City of Biggs

Agenda Item Staff Report
For the Regular City Council Meeting:
October 8, 2013

TO: Honorable Mayor and Members of the City Council

FROM: City Administrator

SUBJECT: Amendment of waste water debt documents. (Informational)

Background:
For some number of weeks, a State Revolving Fund (SRF) attorney and the bond council have been trying to work through an issue where the SRF believes that it was necessary for the City of Biggs and the USDA to modify or amend one or more prior USDA debt documents. Due to a lack of specificity in the financing documents SRF requested an addendum to clarify that the USDA loans allow adding additional layers of parity debt to sewer revenues.

In response, with resolution 2013-28 Council Authorized the City Administrator to revise, modify and/or amend one or more the city's underlying debt agreements to resolve the parity debt issue for SRF.

On Wednesday September 25, 2013 the City completed the process of executing an amendment to accomplish this task.

The attached is the executed first amendment to the City of Biggs Certificates of Participation, Series 2000A, 2000B and 2000C Installment Sale Agreement. The amendment revises Sections 3.02 and 4.03 to permit parity debt with the State Water Resources Control Board, and adds Section 4.17 with respect to future parity debt.

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Mark Sorensen, City Administrator

FIRST AMENDMENT TO
INSTALLMENT SALE AGREEMENT

This FIRST AMENDMENT TO INSTALLMENT SALE AGREEMENT (this "First Amendment") amending that certain Installment Sale Agreement dated February 1, 2000 (the "**Installment Sale Agreement**") by and between Community Housing Improvement Program, Incorporated, a California nonprofit public benefit corporation (the "**Corporation**") and the City of Biggs, a municipal corporation (the "**City**") is entered into as of September 10, 2013 by and between the Corporation and the City. The Corporation and the City are collectively referred to herein as the "**Parties.**"

RECITALS

A. The City issued its City of Biggs Series 2000-A, 2000-B, 2000-C Certificates of Participation (Wastewater System Improvement Project) (the "**Certificates**") on February 9, 2000 to construct certain improvements to the Wastewater System, pursuant to which the City and the Corporation entered into the Installment Sale Agreement pertaining to the Wastewater System and a prior improvement project thereto (the "**Prior Project**"), which Installment Sale Agreement provided among other things for the City to purchase the Wastewater System, as improved by the Prior Project, by payment of certain scheduled installment payments (the "**Installment Payments**") made payable from and secured by a pledge of the operating revenues of the Wastewater System (the "**Net Wastewater Revenues**").

B. The City has determined that the acquisition and construction of certain additions, betterments, extensions and improvements (the "**Project**") to the Wastewater System (the "**Wastewater System**") are necessary and proper for public purposes and uses under the terms of applicable law and are for the common benefit of the inhabitants of the City as a whole

C. The City now seeks to finance the Project with funds to be provided by the California State Water Resources Control Board, pursuant to a proposed agreement in the nature of an installment sale agreement and entitled a "Project Finance Agreement" (the "**Project Finance Agreement**") which will require that the City's payment obligations under the Project Finance Agreement will be secured by a pledge of the Net Wastewater Revenues on a parity with the pledge which secures the City's payment obligations under the Installment Sale Agreement.

D. Section 4.03 of the Installment Sale Agreement presently provides that the City may provide only a subordinate pledge of the Net Wastewater Revenues to secure any additional payment obligations, including but not limited to the City's payment obligations under the Project Finance Agreement.

E. The City and the Corporation desire to amend the Installment Sale Agreement to to enable the City to provide a parity pledge of and lien and charge upon the Net Wastewater Revenues (a "**Parity Pledge**") to secure the City's payment obligations under the Project Finance Agreement.

F. The real party in interest with respect to the pledge of Net Wastewater Revenues to secure the Installment Payments is the United States of America, acting through the United States Department of Agriculture – Rural Development ("**USDA-RD**"), which is the sole owner

of the Certificates, the principal of and the interest on which are payable from proceeds of the Installment Payments.

G. USDA-RD has provided the City with its "Consent of Prior Lender to Parity Pledge of Wastewater System Revenues," dated June 24, 2013 (the "**USDA-RD Consent**"), providing its consent to the City to secure its payment obligations under the Project Finance Agreement with a Parity Pledge, subject to the following two conditions:

(a) The City shall covenant to use its best efforts and shall endeavor to the fullest extent permitted by law to fix, prescribe and collect rates, fees and charges for Wastewater System services during each Fiscal Year which are sufficient to provide Net Revenues in an amount equal to at least 1.20 times the combined debt service during such Fiscal Year on the existing USDA-RD obligation and the Project Finance Agreement; and

(b) The total amount of funds to be disbursed to the City pursuant to the Project Finance Agreement shall not exceed $2,662,000.

H. All acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this First Amendment do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this First Amendment.

I. All capitalized terms used and not defined in this First Amendment have the meaning set forth in the Installment Sale Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the facts contained in the Recitals above, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof or supplement hereto and of any opinion or report or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein:

"**Governmental Loan**" means a loan from the State of California or the United States of America, acting through any of its agencies, to finance improvements to the Wastewater System, and the obligation of the City to make payments to the State or the United States of America under loan agreements, installment sale agreements, certificates of participation or any other debt obligation, all of which must memorializing said debt obligation on a parity basis with the payment of the Installment Payments.

"**Parity Obligation**" means any payment obligation of the City, if any, which is payable from and secured by a pledge of the Wastewater Revenues or Net Wastewater Revenues on parity to the pledge contained in the Installment Sale Agreement. The City represents and warrants that there are no Parity Obligations secured by a Parity Pledge as of the date of this First Amendment.

"**Parity Pledge**" means a pledge of and a lien and charge upon the Net Wastewater Revenues to secure a payment obligation of the City which is on an equality of priority with the pledge securing any Prior Obligation.

"**Project Finance Agreement**" means the written instrument to be entered into between the Water Board and the City evidencing the obligation of the City to repay the amounts disbursed to the City with respect to the Project, together with interest thereon and certain additional amounts as prescribed therein, and providing for a Parity Pledge to secure the City's payment obligations under such instrument.

"**Prior Obligation**" means a payment obligation of the City which was established prior to the Project Finance Agreement to make payments on account of the principal of and the interest on such obligation and which provides a pledge of and a lien and charge upon the Net Wastewater Revenues to secure the payment obligation, including the payment obligation of the City under the Installment Sale Agreement.

"**USDA-RD**" means the United States Department of Agriculture-Rural Development, an agency of the United States Department of Agriculture.

"**USDA-RD Consent**" means the written instrument entitled "Consent of Prior Lender to Parity Pledge of Wastewater System Revenues," executed as of June 24, 2013, by David E. Hartwell, as the authorized representative of USDA-RD, by which USDA-RD provided its conditional consent to the City providing a Parity Pledge to secure the City's payment obligations under the Project Finance Agreement.

"**Water Board**" means the California State Water Resources Control Board.

Section 2. Amendment of Section 3.02 of Installment Sale Agreement. The City's pledge of and lien and charge upon Net Wastewater Revenues to secure the City's payment obligations under the Project Finance Agreement shall be a Parity Pledge. In order to effectuate the Parity Pledge to secure the City's payment obligations under the Project Finance Agreement, the last paragraph of Section 3.02 of the Installment Sale Agreement is hereby amended to read as follows:

"The City's payment obligations under the Project Finance Agreement shall be secured by a Parity Pledge. In furtherance of implementing such Parity Pledge, and notwithstanding the foregoing language of subsections (a) and (b), for as long as the City has any remaining payment obligations under the Project Finance Agreement, the City shall pay its principal and interest payment obligations coming due under the Project Finance Agreement on or before February 15 and August 15 of each year on a parity with and by applying the same priority as

provided in subsection (a) above for the Installment Payments before making any deposit to the Reserve Fund pursuant to subsection (b) above.

After applying the Wastewater Revenues for the purposes and in the order prescribed above in this Section 3.02, the City may expend any remaining Wastewater Revenues for any lawful purpose of the City."

Section 3. Amendment of Section 4.03 of the Installment Sale Agreement. In order to effectuate the Parity Pledge that secures the City's payment obligations under the Project Finance Agreement, as provided by Section 3.02 of the Installment Sale Agreement, as amended by the foregoing Section 2 of this First Amendment, the last paragraph of Section 4.03 of the Installment Sale Agreement shall be amended to read as follows:

"Except with respect to the Parity Pledge which shall secure the City's payment obligations under the Project Finance Agreement, as provided in Section 3.02, as amended, the City may secure any future payment obligations with a pledge, lien or charge upon the Net Wastewater Revenues, provided any such security is wholly subordinate and junior to the Prior Obligation and the Project Finance Agreement.

"In furtherance of establishing compliance with the conditions imposed by USDA-RD in the USDA-RD Consent, the City hereby covenants for the benefit of USDA-RD, the Water Board, and their respective successors and assigns, as follows:

(a) The City hereby covenants to use its best efforts and shall endeavor to the fullest extent permitted by law to fix, prescribe and collect rates, fees and charges for Wastewater System services during each Fiscal Year which are sufficient to provide Net Revenues in an amount equal to at least 1.20 times the combined debt service during such Fiscal Year on the Prior Obligation established by this Installment Sale Agreement and the Project Finance Agreement; and

(b) The total amount of funds to be disbursed to the City pursuant to the Project Finance Agreement shall not exceed $2,662,000."

Section 4. Section 4.17 Limitations on Future Obligations Secured by Net Wastewater Revenues is hereby added to the Installment Sale Agreement as follows:

(a) No Obligations Superior to Installment Payments. In order to protect further the availability of the Net Wastewater Revenues and the security for the Installment Payments and any Parity Obligations, City hereby agrees that City shall not, so long as any Certificates are outstanding, issue or incur any obligations payable from Wastewater Revenues or Net Wastewater Revenues superior to the Installment Payments or such Parity Obligations. City may issue or incur Subordinate Debt as provided herein.

(b) Parity Obligations. City further covenants that, except for financing obligations issued to fully or partially refund the Certificates or Parity Obligations, City shall not issue or incur any Parity Obligations unless:

(i) City is not in default under the terms of this Installment Sale Agreement;

(ii) Net Wastewater Revenues, calculated on sound accounting principles, as shown by the books of City for the latest Fiscal Year or any more recent twelve (12) month period selected by City ending not more than sixty (60) days prior to the adoption of the resolution pursuant to which instrument such Parity Obligation is issued or incurred, as shown by the books of City plus, at the option of City the additional allowance described below, shall have amounted to at least 1.20 times the sum of the Installment Payments coming due and payable in any future Fiscal Year and the annual debt service for such Fiscal Year on all Parity Obligations outstanding immediately subsequent to the incurring of such additional obligations in the Fiscal Year in which such sum is the greatest; and

(iii) Except with respect to Governmental Loans, there shall be established from the proceeds of such Parity Obligations a reserve fund for the security of such Parity Obligations, in an amount equal to the lesser of (i) the maximum amount of debt service required to be paid by City with respect to such Parity Obligations during any Fiscal Year, or (ii) the maximum amount then permitted under the Code, in either event as certified in writing by City. With respect to Governmental Loans, City may, in its sole discretion, establish a reserve fund in an amount not to exceed the limits set forth herein.

(iv) City has obtained written consent from Owner, if Owner is the United States of America, acting through any one of its agencies.

Either or both of the following items may be added to such Net Wastewater Revenues for the purpose of applying the restriction contained in this subsection (b)(ii):

(A) an allowance for Net Wastewater Revenues from any additions to or improvements or extensions of the Wastewater System to be constructed or acquired with the proceeds of such additional obligations, and also for Net Wastewater Revenues from any such additions, improvements or extensions which have been constructed or acquired from moneys from any source but which, during all or any part of such Fiscal Year or twelve (12) month period, were not in service, all in an amount equal to the estimated additional annual Net Wastewater Revenues to be derived from such additions, improvements and extensions during the first full Fiscal Year following the completion thereof, all as shown by a certificate of City may be added to such Net Wastewater Revenues for the purpose of applying the restriction contained in this subsection (b)(ii);

(B) an allowance for earnings arising from any increase in the charges made for service from the Wastewater System which has become effective prior to the incurring of such additional obligations but which, during all or any part of such Fiscal Year or twelve (12) month period, was not in effect, in an amount equal to 100% of the amount by which the Net Wastewater Revenues would have been increased if such increase in charges had been in effect during

the whole of such Fiscal Year or twelve (12) month period, as shown by a certificate of City.

The provisions of subsection (b)(ii) of this Section shall not apply to any Parity Obligations if all of the proceeds of which (other than proceeds applied to pay costs of issuing such Parity Obligations and to make the reserve fund deposit required pursuant to subsection (b)(iii) of this Section) shall be deposited in an irrevocable escrow held in cash or invested in Federal Securities for the purpose of paying the principal of and interest and premium (if any) on any Outstanding Certificates or on any outstanding Parity Obligations, if (x) at the time of the incurring of such Parity Obligations, City certifies in writing that maximum annual debt service on such Parity Obligations will not exceed Maximum Annual Debt Service on the Outstanding Certificates or Parity Obligations to be refunded, and (y) the final maturity of such Parity Obligations is not later than the final maturity of the refunded Certificates or Parity Obligations.

In order to maintain the parity relationship of the Installment Payments to all Parity Obligations permitted hereunder, City covenants that all payments in the nature of principal and interest or reserve account replenishment with respect to any Parity Obligations, except with respect to Governmental Loans, will be structured to occur semi-annually on the Due Dates and in each year as such payments are due with respect to the Installment Payments, and reserve account replenishment with respect to any Parity Obligations, except with respect to Governmental Loans, will be structured to occur monthly, and to otherwise structure the terms of such Parity Obligations to ensure that they are in all respects payable on a parity with the Installment Payments and not prior thereto; provided that City shall not make a payment on such Governmental Loan to the extent it would have the effect of causing City to fail to pay Installment Payments on a timely basis. In such event, City shall make Installment Payments and payments on such Governmental Loan on a pro rata basis.

(c) Treatment or Reimbursements. If interest on any Parity Obligation is reasonably anticipated to be reimbursed to or on behalf of City by the United States of America, then interest payments with respect to such Parity Obligations shall be excluded by the amount of such interest reasonably anticipated to be paid or reimbursed by the United States of America, and such reimbursements will not be included as Wastewater Revenues for purposes of the coverage calculations required in subsection (b)(ii) above.

(d) Subordinate Obligations. City may issue bonds or other obligations secured by a lien on Wastewater Revenues or Net Wastewater Revenues which is subordinate to the lien established under this Installment Sale Agreement, upon such terms and in such principal amounts as City may determine.

Section 4. All other terms of the Installment Sale Agreement remain in full force and effect.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed by each Party's duly authorized representative effective as of the date first written above.

CITY OF BIGGS,
a California municipal corporation

By:_____
City Administrator

COMMUNITY HOUSING IMPROVEMENT PROGRAM INCORPORATED, a California nonprofit public benefit corporation

By:_____
President