cities of Mountain View and Sunnyvale Relating to the Operation of a Materials Recovery and Transfer Station, dated December 22, 2021 (the "Memorandum of Understanding").

2. The Memorandum of Understanding sets forth the contractual rights and obligations of each of the parties to the Memorandum of Understanding for the use and management of the Sunnyvale Materials Recovery and Transfer Station (the "SMaRT Station").

3. The SMaRT Station serves as the transfer station for solid waste generated within the jurisdictions of the City and the City of Mountain View as well as, from time to time, (i) solid waste generated by other public agencies, referred to as "other Partners" in the Memorandum of Understanding and (ii) solid waste generated by other public agencies or solid waste haulers, referred to as "merchant users" in the Memorandum of Understanding.

4. Under the Memorandum of Understanding, the City is the Managing Partner, with the responsibility for the improvement, ownership and operation of the SMaRT Station.

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

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

7. For the purpose of obtaining funds to finance the Improvements in accordance with the terms hereof and of the Indenture of Trust, dated as of November 1, 2025, between U.S. Bank Trust Company, National Association (the "Trustee") and the Authority (the "Indenture"), the Authority has authorized the issuance of its Sunnyvale Financing Authority Solid Waste Revenue Bonds, Series 2025 in the aggregate principal amount of \$[Principal Amount] (the

"Series 2025 Bonds") under the Indenture and under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law").

8. The obligations of the City under this Installment Sale Agreement will be secured by a pledge of the Net Revenues of the Solid Waste System (as those terms are defined herein) and payable from Net Revenues and other available sources.

A G R E E M E N T :

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

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

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

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

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

"Code" means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Series 2025 Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Series 2025 Bonds, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

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

(i) the scheduled Installment Payments, except to the extent payable solely from any security deposit under Section 7.1 of the Installment Sale Agreement

(ii) the principal amount of all Parity Debt scheduled to be paid or redeemed by operation of mandatory sinking fund redemption payments in such period, except to the extent payable solely from a security deposit under the applicable Parity Debt Instrument; and

(iii) the interest which would be due during such period on the aggregate principal amount of all Parity Debt in such period if the Parity Debt is paid or redeemed as scheduled, except to the extent payable solely from a security deposit under the applicable Parity Debt Instrument.

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

"General Fund Administration" means annual overhead reimbursement transfers from the Solid Waste Management Fund to the City's General Fund, which are accounted for as General Fund Administration in the financial statements for the Solid Waste System.

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

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

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

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

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

"Independent Consultant" means any financial or engineering consultant (including without limitation any Independent Certified Public Accountant) with an established reputation

in the field of municipal finance or firm of such consultants appointed and paid by the City, and who, or each of whom-

- (a) is in fact independent and not under domination of the City;
- (b) does not have any substantial identity of interest, direct or indirect, with the City;
and
- (c) is not and no member of which is connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or other audits of the books of or reports to the City.

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

"Maintenance and Operation Costs" means (i) the reasonable and necessary costs spent or incurred by the City for maintaining and operating the Solid Waste System, calculated in accordance with sound accounting principles, and all reasonable and necessary expenses of management and repair and other expenses to maintain and preserve the Solid Waste System in good repair and working order, and including all Personnel Costs, insurance, taxes (if any), expenses, compensation and indemnification of the Trustee, and fees of auditors, accountants, attorneys or engineers, and including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of this Installment Sale Agreement or any Parity Debt Instrument and (ii) the Net SMaRT Station Payments; but *excluding* depreciation, replacement and obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature, and General Fund Administration.

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

"Memorandum of Understanding" means that certain New Memorandum of Understanding Among the Cities of Mountain View and Sunnyvale Relating to the Operation of a Materials Recovery and Transfer Station, dated December 22, 2021, as amended from time to time in accordance with its terms.

"Mountain View" means the City of Mountain View.

"Mountain View Debt Service Payments" means payments scheduled to be made by Mountain View to pay (i) the Installment Payments under the Memorandum of Understanding and (ii) Debt Service on any Parity Debt.

"Net Revenues" means, with respect to the Solid Waste System, for any period of computation, the amount of the Gross Revenues received from the Solid Waste System during

such period, less the amount of Maintenance and Operation Costs of the Solid Waste System becoming payable during such period.

"Net SMaRT Station Payments" means (i) the reasonable and necessary costs spent or incurred by the City for maintaining and operating the SMaRT Station, calculated in accordance with sound accounting principles, and all reasonable and necessary expenses of management and repair and other expenses to maintain and preserve the SMaRT Station in good repair and working order, *net* of (ii) SMaRT Station Revenues.

"Parity Debt" means all bonds, notes, leases, installment sale agreements or other obligations of the City payable from and secured by a pledge of and lien upon any of the Net Revenues issued or incurred pursuant to Section 5.9.

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

"Participant" means a public entity other than Mountain View whose inhabitants or customers are served by the SMaRT Station and agrees in a contract with the City to pay Debt Service on any Parity Debt.

"Participant Debt Service Payments" means payments scheduled to be made by a Participant to pay Debt Service on any Parity Debt.

"Personnel Costs" means the costs of salaries, wages and the necessary contribution to retirement of Solid Waste System employees.

"Series 2025 Bonds" has the meaning given that term in the Recitals.

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

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

"SMaRT Station Revenues" means all gross charges and revenues derived by Sunnyvale from the ownership or operation of the SMaRT Station, including operating payments made to the City under the Memorandum of Understanding, payments from other public entities and solid waste haulers whose inhabitants or customers are served by the SMaRT Station pursuant to contracts with the City, and payments from members of the general public. SMaRT Station Revenues do not include Mountain Debt Service Payments or Participant Debt Service Payments.

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

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

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

SECTION 1.2. *Interpretation.*

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

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

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

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

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

- (a) Due Organization and Existence. The City is a municipal corporation and chartered city duly organized and validly existing under the laws of the State of California, has full legal right, power and authority under said laws to enter into this Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the City Council of the City has duly authorized the execution and delivery of this Agreement.
- (b) Due Execution. The representatives of the City executing this Agreement are fully authorized to execute the same.
- (c) Valid, Binding and Enforceable Obligations. This Agreement has been duly authorized, executed and delivered by the City and constitutes the legal, valid and binding agreement of the City enforceable against the City in

accordance with its terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.

- (d) No Conflicts. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the financial condition, assets, properties or operations of the City, including but not limited to the performance of the City's obligations under this Agreement.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement, or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement, or the financial

conditions, assets, properties or operations of the City, including but not limited to the payment and performance of the City's obligations under this Agreement.

- (g) Prior Indebtedness. The City has not issued or incurred any obligations which are currently outstanding having any priority in payment out of the Net Revenues over the payment of the Installment Payments as provided herein.

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

- (a) Due Organization and Existence. The Authority is a joint exercise of powers authority organized and existing under the laws of the State of California, and has power to enter into this Agreement and the Indenture and to perform the duties and obligations imposed on it hereunder and thereunder. The Board of Directors of the Authority has duly authorized the execution and delivery of this Agreement and the Indenture.
- (b) Due Execution. The representatives of the Authority executing this Agreement and the Indenture are fully authorized to execute the same.
- (c) Valid, Binding and Enforceable Obligations. This Agreement and the Indenture have been duly authorized, executed and delivered by the Authority and constitute the legal, valid and binding agreements of the Authority with the Authority, enforceable against the Authority in accordance with their respective terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.
- (d) No Conflicts. The execution and delivery hereof and of the Indenture, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach, default, lien, charge

or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated hereby and by the Indenture or the financial condition, assets, properties or operations of the Authority, including but not limited to the performance of the Authority's obligations under this Agreement and the Indenture.

- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery hereof or of the Indenture, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement or the Indenture, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the Indenture or the financial conditions, assets, properties or operations of the Authority, including but not limited to the performance of the Authority's obligations hereunder and under the Indenture.

ARTICLE III

ISSUANCE OF SERIES 2025 BONDS; ACQUISITION, CONSTRUCTION AND INSTALLATION OF IMPROVEMENTS

SECTION 3.1. *The Series 2025 Bonds.* The Authority shall cause the Series 2025 Bonds to be issued under the Indenture in the aggregate principal amount of \$[Principal Amount]. The City hereby approves the Indenture, the assignment thereunder to the Trustee of certain rights of the Authority, and the issuance of the Series 2025 Bonds.

SECTION 3.2. *Deposit and Application of Funds.* The proceeds received by the Trustee from the sale of the Series 2025 Bonds to the Original Purchaser will be deposited in the respective funds and accounts, and in the respective amounts, as set forth in Section 3.02 of the Indenture.

SECTION 3.3. *Acquisition, construction and installation of the Improvements.* The Authority hereby agrees with due diligence to supervise and provide for, or cause to be supervised and provided for, the acquisition, construction and installation of the Improvements in accordance with the plans and specifications, purchase orders, construction contracts and other documents relating thereto and approved by the City under all applicable requirements of law. All contracts for, and all work relating to, the acquisition, construction and installation of the Improvements are subject to all applicable provisions of law relating to the acquisition, construction and installation of public works by the City. The Authority expects that the Improvements will be completed on or before December 31, 2027. The failure of the Authority to complete the Improvements by that date does not constitute an Event of Default or a grounds for termination hereof, nor does any such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Installment Payments when due hereunder.

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

SECTION 3.5. *Plans and Specifications.* The City has the right to specify the exact scope, nature and identification of the Improvements and the respective components thereof. Before any payment is made for the Improvements or any component thereof from amounts on

deposit in the Improvements Fund, the City must prepare detailed plans and specifications relating thereto. The City may from time to time amend any such plans and specifications, and thereby change or modify the description of the Improvements or any component thereof.

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

ARTICLE IV

SALE OF IMPROVEMENTS; INSTALLMENT PAYMENTS

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

SECTION 4.2. *Term.* The Term of this Agreement commences on the Closing Date, and ends on November 1, ___, or such later or earlier date on which the Series 2025 Bonds cease to be Outstanding under and within the meaning of the Indenture.

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

SECTION 4.4. *Installment Payments.*

(a) Obligation to Pay. The City hereby agrees to pay to the Authority, as the purchase price of the Improvements hereunder, the aggregate principal amount of \$[Principal Amount] together with interest at the rate of interest on the Series 2025 Bonds (calculated on the basis of a 360-day year of twelve 30-day months) on the unpaid principal balance thereof, payable in semiannual Installment Payments in the respective amounts and on the respective Interest Payment Dates specified in Appendix A.

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

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

(b) Effect of Prepayment. If the City prepays all remaining Installment Payments in full under Section 7.2, the City's obligations under this Agreement will thereupon cease and terminate, including but not limited to the City's obligation to pay Installment Payments therefor under this Section 4.4; *provided, however,* that the City's obligations to compensate and indemnify the Trustee under Sections 4.8 and 5.2 will survive such prepayment. If the City prepays the Installment Payments in part but not in whole under Section 7.2, the principal component of each succeeding Installment Payment will be reduced as provided in such Sections, and the interest component of each remaining Installment Payment will be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Series 2025 Bonds thereby redeemed under the applicable provisions of Section 4.01 of the Indenture.

(c) Late Payments. If the City fails to make any of the payments required under this Section 4.4 and Section 4.8, the payment in default will continue as an obligation of the City until fully paid, and the City agrees to pay the same with interest thereon at the rate of interest on the Series 2025 Bonds.

(d) Assignment. Certain rights of the Authority, including but not limited to the right of the Authority to receive payment of the Installment Payments, have been assigned by the Authority to the Trustee in trust under the Indenture, for the benefit of the Owners of the Series 2025 Bonds, and the City hereby consents to such assignment. The Authority hereby directs the City, and the City hereby agrees, to pay to the Trustee at its Trust Office, all payments payable by the City under this Section 4.4 and all amounts payable by the City under Article VII.

SECTION 4.5. *Pledge of Net Revenues.*

(a) The City hereby transfers, places a charge upon, assigns and sets over to the Trustee, for the benefit of the Owners, that portion of the Net Revenues which is necessary to pay the Installment Payments in any Fiscal Year, and such portion of the Net Revenues is hereby irrevocably pledged to the punctual payment of the Installment Payments. The Net Revenues constitute a trust fund for the security and payment of the Installment Payments. The Net Revenues shall not be used for any other purpose while any of the Series 2025 Bonds remain Outstanding, except that out of Net Revenues there may be apportioned and paid such sums for such purposes, as are expressly permitted by this Article.

The pledge of Net Revenues shall constitute a first, direct and exclusive charge and lien on the Net Revenues for the payment of the Installment Payments in accordance with the terms of this Agreement, on a parity basis with Parity Debt issued in accordance with Section 5.9 of this Agreement.

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

SECTION 4.6. Receipt, Deposit and Application of Revenues.

(a) The City covenants and agrees that all SMaRT Station Revenues, Mountain View Debt Service Payments and Participant Debt Service Payments, when and as received, will be deposited by the City in the SMaRT Station Fund, and the City shall apply such funds in accordance with the Memorandum of Understanding or other applicable contracts with the City. The City shall account for all such amounts separately and apart from all other money, funds, accounts or other resources of the City.

The City will transfer the Mountain View Debt Service Payments to the Solid Waste Management Fund no later than 45 days prior to each Installment Payment Date (or such later date that the Mountain View Debt Service Payments are received from Mountain View).

(b) The City covenants and agrees that all Gross Revenues, when and as received, will be deposited by the City in the Solid Waste Management Fund, and will be accounted for and held in trust in the Solid Waste Management Fund. The City shall account for the Gross Revenues separately and apart from all other money, funds, accounts or other resources of the City.

(c) The City will apply amounts on deposit in the Solid Waste Management Fund to pay when due the following amounts in the following order of priority:

- (i) all Maintenance and Operation Costs;
- (ii) the Installment Payments and all Debt Service on any Parity Debt, except to the extent that any such Installment Payments or Parity Debt may be paid with Mountain View Debt Service Payments or Participant Debt Service Payments;
- (iii) amounts required to remedy any deficiency in any reserve fund established for Parity Debt;
- (iv) any other payments required to comply with the provisions of this Agreement and any Parity Debt Documents, including the Additional Payments; and
- (v) any other lawful purposes of the Gross Revenues, including (A) the payment of any subordinate obligations or any unsecured obligations, (B) the acquisition and construction of improvements to the Solid Waste System or the SMaRT Station, (C) the prepayment of any obligations of the City relating to the Solid Waste System, (D) the administrative costs of the City attributable to the Solid Waste System, including General

Fund Administration, and (E) deposits into a rate stabilization reserve account for the Solid Waste System or the SMaRT Station.

(d) Payment of the Installment Payments and the Debt Service on any Parity Debt will be made from Net Revenues without preference or priority among the Installment Payments and such Parity Debt. If the amount of Net Revenues is at any time insufficient to enable the City to pay when due the Installment Payments and the Debt Service on any Parity Debt, such payments will be made from Net Revenues on a pro rata basis based on the scheduled payment, without taking into account Mountain View Debt Service Payments, Participant Debt Service Payments or amounts in a debt service reserve account.

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

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

The foregoing provisions of this Section 4.7 do not release the Authority from the performance of any of the agreements on its part contained herein or in the Indenture, and if

the Authority fails to perform any such agreements, the City may institute such action against the Authority as the City deems necessary to compel performance, so long as such action does not abrogate the obligations of the City contained in the preceding paragraph. The City may, however, at its cost and expense and in its name or in the name of the Authority, prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect the City's rights hereunder, and in such event the Authority shall cooperate fully with the City and shall take such action necessary to effect the substitution of the City for the Authority in such action or proceeding if the City may request.

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

- (a) to the Authority, all costs and expenses incurred by the Authority to comply with the provisions of this Agreement and the Indenture; and
- (b) to the Trustee upon request therefor, all of its costs and expenses payable as a result of the performance of and compliance with its duties hereunder or under the Indenture or any related documents;
- (c) to the Authority and the Trustee, all amounts required to indemnify the Authority and the Trustee under Section 5.2 hereof and Section 8.07 of the Indenture;
- (d) all costs and expenses of auditors, engineers and accountants for professional relating to the Solid Waste System or the Series 2025 Bonds; and
- (e) all excess investment earnings payable under Section 5.12(c).

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

ARTICLE V

COVENANTS OF THE CITY

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

SECTION 5.2. *Release and Indemnification Covenants.* The City agrees to indemnify the Authority, the Trustee and their respective officers, agents, successors and assigns, against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on or about the Solid Waste System by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Agreement or the Indenture, (c) any act or omission of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Solid Waste System, and (d) any act or omission of any lessee of the City with respect to the Solid Waste System. No indemnification is made under this Section 5.2 or elsewhere in this Agreement for willful misconduct or negligence under this Agreement by the Authority or the Trustee or their respective officers, agents, employees, successors or assigns. The provisions of this Section 5.2 shall survive the expiration of the Term of this Agreement.

SECTION 5.3. *Sale or Eminent Domain of Solid Waste System.*

(a) Except as provided herein, the City covenants that the Solid Waste System will not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole if such encumbrance, sale, lease, pledge, charge or other disposition would materially impair the ability of the City to pay the Installment Payments or the Debt Service on any Parity Debt, or would materially adversely affect its ability to comply with the terms of the this Agreement or any Parity Debt Instrument. The City may not enter into any agreement which impairs the operation of the Solid Waste System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments or the Debt Service any Parity Debt, or which otherwise would impair the rights of the Bond Owners or the Trustee with respect to the Net Revenues. If any substantial part of the Solid Waste System is sold, the payment therefor must either applied by the City in a manner that, in the opinion of Bond Counsel, will not adversely impact the tax-exempt status of the interest on the Series 2025 Bonds.

(b) If all or any part of the Solid Waste System shall be taken by eminent domain proceedings, any amounts received as awards shall be deposited in an Insurance and Condemnation Fund established and held by the City and applied as follows:

(i) If the City has determined that it needs to use the award to make additions, betterments, extensions or improvements to the Solid Waste System in order for the City to comply with Section 5.10, the City shall use such award to make such additions, betterments, extensions or improvements. If the amount of such award shall exceed the costs of such additions, betterments, extensions or improvements that are required for the City to comply with Section 5.10, the excess shall be applied to any lawful purpose of the Solid Waste System, including (A) the payment of Installment Payments and Debt Service on any Parity Debt, (B) the prepayment or discharge of Installment Payments and Debt Service on any Parity Debt and (C) the payment of capital costs of improvements to the Solid Waste System or the SMaRT Station.

(ii) If the City has determined that it does not need to use the award to make additions, betterments, extensions or improvements to the Solid Waste System in order for the City to comply with Section 5.10, the City shall use such award for any lawful purpose of the Solid Waste System, including (A) the payment of Installment Payments and Debt Service on any Parity Debt, (B) the prepayment or discharge of Installment Payments and Debt Service on any Parity Debt and (C) the payment of capital costs of improvements to the Solid Waste System or the SMaRT Station.

(iii) Notwithstanding the foregoing, to the extent the award relates to improvements financed by the Series 2025 Bonds, until such time as the Series 2025 Bonds have been redeemed or paid at maturity, (A) any use of such related award shall comply with Section 5.12 of this Agreement, (B) such related award may not pay Debt Service on or prepay, discharge or redeem any Parity Debt, (C) if such related award will be used to pay Debt Service on or prepay, discharge or redeem the Installment Payments and the Series 2025 Bonds, they cannot be invested at a yield that is greater than the arbitrage yield of the Series 2025 Bonds and (D) if the Series 2025 Bonds are refunded by tax-exempt refunding bonds ("Refunding Bonds"), such related award in the Insurance and Condemnation Fund shall be transferred to an insurance and condemnation fund established for the Refunding Bonds and used for purposes not inconsistent with 5.12 of this Agreement.

SECTION 5.4. *Insurance.*

(a) The City shall at all times maintain with responsible insurers all such insurance on the Solid Waste System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the Solid Waste System.

(b) All amounts collected from insurance against accident to or destruction of any portion of the Solid Waste System shall be deposited in an Insurance and Condemnation Fund established and held by the City and applied as follows:

(i) If the City has determined that it needs to use the insurance proceeds to make additions, betterments, extensions or improvements to the Solid Waste System in order for the City to comply with Section 5.10, the City shall use such insurance proceeds to make such additions, betterments, extensions or improvements. If the amount of such insurance proceeds shall exceed the costs of such additions, betterments, extensions or improvements that are required for the City to comply with Section 5.10, the excess shall be applied to any lawful purpose of the Solid Waste System, including (A) the payment of Installment Payments and Debt Service on any Parity Debt, (B) the prepayment or discharge of Installment Payments and Debt Service on any Parity Debt and (C) the payment of capital costs of improvements to the Solid Waste System or the SMaRT Station.

(ii) If the City has determined that it does not need to use the insurance proceeds to make additions, betterments, extensions or improvements to the Solid Waste System in order for the City to comply with Section 5.10, the City shall use such award for any lawful purpose of the Solid Waste System, including (i) the payment of Installment Payments and Debt Service on any Parity Debt, (ii) the prepayment or discharge of Installment Payments and Debt Service on any Parity Debt and (iii) the payment of capital costs of improvements to the Solid Waste System or the SMaRT Station.

(iii) Notwithstanding the foregoing, to the extent the insurance proceeds relate to improvements financed by the Bonds, until such time as the Bonds have been redeemed or paid at maturity, (A) any use of such related insurance proceeds shall comply with Section 5.12 of this Agreement, (B) such related insurance proceeds may not pay Debt Service on or prepay, discharge or redeem any Parity Debt, (C) if such related insurance proceeds will be used to pay Debt Service on or prepay, discharge or redeem the Installment Payments and the Series 2025 Bonds, they cannot be invested at a yield that is greater than the arbitrage yield of the Series 2025 Bonds and (iv) if the Series 2025 Bonds are refunded by tax-exempt refunding bonds ("Refunding Bonds"), such related insurance proceeds in the Insurance and Condemnation Fund shall be transferred to an insurance and condemnation fund established for the Refunding Bonds and used for purposes not inconsistent with Section 5.12 of this Agreement.

(c) The City will also maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the City, the Authority, the Trustee and the Owners of the Series 2025 Bonds.

(d) Any policy of insurance required under this Section 5.4 may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be

maintained in whole or in part in the form of self-insurance by the City or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance.

SECTION 5.5. *Records and Accounts.* The City shall keep proper books of record and accounts of the Solid Waste System in which complete and correct entries are made of all transactions relating to the Solid Waste System. Said books shall, upon prior request, be subject to the reasonable inspection of the Owners of not less than 10% of the Outstanding Series 2025 Bonds, or their representatives authorized in writing, upon not less than 2 Business Days' prior notice to the City.

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

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

SECTION 5.7. *Rates and Charges.*

(a) Gross Revenues Sum Sufficiency Rate Covenant. The City shall fix, prescribe, revise and collect Charges for the Solid Waste System during each Fiscal Year which are at least sufficient after making allowances for contingencies and error in the estimates, to produce Gross Revenues (including any transfers from a rate stabilization reserve account into the Solid Waste Management Fund) which, together with Mountain View Debt Service Payments and Participant Debt Service Payments, are sufficient to pay one hundred percent (100%) of the following amounts in the following order:

- (i) all Maintenance and Operation Costs estimated by the City to become due and payable in such Fiscal Year;
- (ii) the Installment Payments and any Debt Service on Parity Debt to become due and payable in such Fiscal Year
- (iii) all other payments required for compliance with this Installment Sale Agreement and any Parity Debt Instruments; and
- (iv) all payments required to meet any other obligations of the City which are charges, liens, encumbrances upon or payable from the Gross Revenues.

(b) Net Revenues Rate Covenant. The City shall fix, prescribe, revise and collect Charges for the Solid Waste System during each Fiscal Year which are sufficient to yield Net

Revenues (including any transfers from a rate stabilization reserve account into the Solid Waste Management Fund) which, together with Mountain View Debt Service Payments and Participant Debt Service Payments, are at least equal to one hundred twenty percent (120%) of the Installment Payments and the Debt Service on any Parity Debt to become due and payable in such Fiscal Year.

SECTION 5.8. *Superior and Subordinate Obligations.* The City may not issue or incur any additional bonds or other obligations during the Term of this Agreement having any priority in payment of principal or interest out of the Gross Revenues or the Net Revenues over the Installment Payments. Nothing herein limits or affects the ability of the City to pay Maintenance and Operation Costs, or to issue or incur (a) Parity Debt under Section 5.9, or (b) obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established hereunder.

SECTION 5.9. *Issuance of Parity Debt.* In addition to the Installment Payments, the City may, by Parity Debt Instrument, issue or incur Parity Debt payable from Net Revenues to provide financing for the Solid Waste System or the SMaRT Station, in such principal amount as shall be determined by the City.

The City may issue or incur any such Parity Debt subject to the following specific conditions which are hereby made conditions precedent to the issuance and delivery of such Parity Debt:

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

(b) The Net Revenues (excluding any transfers from a rate stabilization reserve account to the Solid Waste Management Fund), calculated on sound accounting principles, as shown by the books of the City for the latest Fiscal Year or any twelve (12) month period selected by the City occurring during the 18 months prior to the approval by the City Council of the Parity Debt Instrument pursuant to which such Parity Debt is incurred, as shown by the books of the City, *plus*, at the option of the City, any or all of the items described in clauses (i) and (ii) of this paragraph, shall at least equal one hundred twenty percent (120%) of the result of the following equation: Maximum Annual Debt Service immediately subsequent to the issuance of such Parity Debt *minus* the Mountain View Debt Service Payments and Participant Debt Service Payments for the Fiscal Year in which the Maximum Annual Debt Service occurs. For purposes of calculating Net Revenues to demonstrate compliance with the preceding sentence, any or all of the following items may be added to Net Revenues:

(i) An allowance for Net Revenues from any additions to or improvements or extensions of the Solid Waste System to be made with the proceeds of such Parity Debt, and also for Net Revenues from any such additions, improvements or extensions which have been made from moneys from any

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

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

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

(i) The proceeds of such Parity Debt shall be applied to the acquisition, construction, improvement, financing or refinancing of facilities, equipment or improvements of the Solid Waste System or the SMaRT Station, or otherwise for facilities, improvements or property which the City determines are of benefit to the Solid Waste System or the SMaRT Station, or for the purpose of refunding the Installment Payments or any Parity Debt in whole or in part, including all costs (including costs of issuing such Parity Debt, capitalized interest on such Parity Debt during any period which the City deems necessary or advisable, and a reserve account for such Parity Debt) relating thereto;

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

(iii) The principal of such Parity Debt shall be payable on November 1 in any year in which principal is payable.

(d) The City will deliver to the Trustee a Written Certificate of the City certifying that the conditions precedent to the issuance of such Parity Debt set forth in subsections (a), (b) and (c) of this Section 5.9 have been satisfied.

(e) For purposes of illustration but not limitation, Parity Debt secured by a pledge of Net Revenues on a parity basis with the Installment Payments could be issued in the following forms:

(i) the City could enter into an installment payment agreement to finance improvements to the SMaRT Station secured by a pledge of Net Revenues and additional payments made by Mountain View under the Memorandum of Understanding;

(ii) the City could enter into an installment payment agreement to finance improvements to the SMaRT Station secured by a pledge of Net Revenues and additional payments made by Mountain View under a different agreement with the City;

(iii) the City could enter into an installment payment agreement to finance improvements to the SMaRT Station secured by a pledge of Net Revenues and Participant Debt Service Payments;

(iii) the City could issue bonds to finance improvements to the Solid Waste System or the SMaRT Station secured by a pledge of Net Revenues only.

Net Revenues will be applied to pay the Installment Payments and Debt Service on any Parity Debt in accordance with Section 4.6 of this Agreement.

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

SECTION 5.11. *Assignment and Amendment Hereof.* The Authority and the City may at any time amend or modify any of the provisions of this Agreement, but only: (a) with the prior written consents of the Owners of a majority in aggregate principal amount of the Outstanding Series 2025 Bonds; or (b) without the consent of the Trustee or any of the Owners of the Series 2025 Bonds, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City contained in this Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;
- (ii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, to conform to the original intention of the City and the Authority;
- (iii) to modify, amend or supplement this Agreement in such manner as to assure that the interest on the Series 2025 Bonds remains excluded from gross income under the Code;

- (iv) in any other respect whatsoever as the Authority and the City deem necessary or desirable, if in the opinion of Bond Counsel such modifications or amendments do not materially adversely affect the interests of the Owners of the Series 2025 Bonds.

No such modification or amendment may (a) extend or have the effect of extending any Installment Payment Date or reducing any Installment Payment, without the express consent of the Owners of the affected Series 2025 Bonds, or (b) modify any of the rights or obligations of the Trustee without its written assent thereto.

SECTION 5.12. *Tax Covenants.*

a) Private Activity Bond Limitation. The City shall assure that the proceeds of the Series 2025 Bonds are not used in a manner such that the Series 2025 Bonds will satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

b) Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Series 2025 Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

c) Rebate Requirement. The City shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Series 2025 Bonds.

d) No Arbitrage. The City shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Series 2025 Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Series 2025 Bonds would have caused the Series 2025 Bonds to be "arbitrage bonds" within the meaning of section 148 of the Code.

e) Maintenance of Tax-Exemption. The City shall take all actions necessary to assure the exclusion of interest on the Series 2025 Bonds from the gross income of the owners of the Series 2025 Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Series 2025 Bonds.

f) Record Retention. The City will retain its records of all accounting and monitoring it carries out with respect to the Series 2025 Bonds for at least three years after the Series 2025 Bonds mature or are redeemed (whichever is earlier); however, if the Series 2025 Bonds are redeemed and refunded, the City will retain its records of accounting and monitoring at least three years after the earlier of the maturity or redemption of the obligations that refunded the Bonds.

g) Compliance with Tax Certificates. The City will comply with the provisions of the Certificate as Arbitrage and the Certificate Regarding Use of Proceeds with respect to the Series 2025 Bonds, which are incorporated herein as if fully set forth herein. The covenants of this Section will survive payment in full or defeasance of the Series 2025 Bonds.

SECTION 5.13. *Continuing Disclosure.* The City shall comply with and carry out all of the provisions of the Continuing Disclosure Certificate executed by the City as of the Closing Date, as originally executed and as it may be amended from time to time in accordance with its terms. Notwithstanding any other provision of this Agreement, failure of the City to comply with such Continuing Disclosure Certificate will not constitute an Event of Default, although any Participating Underwriter (as that term is defined in such Continuing Disclosure Certificate) or any Owner or beneficial owner of the Series 2025 Bonds may take such actions as may be necessary and appropriate to compel performance by the City of its obligations under this Section, including seeking mandate or specific performance by court order.

SECTION 5.14. *Rate Stabilization Reserve Accounts.* The City has the right at any time to establish one or more rate stabilization reserve accounts to be held by it and administered in accordance with this Section 5.14, for the purpose of stabilizing the rates and charges imposed by the City with respect to the Solid Waste System. From time to time the City may deposit amounts in such rate stabilization reserve accounts, from any source of legally available funds, including but not limited to Net Revenues which are released from the pledge and lien which secures the Installment Payments and any Parity Debt, as the City may determine.

The City may, but is not be required to, withdraw amounts on deposit in such rate stabilization reserve accounts and deposit such amounts in the Solid Waste Management Fund in any Fiscal Year for the purpose of paying the Maintenance and Operation Costs, the Installment Payments or the principal of and interest on any Parity Debt coming due and payable in such Fiscal Year. Amounts so transferred from such rate stabilization reserve accounts to the Solid Waste Management Fund in any Fiscal Year constitute Gross Revenues for that Fiscal Year, and will be applied for the purposes of the Solid Waste Management Fund. Amounts on deposit in such rate stabilization reserve accounts are not pledged to and do not secure the Installment Payments or any Parity Debt. All interest or other earnings on deposits in such rate stabilization reserve accounts will be retained therein or, at the option of the City, be applied for any other lawful purposes. The City has the right at any time to withdraw any or all amounts on deposit in such rate stabilization reserve accounts and apply such amounts for any other lawful purposes of the City.

ARTICLE VI

EVENTS OF DEFAULT

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

- (a) Failure by the City to pay any Installment Payment when due and payable hereunder.
- (b) Failure by the City to pay any Additional Payment when due and payable hereunder, and the continuation of such failure for a period of 30 days.
- (c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding clauses (a) or (b), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee; *provided, however*, that if the City notifies the Authority and the Trustee that in its reasonable opinion the failure stated in the notice can be corrected, but not within such 30-day period, such failure will not constitute an event of default hereunder if the City commences to cure such failure within such 30 day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.
- (d) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.
- (e) The occurrence of any event of default under and as defined in any Parity Debt Instrument.
- (f) Any representation or warranty made, or financial statement, certificate or other document provided by the City shall prove to have been false or misleading in any material respect.
- (g) This Agreement, the Series 2025 Bonds or the Indenture shall, for any reason, cease to be valid and binding on the parties thereto, or shall be

declared null and void, or the validity or enforceability thereof shall be contested by any of the parties thereto.

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

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

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

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

SECTION 6.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Authority is intended to be exclusive. Every such remedy is cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default impairs any such right or power or operates as a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority

to exercise any remedy reserved to it in this Article VI, it is not necessary to give any notice, other than such notice as may be required in this Article VI or by law.

SECTION 6.4. *Agreement to Pay Attorneys' Fees and Expenses.* If either party to this Agreement defaults under any of the provisions hereof and the nondefaulting party, the Trustee or the Owner of any Series 2025 Bonds employs attorneys or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party, the Trustee or such Owner, as the case may be, the reasonable fees of such attorneys and such other expenses so incurred. The provisions of this Section 6.4 survive the expiration of the Term of this Agreement.

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

SECTION 6.6. *Trustee and Bond Owners to Exercise Rights.* Such rights and remedies as are given to the Authority under this Article VI have been assigned by the Authority to the Trustee under the Indenture, to which assignment the City hereby consents. Such rights and remedies will be exercised by the Trustee and the Owners of the Series 2025 Bonds as provided in the Indenture.

ARTICLE VII

PREPAYMENT OF INSTALLMENT PAYMENTS

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

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

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

SECTION 7.2. *Optional Prepayment.* The City may exercise its option to prepay the principal components of the Installment Payments in whole or in part on any date on or after November 1, _____. The City may exercise such option by payment of a prepayment price equal to the sum of (a) the aggregate principal components of the Installment Payments to be prepaid, and (b) the interest component of the Installment Payment required to be paid on or accrued to such date. The Trustee shall deposit the prepayment price in the Installment Payment Fund to be applied to the redemption of Series 2025 Bonds under Section 4.01(a) of the Indenture. If the City prepays the Installment Payments in part but not in whole, the principal components will be prepaid among such maturities and in such integral multiples of \$5,000 as the City designates in written notice to the Trustee.

SECTION 7.3. *Reserved.*

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

ARTICLE VIII

MISCELLANEOUS

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

SECTION 8.2. *Notices.* Any notice, request, complaint, demand or other communication under this Agreement must be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopier or other form of telecommunication, at its

number set forth below. Notice is effective either (a) upon transmission by fax or other form of telecommunication, (b) upon actual receipt after deposit in the United States of America mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the City
or the Authority:* City of Sunnyvale
456 West Olive Avenue
Sunnyvale, California 94086
Attention: Director of Finance
Fax: (408) 730-7398

If to the Trustee: U.S. Bank Trust Company, National Association
Corporate Trust Dept.
U.S. Bank Tower Los Angeles
633 W 5th St., 24th Floor
Los Angeles, CA 90071
Email: Lorraine.goodson@usbank.com

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

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

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

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

not to any particular Article, Section or subdivision hereof; and words of the masculine gender mean and include words of the feminine and neuter genders.

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

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

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

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

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

SUNNYVALE FINANCING AUTHORITY, *as Seller*

By _____
Treasurer

ATTEST:

By _____
Secretary

CITY OF SUNNYVALE, *as Purchaser*

By _____
Director of Finance

ATTEST:

By _____
City Clerk

APPENDIX A

INSTALLMENT PAYMENTS

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

APPENDIX B

DESCRIPTION OF IMPROVEMENTS

The SMaRT Station currently has two completely separate processing systems, one for MSW and one for source-separated curbside recyclables.

The Improvements will upgrade the existing MSW processing system to allow for processing of both MSW and source-separated recyclables (i.e., dual and single-stream collected materials) using a single integrated system.

The project includes removal of existing processing equipment and associated framework/ structures as needed, and the design, fabrication, permitting, supply, and installation of new processing equipment including all related structures (steel and concrete) and equipment supports.

Building modifications including localized equipment foundations, wall cutouts, and conveyor pits may be necessary to accommodate the new equipment.