

Submitted by staff
at 4/1/13
Board Meeting
Item 2X

\$[4,000,000]
**MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
2013 INSTALLMENT SALE AGREEMENT**

PURCHASE AGREEMENT

_____, 2013

The undersigned, Rabobank, N.A. (the "Bank"), offers pursuant to this Purchase Agreement (this "Agreement"), to acquire the assignment (the "Assignment") under the Assignment Agreement, dated as of April 1, 2013 (the "Assignment Agreement"), among the _____ Corporation (the "Corporation"), the Monterey Peninsula Water Management District (the "District") and the Bank. Capitalized terms used and not defined herein shall have the respective meanings ascribed to such terms in the Installment Sale Agreement, dated as of April 1, 2013 (the "Installment Sale Agreement"), by and between the Corporation and the District.

1. **Purchase and Purchase Price.** Subject to the terms and conditions incorporated herein, the Bank agrees to purchase the Assignment at a purchase price of the principal amount thereof (\$[4,000,000]) (the "Purchase Price") on the Closing Date (as defined below). The Assignment is made in connection with the principal and interest installments to be made by the District under the Installment Sale Agreement, as set forth on Exhibit A hereto.

2. **Use of Funds.** The Purchase Price paid to the Corporation by the Bank shall be used to (i) retire a Bank of America, N.A. line of credit, (ii) fund reserves for the District, (iii) finance and refinance certain capital improvements for the District, (iv) fund a debt service reserve, and (v) pay certain costs of the execution and delivery of this Installment Purchase Agreement and related documents.

3. **Disbursement of Funds.** On the Closing Date (as defined below), the Purchase Price, less \$_____ to be held by the Bank in the Reserve Fund and \$_____ to be applied to the payment of the costs for the execution and delivery of the Installment Sale Agreement and related documents, shall be transferred by the Bank to the District for deposit in the Project Fund.

4. **Closing.** On the _____, 2013 (the "Closing Date"), or at such other time or on such date as the Bank, the Corporation and the District mutually agree, the Corporation shall deliver the executed Assignment Agreement to the Bank, provided that all of the conditions required by Section 7 hereof have been satisfied. Delivery by the Bank of the Purchase Price shall constitute acknowledgment by the Bank that such conditions have been fully satisfied or waived.

7. **Conditions Precedent to the Closing.** The conditions precedent to closing on the Closing Date shall be as provided in the form of Assignment Agreement set forth in Exhibit B hereto, which conditions are incorporated herein by reference.

8. **Law Governing; Jurisdiction and Venue.** This Agreement shall be construed and governed in accordance with the laws of the State of California. The Corporation and the District irrevocably agree that all actions, proceedings or counterclaims arising out of or relating to this Agreement, the Assignment Agreement or the Installment Sale Agreement will be litigated in the Superior Court of California selected by the Bank, or the United States District Court for the Eastern District of California. The Corporation and the District each irrevocably consents to service, jurisdiction,

and venue of those courts for all such actions, proceedings and counterclaims and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. Final judgment against the Corporation or the District in any such action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment, a certificate or exemplified copy of which shall be conclusive evidence of the judgment or in any other manner provided by law. The Corporation and the District each irrevocably waives to the fullest extent permitted by applicable law (a) any objection which it may have now or in the future to the laying of the venue of any such action, suit or proceeding in any court referred to in the first sentence above; (b) any claim that any such action, suit or proceeding has been brought in an inconvenient forum; (c) its right of removal of any matter commenced by any other party in the courts of the State of California to any court of the United States of America; (d) to the extent permitted by law, any immunity which it or its assets may have in respect of its obligations under this Agreement, the Assignment Agreement or the Installment Sale Agreement from any suit, execution, attachment (whether provisional or final, in aid of execution, before judgment or otherwise) or other legal process; and (e) any right it may have to require the moving party in any suit, action or proceeding brought in any of the courts referred to above arising out of or in connection with this Agreement, the Assignment Agreement or the Installment Sale Agreement to post security for the costs of the district or to post a bond or to take similar action.

9. **Waiver of trial by jury.** To the fullest extent permitted by law, the parties hereto (a) covenant and agree not to elect a trial by jury in any action or proceeding for the resolution of any controversy or claim that arises out of or relates to this Agreement, the Assignment Agreement or the Installment Sale Agreement, whether arising in contract, tort or by statute (individually and collectively, a "controversy or claim"); and, (b) to the extent permitted by applicable law, hereby irrevocably waive all right to a trial by jury as to any issue relating hereto in any action, proceeding or counterclaim arising out of or relating to any transaction document to the extent such right exists now or in the future. The provisions of this Section are separately given by each party hereto knowingly and voluntarily; and are a material inducement for the Bank entering into this Agreement and the Assignment Agreement and accepting the assignment set forth herein.

10. **Counterparts; Headings.** This agreement may be signed in counterparts with the same effect as if the signatures thereto were on the same instrument. The headings of the Sections of this agreement have been inserted for convenience of reference only and shall not be deemed a part of this agreement.

11. **Partial Invalidity.** If any one or more of the covenants or agreements, or portions thereof, provided in this Agreement to be performed should be contrary to law, then such covenant or covenants, such agreement or agreements, or such portions thereof, shall be null and void and shall be deemed separable from the remaining covenants and agreements or portions thereof and shall in no way affect the validity of this Agreement.

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

**MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT**

By: _____
General Manager

_____ CORPORATION

By: _____
Authorized Officer

RABOBANK, N.A.

By: _____
Ian Carroll, Senior Vice President

EXHIBIT A

INSTALLMENT PAYMENT SCHEDULE

<u>Payment</u> <u>Date</u>	<u>Principal</u>	<u>Interest</u> ⁽¹⁾	<u>Total</u> <u>Payment</u> ⁽²⁾
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Total

⁽¹⁾ Based on an interest rate of 3.6% per annum.

⁽²⁾ Rounded.

EXHIBIT B
FORM OF ASSIGNMENT AGREEMENT