

CREDIT AGREEMENT

Dated as of

October 1, 2017

By and Among

CITY OF SAN JOSE, CALIFORNIA,

CITY OF SAN JOSE FINANCING AUTHORITY

And

WELLS FARGO BANK, NATIONAL ASSOCIATION

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CREDIT AGREEMENT

This **CREDIT AGREEMENT**, (the “Agreement”) dated as of October 1, 2017, by and among the **CITY OF SAN JOSE, CALIFORNIA**, the **CITY OF SAN JOSE FINANCING AUTHORITY** and **WELLS FARGO BANK, NATIONAL ASSOCIATION**. Capitalized terms used herein and not otherwise defined shall have the meaning provided in Article I.

W I T N E S S E T H:

WHEREAS, the City and the Redevelopment Agency have previously entered into the Joint Powers Agreement establishing the Authority as a joint powers authority under the Act, for the purpose, among others, of assisting in the City in its financing needs by financing public capital improvements;

WHEREAS, the City is the operator and joint owner, with the City of Santa Clara, of the existing wastewater treatment plant formerly known as the “San José – Santa Clara Water Pollution Control Plant” and currently known as the “San José – Santa Clara Regional Wastewater Facility (the “Treatment Plant”);

WHEREAS, a capital improvement program for the Treatment Plant is underway;

WHEREAS, the City has determined to finance and refinance the acquisition, construction and installation from time to time of certain improvements, additions, and betterments to, and extensions and replacements of, the Treatment Plant, constituting a portion of the Treatment Plant capital improvement program (the “Projects”);

WHEREAS, to assist the City in financing and refinancing the acquisition, construction and installation of the Projects, the Authority will issue Notes from time to time pursuant to the Act, this Agreement and other applicable laws of the State of California and the Bank will make Advances of the principal of the Notes from time to time as provided in this Agreement;

WHEREAS, the Authority has agreed to sell the Projects to the City and/or refinance the purchase price of Projects previously financed and/or refinanced by the Authority or the City, and the City has agreed to purchase the Projects from the Authority and pay the refinanced purchase price of Projects previously financed and/or refinanced by the Authority or the City, as provided in the Installment Purchase Agreement;

WHEREAS, the City has agreed to make Installment Payments to the Authority to pay the purchase price of the Projects and pay the refinanced purchase price of Projects previously financed and/or refinanced by the Authority or the City, together with interest thereon and other amounts payable by the Authority under this Agreement, as provided in the Installment Purchase Agreement;

WHEREAS, the City has agreed to designate the Installment Payments as Subordinate Obligations under the Master Resolution and, as such, the Installment Payments shall be payable solely from, and secured by a pledge of and lien on, the Net System Revenues as Subordinate Obligations under and as provided in the Master Resolution; and

WHEREAS, the Authority and the City are entering into this Agreement to provide for the issuance of the Notes by the Authority from time to time to finance and/or refinance the Projects and to establish the terms and conditions upon which the Notes are to be issued and secured and to secure the principal thereof, premium, if any, and interest thereon;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. In addition to the terms defined in the recitals hereinabove set forth, the following terms, as used herein, have the following meanings:

“*Act*” means the Joint Exercise of Powers Act, California Government Code Section 6500, *et seq.*

“*Advance*” means each advance of funds made by the Bank to the Authority pursuant to this Agreement and the related Note.

“*Advance Date*” means the date on which an Advance is funded by the Bank pursuant to Section 2.04.

“*Affiliate*” means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Amortization Amount*” shall have the meaning assigned to such term in Section 2.07(c).

“*Amortization End Date*” means the first to occur of (a) the third anniversary of the Termination Date and (b) the date upon which an Event of Default shall occur and the Bank exercises the remedy of acceleration provided in Section 6.02.

“*Amortization Interest Payment Date*” means the first Business Day of each month and the Amortization End Date.

“*Amortization Payment Commencement Date*” means the first Business Day of the third (3rd) full calendar month following the Termination Date.

“*Amortization Period*” shall have the meaning assigned to such term in Section 2.07(c).

“*Amortization Principal Payment*” shall have the meaning assigned to such term in Section 2.07(c).

“*Amortization Principal Payment Date*” means (a) the Amortization Payment Commencement Date and each three month anniversary of the Amortization Payment Commencement Date occurring thereafter which occurs prior to the Amortization End Date and (b) the Amortization End Date.

“*Anti-Corruption Laws*” means all laws, rules, and regulations of any jurisdiction applicable to the Authority from time to time concerning or relating to bribery or corruption.

“*Applicable Factor*” means seventy percent (70%).

“*Applicable Spread*” shall have the meaning given to such term in the Fee Letter Agreement.

“*Authority*” means the City of San José Financing Authority and its permitted successors and assigns.

“*Authority Revenues*” means all Installment Payments made by the City under the Installment Purchase Agreement.

“*Authorized Officer*” or “*Authorized Officers*” means with respect to the Authority, its Executive Director or its Treasurer, or their authorized designees, or any officer or employee of the Authority authorized to perform specific acts or duties on behalf of the Authority by resolution duly adopted by the governing board of the Authority, a certified copy of which is provided to the Bank and, with respect to the City, its City Manager or its Finance Director, or their authorized designees, or any officer or employee of the City authorized to perform specific acts or duties on behalf of the City by resolution adopted by the City Council of the City, a certified copy of which is provided to the Bank.

“*Available Commitment*” means, as of any date, the Commitment of the Bank on such date less the aggregate principal amount outstanding under the Notes on such date.

“*Bank*” means Wells Fargo Bank, National Association, a national banking association, and its successors and assigns.

“*Bank Agreement*” means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, revolving credit agreement, direct purchase agreement (such as a continuing covenant agreement or supplemental bondholder’s agreement), or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) (a) to make loans to the City or the Authority that are secured by or payable from Net System Revenues or (b) (i) to make or provide funds to make, payment of, (ii) to purchase or (iii) to provide credit enhancement for bonds, notes or other obligations of the Authority or the City secured by or payable from Net System Revenues.

“*Bank Rate*” means, for any date of determination, a fluctuating rate of interest per annum as specified below:

Period	Rate
Termination Date through the 180th day following such date	Base Rate
181st day following the Termination Date through Amortization End Date	Base Rate plus 1.00%

“*Bankruptcy Code*” means Title 11 of the United States Code, as amended from time to time, or any successor statute thereto.

“*Base Rate*” means, for any day, a fluctuating rate of interest per annum equal to the greatest of (i) the Prime Rate in effect at such time *plus* one percent (1.00%), (ii) the Federal Funds Rate in effect at such time *plus* two percent (2.00%), and (iii) seven percent (7.00%).

“*Bond Counsel*” means Orrick Herrington & Sutcliff LLP, or any other firm of nationally recognized bond counsel.

“*Business Day*” means any day except (i) a Saturday, (ii) a Sunday, (iii) a day upon which banks in the States of New York or California are authorized or required by law or executive order to close or (iv) a day upon which banks are authorized or required by law or executive order to close in the cities and states in which Requests for Advance and Note Issuance Notices may be presented pursuant to this Agreement.

“*Calculation Agent*” means the Bank; provided, however, if the Bank should decline to act as Calculation Agent, the Calculation Agent shall be the Person designated by the Authority and approved by the Bank.

“*Capital Costs*” means any capital costs associated with any Projects, including any architectural, engineering, planning, design, environmental and other soft costs.

“*Change in Law*” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, including, without limitation Risk-Based Capital Guidelines, (b) any change in any law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd Frank Wall Street Reform and Consumer Protection Act and all requests, rules, rulings, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“*City*” means the City of San José, California and its permitted successors and assigns.

“*Closing Date*” means October 19, 2017 or such later date on which all of the conditions set forth in Section 3.01 have been satisfied or waived in writing by the Bank.

“*Code*” means the Internal Revenue Code of 1986, as amended, and when reference is made to a particular section thereof, the applicable Treasury Regulations from time to time promulgated or proposed thereunder.

“*Commitment*” means Three Hundred Million Dollars (\$300,000,000), as the amount of the commitment of the Bank to make Advances under the Notes and this Agreement, as such amount may be reduced from time to time pursuant to Section 2.03 or Section 6.02.

“*Commitment Fee*” has the meaning assigned to such term in the Fee Letter Agreement.

“*Commitment Period*” means the period from the Closing Date to but not including the Termination Date.

“*Computation Date*” means, with respect to any Note, the second London Business Day preceding (a) the date on which the initial Advance is made under such Note and (b) each applicable Rate Reset Date for such Note.

“*Contract*” means any indentures, agreements (other than this Agreement), other contractual restrictions, leases, instruments (other than the Notes), or guaranties to which the City or the Authority is a party related to Material Debt or under which their obligations are payable from or secured by Net System Revenues.

“*Debt*” of any Person means at any date, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (iv) all obligations of such Person under capital leases, (v) all Debt of others Guaranteed, contingently or otherwise, by such Person, (vi) all deferred reimbursement obligations of such Person to reimburse any bank or other Person in respect of amounts paid pursuant to letters of credit, guarantees or other credit instruments, (vii) all Debt of others secured by a Lien on any asset of such Person, if such Debt is assumed by such Person, (viii) all net obligations of such Person to repurchase any security or other property which arise out of or in connection with the sale or such security or other property, (ix) all obligations of such Person in respect of Interest Rate Swap Agreements or similar agreements and arrangements and (x) obligations under Bank Agreements.

“*Debtor Relief Laws*” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

“*Default*” means any condition or event that constitutes an Event of Default or that with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“*Default Rate*” means, for any day, a rate of interest per annum equal to the sum of the Base Rate in effect on such day plus three percent (3.00%).

“*Environmental Law(s)*” means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, codes, plans, judgments, orders, decrees, permits, concessions, grants, restrictions, franchises, licenses, policies, binding and enforceable guidelines, agreements or other governmental restrictions (or judicial or administrative interpretations thereof) relating to air, water or land pollution, wetlands or the protection of the environment, public health and safety or to emissions, discharges or releases of Hazardous Materials into the environment, including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials or the clean up or other remediation thereof.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to ERISA herein correspond to sections of ERISA as in effect at the Closing Date and any corresponding future sections of ERISA amendatory thereof, supplemental thereto or substituted therefor.

“*Event of Default*” with respect to this Agreement has the meaning set forth in Section 6.01 of this Agreement and, with respect to any Related Document, has the meaning assigned therein.

“*Event of Insolvency*” means, with respect to any Person, the occurrence of one or more of the following events:

- (a) the issuance, under the laws of any state or under the laws of the United States of America, of an order of rehabilitation, liquidation or dissolution of such Person;
- (b) the commencement by or against such Person of a case or other proceeding seeking liquidation, reorganization or other relief with respect to such Person or its debts under any bankruptcy, insolvency or other similar state or federal law now or hereafter in effect, including, without limitation, the appointment of a trustee, receiver, liquidator, custodian or other similar official for such Person or any substantial part of its Property or there shall be appointed or designated with respect to it, an entity such as an organization, board, commission, authority, agency or body to monitor, review, oversee, recommend or declare a financial emergency or similar state of financial distress with respect to it or there shall be declared or introduced or proposed for consideration by it or by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it;
- (c) the making of an assignment for the benefit of creditors by such Person;
- (d) the inability or failure of such Person to generally pay its debts as they become due;
- (e) the declaration of a moratorium with respect to the payment of the debts of such Person;
- (f) such Person shall admit in writing its inability to pay its debts when due;

(g) such Person is “insolvent” as defined in Section 101(32) of the Bankruptcy Code; or

(h) the initiation of any action in furtherance of or to authorize any of the foregoing by or on behalf of such Person.

“*Excluded Taxes*” means, with respect to the Bank, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Bank is organized or in which its principal office is located, and (b) any branch profits taxes imposed by the United States of America.

“*Fed Funds Rate*” means, for any date of determination, a fluctuating rate of interest per annum equal to the weighted average (rounded to the next higher 1/100 of 1%) of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average (rounded to the next higher 1/100 of 1%) of the quotations for such day on such transactions received by Wells Fargo Bank, National Association from three federal funds brokers of recognized standing selected by Wells Fargo Bank, National Association. Each determination of the Fed Funds Rate by Wells Fargo Bank, National Association shall be conclusive and binding on the Authority.

“*Fee Letter Agreement*” means the Fee Letter Agreement dated as of October 19, 2017 between the Authority and the Bank.

“*Fitch*” means Fitch, Inc., and its successors and assigns.

“*Governmental Authority*” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“*Guarantee*” of any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt of any other Person or in any manner providing for the payment of any Debt of any other Person or otherwise protecting the holder of such Debt against loss (whether by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, or to take or pay or otherwise); provided that the term “Guarantee” shall not include endorsement of items for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a correlative meaning.

“*Hazardous Materials*” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, materials, contaminants, chemicals, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“*Improvement Agreement*” has the meaning assigned in the Master Resolution.

“*Installment Payment*” has the meaning assigned in the Installment Purchase Agreement.

“*Installment Purchase Agreement*” means the Subordinate Installment Purchase Contract dated as of October 1, 2017 between the City and the Authority.

“*Interest Payment Date*” means the first Business Day of each month commencing November 1, 2017.

“*Interest Period*” means, as to any Note, the period from (and including) the date the related initial Advance is made under such Note to (but excluding) the next succeeding Rate Reset Date, and thereafter shall mean the period from (and including) each Rate Reset Date to (but excluding) the next succeeding Rate Reset Date (or, if sooner, to and excluding the Stated Expiration Date or the date the Note is paid in full, as applicable).

“*Interest Rate Swap Agreement*” means an interest rate swap, cap or collar agreement or similar arrangement between any Person and a financial institution providing for the transfer or mitigation of interest rate risks either generally or under specific contingencies.

“*Joint Powers Agreement*” means the Joint Exercise of Powers Agreement dated December 8, 1992, between the City and the Redevelopment Agency.

“*LIBOR Index*” means, for any date of determination, the per annum rate of interest determined on the basis of the rate on deposits in United States dollars of amounts equal to or comparable to the amount of the loan in question, offered for a term of one month, which rate appears on the display designated as Reuters Screen LIBOR01 Page (or any successor page), determined as of approximately 11:00 a.m., London time, on each Computation Date for effect on the immediately succeeding Rate Reset Date, or if such rate is not available, another rate reasonably determined by the Calculation Agent of which the Authority has received written notice. Notwithstanding anything herein to the contrary, during any period of time while the LIBOR Index, determined as provided above, would be less than zero percent (0.0%), the LIBOR Index shall be deemed to be zero percent (0.0%).

“*Lien*” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“*London Business Day*” means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency) in the City of London, United Kingdom.

“*Margin Rate Factor*” means the product of (i) one minus the Maximum Federal Corporate Tax Rate multiplied by (ii) 1.53846. The effective date of any change in the Margin

Rate Factor shall be the effective date of the decrease or increase (as applicable) in the Maximum Federal Corporate Tax Rate resulting in such change.

“*Master Resolution*” means Resolution No. _____ adopted by the City Council of the City on October __, 2017 entitled A RESOLUTION OF THE CITY COUNCIL OF SAN JOSE PROVIDING FOR THE ALLOCATION OF WASTEWATER SYSTEM REVENUES, THE PLEDGE OF WASTEWATER NET SYSTEM REVENUES AND ESTABLISHING COVENANTS TO SECURE THE PAYMENT OF OBLIGATIONS PAYABLE FROM WASTEWATER NET SYSTEM REVENUES.

“*Material Adverse Change*” means the occurrence of any event or change which in the sole reasonable discretion of the Bank materially and adversely effects (a) the enforceability of this Agreement or any Related Document, (b) the ability of the Authority or the City to perform its obligations hereunder or thereunder or (c) the rights of or benefits or remedies available to the Bank under this Agreement or the Related Documents.

“*Material Adverse Effect*” means with respect to the Authority or the City, a material and adverse effect in the sole reasonable discretion of the Bank upon (a) the enforceability of this Agreement or any Related Document, (b) the ability of the Authority or the City to perform its obligations under this Agreement or any Related Document or (c) the rights of or benefits or remedies available to the Bank under this Agreement or any Related Document.

“*Material Debt*” means (a) any Debt payable from or secured by a Lien on Net System Revenues on parity with or senior to the Installment Payments (including amounts owed by the City under the Improvement Agreement) and (b) any Debt in the amount of \$5,000,000 or more that is payable from or secured by a Lien on Net System Revenues on a priority that is subordinate to the Installment Payments.

“*Material Litigation*” has the meaning assigned to such term in Section 4.01(e) and 4.02(e).

“*Maximum Federal Corporate Tax Rate*” means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect from time to time or, if as a result of a change in the Code the rate of income taxation imposed on corporations generally shall not be applicable to the Bank the maximum statutory rate of federal income taxation which could apply to the Bank. On the Closing Date the Maximum Federal Corporate Tax Rate is 35%.

“*Maximum Interest Rate*” means 12% per annum.

“*Moody’s*” means Moody’s Investors Service, Inc., and its successors and assigns.

“*Net System Revenues*” has the meaning in the Master Resolution.

“*Note Issuance Notice*” means a notice given by the Authority to the Bank pursuant to Section 2.04(a) in the form of Exhibit B.

“*Note Interest is Taxable*” means that interest paid or to be paid on a Tax Exempt Note is or will be includable for federal income tax purposes in the gross income of the Bank, but excluding the inclusion of interest on such Tax Exempt Note as an item of tax preference for purposes of the calculation of an alternative minimum tax imposed on the Bank.

“*Notes*” means collectively the Taxable Note in the form set forth in Exhibit C and the Tax Exempt Notes in the form set forth in Exhibit D referred to in Section 2.05 hereof and issued pursuant to the provisions hereof.

“*Obligations*” means all obligations to be paid or performed by the Authority or the City pursuant to this Agreement, the Notes, the Installment Purchase Agreement, the Fee Letter Agreement or the Master Resolution.

“*Obligor Rating*” means the ratings assigned by each Rating Agency to the San José-Santa Clara Clean Water Financing Authority Sewer Revenue Refunding Bonds, Series 2009A (without regard to third-party credit enhancement) while such bonds are outstanding and, thereafter, the ratings, if any, assigned by each Rating Agency (without regard to third-party credit enhancement) to at least one issue of unenhanced long-term debt constituting, or secured by obligations constituting, Parity Obligations under the Master Resolution.

“*Optional Termination Date*” means the date on which the Authority elects pursuant to Section 2.03 to terminate the Commitment in its entirety.

“*Parity Obligations*” has the meaning assigned in the Master Resolution.

“*Participant*” shall have the meaning given to such term in Section 8.05(b).

“*Person*” means an individual, limited liability company, a corporation, a partnership, an association, a trust or any other entity or organization, including any Governmental Authority.

“*Prime Rate*” means, for any date of determination, the rate of interest per annum most recently established by Wells Fargo Bank, National Association in its sole discretion as its “prime rate.” The parties hereto acknowledge that the rate announced by Wells Fargo Bank, National Association as its prime rate is an index or base rate and shall not necessarily be publically announced or be its lowest or best rate charged to its customers or other banks. If at any time (a) Wells Fargo Bank, National Association ceases to exist or (b) Wells Fargo Bank, National Association ceases to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported). Each change in the Prime Rate shall be effective without notice as of the opening of business on the day such change in the prime rate occurs.

“*Projects*” shall have the meaning assigned in the recitals to this Agreement.

“*Rate Reset Date*” means the first Business Day of each calendar month.

“*Rating Agencies*” means, collectively, Moody’s, S&P and Fitch.

“*Redevelopment Agency*” means the former Redevelopment Agency of the City of San José.

“*Related Documents*” means, collectively, this Agreement, the Notes, the Fee Letter Agreement, the Installment Purchase Agreement, the Joint Powers Agreement, the Master Resolution and all agreements, certificates or other instruments executed by the Authority in connection with the execution and delivery of this Agreement and the Notes.

“*Related Parties*” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“*Request for Advance*” means a written request made by the Authority to the Bank for an Advance under a Note in the form of Exhibit A.

“*Risk-Based Capital Guidelines*” means (a) the risk-based capital guidelines in effect in the United States of America, including transition rules, and (b) the corresponding capital regulations promulgated by regulatory authorities outside the United States of America including transition rules, and any amendment to such regulations.

“*S&P*” means S&P Global Ratings, and its successors and assigns.

“*Stated Expiration Date*” means October 18, 2020, unless extended pursuant to Section 2.10 hereof.

“*System Revenues*” means has the meaning assigned in the Master Resolution.

“*Tax Exempt Applicable Spread*” means the relevant number of basis points determined as provided in the definition of Applicable Spread in the Fee Letter Agreement set forth in the column entitled Tax Exempt Rate in the chart contained in the definition of Applicable Spread.

“*Tax Exempt Rate*” means a per annum rate of interest established by the Calculation Agent on each Computation Date equal to the product of (a) the sum of (i) the Tax Exempt Applicable Spread plus (ii) the product of (A) the LIBOR Index multiplied by (B) the Applicable Factor multiplied by (b) the Margin Rate Factor. The Tax Exempt Rate shall be rounded upwards to the fifth decimal place. Upon the occurrence and during the occurrence of an Event of Default the Tax Exempt Rate shall equal the Default Rate.

“*Tax Exempt Note*” means each Note issued by the Authority under Section 2.04(a)(ii) in favor of the Bank in the form of Exhibit D.

“*Taxable Applicable Spread*” means the relevant number of basis points determined as provided in the definition of Applicable Spread in the Fee Letter Agreement set forth in the column entitled Taxable Rate in the chart contained in the definition of Applicable Spread.

“*Taxable Date*” means the first date on which Note Interest is Taxable.

“*Taxable Note*” means the Note issued by the Authority under Section 2.04(a)(i) of this Agreement in favor of the Bank in the form of Exhibit C.

“*Taxable Rate*” means a per annum rate of interest established by the Calculation Agent on each Computation Date equal to the sum of the Taxable Applicable Spread plus the LIBOR Index. The Taxable Rate shall be rounded upwards to the fifth decimal place. Upon the occurrence and during the continuance of an Event of Default the Taxable Rate shall equal the Default Rate.

“*Termination Date*,” means the earliest of (i) the Stated Expiration Date, (ii) the Optional Termination Date or (iii) the date the Commitment is terminated in accordance with Section 6.02.

“*Treatment Plant*” shall have the meaning assigned in the recitals to this Agreement.

“*Wastewater System*” has the meaning assigned in the Master Resolution.

“*Wastewater Treatment System Fund*” has the meaning assigned in the Master Resolution.

Section 1.02. Accounting Terms. All accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with generally accepted accounting principles as in effect from time to time in the United States and applicable to entities such as the Authority and the City, applied on a basis consistent (except for changes approved by the City’s independent public accountants) with the most recent financial statements of the City delivered pursuant to Section 5.02(a).

Section 1.03. Time of Day. All references in this Agreement to times of day shall be references to the prevailing time in the Pacific time zone (either standard or daylight savings) unless otherwise expressly provided herein.

Section 1.04. Relation to Other Documents. Nothing in this Agreement shall be deemed to relieve the Authority of any of its obligations under any Related Document.

Section 1.05. Incorporation of Certain Definitions by Reference. Each capitalized term used herein and not defined herein shall have the meaning provided therefor in the Master Resolution.

Section 1.06. Computation of Time Periods. In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.”

Section 1.07. Construction. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the singular includes the plural and the part includes the whole and “or” has the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The word

“including” has the meaning “including, but not limited to.” The section headings contained in this Agreement and the table of contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. All words used herein shall be construed to be of such gender or number as the circumstances require. Reference to any document means such document as amended or supplemented from time to time as permitted under their respective terms and the terms hereof. Reference herein to an Article, Exhibit, Schedule or Section shall constitute a reference to such Article, Exhibit, Schedule or Section of or to this Agreement unless otherwise specified. All references herein to this Agreement or any Related Document shall be a reference to such document as the same may be, from time to time, amended, modified or supplemented in accordance with its terms and the terms hereof.

ARTICLE II

THE NOTES

Section 2.01. Commitment to Lend; Use of Note Proceeds. During the Commitment Period, the Bank agrees, on the terms and conditions set forth in this Agreement, to lend to the Authority by purchasing from the Authority the Notes and making Advances thereunder from time to time in an amount not to exceed the Available Commitment on the Advance Date for such Advance and not to exceed in the aggregate at any one time outstanding the amount of the Commitment. Advances may be used by the Authority to finance Capital Costs, pay costs of issuing the Notes and to refinance other Debt of the Authority or the City secured by a Lien on or payable from Net System Revenues but may not be used to repay any Debt that is in default. The Authority hereby agrees to sell to the Bank, all, but not less than all, of the Notes at a purchase price equal to the aggregate of the Advances made thereunder. Except for the initial Advance under a Tax-Exempt Note, each Advance must be made in a minimum amount of \$1,000,000. Within the foregoing limits, Advances may be made on the Notes under Section 2.04, the Notes may be prepaid under Section 2.07, Tax-Exempt Notes may be issued by the Authority under Section 2.04, and the principal amount of the Taxable Note that is paid or prepaid by the Authority may again be Advanced under the Taxable Note as provided in Section 2.04 at any time during the Commitment Period. Notwithstanding anything to the contrary contained in this Agreement, the aggregate amount of the Advances made under any Tax-Exempt Note may not exceed the stated principal amount of that Tax-Exempt Note. The Authority agrees to pay the Bank the outstanding principal amount of any and all Notes, together with interest thereon, in accordance with this Agreement.

Section 2.02. Fees. The Authority agrees to pay to the Bank fees in the amounts and at such times as provided in the Fee Letter Agreement. Any amounts due and payable under the Fee Letter Agreement shall be considered due and payable hereunder for all purposes of this Agreement as if set forth herein in full. The terms of the Fee Letter Agreement shall be deemed incorporated by reference into this Agreement and all references herein to this “Agreement” shall be deemed to include the Fee Letter Agreement.

Section 2.03. Termination or Reduction of Commitment.

(a) The Authority may, upon at least three Business Days’ notice (ten Business Days’ notice in connection with a termination of the Commitment in its entirety) given by an Authorized Officer to the Bank, terminate the Commitment entirely at any time or reduce the Commitment from time to time by a minimum amount of \$1,000,000 and any amount in excess thereof. The Authority shall pay any amounts due under the Fee Letter Agreement by reason of such termination or reduction.

(b) If the Commitment is terminated in its entirety, all amounts payable to the Bank hereunder and under the Related Documents shall be payable in full on the effective date of such termination.

Section 2.04. Issuance of Notes and Method of Making Advances.

(a) *Issuance of Notes.*

(i) *Taxable Note.* On the Closing Date the Authority will issue the Taxable Note registered in the name of the Bank, designated as the City of San José Financing Authority Subordinate Wastewater Revenue Taxable Note, in the stated principal amount of not to exceed \$300,000,000 outstanding at any one time and will deliver the same to the Bank as provided in Section 3.01(d). The Taxable Note shall be dated the Closing date, be issued in minimum authorized denominations of \$1,000,000 and any amount in excess thereof and be in the form attached hereto as Exhibit C. On and after the Closing Date, the Authority may request Advances under the Taxable Note as provided herein.

(ii) *Tax-Exempt Notes.* On the Closing Date, the Authority will issue an initial Tax-Exempt Note registered in the name of the Bank, designated as the City of San José Financing Authority Subordinate Wastewater Revenue Note, Series A (the “Series A Tax-Exempt Note”), in the stated principal amount of not to exceed \$300,000,000. From time to time after the Closing Date, the Authority may deliver to the Bank a Note Issuance Notice and, pursuant to such Notice, the Authority may issue one or more additional Tax-Exempt Note(s) (not to exceed four Tax-Exempt Notes outstanding at any one time) and deliver the same to the Bank. Each additional Tax-Exempt Note shall be registered in the name of the Bank and designated as and constitute a separate series of Tax-Exempt Notes from all other series of Tax-Exempt Notes issued by the Authority under this Agreement. In connection with each delivery of a Tax-Exempt Note, the Authority shall satisfy the conditions set forth in Section 3.02. Each Tax-Exempt Note shall be dated its date of issuance, be issued in minimum authorized denominations of \$1,000,000 and any amount in excess thereof and be in the form attached hereto as Exhibit D. Following such delivery of a Tax-Exempt Note, the Authority may request Advances under such Tax-Exempt Note as provided herein; provided that the aggregate amount of the Advances made under any Tax-Exempt Note may not exceed the stated principal amount of that Tax-Exempt Note. No more than four Tax-Exempt Notes may be outstanding at any time.

(iii) *Execution of Notes.* The Notes shall be executed on behalf of the Authority by the manual or facsimile signature of any Authorized Officer of the Authority. In case any Authorized Officer of the Authority who shall have signed any of the Notes shall cease to be an Authorized Officer of the Authority before the Notes so signed shall have been delivered or issued by the Authority, such Notes may nevertheless be delivered and issued and, upon such delivery and issue, shall be as binding upon the Authority as though those who signed the same had continued to be an Authorized Officer of the Authority, and also any Note may be signed on behalf of the Authority by such persons as at the actual date of execution of such Note shall be the proper Authorized Officer of the Authority although at the nominal date of such Note any such person shall not have been such Authorized Officer of the Authority.

(iv) *Registration of Notes.* The Notes shall be issued in registered form, initially registered in the name of the Bank. The Authority shall maintain in its books and records the name of each registered owner of the Notes from time to time. Registered ownership of the Notes may not be transferred without the prior written consent of the Authority.

(b) *Request for Advances.* If, on any Business Day during the Commitment Period, the Bank receives, at the location specified for the delivery of a Request for Advance specified pursuant to Section 8.01, a Request for Advance from an Authorized Officer of the Authority with respect to an outstanding Note, and the Authority telephonically confirms the Bank's receipt of such Request for Advance, by not later than 12:00 noon, the Bank shall, subject to satisfaction of the requirements of Section 2.01 and Article III, transfer to the Authority not later than 2:00 p.m. on the Advance Date specified in the Request for Advance, so long as such Advance Date occurs during the Commitment Period and is at least five Business Days following the Bank's receipt of such Request for Advance, as specified in such Request for Advance, in immediately available funds, an amount equal to the Advance thereby requested. The Authority may not request that Advances be made hereunder more than twice in any 30-day period.

(c) *Generally.* A Request for Advance may be given by facsimile transmission or electronic mail. A Request for Advance shall be irrevocable after receipt thereof by the Bank. Each Request for Advance shall specify the following information:

(i) the aggregate amount of the Advance or Advances requested;

(ii) as to each Advance requested, the amount which is to be Advanced under the Taxable Note and the amount which is to be Advanced under a Tax-Exempt Note and, in the case of Advances under a Tax-Exempt Note, the designation of the Tax-Exempt Note under which the Advance is to be made;

(iii) as to each Advance under a Tax-Exempt Note, a certification by the Authority that the sum of the amount of such Advance plus the amount of all previous Advances made under such Tax-Exempt Note does not exceed the stated principal amount of such Tax-Exempt Note;

(iv) the Advance Date for each Advance requested, which shall be a Business Day that falls within the Commitment Period;

(v) the wire instruction pursuant to which the proceeds of the proposed Advance(s) are to be transferred; and

(vi) a representation by the Authority that as of the Advance Date for each requested Advance all conditions set forth in Article II and Article III with respect to each Advance requested in such Request for Advance have been satisfied.

Section 2.05. Notes. The Advances made by the Bank under the Notes will be treated by the Bank as loans made by the Bank to the Authority through the purchase of the Notes by the Bank in installments equal to the Advances. The Bank is authorized to make a notation on each Note as to the date and amount of each Advance and as to each payment of principal of the Note, but the failure to make such notation shall not relieve the Authority of its obligations to pay the outstanding principal of the Notes, together with interest thereon, as provided herein.

Section 2.06. Interest.

(a) **Accrual.** Each Note shall bear interest on the outstanding principal amount thereof, for each day from and including the date the initial Advance is made thereunder until it is paid in full. The Taxable Notes shall bear interest at the Taxable Rate. The Tax-Exempt Notes shall bear interest at the Tax-Exempt Rate. Interest on the Tax Exempt Notes is to be excludable from the Bank's income for federal income and tax purposes. Interest on Taxable Notes and other amounts owing hereunder (other than Tax Exempt Notes) is to be includable in the Bank's gross income for federal income tax purposes.

(b) **Calculation.** The Calculation Agent shall determine the applicable interest rate for the Notes as of each applicable Computation Date, and such rate shall become effective on the Rate Reset Date next succeeding such Computation Date. Interest on the outstanding principal amount of each Note shall accrue each day during the applicable Interest Period. Interest on each Note and amounts otherwise payable hereunder shall be calculated as provided in Section 2.09.

(c) **Payment.** The Authority agrees to pay to the Bank interest on the outstanding principal amount of all Notes monthly in arrears on each Interest Payment Date and, as to each Note, on the date the outstanding principal of such Note is paid in full and, as to each Note, but solely with respect to the portion of such Note being prepaid, on the date any portion of the principal of such Note is prepaid in part.

(d) **Overdue Amounts.** Any overdue principal and, to the extent permitted by law, overdue interest on any Note and all other amounts payable hereunder or under the Fee Letter Agreement which are not paid when due shall bear interest, payable on demand, for each day until paid, at a rate per annum equal to the Default Rate.

(e) **Taxability.** In the event a Taxable Date occurs prior to the date on which the parties identify that Note Interest is Taxable, in addition to (but not in duplication of) the amounts required to be paid pursuant hereto, the Authority hereby agrees to pay to the Bank, within 30 days of a demand therefor (i) an amount equal to the difference between (A) the amount of interest paid to the Bank during the period in which Note Interest is Taxable beginning on the Taxable Date (the “Taxable Period”) and (B) the amount of interest that would have been paid to the Bank during such Taxable Period had the Tax Exempt Note borne the Taxable Rate, and (ii) an amount equal to any interest, penalties or charges owed by the Bank as a result of interest on the Tax Exempt Note becoming includable in the gross income of the Bank, together with any and all attorneys’ fees, court costs, or other out of pocket costs incurred by the Bank in connection therewith. On and after a Taxable Date for a Tax-Exempt Note, the Tax Exempt Note for which the Note Interest is Taxable shall constitute a Taxable Note and shall bear interest at the Taxable Rate until such time as another interest rate shall apply pursuant to the terms hereof.

(f) **Contest.** Subject to the provisions of subsection (g) of this Section 2.06, the Bank shall afford the Authority the opportunity, at the Authority’s sole cost and expense, to contest (i) the validity of any amendment to the Code which causes the interest on a Tax Exempt Note to be includable in the gross income of the Bank or (ii) any challenge to the validity of the tax exemption with respect to interest on a Tax Exempt Note, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals).

(g) **Condition Precedent to Contest.** As a condition precedent to the exercise by the Authority of its right to contest as set forth in subsection (f) of this Section 2.06, the Authority shall, on demand, immediately reimburse the Bank for (i) any and all expenses (including attorneys’ fees for services that may be required or desirable, as determined by the Bank in its sole discretion) that may be incurred by the Bank in connection with any such contest, and (ii) any and all penalties or other charges payable by the Bank for failure to include interest on the Tax Exempt Note in its gross income.

(h) **Survival.** The obligations of the Authority under this Section shall survive the termination of this Agreement and the payment in full of the Notes.

Section 2.07. Principal.

(a) **Optional Prepayment.** The Authority may prepay a Note in whole at any time, or from time to time in part in amounts aggregating \$1,000,000 and any amount in excess thereof or, if the outstanding principal amount of the Note being prepaid is less than \$1,000,000, the total amount of such Note which is then outstanding, by giving notice to the Bank by 11:00 a.m. on the date which is at least two Business Days prior to the date on which such prepayment is to be made and by paying to the Bank the principal amount thereof to be prepaid together with accrued interest to the date of prepayment. Any such notice shall be irrevocable once received by the Bank.

(b) **Mandatory Repayment.** The Notes shall mature in full on the Termination Date and the Authority shall repay all of the Notes and all other amounts then due and owing under this Agreement, under the Notes and the Fee Letter Agreement on the Termination Date; provided that no Note may mature more than 50 years from its date of issuance.

(c) **Term Out.** (i) Notwithstanding subsection (b) above, in the event the Bank does not receive repayment of the outstanding principal of all Notes on or before the Termination Date, and provided that (A) no Default or Event of Default shall have occurred and be continuing and (B) the representations and warranties set forth in Article IV shall be true and correct on the Termination Date, then the Authority shall pay the outstanding principal amount of the Notes (the “Amortization Amount”) in installments payable on each Amortization Principal Payment Date (each such payment, an “Amortization Principal Payment”), with the final installment in an amount equal to the remaining balance of the Amortization Amount on the Amortization End Date (the period commencing on the Termination Date and ending on the Amortization End Date is herein referred to as the “Amortization Period”). Each Amortization Principal Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Principal Payments over the Amortization Period so the Amortization Amount is fully repaid by the end of the Amortization Period. The Authority may prepay, or cause to be prepaid, some or all of the Amortization Amount on any date upon one Business Days’ notice to the Bank, such prepayment to be accompanied by interest accrued thereon at the Bank Rate to the date of prepayment.

(ii) During the Amortization Period, interest on the Notes shall accrue at the Bank Rate and shall be payable in arrears on each Amortization Interest Payment Date.

Section 2.08. General Provisions as to Payments. The Authority shall make each payment of principal of, and interest on, the Notes, not later than 3:00 p.m., on the day when due, in federal or other funds immediately available to the Bank. All payments by the Authority to the Bank hereunder shall be nonrefundable and made in lawful currency of the United States and in immediately available funds. Amounts payable to the Bank hereunder shall be transferred to the Bank’s account specified pursuant to the Fee Letter Agreement not later than 3:00 p.m., on the date payment is due. Any payment received by the Bank after 3:00 p.m. shall be deemed to have been received by the Bank on the next Business Day. If any payment hereunder is due on a day that is not a Business Day, then such payment shall be due on the immediately succeeding Business Day, and, in the case of the computation of the interest or fees hereunder, such extension of time shall, in such case, be included in the computation of the payment due hereunder.

Section 2.09. Computation of Interest. Interest on the Notes shall be computed on the basis of year of 360 and the actual number of days elapsed in the calculation period. Interest on all amounts owing hereunder bearing interest at a rate calculated using the Base Rate shall be computed on the basis of a year of 365 or 366 days and paid for the actual number of days elapsed.

Section 2.10. Request by the Authority for Extension of Term of Agreement. Not earlier than 180 days prior to the Stated Expiration Date, the Authority may by written notice to the Bank in the form of Exhibit E request that the Stated Expiration Date be extended. The Bank may grant such requested extension of the Stated Expiration Date by delivery of notice in the form of Exhibit F. The Bank shall have the right to accept or reject any such request in its sole and absolute discretion and failure of the Bank to provide such written response to the Authority within 30 days after receipt of such request shall be deemed a rejection by the Bank of such request. If the Stated Expiration Date is extended, the Authority shall, except as otherwise agreed to in writing by the Bank, be deemed to have made the representations and warranties contained herein on and as of the date on which the Stated Expiration Date is so extended. Notwithstanding anything to the contrary contained in this Section 2.10, (a) in no event shall the Stated Expiration Date be extended to a date that is more than 50 years after the Closing Date and (b) if any Tax-Exempt Notes will be outstanding on any date that the Stated Expiration Date is extended, the Authority shall obtain an opinion of Bond Counsel to the effect that such extension of the Stated Expiration Date will not, in and of itself, cause interest on the outstanding Tax-Exempt Notes to be included in gross income for purposes of federal income taxation.

Section 2.11. Maximum Interest Rate.

(a) If the amount of interest payable for any period in accordance with the terms hereof or the Notes exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the Maximum Interest Rate, then interest for such period shall be payable in an amount calculated at the Maximum Interest Rate for such period.

(b) Any interest that would have been due and payable for any period but for the operation of subsection (a) above shall accrue and be payable as provided in this subsection (b) and shall, less interest actually paid to the Bank, as applicable, for such period, constitute the “Excess Interest Amount.” If there is any accrued and unpaid Excess Interest Amount as of any date then the principal amount of the Notes with respect to which interest is payable shall bear interest at the Maximum Interest Rate, until payment to the Bank, of the entire Excess Interest Amount.

(c) Notwithstanding the foregoing, on the date on which no Notes are outstanding hereunder, to the extent possible without violating Applicable Law, the Authority shall pay to the Bank, a fee equal to any accrued and unpaid Excess Interest Amount.

Section 2.12. Maintenance of Accounts. The Bank shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Authority and the amounts payable and paid from time to time hereunder and under the Fee Letter Agreement. In any legal action or proceeding in respect of this Agreement or the Fee Letter Agreement, the entries made in such account or accounts shall be presumptive evidence of the existence and amounts of the obligations of the Authority therein recorded. The failure to record any such amount shall not, however, limit or otherwise affect the obligations of the Authority hereunder or under the Fee Letter Agreement to repay all amounts owed hereunder, together with all interest accrued thereon as provided herein.

Section 2.13. Net of Taxes, Etc.

(a) **Taxes.** Any and all payments to the Bank by the Authority hereunder shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges, withholdings or liabilities imposed thereon, excluding, however, Excluded Taxes (all such non excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as “Taxes”). If the Authority shall be required by law to withhold or deduct any Taxes imposed by the United States or any political subdivision thereof from or in respect of any sum payable hereunder to the Bank, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.13), the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Authority shall make such deductions and (iii) the Authority shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. If the Authority shall make any payment under this Section 2.13 to or for the benefit of the Bank with respect to Taxes and if the Bank shall claim any credit or deduction for such Taxes against any other taxes payable by the Bank to any taxing jurisdiction in the United States then the Bank shall pay to the Authority an amount equal to the amount by which such other taxes are actually reduced; provided, that the aggregate amount payable by the Bank pursuant to this sentence shall not exceed the aggregate amount previously paid by the Authority with respect to such Taxes. In addition, the Authority agrees to pay any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies that arise under the laws of the United States of America or the States of New York or California from any payment made hereunder or from the execution or delivery or otherwise with respect to this Agreement (hereinafter referred to as “Other Taxes”). The Bank shall provide to the Authority within a reasonable time a copy of any written notification it receives with respect to Taxes or Other Taxes owing by the Authority to the Bank hereunder; provided, that the Bank’s failure to send such notice shall not relieve the Authority of its obligation to pay such amounts hereunder.

(b) **Reimbursement.** The Authority shall, to the fullest extent permitted by law and subject to the provisions hereof, reimburse the Bank for the full amount of Taxes and Other Taxes including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.13 paid by the Bank or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted; provided, that the Authority shall not be obligated to reimburse the Bank for any penalties, interest or expenses relating to Taxes or Other Taxes arising from the Bank’s gross negligence or willful misconduct. The Bank agrees to give notice to the Authority of the assertion of any claim against the Bank relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion; provided, that the Bank’s failure to notify the Authority promptly of such assertion shall not relieve the Authority of its obligation under this Section 2.13. Payments by the Authority pursuant to this reimbursement obligation shall be made within thirty (30) days from the date the Bank makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. The Bank agrees to repay to the

Authority any refund (including that portion of any interest that was included as part of such refund) with respect to Taxes or Other Taxes paid by the Authority pursuant to this Section 2.13 received by the Bank for Taxes or Other Taxes that were paid by the Authority pursuant to this Section 2.13 and to contest, with the cooperation and at the expense of the Authority, any such Taxes or Other Taxes which the Bank or the Authority reasonably believes not to have been properly assessed.

(c) **Notice.** Within thirty (30) days after the date of any payment of Taxes by the Authority, the Authority shall furnish to the Bank the original or a certified copy of a receipt evidencing payment thereof.

(d) **Survival of Obligations.** The obligations of the Authority under this Section 2.13 shall survive the termination of this Agreement.

Section 2.14. Make Whole Funding. In the event the Bank shall incur any loss, cost, or expense (including, without limitation, any loss, cost, or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by the Bank to fund or maintain the Notes or the relending or reinvesting of such deposits or other funds or amounts paid or prepaid to the Bank) as a result of any prepayment of any outstanding principal amount of any Note bearing interest at an interest rate calculated on the basis of LIBOR on a date other than a Rate Reset Date for any reason, whether before or after default, and whether or not such payment is required by any provision of this Agreement, then upon the demand of the Bank, the Authority shall pay to the Bank such amount as will reimburse the Bank for such loss, cost, or expense, as determined by the Bank in good faith; provided that this Section 2.14 shall not apply to any prepayment of any outstanding principal amount of any Note if the date of such prepayment occurs (a) at least 30 days after irrevocable and unconditional written notice of such prepayment is given to the Bank by the Authority or (b) on or after the Termination Date. If the Bank requests such a reimbursement, it shall provide to the Authority a certificate setting forth the computation of the loss, cost, or expense giving rise to the request for reimbursement in reasonable detail and such certificate shall be conclusive absent manifest error.

Section 2.15. Absence of LIBOR Funding.

(a) **Circumstances Affecting LIBOR Index Availability.** If for any reason (i) the Bank shall determine (which determination shall be conclusive and binding absent fraud or manifest error) that Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount of any Note, or (ii) the Bank shall determine (which determination shall be conclusive and binding absent fraud or manifest error) that reasonable and adequate means do not exist for ascertaining the LIBOR Index for any Interest Period with respect to any Note, then the Bank shall promptly give notice thereof to the Authority. Thereafter, the Notes shall automatically convert to bear interest at a rate reasonably selected by the Calculation Agent of which the Authority has notice.

(b) **Laws Affecting LIBOR Index Availability.** If, after the date hereof, the introduction of, or any change in, any applicable law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof or compliance by the

Bank (or any its lending offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for the Bank (or any of its lending offices) to honor its obligations hereunder to make or maintain the Notes, the Bank shall promptly give notice thereof to the Authority. Thereafter, the Notes shall automatically convert to bear interest at a rate reasonably selected by the Calculation Agent of which the Authority has notice.

Section 2.16. Pledge of Authority Revenues. (a) The Authority hereby pledges the Authority Revenues to secure the payment of the principal of, premium, if any and interest on the Notes in accordance with their terms and the provisions of this Agreement and the payment of all other amounts payable by the Authority under this Agreement. This pledge shall constitute a lien on and security interest in such assets and shall attach, be perfected and be valid and binding from and after delivery of any Notes, without any physical delivery thereof or further act.

(b) In addition, the Authority hereby grants a security interest in and assigns to the Bank all of the Authority Revenues and all of the right, title and interest of the Authority in the Installment Purchase Agreement as security for the repayment of all amounts owed under the Notes and under this Agreement. The Bank shall be entitled to and shall collect and receive all of the Authority Revenues, and any Authority Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Bank and shall forthwith be paid by the Authority to the Bank. The Bank shall also be entitled to take all steps, actions and proceedings reasonably necessary in its judgment to enforce all of the rights of the Authority and all of the obligations of the City under the Installment Purchase Agreement.

(c) The City hereby acknowledges the foregoing pledge of the Authority Revenues. The City agrees to pay the Authority Revenues to the Bank to the extent amounts are owed hereunder, under the Notes or under the Fee Letter Agreement.

ARTICLE III

CONDITIONS

Section 3.01. Conditions to Closing Date. This Agreement shall become effective on the Closing Date provided that the Bank receives each of the following, each in form and substance satisfactory to the Bank, on or prior to such date:

(a) counterparts of this Agreement and the Fee Letter Agreement duly executed by the Bank and an Authorized Officer of the Authority and the City;

(b) each Note to be delivered on the Closing Date will be duly executed and delivered to the Bank, dated the Closing Date, complying with the provisions of Section 2.05;

(c) copies of the Master Resolution and the Improvement Agreement, including all amendments and supplements thereto, all certified by the City Clerk as

being true and complete copies and that such documents are in full force and effect as of the Closing Date;

(d) copies of the Joint Powers Agreement and the bylaws of the Authority, certified to be in full force and effect as of the Closing Date by the Secretary of the Authority;

(e) Certified copies of all resolutions of the Authority and the City which authorize the execution, delivery or performance of this Agreement or any of the Related Documents;

(f) an executed opinion of the City Attorney, counsel for the Authority, dated the Closing Date and addressed to the Bank and an executed opinion of the City Attorney, counsel for the City, dated the Closing Date and addressed to the Bank;

(g) an executed opinion of Orrick Herrington & Sutcliff LLP, Bond Counsel for the Authority and the City, dated the Closing Date and addressed to the Bank;

(h) a certificate of the Secretary or an Assistant Secretary of the Authority certifying the names and specimen signatures of each Authorized Officer of the Authority and a certificate of the Clerk or Deputy Clerk of the City certifying the names and specimen signatures of each Authorized Officer of the City;

(i) certificates, dated the Closing Date, of an Authorized Officer of the Authority and of the City to the effect that, on and as of the Closing Date (i) after giving effect to the execution and delivery of this Agreement, the Fee Letter Agreement and the Notes, each of the representations and warranties of the Authority and the City contained in this Agreement is true and correct on and as of the Closing Date as though made on and as of such date, (ii) no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this Agreement, the Fee Letter Agreement and the Notes, (iii) except as disclosed in writing by the Authority and the City to the Bank, there is no existing litigation in which a final adverse determination would result in a Material Adverse Change or in a material adverse change in the business, assets, liabilities, condition (financial or otherwise), operations or prospects of the Authority or the City related to the Wastewater System or the Treatment Plant, (iv) except as disclosed in writing by the Authority and the City to the Bank, there has been no material adverse change in the Authority's or the City's business, assets, liabilities, condition (financial or otherwise), operations or prospects related to the Wastewater System or Treatment Plant since June 30, 2016, and (v) the certificate delivered under this Section 3.01(i) shall be deemed a representation and warranty by the Authority and the City that the conditions precedent to the execution and delivery of this Agreement and the Notes, unless otherwise waived in accordance herewith, shall have been satisfied;

(j) copies of any consents or approvals of any Person required in connection with the Authority's or the City's execution, delivery and performance of this Agreement and any of the Related Documents;

(k) such security documents, if any, as shall give effect to Sections 4.01(h) and 4.02(h);

(l) written evidence that the long term unenhanced ratings assigned to the San José-Santa Clara Clean Water Financing Authority Sewer Revenue Refunding Bonds, Series 2009A are “Aa2” by Moody’s, “AAA” by S&P and “AAA” by Fitch;

(m) certified copies of all agreements between the City and any and all outside users of the Treatment Plant related to the Treatment Plant;

(n) an estimation of the potential negative impact on the City of all current and potential litigation between the City and the tributary agencies and estimated reserves; and

(o) evidence satisfactory to the Bank that the City maintains insurance meeting the requirements of Section 5.02(v); and

(p) such other documents as the Bank may reasonably request.

Section 3.02. Conditions to Issuance of Tax-Exempt Notes. The issuance of each Tax-Exempt Note by the Authority shall be subject to the satisfaction of the following conditions in connection with the issuance of each such Note:

(a) The Bank shall have received a properly completed Note Issuance Notice;

(b) The Authority shall have delivered to the Bank an opinion of Bond Counsel addressed to the Authority and dated the date of issuance of the Tax-Exempt Note to the effect that (i) the Tax-Exempt Note constitutes the valid and binding limited obligation of the Authority and (ii) interest on the Tax-Exempt Note is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes, together with a reliance letter of Bond Counsel addressed to the Bank to the effect that the Bank may rely on such opinion as though the same were addressed to the Bank;

(c) The Authority and the City shall have delivered to Bond Counsel and the Bank a tax certificate and agreement executed by the Authority and the City relating to the issuance of the Tax-Exempt Note, in form and substance acceptable to Bond Counsel;

(d) The Authority shall have delivered to Bond Counsel and the Bank a completed Internal Revenue Service Form 8038-G relating to the Tax-Exempt Note, executed by the Authority, in form and substance acceptable to Bond Counsel;

(e) No Default or Event of Default shall have occurred and be continuing;

(f) The representations and warranties of the Authority and the City contained in Article IV of this Agreement and in the other Related Documents are correct in all material respects on and as of the Advance Date as though made on and as of such date;

(g) The Termination Date shall not have occurred.

Section 3.03. Conditions to Advances. The obligation of the Bank to make each Advance hereunder is subject to the satisfaction of the conditions set forth in Sections 2.01 and 2.04 and the following conditions, unless waived in writing by the Bank:

(a) The Bank shall have received a properly completed Request for Advance during the Commitment Period;

(b) No Default or Event of Default shall have occurred and be continuing;

(c) The principal amount of such Advance shall not exceed the Available Commitment on the Advance Date and the principal amount of such Advance, together with the principal amount of all other Advances made or to be made or outstanding on the Advance Date for such Advance, does not exceed the Commitment;

(d) The amount of any such Advance to be made under a Tax-Exempt Note, together with the amount of all other Advances previously made under such Tax-Exempt Note shall not exceed the stated principal amount of such Tax-Exempt Note;

(e) The representations and warranties of the Authority and the City contained in Article IV of this Agreement and in the other Related Documents are correct in all material respects on and as of the Advance Date as though made on and as of such date; and

(f) The Termination Date shall not have occurred.

Each Request for Advance hereunder shall be deemed to be a representation and warranty by the Authority on the date of such request as to the facts specified in this Section 3.03.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.01. Representations and Warranties of the Authority. The Authority represents and warrants that:

(a) **Organization and Powers.** The Authority (a) is a joint exercise of powers authority duly formed and existing under the Joint Powers Agreement and the Act, (b) has all powers and all material governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted, (c) has all required power and authority to execute, deliver and perform its obligations under this Agreement and the Related Documents to which it is a party and (d) is licensed or qualified to do business in each jurisdiction where the ownership of property or the conduct of its business requires such qualifications.

(b) **Authorization; Contravention.** The adoption, execution, delivery and performance by the Authority of the Related Documents to which it is a party and the

making of the borrowings hereunder are within the Authority's power and authority, have been duly authorized by all necessary action by the Authority and do not contravene, or result in the violation of or constitute a default under, any provision of the Constitution of the State of California or any applicable law or regulation, or any order, rule or regulation of any court, governmental agency or instrumentality or any agreement, resolution or instrument to which the Authority is a party or by which it or any of its property is bound.

(c) **Governmental Consent or Approval.** No authorization, consent, approval, permit, license, exemption of or filing or registration with, any court or governmental department, commission, board, bureau, agency or instrumentality is or will be necessary for the valid execution, delivery or performance by the Authority of the Related Documents to which it is a party except such consents, authorizations, orders and approvals (copies of which have been furnished to the Bank) as have been obtained, were validly issued and are in full force and effect.

(d) **Binding Effect.** The Notes have been or will be duly executed by the Authority and delivered in accordance with this Agreement and the Related Documents. Each of the Related Documents to which the Authority is a party has been duly executed and delivered by or on behalf of the Authority. Each of the Related Documents to which the Authority is a party constitute valid and binding obligations of the Authority enforceable in accordance with their respective terms, except as such enforceability may be limited to (i) bankruptcy, insolvency, reorganization, or similar laws affecting creditors' rights generally, (ii) general principles of equity, (iii) the exercise of judicial discretion in appropriate cases, and (iv) the limitations on legal remedies against joint powers authorities in the State of California.

(e) **Litigation.** Except as disclosed in writing by the Authority to the Bank, there are no actions, suits or proceedings pending with service of process accomplished or, to the best of the knowledge of the Authority's Treasurer, threatened in writing against or affecting the Authority, or relating to the Related Documents in any court or before or by any governmental department, agency or instrumentality in which there is a reasonable possibility of any adverse decision which could have a Material Adverse Effect (together with the litigation described in Section 4.02(e), "Material Litigation").

(f) **Compliance; No Default.** No "event of default" specified in any of the Related Documents to which the Authority is a party and no event which, with the giving of notice or lapse of time or both would become such an event of default, has occurred and is continuing.

(g) **Immunity.** The Authority cannot assert sovereign immunity as a defense to the enforcement of its obligations hereunder or under any of the Related Documents to which it is a party.

(h) **Security for the Obligations.** To secure the obligations of the Authority hereunder, the Authority has assigned and granted a first priority perfected security interest in its rights under the Installment Purchase Agreement to the Bank.

(i) **Information.** All information supplied and statements and representations made to the Bank by an authorized Person on behalf of the Authority in any financial, credit or accounting statement, application for credit or other statement or document furnished to the Bank in connection with this Agreement, whether prior to, contemporaneously with or subsequent to the execution hereof, and any certificate, document, schedule or other writing furnished to the Bank pursuant to this Agreement or in response to a request made by the Bank pursuant to this Agreement, are and will be, when furnished in all material respects true, complete, correct, valid, genuine and what they purport or are represented to be.

(j) **Incorporation of Representations and Warranties by Reference.** The Authority hereby makes to the Bank the same representations and warranties made by the Authority in each Related Document to which it is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference for the benefit of the Bank with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. No amendment to such representations and warranties or defined terms made pursuant to any Related Document shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the prior written consent of the Bank.

(k) **Regulation U.** The Authority is not entering into this Agreement and the transactions contemplated hereby for the purpose of purchasing or carrying margin stock as defined in Regulation U of the Board of Governors of the Federal Reserve System.

(l) **Usury.** Assuming that the Bank is an exempted class of persons within the meaning of Article 15 of the California Constitution, the terms of this Agreement and the Related Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws of the State of California.

(m) **No Proposed Legal Changes.** Except as previously disclosed in writing to the Bank, to the knowledge of the Authority's Treasurer since the Closing Date no amendment to the Constitution of the State of California or any published administrative interpretation of the Constitution of the State of California and no law has been enacted and no final and non-appealable judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect.

(n) **Anti-Terrorism Representations.**

(i) The Authority is not in violation of any laws relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Patriot Act;

(ii) The Authority is not any of the following:

(A) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(B) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(C) a Person with which the Bank is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(D) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(E) a Person that is named as a “specially designated national and blocked person” on the most current list published by the Office of Foreign Asset Control (“OFAC”) or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list;

(o) ***Compliance with Applicable Law.*** The Authority in compliance in all material respects with the requirements of all applicable law, including all governmental approvals, except in such instances in which (i) such requirement of applicable law is being contested in good faith by appropriate proceedings diligently conducted by or on behalf of the Authority or (ii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

(p) ***Employee Benefit Plans.*** The Authority does not maintain or contribute to, and has not maintained or contributed to, an employee pension benefit plan that is subject to Title IV of ERISA.

Section 4.02. Representations and Warranties of the City. The City represents and warrants that:

(a) ***Organization and Powers.*** The City (a) is a charter city duly organized and existing under the Constitution and laws of the State of California, (b) has all powers and all material governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted, (c) has all required power and authority to execute, deliver and perform its obligations under this Agreement and the Related Documents to which it is a party and (d) is licensed or qualified to do business in each jurisdiction where the ownership of property or the conduct of its business requires such qualifications.

(b) ***Authorization; Contravention.*** The adoption, execution, delivery and performance by the City of the Related Documents to which it is a party are within the City’s power and authority, have been duly authorized by all necessary action by the City and do not contravene, or result in the violation of or constitute a default under, any provision of the Constitution of the State of California or any applicable law or regulation, or any order, rule or regulation of any court, governmental agency or instrumentality or any agreement, resolution or instrument to which the City is a party or by which it or any of its property is bound.

(c) **Governmental Consent or Approval.** No authorization, consent, approval, permit, license, exemption of or filing or registration with, any court or governmental department, commission, board, bureau, agency or instrumentality is or will be necessary for the valid execution, delivery or performance by the City of the Related Documents to which it is a party except such consents, authorizations, orders and approvals (copies of which have been furnished to the Bank) as have been obtained, were validly issued and are in full force and effect.

(d) **Binding Effect.** Each of the Related Documents to which the City is a party has been duly executed and delivered by or on behalf of the City. Each of the Related Documents to which the City is a party constitute valid and binding obligations of the City enforceable in accordance with their respective terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, or similar laws affecting creditors' rights generally, (ii) general principles of equity, (iii) the exercise of judicial discretion in appropriate cases, and (iv) the limitations on legal remedies against cities in the State of California.

(e) **Litigation.** Except as disclosed in writing to the Bank, there are no actions, suits or proceedings pending with service of process accomplished or, to the best of the knowledge of the City's Finance Director, threatened in writing against or affecting the City, or relating to the Related Documents in any court or before or by any governmental department, agency or instrumentality in which there is a reasonable possibility of any adverse decision which could have a Material Adverse Effect (together with the litigation described in Section 4.01(e), "Material Litigation").

(f) **Compliance; No Default.** No "event of default" specified in any of the Related Documents to which the City is a party or the Improvement Agreement and no event which, with the giving of notice or lapse of time or both would become such an event of default, has occurred and is continuing.

(g) **Immunity.** The City cannot assert sovereign immunity as a defense to the enforcement of its obligations hereunder or under any of the Related Documents to which it is a party.

(h) **Security for the Obligations.** The Installment Purchase Agreement and the Installment Payments owing thereunder are secured by a lien on Net System Revenues, as provided in the Master Resolution, subject only to the lien on Net System Revenues securing amounts owed under the Improvement Agreement and the Parity Obligations.

(i) **Environmental Laws.** To the knowledge of the City's Manager, the City has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable Environmental Laws, or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any Hazardous Materials into the environment, which noncompliance or remedial action would have a Material Adverse Effect.

(j) **Financial Information.** The balance sheet of the City as at June 30, 2016, and the related statement of revenues, expenses and changes in net assets and statement of cash flows for the fiscal year then ended, copies of all of which have been delivered to the Bank, fairly present the financial position of the City at such date and the results of its operations and changes in financial position for the fiscal year then ended, in conformity with generally accepted accounting principles consistently applied (except as stated therein). Since the date of such financial statements there has been no Material Adverse Change.

(k) **Information.** All information supplied and statements and representations made to the Bank by an authorized Person on behalf of the City in any financial, credit or accounting statement, application for credit or other statement or document furnished to the Bank in connection with this Agreement, whether prior to, contemporaneously with or subsequent to the execution hereof, and any certificate, document, schedule or other writing furnished to the Bank pursuant to this Agreement or in response to a request made by the Bank pursuant to this Agreement, are and will be, when furnished in all material respects true, complete, correct, valid, genuine and what they purport or are represented to be.

(l) **Incorporation of Representations and Warranties by Reference.** The City hereby makes to the Bank the same representations and warranties made by the City in each Related Document to which it is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference for the benefit of the Bank with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. No amendment to such representations and warranties or defined terms made pursuant to any Related Document shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the prior written consent of the Bank.

(m) **Regulation U.** The City is not entering into this Agreement and the transactions contemplated hereby for the purpose of purchasing or carrying margin stock as defined in Regulation U of the Board of Governors of the Federal Reserve System.

(n) **Usury.** Assuming that the Bank is an exempted class of persons within the meaning of Article 15 of the California Constitution, the terms of this Agreement and the Related Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws of the State of California.

(o) **No Proposed Legal Changes.** Except as previously disclosed in writing to the Bank, to the knowledge of the City's Finance Director since the Closing Date no amendment to the Constitution of the State of California or any published administrative interpretation of the Constitution of the State of California and no law has been enacted and no final and non-appealable judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect.

(p) ***Anti-Terrorism Representations.***

(i) The City is not in violation of any Anti-Terrorism Laws;

(ii) The City is not any of the following:

(A) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(B) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(C) a Person with which the Bank is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(D) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(E) a Person that is named as a “specially designated national and blocked person” on the most current list published by the OFAC or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list;

(q) ***Compliance with Applicable Law.*** The City in compliance in all material respects with the requirements of all applicable law, including all governmental approvals, except in such instances in which (i) such requirement of applicable law is being contested in good faith by appropriate proceedings diligently conducted by or on behalf of the City or (ii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

(r) ***Insurance.*** The City currently maintains insurance with respect to the Treatment Plant of such type and in such amounts or in excess of such amounts as are customarily carried by, and insures against such risks as are customarily insured against by, Persons and projects of like type, size and character.

(s) ***Employee Benefit Plans.*** The City does not maintain or contribute to, and has not maintained or contributed to, an employee pension benefit plan that is subject to Title IV or ERISA.

ARTICLE V

COVENANTS

Section 5.01. Covenants of the Authority. The Authority covenants and agrees with the Bank that it will do the following so long as any amounts may be drawn hereunder and for so

long as any amounts are owing to the Bank hereunder under the Fee Letter Agreement or under the Notes, unless the Bank shall otherwise consent in writing:

(a) **Information.** The Authority covenants and agrees that, at all times from and after the Closing Date until the Termination Date and until payment in full of all amounts due and owing to the Bank hereunder, the Authority will deliver to the Bank:

(i) **Amendments.** Promptly after the adoption thereof, copies of any amendments of or supplements to any of the Related Documents.

(ii) **Other Information.** Such other information regarding the Authority as the Bank may reasonably request.

(b) **Notices.**

(i) **Notice of Default.** The Authority shall provide to the Bank immediate notice by telephone, promptly confirmed in writing, of any Default or Event of Default.

(ii) **Notice of Material Adverse Change, Material Adverse Effect and Taxable Date.** The Authority shall provide to the Bank in writing, promptly upon learning thereof, notice of any event that could reasonably be expected to result in a Material Adverse Change, any Taxable Date and any event which could reasonably be expected to have a Material Adverse Effect or could reasonably be expected to cause a Taxable Date to occur.

(iii) **Litigation and other Notices.** The Authority shall provide to the Bank in writing, promptly upon learning thereof, notice of any criminal investigation or proceeding by a Governmental Authority involving the criminal conduct of the Authority or the criminal conduct of any officer or managerial employee of the Authority related to the official duties of such officer or managerial employee.

(c) **No Amendment of Related Documents.** The Authority will not permit or consent to any amendment to or modification, waiver, or termination of any of the Related Documents.

(d) **Related Obligations and Incorporation of Covenants.** The covenants of the Authority set forth in the Related Documents to which it is a party, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety for the benefit of the Bank and shall be enforceable by the Bank against the Authority. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein. To the extent that any such incorporated provision permits any Person to waive compliance with or consent to such provision or requires that a document, opinion, report or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this

Agreement, such compliance shall be waived, or such provision shall be consented to, only if it is waived or consented to, as the case may be, by the Bank and such document, opinion, report or other instrument shall be acceptable or satisfactory only if acceptable or satisfactory to the Bank. No amendment to such covenants (or the defined terms relating thereto) made pursuant to the Related Documents shall be effective to amend such incorporated covenants without the written consent of the Bank. Notwithstanding the termination or expiration of any Related Document, the Authority shall, unless such Related Document has terminated or expired in accordance with its terms and has been replaced by a new Related Document, continue to observe the covenants therein contained for the benefit of the Bank until the termination of this Agreement.

(e) ***Taxes and Liabilities.*** The Authority will pay or cause to be paid and discharged (a) all its indebtedness and obligations promptly and in accordance with their terms to the extent that such failure to pay or discharge would adversely affect the rights of the Bank hereunder or under the Related Documents or the ability of the Authority to perform its obligations under, the Notes, the Fee Letter Agreement or this Agreement and (b) promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income and profits, or upon any of its property, real, personal or mixed, or upon any part thereof, in each case before the same shall become in default which, if not paid, would likely have a Material Adverse Effect.

(f) ***Further Assurances.*** The Authority will at any and all times, insofar as it may be authorized so to do by law, pass, make, do, execute, acknowledge and deliver all and every such further resolutions, acts, deeds, conveyances, assignments, recordings, filings, transfers and assurances as may be necessary or, in the reasonable judgment of the Bank, desirable for the better assuring, conveying, granting, assigning, and confirming all and singular the rights, revenues, and other funds hereby pledged or assigned to the payment of the Notes, or intended so to be, of which the Authority may become bound to pledge or assign. From time to time hereafter, the Authority will execute and deliver such additional instruments, certificates or documents, and will take all such actions as the Bank may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement and each of the other Related Documents or for the purpose of more fully perfecting or renewing the Bank's rights with respect to any rights, properties or assets subject to such documents pursuant hereto or thereto.

(g) ***Most Favored Lender.*** The Authority shall notify the Bank in writing prior to entering into any Bank Agreement, the obligations under which are to be secured by the Net System Revenues on a parity with or senior to the Installment Payments, or amending or modifying an existing Bank Agreement to which the Authority is a party, the obligations under which are secured by the Net System Revenues on a parity with or senior to the Installment Payments, if any such, agreement, amendment or modification will contain (a) covenants that are more restrictive (including, without limitation, financial covenants), (b) events of default which are additional or are more favorable to the lender, or (c) remedies which are more favorable to the lender, in each case, than those contained in this Agreement. Effective upon the Authority's entry into any such agreement, amendment or modification, the corresponding covenants, terms and conditions of this Agreement shall, unless otherwise agreed to by the Bank, be deemed to

be automatically and immediately amended to conform with and to include the applicable covenants, events of default, remedies, terms and/or conditions thereof. The Authority hereby represents and warrants to the Bank that the Authority is not party to any Bank Agreement on the Closing Date that contains more restrictive covenants or events of default or remedies more favorable to the lender than those contained in this Agreement. The Authority hereby agrees promptly to execute and deliver any and all such documents and instruments and to take all such further actions as the Bank may, reasonably, deem necessary or appropriate to effectuate the provisions of this Section 5.01(g).

(h) ***Maintenance of Books and Records.*** The Authority shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions in relation to its business and activities related to the Installment Purchase Contract.

(i) ***Exempt Status.*** The Authority shall not take any action or omit to take any action that, if taken or omitted, would adversely affect the excludability of interest on the Tax Exempt Notes from the gross income of the Bank thereof for purposes of federal income taxation under the Code.

(j) ***Licenses, Permits, Etc.*** All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, board, agency or commission having jurisdiction in the matter which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would adversely affect the due performance by the Authority of its obligations hereunder and under the other Related Documents to which it is a party have been and shall at all times in all material respects be duly maintained and complied with by the Authority.

(k) ***Laws and Contracts.*** The Authority shall do all things necessary to maintain and comply with all necessary authorizations, approvals, consents and rights material for the conduct of its business as it is presently being conducted and the ownership and operations of its facilities as they are presently being operated and comply in all material respects with all present and future laws (including Environmental Laws), statutes, rules, regulations, codes, ordinances, orders, writs, judgments, decrees, awards, injunctions, restrictive covenants and requirements binding upon or applicable to it, its assets or its operations to the extent that a failure to so maintain or comply would materially and adversely affect (in the reasonable opinion of the Bank) the rights of the Bank hereunder or the ability of the Authority to perform its obligations under the Notes or this Agreement. The Authority shall comply in all material respects with any credit agreement, indenture, mortgage, agreement or other instrument to which it is a party or otherwise subject to the extent that a failure to comply would materially and adversely affect (in the reasonable opinion of the Bank) the rights of the Bank hereunder or the ability of the Authority to perform its obligations under the Notes or this Agreement. The Authority will promptly furnish copies of all default notices under any such laws and any outstanding contracts or agreements, a default under which would likely have a Material Adverse Effect.

(l) ***Existence.*** The Authority shall maintain its existence.

(m) **Liens.** The Authority shall not cause or permit there to be any Lien on its rights under the Installment Purchase Agreement except for the Lien in favor of the Bank. The Authority shall not assign or transfer any of its rights under the Installment Purchase Agreement except to the Bank.

(n) **Restrictions on Use of Note Proceeds.** The proceeds of the Notes will be applied by the Authority to the purposes described in Section 2.01.

(o) **Filing of Agreement.** In the event that the Authority delivers this Agreement to the Municipal Securities Rulemaking Board, for filing with EMMA, the filed copy of this Agreement shall be redacted in a manner satisfactory to the Bank.

Section 5.02. Covenants of the City. The City covenants and agrees with the Bank that it will do the following so long as any amounts may be drawn hereunder and for so long as any amounts are owing to the Bank hereunder under the Fee Letter Agreement or under the Notes, unless the Bank shall otherwise consent in writing:

(a) **Information.** The City covenants and agrees that, at all times from and after the Closing Date until the Termination Date and until payment in full of all amounts due and owing to the Bank hereunder, the City will deliver to the Bank:

(i) as soon as available and in any event within 270 days after the end of each fiscal year of the City, (A) either (1) a copy of the annual audit report of the City (which will include financial statements for the Wastewater Treatment System Fund), certified to the City as having been prepared in accordance with generally accepted accounting principles consistently applied by independent certified public accountants of recognized standing, including a balance sheet of the City as of the end of such fiscal year and related statement of revenues, expenses and changes in net assets and statement of cash flows for the fiscal year ended or (2) a copy of a separate annual audit report for the Wastewater Treatment System Fund, certified to the City as having been prepared in accordance with generally accepted accounting principles consistently applied by independent certified public accountants of recognized standing, including a balance sheet of the Wastewater Treatment System Fund as of the end of such fiscal year and related statement of revenues, expenses and changes in net assets and statement of cash flows for the fiscal year ended and (B) a letter from an Authorized Officer addressed to the Bank in the form of Exhibit H stating that no Default or Event of Default has come to his or her attention which was continuing at the end of such fiscal year or on the date of such letter, or, if such Default or Event of Default has come to such officer's attention and was continuing at the end of such fiscal year or on the date of such letter, indicating the nature of such Default or Event of Default and the action which the City proposes to take with respect thereto;

(ii) **Budget.** As soon as available, the annual capital and operating budgets of the City for such upcoming Fiscal Year. Additionally, promptly after

the adoption thereof, any amendments to the annual operating budget that could reasonably be expected to result in a Material Adverse Change.

(iii) **Amendments.** Promptly after the adoption thereof, copies of any amendments of or supplements to any of the Related Documents.

(iv) **Material Event Notices.** Immediately following any dissemination, distribution or provision thereof to any Person, a copy of any Material Event Notice related to the Wastewater System, the Treatment Plant or the System Revenues disseminated, distributed or provided by the City in satisfaction of or as may be required by the provisions of Rule 15c2-12 promulgated pursuant to the Securities Exchange Act of 1934, as amended (17 C.F.R. Sec. 240 15c2-12), or any successor or similar legal requirement.

(v) **EMMA Filings.** Copies of all filings related to the Wastewater System, the Treatment Plant or the System Revenues required to be made by the City with EMMA promptly after such filings are made.

(b) **Notices.**

(i) **Notice of Default.** The City shall provide to the Bank immediate notice by telephone, promptly confirmed in writing, of any Default or Event of Default.

(ii) **Notice of Material Adverse Change, Material Adverse Effect and Taxable Date.** The City shall provide to the Bank in writing, promptly upon learning thereof, notice of any event that could reasonably be expected to result in a Material Adverse Change, any Taxable Date and any event which could reasonably be expected to have a Material Adverse Effect or could reasonably be expected to cause a Taxable Date to occur.

(iii) **Litigation and other Notices.** The City shall provide to the Bank in writing, promptly upon learning thereof, notice of:

(A) any Material Litigation or any other actions, suits, proceedings, inquiry or investigation before any Governmental Authority against the City relating to the Wastewater System, the Treatment Plant or the System Revenues which involve claims equal to or in excess of \$10,000,000;

(B) any criminal investigation or proceeding by a Governmental Authority involving the criminal conduct of the City or the criminal conduct of any officer or managerial employee of the City related to the official duties of such officer or managerial employee; and

(C) any communication from any labor union of an intent to strike with respect to the Treatment Plant at a future date with such notice

to include a description of the action or actions that it proposes to take with respect thereto.

(c) ***No Amendment of Related Documents.*** The City will not permit or consent to any amendment to or modification, waiver, or termination of any of the Related Documents.

(d) ***Related Obligations and Incorporation of Covenants.*** The covenants of the City set forth in the Related Documents to which it is a party, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety for the benefit of the Bank and shall be enforceable by the Bank against the City. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein. To the extent that any such incorporated provision permits any Person to waive compliance with or consent to such provision or requires that a document, opinion, report or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such compliance shall be waived, or such provision shall be consented to, only if it is waived or consented to, as the case may be, by the Bank and such document, opinion, report or other instrument shall be acceptable or satisfactory only if acceptable or satisfactory to the Bank. No amendment to such covenants (or the defined terms relating thereto) made pursuant to the Related Documents shall be effective to amend such incorporated covenants without the written consent of the Bank. Notwithstanding the termination or expiration of any Related Document, the City shall, unless such Related Document has terminated or expired in accordance with its terms and has been replaced by a new Related Document, continue to observe the covenants therein contained for the benefit of the Bank until the termination of this Agreement.

(e) ***Taxes and Liabilities.*** The City will pay or cause to be paid and discharged (a) all its indebtedness and obligations promptly and in accordance with their terms to the extent that such failure to pay or discharge would adversely affect the rights of the Bank hereunder or under the Related Documents or the ability of the City to perform its obligations under this Agreement or the Related Documents to which it is a party and (b) promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income and profits, or upon any of its property, real, personal or mixed, or upon any part thereof, in each case before the same shall become in default which, if not paid, would likely result in a Material Adverse Effect.

(f) ***Further Assurances.*** The City will at any and all times, insofar as it may be authorized so to do by law, pass, make, do, execute, acknowledge and deliver all and every such further resolutions, acts, deeds, conveyances, assignments, recordings, filings, transfers and assurances as may be necessary or, in the reasonable judgment of the Bank, desirable for the better assuring, conveying, granting, assigning, and confirming all and singular the rights, revenues, and other funds hereby pledged or assigned to the payment of the Notes, or intended so to be, of which the City may become bound to pledge or assign. From time to time hereafter, the City will execute and deliver such additional

instruments, certificates or documents, and will take all such actions as the Bank may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement and each of the other Related Documents or for the purpose of more fully perfecting or renewing the Bank's rights with respect to any rights, properties or assets subject to such documents pursuant hereto or thereto.

(g) ***Most Favored Lender.*** The City shall notify the Bank in writing prior to entering into any Bank Agreement, the obligations under which are to be secured by the Net System Revenues on a parity with or senior to the Installment Payments, or amending or modifying an existing Bank Agreement to which the City is a party, the obligations under which are secured by the Net System Revenues on a parity with or senior to the Installment Payments, if any such, agreement, amendment or modification will contain (a) covenants that are more restrictive (including, without limitation, financial covenants), (b) events of default which are additional or are more favorable to the lender, or (c) remedies which are more favorable to the lender, in each case, than those contained in this Agreement. Effective upon the City's entry into any such agreement, amendment or modification, the corresponding covenants, terms and conditions of this Agreement shall, unless otherwise agreed to by the Bank, be deemed to be automatically and immediately amended to conform with and to include the applicable covenants, events of default, remedies, terms and/or conditions thereof. The City hereby represents and warrants to the Bank that the City is not party to any Bank Agreement on the Closing Date that contains more restrictive covenants or events of default or remedies more favorable to the lender than those contained in this Agreement. The City hereby agrees promptly to execute and deliver any and all such documents and instruments and to take all such further actions as the Bank may, reasonably, deem necessary or appropriate to effectuate the provisions of this Section 5.02(g).

(h) ***Maintenance of Books and Records.*** The City shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions in relation to its business and activities related to the Wastewater System, the Treatment Plant and the System Revenues.

(i) ***Inspections.*** The City shall permit the Bank or its respective representatives, at any reasonable time and upon reasonable notice, during normal business hours and from time to time, at the request of the Bank to visit and inspect the properties of the City relating to the Wastewater System and the Treatment Plant, to examine and make copies of and take abstracts from the records and books of account relating to the System Revenues, and to discuss the affairs, finances and accounts relating to the Wastewater System, the Treatment Plant and the System Revenues with the appropriate officers of the City. The Bank agrees to maintain the confidentiality of all such books, records and information; provided, however, that the Bank shall not be precluded from disclosing such information or the contents of such books and records to its legal counsel, its Participants or, to the extent required by statute, rule, regulation or judicial process or upon the lawful demand of any court, agency or other governmental authority having jurisdiction over the Bank.

(j) **Exempt Status.** The City shall not take any action or omit to take any action that, if taken or omitted, would adversely affect the excludability of interest on the Tax Exempt Notes from the gross income of the Bank thereof for purposes of federal income taxation under the Code.

(k) **Licenses, Permits, Etc.** All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, board, agency or commission having jurisdiction in the matter which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would adversely affect the due performance by the City of its obligations hereunder and under the other Related Documents to which it is a party have been and shall at all times in all material respects be duly maintained and complied with by the City.

(l) **Laws and Contracts.** The City shall do all things necessary to maintain and comply with all necessary authorizations, approvals, consents and rights material for the conduct of its business as it is presently being conducted and the ownership and operations of its facilities as they are presently being operated and comply in all material respects with all present and future laws (including Environmental Laws), statutes, rules, regulations, codes, ordinances, orders, writs, judgments, decrees, awards, injunctions, restrictive covenants and requirements binding upon or applicable to it, its assets or its operations to the extent that a failure to so maintain or comply would materially and adversely affect (in the reasonable opinion of the Bank) the rights of the Bank hereunder or the ability of the City to perform its obligations under this Agreement. The City shall comply in all material respects with any credit agreement, indenture, mortgage, agreement or other instrument to which it is a party or otherwise subject to the extent that a failure to comply would materially and adversely affect (in the reasonable opinion of the Bank) the rights of the Bank hereunder or the ability of the City to perform its obligations under this Agreement. The City will promptly furnish copies of all default notices under any such laws and any outstanding contracts or agreements, a default under which would likely result in a Material Adverse Effect.

(m) **Existence.** The City shall maintain its existence.

(n) **Liens.** The City shall not cause or permit there to be any Lien on the Net System Revenues except for the Liens expressly provided for in or permitted by the Master Resolution.

(o) **Restrictions on Use of Note Proceeds.** The proceeds of the Notes will be applied by the Authority to the purposes described in Section 2.01.

(p) **Reserved.**

(q) **Disposition of Assets.** The City shall comply with Section 3.02 of the Master Resolution.

(r) **Filing of Agreement.** In the event that the City delivers this Agreement to the Municipal Securities Rulemaking Board, for filing with EMMA, the filed copy of this Agreement shall be redacted in a manner satisfactory to the Bank.

(s) **Insurance.** The City will at all times maintain insurance with respect to the Treatment Plant of such type, and in such amounts or in excess of such amounts as are customarily carried by, and insuring against such risks as are customarily insured against by, Persons and projects of like type, size and character.

(t) **Rating Maintenance.** The City shall cause at least one Rating Agency to assign the Obligor Rating until such time as all indebtedness secured by a lien on or payable from System Revenues that has previously been assigned a rating by a Rating Agency is no longer outstanding.

(u) **Financial Covenants.** Notwithstanding anything in the Master Resolution or the Installment Purchase Agreement to the contrary, in addition to the complying with the requirements of the Master Resolution, the City shall comply with the following covenants when incurring Parity Obligations or Subordinate Obligations, setting rates and charges, calculating Debt Service and entering into Hedging Agreements.

(i) **Coverage Requirement, Additional Parity Obligations Test.** The City shall not incur additional Parity Obligations under Section 2.04(c) of the Master Resolution without satisfying the requirements of Section 2.04 of the Master Resolution using a Coverage Requirement for such purpose as follows:

“*Coverage Requirement*” means, with respect to any specified period, an amount of Adjusted Net System Revenues for the specified period equal, in each case, to at least (1) 115% of the Maximum Annual Debt Service on all Outstanding Parity Obligations (including the additional Parity Obligations being issued), and (2) 110% of the Maximum Annual Debt Service on all Outstanding Parity Obligations (including the additional Parity Obligations being issued) and Outstanding Subordinate Obligations (as defined in the Master Resolution).

“*Maximum Annual Debt Service*” means the maximum amount payable by the City in any single Fiscal Year of the City as Debt Service with regard to the Obligations (as defined in the Master Resolution) in question during the period commencing with the Fiscal Year of the City in which such calculation is made and terminating with the last Fiscal Year of the City in which any Debt Service for such Obligations is due.

(ii) **Coverage Requirement, Additional Subordinate Obligations Test.** The City shall not incur additional Subordinate Obligations under Section 2.04(f) of the Master Resolution without satisfying (1) the requirements of Section 2.04 of the Master Resolution and (2) the requirements of Section 2.04(c)(2) of the Master Resolution after substituting Subordinate Obligations for Parity Obligations in each place in Section 2.04(c)(2) of the Master Resolution that Parity Obligations appears and using a Coverage Requirement for such purpose as follows:

“Coverage Requirement” means, with respect to any specified period, an amount of Adjusted Net System Revenues for the specified period equal, in each case, to at least (1) 115% of the Maximum Annual Debt Service on all Outstanding Parity Obligations, and (2) 110% of the Maximum Annual Debt Service on all Outstanding Parity Obligations and Outstanding Subordinate Obligations (as defined in the Master Resolution) (including the additional Subordinate Obligations (as defined in the Master Resolution) being issued).

Notwithstanding anything to the contrary contained in this Agreement, none of the following shall constitute an incurrence of additional Subordinate Obligations by the City for purposes of compliance with this Section 5.02(u)(ii): (1) the issuance of Notes by the Authority pursuant to this Agreement; (2) the increase of the principal amount of any Note issued pursuant to this Agreement due to the making of an Advance; (3) the incurrence or increase in amount of any Obligation under the Notes, this Agreement or the Fee Letter Agreement; or (4) any increased or additional Installment Payments or Debt Service as a result of any of the foregoing.

(iii) **Coverage Requirement, Rate Covenant.** The City will fix and prescribe rates and charges for the Wastewater Service and cause to fixed and prescribed rates and charges for use of the Treatment Plant as provided in Section 3.04 of the Master Resolution with a Coverage Requirement for purposes of Section 3.04 of the Master Resolution as follows:

“Coverage Requirement” means, with respect to any specified period, an amount of Adjusted Net System Revenues for the specified period equal, in each case, to at least (1) 115% of the Debt Service on all Outstanding Parity Obligations for the specified period, and (2) 110% of the Debt Service on all Outstanding Parity Obligations and Outstanding Subordinate Obligations (as defined in the Master Resolution) for the specified period.

In addition, notwithstanding Section 3.04(b) of the Master Resolution, the failure of the Adjusted Net System Revenues in any Fiscal Year to be equal to at least the Coverage Requirement, specified above in this Section 5.02(u)(iii), for such Fiscal Year shall constitute a Default under of this Agreement.

(iv) **Calculation of Debt Service.** For purposes of the calculation of Debt Service pursuant to the Master Resolution, payments made under Hedge Agreements shall not be taken into account for purposes of calculating Debt Service unless at the time such payments are to be taken into account the counterparty to the City under such Hedge Agreement or a guarantor of such counterparty’s obligations under such Hedge Agreement is rated (without regard to third-party credit enhancement) at least “A-”, “A3” or “A-” by at least one of Fitch, Moody’s or S&P.

(v) **Treatment of Hedge Agreements.** In no event shall termination payments owed by the City under any Hedge Agreement by reason of the occurrence of an event of default or termination of such Hedge Agreement that are payable from or secured by Net System Revenues be payable from or secured by Net System Revenues on parity with or senior to the obligations of the City to make payments under the Installment Purchase Agreement.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.01. Events of Default. If any of the following events shall occur, each such event shall be an “Event of Default”:

(a) **Payments.** The Authority shall fail to pay, or cause to be paid, when due (i) any payment of the principal of, or interest on, the Notes or (ii) any other amount owed by the Authority to the Bank pursuant to this Agreement or any of the Related Documents.

(b) **Covenants.** The Authority or the City shall fail to perform or observe any covenant set forth in Sections 5.01(b), (c), (d), (g), (i), (l), (m), (n) and (o) and 5.02(b), (c), (d), (g), (j), (m), (n), (o), (q), (r), (t) and (u).

(c) **Other Covenants.** The Authority or the City shall fail to perform any term, covenant, condition or provision of this Agreement or any of the Related Documents (other than as specified in any other subsection of this Section), which failure continues for thirty days or more after receipt by Authority or the City of written notice of such failure.

(d) **Representations.** Any representation or warranty made or deemed made by or on behalf of the Authority or the City in this Agreement, in any Related Document or in any certificate, financial statement or other statement furnished by or on behalf of the Authority or the City pursuant to this Agreement or any of the Related Documents shall prove to have been inaccurate, misleading or incomplete in any material respect when made or deemed to have been made.

(e) **Other Documents.** The occurrence of an Event of Default under any of the Related Documents.

(f) **Default on Other Material Debt.** Default by the Authority or the City in the payment of any amount when due in respect of any Material Debt; or default under any Contract under or pursuant to which Material Debt payable from or secured by a Lien on Net System Revenues on a parity with or senior to the Installment Payments is incurred or issued, and continuance of such default beyond the period of grace, if any, allowed with respect thereto; or default under any Contract under or pursuant to which Material Debt payable from or secured by a Lien on Net System Revenues on a priority that is subordinate to the Installment Payments is incurred or issued, and continuance of such default beyond the period of grace, if any, allowed with respect thereto, which

default results in such Material Debt becoming, or being capable of becoming, immediately due and payable; or the occurrence of any act or omission by the Authority or the City under any Contract under or pursuant to which Material Debt is incurred or issued which results in such Material Debt becoming, or being capable of becoming, immediately due and payable (or, with respect to any Interest Rate Swap Agreement that constitutes Material Debt, which results in such Interest Rate Swap Agreement being terminated early or being subject to early termination).

(g) ***Contest of Validity; Invalidity.***

(i) The Authority or the City shall in writing claim, or repudiate its obligations under, or initiate any legal proceedings to seek an adjudication that, any of the provisions that provide for the payment of principal of or interest on the Notes or that establish the pledge of the Authority Revenues to secure the Obligations, this Agreement or the Related Documents is not valid or binding on the Authority or the City;

(ii) Any court of competent jurisdiction or other Governmental Authority with jurisdiction to rule on the validity of this Agreement or the Related Documents shall find or rule that any of the provisions that provide for the payment of principal of or interest on the Notes or that establish the pledge of the Authority Revenues to secure the Obligations, this Agreement or the Related Documents is not valid or binding on the Authority or the City; or

(iii) Except as provided in clauses (i) and (ii) above, any provision of this Agreement or any of the Related Documents shall cease to be valid and binding or shall be declared null and void; or the Authority, the City or any Governmental Authority shall contest any such provision; or the Authority, the City or any agent or trustee on behalf of the Authority or the City shall deny that it has any further liability under any provision of this Agreement or any of the other Related Documents; or the Authority or the City shall (A) claim that this Agreement or any of the other Related Documents is not valid or binding on it, (B) repudiate its obligations under this Agreement or any of the other Related Documents, and/or (C) initiate any legal proceedings to seek an adjudication that this Agreement or any of the other Related Documents or the Authority's or the City's obligation to repay any Material Debt is not valid or binding on it.

(h) ***Judgments.*** Entry or filing of any final, non-appealable judgment or any similar process in an amount in excess of \$10,000,000 against the Authority or the City payable from System Revenues and failure by the Authority or the City to stay the enforcement of such judgment or other process for a period of 60 days or failure to pay or satisfy the same within 60 days.

(i) ***Event of Insolvency.*** An Event of Insolvency shall have occurred with respect to the Authority or the City.

(j) **Validity and Perfection of Liens.** Any Lien created by this Agreement or any of the Related Documents in favor of the Bank or the Authority, at any time and for any reason (except as expressly permitted to be released by the terms of such governing document) shall not constitute a valid and perfected Lien or shall fail to have the priority required by this Agreement and the Related Documents, or the Authority or the City shall so assert in writing.

(k) **Downgrade.** Any Obligor Rating shall be withdrawn or suspended for credit related reasons or reduced below “A3” by Moody’s, “A-” by S&P or “A-” by Fitch.

Section 6.02. Remedies. Upon the occurrence of any Event of Default the Bank may exercise any one or more of the following rights and remedies in addition to any other remedies herein or by law provided:

(a) by written notice to the Authority and the City, immediately terminate (i) the Commitment Period, (ii) the Commitment and (iii) the obligation of the Bank to make Advances hereunder, and, thereafter, the Bank shall be under no obligation to make Advances hereunder; provided that upon the occurrence of an Event of Default under Section 6.01(i) hereof, such termination shall automatically occur (unless such automatic termination is waived by the Bank in writing);

(b) subject to Section 6.03, by written notice to the Authority and the City, declare an Event of Default to have occurred hereunder and direct that the Installment Payments under the Installment Purchase Agreement be declared to be immediately due and payable, as provided in Section 5.01 of the Installment Purchase Agreement and/or declare the Notes, all accrued interest thereon and all other amounts payable under this Agreement to be, and such amounts shall thereupon become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Authority; provided that upon the occurrence of an Event of Default under Section 6.01(i) hereof, such acceleration shall automatically occur (unless such automatic acceleration is waived by the Bank in writing);

(c) pursue any rights and remedies it may have under the Related Documents;

(d) pursue any other action available at law or in equity;

(e) the Bank may exercise any other rights or remedies available to the Bank under any Related Document, any other agreement or at law or in equity as and to the extent permitted thereunder;

(f) The Bank may by mandamus or other appropriate action or proceeding at law or in equity in any court of competent jurisdiction, enforce and compel performance of the Master Resolution and the Installment Purchase Agreement and every provision and covenant thereof, including without limiting the generality of the foregoing, the enforcement of the performance of all obligations and duties required to be done or performed by the City under the Master Resolution, the Installment Purchase Agreement and the applicable laws of the State of California; and/or

(g) The Bank may by an instrument or instruments in writing filed with the Authority and the City appoint a trustee to protect and enforce the rights of the Bank.

The rights and remedies of the Bank specified herein are for the sole and exclusive benefit, use and protection of the Bank, and the Bank is entitled, but shall have no duty or obligation to the Authority, the City or any other person, (A) to exercise or to refrain from exercising any right or remedy reserved to the Bank hereunder, or (B) to cause the Authority, the City or any other party to exercise or to refrain from exercising any right or remedy available to it under any of the Related Documents. Failure or delay by the Bank to take action in regard to one or more Events of Default shall not constitute a waiver of the right to take action in regard or any such Event of Default or subsequent Events of Default. The Bank hereby recognizes that the procedural requirements applicable to commencing an action against the Authority and the City differ from requirements applicable to nongovernmental entities.

Section 6.03. Special Acceleration Terms for Certain Events of Default.

Notwithstanding the provisions of Section 6.02(b),

(a) solely in the case of an Event of Default under Sections 6.01(a)(i), (f), (g)(i), (g) (ii), (h), (j) or (k), an acceleration pursuant to Section 6.02(b) shall not be declared or directed by the Bank until seven (7) days after the occurrence of such Event of Default; and

(b) solely in the case of an Event of Default under any other subsection of Sections 6.01 other than those specifically enumerated in Section 6.03(a) above and Section 6.01(i), an acceleration pursuant to Section 6.02(b) shall require one hundred eighty (180) days' prior written notice from the Bank to the Authority.

Notwithstanding the foregoing, (i) if any other holder of Debt, secured by or payable from Net System Revenues has the right to cause such Debt to be immediately due and payable (whether by repurchase, mandatory tender, mandatory redemption, acceleration or otherwise) on a date earlier than or pursuant to a notice period which is shorter than the applicable date or notice period set forth in Section 6.03(a) or (b), as applicable, in connection with a similar type of default, then the period set forth in Section 6.03(a) or (b), as applicable, shall automatically be changed to reflect such shorter period or earlier date, or (ii) if any other holder, lender, credit enhancer, liquidity provider or insurer of such Debt or any counterparty to any Interest Rate Swap Agreement which, in either case, is secured by or payable from Net System Revenues causes any such Debt or obligations of the Authority or the City under such Interest Rate Swap Agreement to become immediately due and payable or an Event of Default under Section 6.01(i) occurs, then the Bank may immediately, without notice or delay, avail itself of the remedies set forth in Sections 6.02(a) and accelerate all obligations of the Authority under this Agreement and cause the acceleration of the Installment Payments under the Installment Purchase Agreement.

ARTICLE VII
CHANGES IN COST

Section 7.01. Increased Costs.

(a) ***Increased Costs Generally.*** If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, liquidity ratio, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Bank;

(ii) subject the Bank to any Taxes of any kind whatsoever with respect to this Agreement or the Notes, or change the basis of taxation of payments to the Bank in respect thereof (except for indemnified Taxes covered by Section 2.13 and the imposition of, or any change in the rate of, any Excluded Taxes payable by the Bank); or

(iii) impose on the Bank any other condition, cost or expense affecting this Agreement or the Notes;

and the result of any of the foregoing shall be to increase the cost to the Bank of maintaining this Agreement or owning the Notes (or of maintaining its obligation to make Advances), or to reduce the amount of any sum received or receivable by the Bank hereunder or under the Notes (whether of principal, interest or any other amount) then, upon written request of the Bank as set forth in subsection (c) below, the Authority shall promptly pay to the Bank such additional amount or amounts as will compensate the Bank for such additional costs incurred or reduction suffered.

(b) ***Capital Requirements.*** If the Bank determines that any Change in Law affecting the Bank or the Bank's parent or holding company, if any, regarding capital requirements, has or would have the effect of reducing the rate of return on the Bank's capital or the capital of the Bank's parent or holding company, if any, as a consequence of this Agreement, or the Notes, to a level below that which the Bank or the Bank's parent or holding company could have achieved but for such Change in Law (taking into consideration the Bank's policies and the policies of the Bank's parent or holding company with respect to capital adequacy), then from time to time upon written request of the Bank as set forth in subsection (c) below, the Authority shall promptly pay to the Bank such additional amount or amounts as will compensate the Bank or the Bank's parent or holding company for any such reduction suffered.

(c) ***Certificates for Reimbursement.*** A certificate of the Bank setting forth the amount or amounts necessary to compensate the Bank or the Bank's parent or holding company as specified in subsection (a) or (b) above and delivered to the Authority, shall be conclusive absent manifest error. The Authority shall pay the Bank the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of the Bank to demand compensation pursuant to this Section shall not constitute a waiver of the Bank's right to demand such compensation; provided that the Authority shall not be required to compensate the Bank pursuant to this Section for any increased costs incurred or reductions suffered more than six (6) months prior to the date that the Bank notifies the Authority of the Change in Law giving rise to such increased costs or reductions, and of the Bank's intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six (6) month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) **Survival.** Without prejudice to the survival of any other agreement of the Authority hereunder, the agreements and obligations of the Authority contained in this Section shall survive the termination of this Agreement and the payment in full of the Notes and the obligations of the Authority thereunder and hereunder.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Notices. Notices; Effectiveness; Electronic Communication.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, if to the Authority, the City or the Bank, to the address, facsimile number, electronic mail address or telephone number specified for such Person in this Section 8.01. Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (c). Notwithstanding the foregoing, notices to the Bank under Article II hereof shall be given as described in Article II and shall not be effective until received.

(b) **Electronic Communications.** Notices and other communications to the Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Bank.

(c) Unless the Bank otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's

receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; *provided* that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(d) In no event shall the Bank or any of its Related Parties have any liability to the Authority or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Authority’s or the Bank’s transmission of materials through the Internet.

(e) ***Change of Address, Etc.*** Each of the Authority and the Bank may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto.

(f) ***Reliance by the Bank.*** The Bank shall be entitled to rely and act upon any notices (including telephonic or electronic notices) purportedly given by or on behalf of the Authority even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. To the extent permitted by law, the Authority shall indemnify the Bank from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Authority. All telephonic notices to and other telephonic communications with the Bank may be recorded by the Bank, and each of the parties hereto hereby consents to such recording.

Authority: City of San José Financing Authority
Attention: Debt Management
200 East Santa Clara Street, 13th Floor
San José, CA 95113
Telephone: (408) 535-7010
E-mail: debt.management@sanjoseca.gov

City: City of San José – Finance Department
Attention: Debt Management
200 East Santa Clara Street, 13th Floor
San José, CA 95113
Telephone: (408) 535-7010
E-mail: debt.management@sanjoseca.gov

For notices sent under
Article IV or Section

8.10, with copy to: Office of the City Attorney
Attention: Assistant City Attorney for Litigation
200 East Santa Clara Street, 16th Floor
San José, CA 95113
Telephone: (408) 535-1900

Bank: For a Request for Advance and for billing and paying
purposes:

Wells Fargo Bank, National Association
333 Market Street
San Francisco, CA 94105
Attention: Kavita Singh
Telephone: (415) 370-2930
Facsimile: (866) 359-9964
E-mail: singhk@wellsfargo.com

with a copy to:

Wells Fargo Bank, National Association
Government & Institutional Banking
Attention: Mary Lou Lopez
333 Market Street, 15th Floor
MAC A0109-152
San Francisco, CA 94105
Telephone: (415) 371-2964
E-mail: mllopez@wellsfargo.com

For all other purposes to:

Wells Fargo Bank, National Association
Government & Institutional Banking
Attention: Mary Lou Lopez
333 Market Street, 15th Floor
MAC A0109-152
San Francisco, CA 94105
Telephone: (415) 371-2964
E-mail: mllopez@wellsfargo.com

Section 8.02. No Waivers. No failure or delay by the Bank in exercising any right, remedy, power or privilege hereunder or under the other Related Documents or otherwise shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law

or equity. Any waiver of any provision of this Agreement, and any consent to any departure by the Authority from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Authority in any case shall entitle the Authority to any other or further notice or demand in similar or other circumstances.

Section 8.03. Costs, Expenses and Taxes. The Authority shall pay, on demand, if an Event of Default occurs, the reasonable out of pocket expenses incurred by the Bank (including reasonable attorneys' fees), in connection with such Event of Default and collection and other enforcement proceedings resulting therefrom.

Section 8.04. Amendments or Modifications. Any provision of this Agreement or the Notes may be amended or modified if, but only if, such amendment or modification is in writing and is signed by the Authority, the City and the Bank.

Section 8.05. Benefit of Agreement.

(a) **Generally.** This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; provided that the Authority may not assign and transfer any of its interests without prior written consent of the Bank.

(b) **Participations.** The Bank may at any time sell, assign, negotiate, grant participations in, or otherwise dispose of its rights under this Agreement or the other Related Documents, to certain participating entities (the "Participants"); provided that (i) the Bank's obligations under this Agreement shall remain unchanged, (ii) the Bank shall remain solely responsible to the Authority for the performance of its obligations, (iii) the Authority shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement and (iv) no Participant shall be entitled to receive any greater payment under the Notes, this Agreement or the Fee Letter Agreement than the Bank would have been entitled to receive with respect to the participation sold to such Participant. The Bank may, in connection with any participation or proposed participation, disclose to the Participant or proposed Participant any information relating to the Authority furnished to the Bank by or on behalf of the Authority. While the Bank has no present intent to sell, assign, negotiate, grant participations in, or otherwise dispose of its rights under this Agreement or the other Related Documents, the Bank reserves the right to do so in its sole discretion.

Section 8.06. Severability. Any provision of this Agreement that is prohibited, unenforceable or not authorized shall be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof. The parties shall endeavor, in good faith negotiations, to replace the invalid, illegal or unenforceable provisions with valid provisions, the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 8.07. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 8.08. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when the Bank shall have received counterparts hereof signed by all of the parties hereto. Complete sets of counterparts shall be lodged with the Authority, the City and the Bank. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 8.09. Governing Law. THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT (EXCEPT, AS TO ANY OTHER RELATED DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA.

Section 8.10. Indemnity. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant hereto or under law or equity, the Authority hereby agrees (to the extent permitted by law) to indemnify and hold harmless the Bank and its officers, directors and agents (each, an “Indemnitee”) from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever (including reasonable attorneys’ fees) which may be incurred by or which may be claimed against an Indemnitee by any Person (collectively, the “Liabilities”) by reason of or in connection with (a) the execution and delivery or transfer of, or payment or failure to pay under, any Related Document to which the Authority or the City is a party; (b) the issuance of the Notes; and (c) the use of the proceeds of the Notes; provided that the Authority shall not be required to indemnify an Indemnitee for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of such Indemnitee. If any proceeding shall be brought or threatened against an Indemnitee by reason of or in connection with the events described in clause (a), (b) or (c) as a condition of indemnity hereunder each Indemnitee shall promptly notify the Authority in writing and the Authority shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnitee and the payment of all reasonable costs of litigation. Notwithstanding the preceding sentence, each Indemnitee shall have the right to employ its own counsel and to determine its own defense of such action in any such case, but the fees and expenses of such counsel shall be at the expense of such Indemnitee unless (i) the employment of such counsel shall have been authorized in writing by the Authority, or (ii) the Authority, after due notice of the action, shall not have employed counsel reasonably satisfactory to such Indemnitee to have charge of such defense, in either of which events the reasonable fees and expenses of counsel for such Indemnitee shall be borne by the Authority. The Authority shall not be liable for any settlement

of any such action effected without its consent. Nothing under this Section 8.10 is intended to limit the Authority's payment of the Obligations.

Section 8.11. Survival of Agreement. All covenants, agreements, representations and warranties made herein, in the other Related Documents and in the certificates delivered pursuant hereto shall survive the issuance of the Note and shall continue in full force and effect as to the Bank so long as any obligations of the Authority hereunder or under the other Related Documents are outstanding and unpaid and so long as the Bank has any liability hereunder.

Section 8.12. Oral Negotiations and Prior Writings. This Agreement and the documents, instruments, and agreements required hereunder supersede all oral negotiations and prior writings in respect of the subject matter hereof and thereof.

Section 8.13. Disclaimer. The Authority acknowledges that the Bank has made no representation that the transactions contemplated by this Agreement or any other agreement delivered in connection herewith will have particular tax or accounting treatment upon the Authority or any other Person.

Section 8.14. No Third Party Beneficiary Rights or Benefits. This Agreement shall not be construed so as to confer any right or benefit upon any Person other than the parties to the Agreement and their respective successors and assigns (including the Participants).

Section 8.15. Responsibility. Except to the extent required by law, neither the Bank nor any Participants shall have any responsibility as to the application by the Authority of the proceeds of any Note.

Section 8.16. Liability of the Bank. As to the Bank, the Authority assumes all risks of the acts or omissions of any Persons with respect to the use of the Note proceeds; provided, however, that this assumption is not intended to, and shall not, preclude the Authority from pursuing such rights and remedies as it may have against any such Person at law or under any other agreement. Neither the Bank nor any of their officers, directors, employees or agents shall be liable or responsible for:

- (a) the validity, sufficiency or genuineness of any documents or endorsements, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged;
- (b) payment by the Bank against presentation of documents which do not comply with the terms of this Agreement, including failure of any documents to bear adequate reference to this Agreement; or
- (c) any other circumstances in making or failing to make payment under this Agreement;

provided, however, that the Authority shall have a claim against the Bank, and the Bank shall be liable to the Authority for direct, but not indirect, consequential, special or punitive damages (the right to receive indirect, consequential, special or punitive damages being hereby waived by the Authority) suffered by the Authority which were caused solely by the willful misconduct or

gross negligence of the Bank in connection with payments under this Agreement. By way of amplification, the Bank may accept documents that appear on their face to be in order without responsibility for further investigation, regardless of any notice or information to the contrary. Subject to the foregoing, the determination of whether a Request for Advance has been presented pursuant to this Agreement prior to the Termination Date or whether a Request for Advance or any accompanying document or instrument is in proper and sufficient form shall be made by the Bank in its sole discretion, which determination shall be conclusive and binding upon the Authority absent evidence that such determination was manifestly in error. The Authority hereby waives any right to object to any payment made under this Agreement against a Request for Advance with accompanying documents but varying in punctuation, capitalization, spelling or similar matters of form.

Section 8.17. Consent To Jurisdiction; Judicial Reference.

(a) ***Jurisdiction.*** EACH PARTY HERETO CONSENTS TO THE JURISDICTION OF A CALIFORNIA FEDERAL OR STATE COURT HAVING JURISDICTION OVER THE MATTER, SUBJECT TO THE FURTHER PROVISIONS OF SUBSECTIONS (b) AND (c) OF THIS SECTION 8.17.

(b) ***Waiver of Jury Trial.*** EACH PARTY HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS. IT IS HEREBY ACKNOWLEDGED THAT THE WAIVER OF A JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE BANK TO HOLD THE NOTES AND THAT THE EXECUTION AND DELIVERY OF THIS AGREEMENT BY THE AUTHORITY, THE CITY AND THE BANK IS MADE IN RELIANCE UPON SUCH WAIVER. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT SUCH WAIVER HAS BEEN KNOWINGLY AND VOLUNTARILY MADE FOLLOWING CONSULTATION WITH ITS RESPECTIVE LEGAL COUNSEL.

(c) ***Judicial Reference.*** If and to the extent that the foregoing waiver of the right to jury trial is unenforceable for any reason in the State of California, each of the parties hereto hereby consents to the adjudication of all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be empowered to hear and determine all issues in such reference, whether fact or law.

Section 8.18. USA Patriot Act. The Bank hereby notifies the Authority that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107 56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify and record information that identifies the Authority, which information includes the name and address of the Authority and other information that will allow the Bank to identify the Authority in accordance with the Patriot Act, and the Authority hereby agrees to take any action necessary to enable the Bank to comply with the requirements of the Patriot Act.

Section 8.19. Obligations Absolute. The obligations of the Authority under this Agreement shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement and the Note under all circumstances without set off or counterclaim. The obligations of the Authority under this Agreement shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including without limitation, the following circumstances: (i) any lack of validity or enforceability of the Related Documents or any other agreement or document relating thereto; (ii) any amendment or waiver of or any consent to or departure from this Agreement, the Related Documents or any document relating thereto; (iii) the existence of any claim, set off, defense or other right which the Authority may have at any time against the Bank or any other person or entity, whether in connection with this Agreement, the transactions described herein or any unrelated transaction; (iv) the occurrence of an Event of Default by the Authority hereunder; (v) the impairment of any security for the performance or observance of any of the agreements or terms of this Agreement; or (vi) any of the circumstances contemplated in clauses (a) through (c), inclusive, of Section 8.16. The Authority understands and agrees that no payment by it under any other agreement (whether voluntary or otherwise) shall constitute a defense to its obligations hereunder, except to the extent that the Bank has been indefeasibly paid in full.

Section 8.20. Assignment to Federal Reserve Bank. The Bank may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, provided that any payment in respect of such assigned obligations made by the Authority to the Bank in accordance with the terms of this Agreement shall satisfy the Authority's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment shall release the Bank from its obligations hereunder.

Section 8.21. No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Related Document), the Authority acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the services regarding this Agreement provided by the Bank and any Affiliate thereof are arm's-length commercial transactions between the Authority, on the one hand, and the Bank and its Affiliates, on the other hand, (ii) the Authority has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Authority is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Related Documents; (b) (i) the Bank and its Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Authority, or any other Person and (ii) neither the Bank nor any of its Affiliates has any obligation to the Authority with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Related Documents; and (c) the Bank and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Authority, and neither the Bank nor any of its Affiliates has any obligation to disclose any of such interests to the Authority. To the fullest extent permitted by law, the Authority, hereby waives and releases any claims that it may have against the Bank or any of its Affiliates with respect to any breach or

alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

Section 8.22. Payments Set Aside. To the extent that any payment by or on behalf of the Authority is made to the Bank and such payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Bank in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made.

Section 8.23. Electronic Execution of Certain Documents. The words “execute,” “execution,” “signed,” “signature,” and words of like import in any in any amendment or other modification hereof (including waivers and consents) shall be deemed to include signatures exchanged by electronic mail or by facsimile.

Section 8.24. Limited Liability of Authority. Neither the Notes nor any obligation of the Authority under this Agreement or the Fee Letter Agreement shall be deemed to constitute a debt or liability of the State of California or of any political subdivision thereof other than the Authority or a pledge of the faith and credit of the State of California or of any political subdivision thereof, but shall be payable solely from the funds herein provided. None of the State of California, any political subdivision thereof, or the Authority shall be obligated to pay the principal of, premium, if any, or interest on the Notes or any other amount under this Agreement or the Fee Letter Agreement except from the Authority Revenues and neither the faith and credit nor the taxing power of the State of California or of any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Notes or any other amount under this Agreement or the Fee Letter Agreement. The execution and delivery of this Agreement, the Fee Letter Agreement and the issuance of the Notes shall not directly or indirectly or contingently obligate the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. Notwithstanding anything in this Agreement, the Fee Letter Agreement or in the Notes contained, the Authority shall have no pecuniary liability under the Notes, this Agreement or the Fee Letter Agreement except that which can be satisfied from the Authority Revenues, and the Authority shall not be required to advance any moneys derived from any source other than the Authority Revenues for any of the purposes in this Agreement or the Fee Letter Agreement mentioned, whether for the payment of the principal of, premium, if any, or the interest on the Notes or any other amount under this Agreement or the Fee Letter Agreement or for any other purpose of this Agreement or the Fee Letter Agreement. Nevertheless, the Authority may, but shall not be required to, advance for any of the purposes hereof any funds of the Authority which may be made available to it for such purposes.

Section 8.25. Waiver of Personal Liability. No member, officer, official, agent or employee of the Authority or the City shall be individually or personally liable for the payment of the principal of, premium, if any, or interest on the Notes or any other amount under this Agreement or the Fee Letter Agreement or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement, the Fee Letter Agreement or the issuance of the Notes; but nothing herein contained shall relieve any such member, officer,

official, agent or employee of the Authority or the City from the performance of any official duty provided by law or by this Agreement.

Section 8.26. Time of the Essence. Time is of the essence of the Related Documents.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

Approved as to form:

RICHARD DOYLE, City Attorney

By: _____
Chief Deputy City Attorney

CITY OF SAN JOSE FINANCING
AUTHORITY

By: _____
Name: _____
Title: _____

Attested to:

By: _____
Name: _____
Secretary

[Signatures continued on following page]

[Signature page to Credit Agreement]

CITY OF SAN JOSE

By: _____
Name: _____
Title: _____

Attested to:

By: _____
Name: _____
Title: _____

[Signatures Continued On Next Page]

[Signature page to Credit Agreement]

WELLS FARGO BANK, NATIONAL
ASSOCIATION

By: _____
Name: _____
Title: _____

EXHIBIT A

[FORM OF REQUEST FOR ADVANCE]

REQUEST FOR ADVANCE

[DATE]

Wells Fargo Bank, National Association
333 Market Street
San Francisco, CA 94105
Attention: Kavita Singh
Telephone: (415) 370--2930
Facsimile: (866) 359-9964
Email: singhk@wellsfargo.com

Ladies and Gentlemen:

The undersigned, City of San José Financing Authority, refers to the Credit Agreement dated as of October 1, 2017 (the "Agreement") by and among the undersigned, the City of San José, California and Wells Fargo Bank National Association (the "Bank"), and hereby requests pursuant to Sections 2.01 and 2.04 of the Agreement that the Bank make one or more Advances to the undersigned under the Agreement, and in that connection sets forth below the information relating to such Advances (the "Proposed Advances") as required by Section 2.04 of the Agreement:

(i) The date on which the Proposed Advance is to be made is _____; and

(ii) [The amount of the Proposed Advance to be made under the Taxable Note is \$[_____]]:

(iii) [The amount of the Proposed Advance to be made under a Tax-Exempt Note is \$[_____]]:

(iv) The Proposed Advance that is to be made under a Tax-Exempt Note shall be made under the following Tax Exempt Note: [Identify Note]

(v) [The Authority hereby certifies that the sum of the amount of the Proposed Advance to be made under the Tax-Exempt Note identified above plus the amount of all previous Advances made under such Tax-Exempt Note does not exceed the stated principal amount of such Tax-Exempt Note];

(vi) The Authority represents all conditions to this Proposed Advance set forth in Article II and III of the Agreement have been satisfied;

(vii) The proceeds of the Proposed Advances shall be transferred to the Authority's account at:

[Include wire instructions]

The Authority hereby represents that all conditions in Sections 2.01, 2.04 and 3.03 of the Agreement have been satisfied.

Very truly yours,

CITY OF SAN JOSE FINANCING
AUTHORITY

By: _____
Name: _____
Authorized Officer

cc: Mary Lou Lopez

EXHIBIT B

[FORM OF NOTE ISSUANCE NOTICE]

[DATE]

Wells Fargo Bank, National Association
333 Market Street
San Francisco, CA 94105
Attention: Kavita Singh
Telephone: (415) 370--2930
Facsimile: (866) 359-9964
Email: singhk@wellsfargo.com

Ladies and Gentlemen:

The undersigned, City of San José Financing Authority (the “Authority”), refers to the Credit Agreement dated as of October 1, 2017 (the “Agreement”) among the Authority, the City of San José, California and Wells Fargo Bank, National Association (the “Bank”), and hereby notifies the Bank of the Authority’s intended delivery of Tax Exempt Note to the Bank as follows:

- (i) Date on which the Tax Exempt Note will be issued: _____.
- (ii) Stated principal amount of the Tax Exempt Note: _____.

The Authority hereby represents and warrants that all conditions to the issuance of the Tax Exempt Note in Sections 2.01, 2.04 and 3.02 have been satisfied.

Very truly yours,

CITY OF SAN JOSE FINANCING
AUTHORITY

By: _____
Name: _____
Title: _____

cc: Mary Lou Lopez

EXHIBIT C

[FORM OF TAXABLE NOTE]

<u>NUMBER</u>	<u>PRINCIPAL AMOUNT</u>
R-1	NOT TO EXCEED \$300,000,000 OUTSTANDING AT ANY ONE TIME

**CITY OF SAN JOSE FINANCING AUTHORITY
SUBORDINATE WASTEWATER REVENUE TAXABLE NOTE**

INTEREST RATE	DATED	CUSIP
Variable	October __, 2017	

REGISTERED OWNER: WELLS FARGO BANK, NATIONAL ASSOCIATION

CITY OF SAN JOSE FINANCING AUTHORITY, a joint powers authority and public entity of the State of California (the "Authority"), for value received, hereby promises to pay (but only out of the Authority Revenues pledged therefor as hereinafter mentioned) to the Registered Owner specified above (the "Registered Owner"), on the Termination Date (as defined in the Credit Agreement, dated as of October 1, 2017, among the Authority, the City of San José (the "City") and Wells Fargo Bank, National Association (the "Bank") (as amended from time to time in accordance with its terms, the "Credit Agreement")) the outstanding principal amount hereof, in lawful money of the United States of America; and to pay interest thereon (but only from said Authority Revenues) in like lawful money on the dates provided in the Credit Agreement at the rates per annum determined pursuant to the Credit Agreement. All payments of principal hereof, and interest hereon, are payable to the Registered Owner not later than the time specified in the Credit Agreement on the day when due, in federal or other funds immediately available as provided in the Fee Letter Agreement (as defined in the Credit Agreement). This Note is issuable in denominations of \$1,000,000 and any amount in excess thereof. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

This Note is one of a duly authorized issue of notes of the Authority designated as "City of San José Financing Authority Subordinate Wastewater Revenue Taxable Notes" (the "Notes"), limited in aggregate principal amount to \$300,000,000 outstanding at any one time, and issued pursuant to the provisions of the Joint Exercise of Powers Act, constituting Title 1, Division 7, Chapter 5 of the Government Code of the State of California (the "Act"), and the Credit Agreement. Subject to the terms of the Credit Agreement, Advances may be made on this Note, this Note may be prepaid, and the principal amount of this Note that is paid or prepaid by the Authority may again be Advanced under this Note. The Notes are issued for the purpose of financing the acquisition, construction and installation from time to time of certain improvements, additions, and betterments to, and extensions and replacements of, the Treatment Plant for the City and/or, subject to the terms of the Credit Agreement, the refunding of any

bonds, notes or other evidences of indebtedness of the Authority or the City issued or incurred for such purpose.

The Notes and the interest thereon are limited obligations of the Authority payable solely from the Authority Revenues (as that term is defined in the Credit Agreement), constituting installment payments (the “Installment Payments”) to be made by the City to the Authority pursuant to the Subordinate Installment Purchase Contract, dated as of October 1, 2017 (as amended from time to time in accordance with its terms and the terms of the Credit Agreement, the “Installment Purchase Agreement”), between the Authority and the City, and are secured by a pledge and assignment of said Authority Revenues, subject only to the provisions of the Credit Agreement permitting the application thereof for the purposes and on the terms and conditions set forth in the Credit Agreement. The Notes are further secured by an assignment of the right, title and interest of the Authority in the Installment Purchase Agreement (to the extent and as more particularly described in the Credit Agreement).

The Notes are limited obligations of the Authority and the principal thereof, premium, if any, and interest thereon, are payable solely from, and secured in accordance with their terms and the provisions of the Credit Agreement solely by, the Authority Revenues. The Notes are not a debt or liability of the State of California, the City or of any other political subdivision of the State of California other than the Authority or a pledge of the faith and credit of the State of California, the City or of any other political subdivision of the State of California, but shall be payable solely from the Authority Revenues. None of the State of California, the City, any other political subdivision of the State of California, or the Authority shall be obligated to pay the principal of, premium, if any, or interest on the Notes except from the Authority Revenues and neither the faith and credit nor the taxing power of the State of California, the City or of any political subdivision of the State of California is pledged to the payment of the principal of, premium, if any, or the interest on the Notes. The issuance of the Notes shall not directly or indirectly or contingently obligate the State of California, the City or any other political subdivision of the State of California to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. Notwithstanding anything herein or in the Credit Agreement, the Authority shall have no pecuniary liability under the Notes except that which can be satisfied from the Authority Revenues, and the Authority shall not be required to advance any moneys derived from any source other than the Authority Revenues for the payment of the principal of, premium, if any, or the interest on the Notes.

Reference is hereby made to the Credit Agreement (a copy of which is on file with the Authority) and to the Act for a description of the rights thereunder of the Registered Owner, of the nature and extent of the security for the Notes, and of the rights and obligations of the Authority thereunder, all of the provisions of which Credit Agreement are incorporated herein and to which the Registered Owner of this Note, by acceptance hereof, assents and agrees.

Interest

This Note shall bear interest on the outstanding principal amount hereof, for each day from and including the date the initial Advance is made hereunder until it is paid in full, at the Taxable Rate.

“Taxable Rate” means a per annum rate of interest established by the Calculation Agent on each Computation Date equal to the sum of the Taxable Applicable Spread plus the LIBOR Index. The Taxable Rate shall be rounded upwards to the fifth decimal place. Upon the occurrence and during the continuance of an Event of Default the Taxable Rate shall equal the Default Rate.

The Calculation Agent shall determine the applicable interest rate for this Note as of each applicable Computation Date, and such rate shall become effective on the Rate Reset Date next succeeding such Computation Date. Interest on the outstanding principal amount of this Note shall accrue each day during the applicable Interest Period. Interest on this Note shall be computed on the basis specified in the Credit Agreement.

Interest on the outstanding principal amount of this Note is payable monthly in arrears on each Interest Payment Date, on the date the outstanding principal of this Note is paid in full and, solely with respect to the portion of this Note being prepaid, on the date any portion of the principal of this Note is prepaid in part.

Optional Prepayment

The Authority may prepay this Note in whole at any time, or from time to time in part in amounts aggregating \$1,000,000 and any amount in excess thereof or, if the outstanding principal amount of this Note being prepaid is less than \$1,000,000, the total amount of this Note which is then outstanding, by giving notice to the Registered Owner by 11:00 a.m. on the date which is at least two Business Days prior to the date on which such prepayment is to be made and by paying to the Registered Owner the principal amount thereof to be prepaid together with accrued interest to the date of prepayment. Any such notice shall be irrevocable once received by the Registered Owner.

Payment of Principal after Termination Date

Notwithstanding anything to the contrary contained herein or in the Credit Agreement, in the event the Registered Owner does not receive repayment of the outstanding principal of this Note on or before the Termination Date, and provided that (A) no Default or Event of Default shall have occurred and be continuing and (B) the representations and warranties set forth in the Credit Agreement shall be true and correct on the Termination Date, then the Authority shall pay the outstanding principal amount of this Note (the “Amortization Amount”) in installments payable on each Amortization Principal Payment Date (each such payment, an “Amortization Principal Payment”), with the final installment in an amount equal to the remaining balance of the Amortization Amount on the Amortization End Date (the period commencing on the Termination Date and ending on the Amortization End Date is herein referred to as the “Amortization Period”). Each Amortization Principal Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Principal Payments over the Amortization Period so the Amortization Amount is fully repaid by the end of the Amortization Period. The Authority may prepay, or cause to be prepaid, some or all of the Amortization Amount on any date upon one Business Days’ notice to the Registered Owner, such prepayment to be accompanied by interest accrued thereon at the Bank Rate to the date of prepayment.

During the Amortization Period, interest on the Notes shall accrue at the Bank Rate and shall be payable in arrears on each Amortization Interest Payment Date.

Maximum Interest Rate

If the amount of interest payable on this Note for any period in accordance with the terms hereof or the Credit Agreement exceeds the amount of interest that would be payable on this Note for such period had interest for such period been calculated at the Maximum Interest Rate, then interest for such period shall be payable in an amount calculated at the Maximum Interest Rate for such period.

Any interest that would have been due and payable for any period but for the operation of the immediately preceding paragraph shall accrue and be payable on this Note as provided in this paragraph and shall, less interest actually paid to the Registered Owner, as applicable, for such period, constitute the "Excess Interest Amount." If there is any accrued and unpaid Excess Interest Amount as of any date with respect to this Note then the principal amount of this Note shall bear interest at the Maximum Interest Rate, until payment to the Registered Owner, of the entire Excess Interest Amount.

The Authority shall treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority shall not be affected by any notice to the contrary.

THE REGISTERED OWNER OF THIS NOTE WILL PURCHASE THE PRINCIPAL AMOUNT OF THIS NOTE IN INSTALLMENTS BY MAKING ADVANCES IN ACCORDANCE WITH THE TERMS OF THE CREDIT AGREEMENT. ACCORDINGLY, THE PRINCIPAL AMOUNT OF THIS NOTE WHICH HAS BEEN PURCHASED AND IS OUTSTANDING AT ANY GIVEN TIME MAY BE LESS THAN THE MAXIMUM PRINCIPAL AMOUNT OF THIS NOTE AS SET FORTH ON THE FACE OF THIS NOTE. THE REGISTERED OWNER OF THIS NOTE MAY MAKE A NOTATION ON THIS NOTE ON THE SCHEDULE ATTACHED HERETO AS TO THE DATE AND THE AMOUNT OF EACH ADVANCE AND AS TO EACH PAYMENT OF PRINCIPAL OF THIS NOTE, BUT THE FAILURE TO MAKE A NOTATION SHALL NOT RELIEVE THE AUTHORITY OF ITS OBLIGATIONS TO PAY THE OUTSTANDING PRINCIPAL OF THIS NOTE, TOGETHER WITH INTEREST HEREON, AS PROVIDED HEREIN AND IN THE CREDIT AGREEMENT.

PAYMENTS OF THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON THIS NOTE MAY BE MADE DIRECTLY TO THE REGISTERED OWNER HEREOF WITHOUT NOTATION HEREON. IT CANNOT BE DETERMINED FROM THE FACE OF THIS NOTE WHETHER ALL OR ANY PART OF SUCH PAYMENTS HAVE BEEN PAID.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to have happened and to have been performed precedent to and in the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by the provisions of the Act and by the Constitution and laws of the State of California, and that the amount of this Note, together with all other indebtedness of the Authority, does not exceed any

limit prescribed by the Act or the Constitution and laws of the State of California, and is not in excess of the amount of Notes permitted to be issued under the Credit Agreement.

IN WITNESS WHEREOF, CITY OF SAN JOSE FINANCING AUTHORITY has caused this Note to be executed in its name and on its behalf by the manual signature of its [Treasurer] as of the date set forth above.

CITY OF SAN JOSE FINANCING AUTHORITY

By: _____
[Treasurer]

ADVANCES AND PAYMENTS OF PRINCIPAL

Date	Amount Of Advance	Amount Of Principal Repaid	Unpaid Principal Balance	Notation Made By
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EXHIBIT D

[FORM OF TAX EXEMPT NOTE]

<u>NUMBER</u>	<u>PRINCIPAL AMOUNT</u>
R-__	\$ _____

**CITY OF SAN JOSE FINANCING AUTHORITY
SUBORDINATE WASTEWATER REVENUE NOTE, SERIES [__]**

<u>INTEREST RATE</u>	<u>DATED</u>	<u>CUSIP</u>
Variable		

REGISTERED OWNER: WELLS FARGO BANK, NATIONAL ASSOCIATION

CITY OF SAN JOSE FINANCING AUTHORITY, a joint powers authority and public entity of the State of California (the "Authority"), for value received, hereby promises to pay (but only out of the Authority Revenues pledged therefor as hereinafter mentioned) to the Registered Owner specified above (the "Registered Owner"), on the Termination Date (as defined in the Credit Agreement, dated as of October 1, 2017, among the Authority, the City of San José (the "City") and Wells Fargo Bank, National Association (the "Bank") (as amended from time to time in accordance with its terms, the "Credit Agreement")) the principal amount specified above or so much of such maximum authorized principal amount as may have been Advanced hereunder as provided in the Credit Agreement, in lawful money of the United States of America; and to pay interest thereon (but only from said Authority Revenues) in like lawful money on the dates provided in the Credit Agreement at the rates per annum determined pursuant to the Credit Agreement. All payments of principal hereof, and interest hereon, are payable to the Registered Owner not later than the time specified in the Credit Agreement on the day when due, in federal or other funds immediately available as provided in the Fee Letter Agreement (as defined in the Credit Agreement). This Note is issuable in denominations of \$1,000,000 and any amount in excess thereof. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

This Note is one of a duly authorized issue of notes of the Authority designated as "City of San José Financing Authority Subordinate Wastewater Revenue Notes, Series [__]" (the "Notes"), limited in aggregate principal amount to \$[_____], and issued pursuant to the provisions of the Joint Exercise of Powers Act, constituting Title 1, Division 7, Chapter 5 of the Government Code of the State of California (the "Act"), and the Credit Agreement. The Notes are issued for the purpose of financing the acquisition, construction and installation from time to time of certain improvements, additions, and betterments to, and extensions and replacements of, the Treatment Plant for the City and/or, subject to the terms of the Credit Agreement, the

refunding of any bonds, notes or other evidences of indebtedness of the Authority or the City issued or incurred for such purpose.

The Notes and the interest thereon are limited obligations of the Authority payable solely from the Authority Revenues (as that term is defined in the Credit Agreement), constituting installment payments (the “Installment Payments”) to be made by the City to the Authority pursuant to the Subordinate Installment Purchase Contract, dated as of October 1, 2017 (as amended from time to time in accordance with its terms and the terms of the Credit Agreement, the “Installment Purchase Agreement”), between the Authority and the City, and are secured by a pledge and assignment of said Authority Revenues, subject only to the provisions of the Credit Agreement permitting the application thereof for the purposes and on the terms and conditions set forth in the Credit Agreement. The Notes are further secured by an assignment of the right, title and interest of the Authority in the Installment Purchase Agreement (to the extent and as more particularly described in the Credit Agreement).

The Notes are limited obligations of the Authority and the principal thereof, premium, if any, and interest thereon, are payable solely from, and secured in accordance with their terms and the provisions of the Credit Agreement solely by, the Authority Revenues. The Notes are not a debt or liability of the State of California, the City or of any other political subdivision of the State of California other than the Authority or a pledge of the faith and credit of the State of California, the City or of any other political subdivision of the State of California, but shall be payable solely from the Authority Revenues. None of the State of California, the City, any other political subdivision of the State of California, or the Authority shall be obligated to pay the principal of, premium, if any, or interest on the Notes except from the Authority Revenues and neither the faith and credit nor the taxing power of the State of California, the City or of any political subdivision of the State of California is pledged to the payment of the principal of, premium, if any, or the interest on the Notes. The issuance of the Notes shall not directly or indirectly or contingently obligate the State of California, the City or any other political subdivision of the State of California to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. Notwithstanding anything herein or in the Credit Agreement, the Authority shall have no pecuniary liability under the Notes except that which can be satisfied from the Authority Revenues, and the Authority shall not be required to advance any moneys derived from any source other than the Authority Revenues for the payment of the principal of, premium, if any, or the interest on the Notes.

Reference is hereby made to the Credit Agreement (a copy of which is on file with the Authority) and to the Act for a description of the rights thereunder of the Registered Owner, of the nature and extent of the security for the Notes, and of the rights and obligations of the Authority thereunder, all of the provisions of which Credit Agreement are incorporated herein and to which the Registered Owner of this Note, by acceptance hereof, assents and agrees.

Interest

This Note shall bear interest on the outstanding principal amount hereof, for each day from and including the date the initial Advance is made hereunder until it is paid in full, at the Tax Exempt Rate.

“Tax Exempt Rate” means a per annum rate of interest established by the Calculation Agent on each Computation Date equal to the product of (a) the sum of (i) the Tax Exempt Applicable Spread plus (ii) the product of (A) the LIBOR Index multiplied by (B) the Applicable Factor multiplied by (b) the Margin Rate Factor. The Tax Exempt Rate shall be rounded upwards to the fifth decimal place. Upon the occurrence and during the occurrence of an Event of Default the Tax Exempt Rate shall equal the Default Rate.

The Calculation Agent shall determine the applicable interest rate for this Note as of each applicable Computation Date, and such rate shall become effective on the Rate Reset Date next succeeding such Computation Date. Interest on the outstanding principal amount of this Note shall accrue each day during the applicable Interest Period. Interest on this Note shall be computed on the basis specified in the Credit Agreement.

Interest on the outstanding principal amount of this Note is payable monthly in arrears on each Interest Payment Date, on the date the outstanding principal of this Note is paid in full and, solely with respect to the portion of this Note being prepaid, on the date any portion of the principal of this Note is prepaid in part.

Taxability

On and after a Taxable Date for this Note, this Note shall bear interest at the Taxable Rate until such time as another interest rate shall apply pursuant to the terms hereof.

“Taxable Rate” means a per annum rate of interest established by the Calculation Agent on each Computation Date equal to the sum of the Taxable Applicable Spread plus the LIBOR Index. The Taxable Rate shall be rounded upwards to the fifth decimal place. Upon the occurrence and during the continuance of an Event of Default the Taxable Rate shall equal the Default Rate.

Optional Prepayment

The Authority may prepay this Note in whole at any time, or from time to time in part in amounts aggregating \$1,000,000 and any amount in excess thereof or, if the outstanding principal amount of this Note being prepaid is less than \$1,000,000, the total amount of this Note which is then outstanding, by giving notice to the Registered Owner by 11:00 a.m. on the date which is at least two Business Days prior to the date on which such prepayment is to be made and by paying to the Registered Owner the principal amount thereof to be prepaid together with accrued interest to the date of prepayment. Any such notice shall be irrevocable once received by the Registered Owner.

Payment of Principal after Termination Date

Notwithstanding anything to the contrary contained herein or in the Credit Agreement, in the event the Registered Owner does not receive repayment of the outstanding principal of this Note on or before the Termination Date, and provided that (A) no Default or Event of Default shall have occurred and be continuing and (B) the representations and warranties set forth in the Credit Agreement shall be true and correct on the Termination Date, then the Authority shall pay the outstanding principal amount of this Note (the “Amortization Amount”) in installments

payable on each Amortization Principal Payment Date (each such payment, an “Amortization Principal Payment”), with the final installment in an amount equal to the remaining balance of the Amortization Amount on the Amortization End Date (the period commencing on the Termination Date and ending on the Amortization End Date is herein referred to as the “Amortization Period”). Each Amortization Principal Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Principal Payments over the Amortization Period so the Amortization Amount is fully repaid by the end of the Amortization Period. The Authority may prepay, or cause to be prepaid, some or all of the Amortization Amount on any date upon one Business Days’ notice to the Registered Owner, such prepayment to be accompanied by interest accrued thereon at the Bank Rate to the date of prepayment.

During the Amortization Period, interest on the Notes shall accrue at the Bank Rate and shall be payable in arrears on each Amortization Interest Payment Date.

Maximum Interest Rate

If the amount of interest payable on this Note for any period in accordance with the terms hereof or the Credit Agreement exceeds the amount of interest that would be payable on this Note for such period had interest for such period been calculated at the Maximum Interest Rate, then interest for such period shall be payable in an amount calculated at the Maximum Interest Rate for such period.

Any interest that would have been due and payable for any period but for the operation of the immediately preceding paragraph shall accrue and be payable on this Note as provided in this paragraph and shall, less interest actually paid to the Registered Owner, as applicable, for such period, constitute the “Excess Interest Amount.” If there is any accrued and unpaid Excess Interest Amount as of any date with respect to this Note then the principal amount of this Note shall bear interest at the Maximum Interest Rate, until payment to the Registered Owner, of the entire Excess Interest Amount.

The Authority shall treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority shall not be affected by any notice to the contrary.

THIS NOTE IS BEING ISSUED AS A DRAW-DOWN NOTE, IN THAT THE REGISTERED OWNER OF THIS NOTE WILL PURCHASE THE PRINCIPAL AMOUNT OF THIS NOTE IN INSTALLMENTS BY MAKING ADVANCES IN ACCORDANCE WITH THE TERMS OF THE CREDIT AGREEMENT. ACCORDINGLY, THE PRINCIPAL AMOUNT OF THIS NOTE WHICH HAS BEEN PURCHASED AND IS OUTSTANDING AT ANY GIVEN TIME MAY BE LESS THAN THE MAXIMUM PRINCIPAL AMOUNT OF THIS NOTE AS SET FORTH ON THE FACE OF THIS NOTE. THE REGISTERED OWNER OF THIS NOTE MAY MAKE A NOTATION ON THIS NOTE ON THE SCHEDULE ATTACHED HERETO AS TO THE DATE AND THE AMOUNT OF EACH ADVANCE AND AS TO EACH PAYMENT OF PRINCIPAL OF THIS NOTE, BUT THE FAILURE TO MAKE A NOTATION SHALL NOT RELIEVE THE AUTHORITY OF ITS OBLIGATIONS TO PAY THE OUTSTANDING PRINCIPAL OF THIS NOTE, TOGETHER WITH INTEREST HEREON, AS PROVIDED HEREIN AND IN THE CREDIT AGREEMENT.

PAYMENTS OF THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON THIS NOTE MAY BE MADE DIRECTLY TO THE REGISTERED OWNER HEREOF WITHOUT NOTATION HEREON. IT CANNOT BE DETERMINED FROM THE FACE OF THIS NOTE WHETHER ALL OR ANY PART OF SUCH PAYMENTS HAVE BEEN PAID.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to have happened and to have been performed precedent to and in the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by the provisions of the Act and by the Constitution and laws of the State of California, and that the amount of this Note, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Act or the Constitution and laws of the State of California, and is not in excess of the amount of Notes permitted to be issued under the Credit Agreement.

IN WITNESS WHEREOF, CITY OF SAN JOSE FINANCING AUTHORITY has caused this Note to be executed in its name and on its behalf by the manual signature of its [Treasurer] as of the date set forth above.

CITY OF SAN JOSE FINANCING AUTHORITY

By: _____
[Treasurer]

ADVANCES AND PAYMENTS OF PRINCIPAL

Date	Amount Of Advance	Amount Of Principal Repaid	Unpaid Principal Balance	Notation Made By
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EXHIBIT E

[FORM OF REQUEST FOR EXTENSION]

REQUEST FOR EXTENSION

Wells Fargo Bank, National Association
333 Market Street, 15th Floor
MAC A0109-152
San Francisco, CA 94105
Attention: Mary Lou Lopez

Ladies and Gentlemen:

Reference is hereby made to that certain Credit Agreement, dated as of October 1, 2017 (the “Agreement”), among the City of San José Financing Authority (the “Authority”), the City of San José, California and Wells Fargo Bank, National Association (the “Bank”). All capitalized terms contained herein which are not specifically defined shall be deemed to have the definition set forth in the Agreement. The Authority hereby requests, pursuant to Section 2.10 of the Agreement, that the Stated Expiration Date for the Agreement be extended by [IDENTIFY APPROPRIATE PERIOD]. The Authority hereby represents and warrants that:

- (a) no Default or Event of Default has occurred and is continuing; and
- (b) all representations and warranties of the Authority under the Agreement are true and correct and are deemed to be made on the date hereof.

We have enclosed along with this request the following information:

1. The nature of any and all Defaults and Events of Default; and
2. Any other pertinent information previously requested by the Bank.

The Bank is requested to notify the Authority of its decision with respect to this request for extension within 30 days of the date of receipt hereof. If the Bank fails to notify the Authority of its decision within such 30 day period, the Bank shall be deemed to have rejected such request.

Very truly yours,

CITY OF SAN JOSE FINANCING
AUTHORITY

By: _____
Name: _____
Title: _____

EXHIBIT F

[FORM OF EXTENSION NOTICE]

[DATE]

City of San José Financing Authority
200 East Santa Clara Street, 13th Floor
San Jose, CA 95113
Attention: Debt Management

Ladies and Gentlemen:

The undersigned, duly authorized officer of Wells Fargo Bank, National Association (the “Bank”) hereby advise you, with reference to the Credit Agreement dated as of October 1, 2017 (the “Agreement”) among the City of San José, California, the Bank and the City of San José Financing Authority (the “Authority”) (any capitalized term used herein and not defined shall have its respective meaning as set forth in the Agreement), that [Complete as Appropriate]:

1. At the request and for the account of the Authority, we hereby extend the date referenced in the definition of “Stated Expiration Date” in the Agreement (as such date may have been extended previously from time to time) to _____.
2. Except as specifically provided in paragraph (1) above, all of the terms and conditions of the Agreement remain unchanged and in full force and effect.
3. [This Notice of Extension is an integral part of the Agreement.]

OR

[The Stated Expiration Date will not be extended at this time.]

Sincerely,

WELLS FARGO BANK, NATIONAL
ASSOCIATION

By: _____
Name: _____
Title: _____

EXHIBIT G

FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: _____, _____

To: Wells Fargo Bank, National Association
333 Market Street, 15th Floor
MAC A0109-152
San Francisco, CA 94105
Attention: Mary Lou Lopez

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of October 1, 2017 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement;" the terms defined therein being used herein as therein defined), among the City of San José Financing Authority (the "*Authority*"), the City of San José, California (the "*City*") and Wells Fargo Bank, National Association, (the "*Bank*").

The undersigned Authorized Officer hereby certifies as of the date hereof that he/she is the _____ of the /City, and that, as such, he/she is authorized to execute and deliver this Certificate to the Bank on the behalf of the City, and that:

1. Attached hereto as Schedule 1 are the year-end audited financial statements required by Section 5.02(a)(i) of the Agreement for the fiscal year of the City ended as of the above date, together with the report and opinion of an independent certified public accountant required by such section.

2. The undersigned has reviewed and is familiar with the terms of the Agreement and has made, or has caused to be made under his/her supervision, a review of the transactions and condition (financial or otherwise) of the City during the accounting period covered by the attached financial statements.

3. A review of the activities of the City during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period the Authority and the City performed and observed all their respective obligations under the Related Documents, and

[select one:]

[to the best knowledge of the undersigned during such fiscal period, the Authority and the City performed and observed each covenant and condition of the Related

Documents applicable to it, and no Default or Event of Default has occurred and is continuing.]

--or--

[the following covenants or conditions have not been performed or observed and the following is a list of each such Default or Event of Default and its nature and status:]

4. The representations and warranties of the Authority and the City contained in Article V of the Agreement are true and correct on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Certificate, the representations and warranties contained in Article IV of the Agreement shall be deemed to refer to the most recent statements furnished pursuant to Section 5.02(a)(i) of the Agreement, including the statements in connection with which this Certificate is delivered.

5. [Discuss calculation of the Net System Revenues generated in the period and calculation of the Coverage Requirement]

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of _____, _____.

CITY OF SAN JOSE

By: _____
Name: _____
Title: _____