

RESOLUTION NO. 20-01 (PFFC)

A RESOLUTION OF THE CITY OF SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION APPROVING INSTALLMENT SALE FINANCING IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$50,000,000 TO PROVIDE INTERIM FINANCING FOR CAPITAL COSTS OF THE SAN JOSÉ-SANTA CLARA REGIONAL WASTEWATER FACILITY, AND APPROVING FINAL FORM OF FINANCING DOCUMENTS AND OFFICIAL ACTIONS

BE IT RESOLVED BY THE CITY OF SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION AS FOLLOWS:

WHEREAS, the City of Santa Clara (the "City") owns and operates facilities and property for the collection and transmission of wastewater within the service area of the City (the "Wastewater System"), and wastewater which is collected by the City is transmitted for treatment to the San José-Santa Clara Regional Wastewater Facility (the "Wastewater Treatment Facility") which is co-owned by the City and the City of San José pursuant to that certain Sewage Plant Agreement dated March 30, 1959, as amended (the "Wastewater Treatment Agreement");

WHEREAS, under the Wastewater Treatment Agreement, the City is obligated to contribute its share of the capital costs of improvements to the Wastewater Treatment Facility, and the City is currently obligated to contribute funds towards the cost of constructing certain improvements to the Wastewater Treatment Facility ("Project");

WHEREAS, the City has determined that it is in its best interests to provide interim financing for the Project and in order to implement such financing the City has proposed to enter into an Installment Sale Agreement (the "Installment Sale Agreement") with the City of Santa Clara Public Facilities Financing Corporation (the "Financing Corporation") pursuant to which the Financing Corporation agrees to provide financing for the Project and to sell the completed Project to the City in consideration of the payment by the City of periodic installment payments (the "Installment Payments"), which are payable from and secured by a pledge of and lien on the net revenues of the Wastewater System;

WHEREAS, in order to provide the funds needed to finance the Project in an amount not exceeding \$50,000,000, the Financing Corporation proposes to assign the Installment Payments to JPMorgan Chase Bank, N.A., as lender (the "Lender"); and,

WHEREAS, the Board of Directors of the Financing Corporation approves all of said transactions in furtherance of the public purposes of the Financing Corporation, and the Board of Directors wishes at this time to authorize all proceedings and documents relating to the financing for the Project as described herein.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION AS FOLLOWS:

1. That ...

A. Approval of Financing Plan and Related Documents. The Board of Directors hereby approves the financing plan outlined above, and in accordance with the proposal submitted to the City by the Lender in the form on file with the Secretary.

B. Installment Sale Agreement. The Board of Directors hereby approves the Installment Sale Agreement relating to the financing of the Project, between the City and the Financing Corporation, in the form thereof on file with the Secretary together with any changes therein or additions thereto deemed advisable by the Executive Director, whose execution thereof shall be conclusive evidence of such approval. The Executive Director is hereby authorized and directed for and in the name and on behalf of the Financing Corporation to execute, and the Secretary is hereby authorized and directed to attest to, the final form of the Installment Sale Agreement on behalf of the Financing Corporation.

C. Assignment to Lender. The hereby approves the assignment to the Lender of certain rights of the Financing Corporation under the Installment Sale Agreement, including the right to receive the Installment Payments. Such assignment shall be made pursuant to an Assignment Agreement among the City, the Financing Corporation and the Lender in substantially the form on file with the Secretary, together with any changes therein or additions thereto deemed advisable by

the Executive Director, whose execution thereof shall be conclusive evidence of such approval. The Executive Director is hereby authorized and directed for and in the name and on behalf of the Financing Corporation to execute, and the Secretary is hereby authorized and directed to attest to, the final form of the Assignment Agreement on behalf of the Financing Corporation.

D. Official Actions. The President, the Executive Director, the Director of Finance, the Secretary and all other officers of the Financing Corporation are each authorized and directed in the name and on behalf of the Financing Corporation to make any and all assignments, certificates, requisitions, agreements, notices, consents and other instruments of conveyance and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this Resolution any officer of the Financing Corporation is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

2. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this Resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution. The hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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3. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION, AT A REGULAR MEETING THEREOF HELD ON THE 26TH DAY OF MAY, 2020, BY THE FOLLOWING VOTE:


AYES: DIRECTORS: Chahal, Davis, Hardy, O'Neill, and Watanabe, and Mayor Gillmor

NOES: DIRECTORS: None

ABSENT: DIRECTORS: None

ABSTAINED: DIRECTORS: None

ATTEST:



NORA PIMENTEL, MMC
SECRETARY OF THE SANTA CLARA PUBLIC
FACILITIES FINANCING CORPORATION

Attachments incorporated by reference:

1. Installment Sale Agreement
2. Assignment Agreement

INSTALLMENT SALE AGREEMENT

This INSTALLMENT SALE AGREEMENT (together with any amendments hereof and supplements hereto, this "Agreement"), dated as of June 1, 2020, is between the CITY OF SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), as seller, and the CITY OF SANTA CLARA, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California (the "City"), as purchaser.

BACKGROUND :

1. The City owns and operates facilities and property for the collection and transmission of wastewater within the service area of the City (the "Wastewater System"), and wastewater which is collected by the City is transmitted for treatment to the San José-Santa Clara Regional Wastewater Facility (the "Wastewater Treatment Facility") which is co-owned by the City and the city of San José, pursuant to that certain Sewage Plant Agreement dated March 30, 1959, as amended, between the City and the city of San José (the "Wastewater Treatment Agreement").

2. Under the Wastewater Treatment Agreement, the City is obligated to contribute its share of the capital costs of improvements to the Wastewater Treatment Facility, and the City is currently obligated to contribute funds for the capital costs of improving the Wastewater Treatment Facility (the "Project").

3. The Corporation has been formed for the purpose of assisting the City in the financing of public capital improvements, and in order to provide funds to finance the Project the Corporation has proposed to enter into this Agreement with the City under which the Corporation agrees to provide financing for the Project and to sell the completed Project to the City in consideration of the agreement by the City to pay the purchase price of the Project in semiannual installments (the "Installment Payments").

4. For the purpose of obtaining the moneys required to finance the construction of the Project in accordance with the terms hereof, the Corporation has assigned and transferred certain of its rights under this Agreement to JPMorgan Chase Bank, N.A. (the "Assignee"), under an Assignment Agreement dated as of June 1, 2020, among the City, the Corporation and the Assignee.

5. The City and the Corporation have previously entered into an Installment Sale Agreement dated November 8, 2016 (the "Trimble Road ISA"), for the purpose of providing financing for the rehabilitation and replacement of the Trimble Road trunk sanitary sewer pipelines, under which the City is obligated to pay semiannual installment payments in the aggregate principal amount of \$12,000,000 (the "Trimble Road Installment Payments").

5. The Installment Payments will be payable from and secured by a pledge of and lien on the net revenues of the Wastewater System on a subordinate basis to the Trimble Road Installment Payments.

A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Corporation formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement shall have the following respective meanings given to them in this Section.

"Additional Revenues" means, with respect to the issuance of any Parity Debt, any or all of the following amounts:

- (a) An allowance for Net Revenues from any additions or improvements to or extensions of the Wastewater System to be financed from the proceeds of such Parity Debt or from any other source but in any case which, during all or any part of the most recent completed Fiscal Year for which audited financial statements are available or for any other 12-month period selected by the City under Section 5.7(b), were not in service, all in an amount equal to 100% of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first 36-month period in which each addition, improvement or extension is to be in operation, all as shown by the certificate or opinion of a Financial Consultant.
- (b) An allowance for Net Revenues arising from any increase in the charges made for service from the Wastewater System which has been adopted prior to the incurring of such Parity Debt but which, during all or any part of such Fiscal Year or such 12-month period, was not in effect, in an amount equal to the total amount by which the Net Revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year or such 12-month period, all as shown by the certificate or opinion of a Financial Consultant.

"Advances" means amounts funded by the Assignee to the City pursuant to a Funding Request.

"Applicable Law" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement,

interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case, whether or not having the force of law.

“Assignee” means JPMorgan Chase Bank, N.A., as assignee of certain rights of the Corporation hereunder, its successors and assigns.

“Assignment Agreement” means the Assignment Agreement dated as of June 1, 2020, between the Corporation and the Assignee, including any authorized amendments thereto.

“Authorized Amount” means the amount of \$50,000,000, being the maximum amount of funding to be provided by the Assignee for the payment of Project Costs.

“Authorized Representative” means: (a) with respect to the Corporation, its Executive Director, Chief Financial Officer, Secretary or any other person designated as an Authorized Representative of the Corporation by a Written Certificate of the Corporation signed by its Executive Director and filed with the City and the Assignee; and (b) with respect to the City, its City Manager, Director of Finance, Director of Water and Sewer Utilities, City Attorney, Assistant City Clerk, or any other person designated as an Authorized Representative of the City by a Written Certificate of the City signed by its City Manager and filed with the Corporation and the Assignee.

“Availability” means the Commitment minus the sum of the outstanding principal amount of all Advances at such time.

“Bond Counsel” means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income for purposes of federal income taxation under Section 103 of the Tax Code.

“Business Day” means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California are closed.

“City” means the City of Santa Clara, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California.

“Closing Date” means June 11, 2020, being the date of execution and delivery of this Agreement.

“Commitment” means, on the Closing Date, an initial amount equal to \$50,000,000 and thereafter such initial amount adjusted from time to time, including downward to zero upon the expiration or termination of the Commitment in accordance with the terms hereof, including, but not limited to, upon the occurrence of an Event of Default hereunder; *provided, that*, after giving effect to any of the foregoing adjustments the Commitment shall never exceed the Authorized Amount at any one time. Advances under the Commitment are non-revolving.

“Connection Charges” means all amounts levied by the City as a fee for connecting to the Wastewater System, as such fee is established from time to time under Section 66013 of the Government Code of the State of California.

"Corporation" means the City of Santa Clara Public Facilities Financing Corporation, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California.

"Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the City or the Corporation relating to the execution and delivery of this Agreement, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of Bond Counsel, the City's municipal advisor and legal counsel to the Assignee, financing discounts, legal fees and charges, insurance fees and charges, financial and other professional consultant fees, and any charges and fees in connection with the foregoing.

"Date of Taxability" means the date from and for the interest component of the Installment Payments is subject to federal or State income taxation as a result of a Determination of Taxability.

"Default Rate" means, as of any date, the rate at which the interest components of the Installment Payments are calculated, plus 400 basis points.

"Determination of Taxability" means and shall be deemed to have occurred on the first to occur of the following:

- (i) on that date when the City files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have occurred;
- (ii) on the date when the Assignee notifies the City that it has received a written opinion from Bond Counsel to the effect that an Event of Taxability has occurred, which notice shall be accompanied by a copy of such opinion of Bond Counsel, unless, within 180 days after receipt by the City of such notification and copy of such opinion from the Assignee, the City shall deliver to the Assignee a ruling or determination letter issued to or on behalf of the City by the Commissioner or any District Director of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;
- (iii) on the date when the City shall be advised in writing by the Commissioner or any District Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon any review or audit or upon any other ground whatsoever, an Event of Taxability has occurred; or
- (iv) on that date when the City shall receive notice from the Assignee that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed the interest component of the Installment Payments as

includable in the gross income of the Assignee due to the occurrence of an Event of Taxability;

provided, however, that no Determination of Taxability shall occur under subparagraph (iii) or subparagraph (iv) above unless the City has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; *provided further, however*, that upon demand from the Assignee, the City shall reimburse the Assignee for any payments, including any taxes, interest, penalties or other charges, such Assignee shall be obligated to make as a result of the Determination of Taxability.

“Environmental Laws” means any federal, state, or local law, rule or regulation now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, relating to health, safety, or the environment.

“Event of Default” means an event of default as described in Section 6.1.

“Event of Taxability” means a change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the City, or the failure to take any action by the City, or the making by the City of any misrepresentation in this Agreement or the certificate regarding federal arbitrage which has been executed and delivered by the City in connection with this Agreement) which has the effect of causing the interest component of the Installment Payments to be includable, in whole or in part, in the gross income of the Assignee for federal income tax purposes.

“Excess Investment Earnings” means an amount required to be rebated to the United States of America under Section 148(f) of the Tax Code due to investment of gross proceeds of the Installment Payments at a yield in excess of the yield on the Installment Payments.

“Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; and (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

“Financial Consultant” means any consultant or firm of consultants appointed by the City and who, or each of whom: (a) is judged by the City to have experience in matters relating to the financing of Wastewater System enterprises; (b) is in fact independent and not under domination of the City; and (c) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

“Fiscal Year” means the twelve-month period beginning on July 1 of any year and ending on June 30 of the next succeeding year, or any other twelve-month period selected by the City as its fiscal year.

"Funding Request" means a written request in the form of Appendix C submitted by the City to Assignee under Section 3.5 for the purpose of providing funds for the payment of Project Costs.

"Governmental Authority" means the government of the United States or any state or political subdivision thereof or any other nation or political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

"Gross Revenues" means all gross charges received for, and all other gross income and receipts derived by the City from, the ownership and operation of the Wastewater System or otherwise arising from the Wastewater System, including but not limited to investment earnings thereon and including Connection Charges; but excluding (a) the proceeds of any *ad valorem* property taxes levied for the purpose of paying general obligation bonds of the City relating to the Wastewater System, (b) the proceeds of any special assessments or special taxes levied upon real property within any improvement district for the purpose of paying special assessment bonds or special tax obligations of the City relating to the Wastewater System; and (c) customers' deposits or any other deposits subject to refund until such deposits have become the property of the City, or contributions in aid of construction.

"Independent Accountant" means any independent certified public accountant or firm of independent certified public accountants appointed and paid by the City, and who, or each of whom: (a) is in fact independent and not under domination of the City; (b) does not have any substantial interest, direct or indirect, with the City; and (c) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or other audits of the books of or reports to the City.

"Installment Payment Date" means January 1 and July 1 in each year, commencing January 1, 2021.

"Installment Payments" means all payments required to be paid by the City on any date under Section 4.4, including any amounts payable upon delinquent installments and including any prepayment thereof under Section 7.2.

"Joint Powers Agreement" means, collectively:

- (a) that certain agreement entitled "Master Agreement for Wastewater Treatment" dated as of March 1, 1983, between the City, the city of San José and the Cupertino Sanitary District, including all amendments and supplements thereto which are heretofore or hereafter executed and delivered by the parties to such agreement, their successors and assigns;
- (b) that certain agreement entitled "Master Agreement for Wastewater Treatment" dated as of March 1, 1983, between the City, the city of San José and County Sanitation District #4, including all amendments

and supplements thereto which are heretofore or hereafter executed and delivered by the parties to such agreement, their successors and assigns; and

- (c) that certain agreement entitled "Master Agreement for Wastewater Treatment" dated as of March 1, 1983, between the City, the City of San José and the city of Milpitas, including all amendments and supplements thereto which are heretofore or hereafter executed and delivered by the parties to such agreement, their successors and assigns.

"Maturity Date" means July 1, 2024.

"Maximum Annual Debt Service" means, as of the date of any calculation, the maximum sum obtained for the current or any future Fiscal Year during the Term of this Agreement by totaling the following amounts for such Fiscal Year:

- (a) the aggregate amount of the Trimble Road Installment Payments coming due and payable in such Fiscal Year;
- (b) the principal amount of all outstanding Parity Debt, if any, coming due and payable by their terms in such Fiscal Year; and
- (c) the amount of interest which would be due during such Fiscal Year on the aggregate principal amount of all outstanding Parity Debt, if any, which would be outstanding in such Fiscal Year if such Parity Debt is retired as scheduled.

With respect to the Installment Payments and any Parity Debt, debt service with respect thereto shall be calculated as follows:

- (i) For the Installment Payments and for any issue of Parity Debt the interest on which is computed at a variable rate, interest with respect thereto shall be calculated at the highest of: (i) the actual rate on the date of calculation, or if the indebtedness is not yet outstanding, the initial rate (if established and binding), (ii) if the indebtedness has been outstanding for at least 12 months, the average rate over the 12 months immediately preceding the date of calculation, or if no debt is outstanding for the 12 months under the authorizing document, the average rate borne by reference to an index comparable to that to be utilized in determining the interest rate for the debt to be issued, and (iii) (A) if interest on the indebtedness is excludable from gross income under the applicable provisions of the Tax Code, the most recently published Bond Buyer "Revenue Bond Index" (or comparable index if no longer published), or (B) if interest is not so excludable, the interest rate on direct U.S. Treasury obligations having comparable maturities.
- (ii) For the Installment Payments and for any issue of Parity Debt having more than 25% of the aggregate principal amount thereof coming due in any Fiscal Year, the amount of debt service shall be calculated on

the assumption that the amount of principal of and interest on such Parity Debt were payable over a 30-year term on a level debt service basis.

"Maximum Rate" means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

"Net Revenues" means, for any period, an amount equal to all of the Gross Revenues received during such period minus the amount required to pay all Operation and Maintenance Costs becoming payable during such period.

"Operation and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the City for maintaining and operating the Wastewater System, determined in accordance with generally accepted accounting principles, including but not limited to the following:

- (a) all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Wastewater System in good repair and working order;
- (b) all administrative costs of the City that are charged directly or apportioned to the operation of the Wastewater System, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums; and
- (c) amounts paid by the City under the Joint Powers Agreement as operation and maintenance costs of the San José / Santa Clara Water Pollution Control Plant.

"Operation and Maintenance Costs" do not include (i) the Trimble Road Installment Payments, the Installment Payments or payments of debt service on any Parity Debt, (ii) depreciation, replacement and obsolescence charges or reserves therefor, (iii) amortization of intangibles or other bookkeeping entries of a similar nature; and (iv) amounts paid by the City under the Joint Powers Agreement as capital costs of the San José / Santa Clara Water Pollution Control Plant.

"Parity Debt" means any bonds, notes, loans, leases, installment sale agreements or other obligations of the City payable from and secured by a pledge of and lien upon any of the Net Revenues on a parity with the Installment Payments, entered into or issued under and in accordance with Section 5.7.

"Parity Debt Documents" means, collectively, the indenture of trust, trust agreement or other document authorizing the issuance of any Parity Debt or any securities which evidence Parity Debt.

"Project" means the facilities, improvements and other property described more fully in Appendix B attached to this Agreement, as may be amended from time to time.

"Project Costs" means all costs of the acquisition, construction and installation of the Project which are paid from moneys on deposit in the Project Fund, including but not limited to:

- (a) all costs required to be paid to any person under the terms of any agreement for or relating to the acquisition, construction and installation of the Project;
- (b) obligations incurred for labor and materials in connection with the acquisition, construction and installation of the Project;
- (c) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect in connection with the acquisition, construction and installation of the Project;
- (d) all preliminary costs of the Project, including but not limited to design, environmental, engineering and architectural services, costs for testing, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees and costs for supervising construction, as well as for the performance of all other duties required by or consequent to the proper acquisition, construction and installation of the Project;
- (e) any sums required to reimburse the City for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the acquisition, construction and installation of the Project;
- (f) Costs of Issuance and other financing costs incurred in connection with the acquisition, construction and installation of the Project; and
- (g) the interest components of the Installment Payments during the period of acquisition, construction and installation of the Project.

"Project Fund" means the fund or account by that name established and held by the City under Section 3.6.

"Rate Stabilization Fund" means any fund established and held by the City as a fund for the stabilization of rates and charges imposed by the City with respect to the Wastewater System, which fund is established, held and maintained in accordance with Section 4.7.

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

"Taxable Date" means the date as of which the interest components of the Installment Payments are first includable in gross income of the recipient thereof as a

result of the occurrence of an Event of Taxability, as such date is established pursuant to either (a) a Determination of Taxability, or (b) an opinion of Bond Counsel.

"Taxable Period" means the period for which the interest components of the Installment Payments become includable in the gross income of the recipient thereof, commencing on the Taxable Date.

"Term" means the time during which this Agreement is in effect, as provided in Section 4.3.

"Trimble Road Installment Payments" means the installment payments which the City is obligated to pay under Section 4.4 of the Trimble Road ISA.

"Trimble Road ISA" means the Installment Sale Agreement dated November 8, 2016, between the Corporation and the City, as amended from time to time in accordance with the terms thereof.

"Undrawn Fees" has the meaning given that term in Section 4.5.

"Unutilized Commitment" means the Commitment less outstanding Advances and less an amount equal to any reduction thereof effected pursuant to Article IV.

"Wastewater Fund" means the fund or funds established and held by the City with respect to the Wastewater System for the receipt and deposit of Gross Revenues.

"Wastewater System" means the entire system of the City for the collection and transmission of wastewater, including but not limited to all facilities, properties and improvements at any time owned, controlled or operated by the City for the collection and transmission of wastewater within the service area of the City, and any necessary lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto at any time acquired, constructed or installed by the City.

"Written Certificate" of the Corporation or the City means, respectively, a written certificate, request or requisition signed in the name of the Corporation or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

SECTION 1.2. *Interpretation.*

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

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

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

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

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

- (a) Due Organization and Existence. The City is a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California, and is empowered, among other things, to maintain and operate the Wastewater System and to acquire in the name of the City any interest in real or personal property necessary or convenient for the operation of the Wastewater System.
- (b) Due Authorization. The laws of the State authorize the City to enter into this Agreement, and to enter into the transactions contemplated hereby and to carry out its obligations hereunder.
- (c) No Conflicts. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the financial condition, assets, properties or operations of the City, including but not limited to the performance of the City's obligations under this Agreement.
- (d) Valid, Binding and Enforceable Obligations. This Agreement has been duly authorized, executed and delivered by the City and constitutes the legal, valid and binding agreements of the City enforceable against the City in accordance with its terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors'

rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.

- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement, or the financial conditions, assets, properties or operations of the City, including but not limited to the payment and performance of the City's obligations under this Agreement.
- (g) No Prior Defaults. No lease, rental agreement, installment sale agreement, lease-purchase agreement, loan, note, payment agreement or contract for purchase to which the City has been a party at any time during the past ten years has been terminated by the City as a result of either insufficient funds available in any Fiscal Year, or due to the non-payment of required payments. No event has occurred which would constitute a payment-related event of default under any debt, note, revenue bond or obligation which the City has issued during the past ten years.
- (g) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement, or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.
- (h) Financial Information. The financial information concerning the City heretofore delivered to the Assignee is complete and correct and fairly presents the financial condition of the City for the period(s) referred to and has been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the period(s) involved. There are no liabilities (of the type required to be reflected on balance sheets prepared in accordance with generally accepted accounting principles), direct or indirect, fixed or contingent, of the City as of the date of such financial information which are not reflected therein. There has been no material adverse change in the financial condition or operations of the City since the

date of such information (and to the City's knowledge no such material adverse change is pending or threatened), and the City has not guaranteed the obligations of, or made any investment in or loans to, any person except as disclosed in such information. The City has good and marketable title to all of its properties and assets related to the Project, and all of such properties and assets are free and clear of encumbrances, except as reflected in such financial information. To the best of the City's knowledge, no document furnished nor any representation, warranty or other written statement made to the Assignee in connection with the negotiation, preparation or execution of this Agreement contains any untrue or misleading statement of a material fact.

- (i) Adequacy of Net Revenues. The City has structured fees, estimated revenues and/or taken other lawful actions necessary to ensure that the pledge of and lien on Net Revenues are sufficient to pay the Installment Payments when due and payable, and such moneys have been and will continue to be applied in the funds and accounts as required herein and towards payment of the Installment Payments when due and payable.
- (j) Completion of Project. The City has an immediate need for, and expects to make immediate use of, the Project, which need is not temporary or expected to diminish during the Term of this Agreement. To the extent the City is or may be required to use additional revenues or spend additional money to complete the Project or make the Project useable, the City represents, warrants and covenants to take all required actions to complete the Project and make the Project useable. The City presently intends to continue this Agreement and make all Installment Payments required hereunder for the entire Term of this Agreement.
- (k) Compliance with Trimble Road ISA. The City is in full compliance with the terms and provisions of the Trimble Road ISA. No event has occurred which constitutes an event of default under the Trimble Road ISA or which, with the passage of time, if not cured, would constitute an event of default under the Trimble Road ISA.
- (l) Environmental. The Project and the Wastewater System is in full compliance with all applicable Environmental Laws.
- (m) Sufficient Funds. The City reasonably believes that sufficient funds can be obtained to make all Installment Payments, the Undrawn Fees and all other amounts required to be paid pursuant to this Agreement.
- (n) Tax-Exempt Status. The City has not taken any action or omitted to take any action, and has no actual knowledge of any action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Installment Payments from gross income for federal income tax purposes.

- (o) Role of Assignee. The City acknowledges that (i) the Assignee, as the assignee of the Corporation under the Assignment Agreement, is acting solely for its own loan account and not as a fiduciary for the City or in the capacity of broker, dealer, placement agent, municipal securities underwriter or municipal advisor, (ii) the Assignee has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the City or with respect to this Agreement and the financing related thereto, and (iii) the Assignee has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, or the correctness of any legal interpretation made by counsel to any other party with respect to any such matters.

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

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

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

- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Corporation, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery hereof or of the Assignment Agreement, or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Corporation after reasonable investigation, threatened against or affecting the Corporation or the assets, properties or operations of the Corporation which, if determined adversely to the Corporation or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement, or upon the financial condition, assets, properties or operations of the Corporation, and the Corporation is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the financial conditions, assets, properties or operations of the Corporation, including but not limited to the performance of the Corporation's obligations hereunder and under the Assignment Agreement.

ARTICLE III

ACQUISITION AND CONSTRUCTION OF THE PROJECT

SECTION 3.1. *Deposit of Moneys.* The Corporation hereby agrees to cause the Project to be acquired, constructed and improved as provided in Section 3.2, and to sell the completed Project to the City as provided in Section 4.1. In order to provide funds for the construction of the Project, the Corporation shall assign certain of its rights under this Agreement, including the right to receive the Installment Payments from the City, to the Assignee under the Assignment Agreement, and to cause the proceeds of such assignment to be deposited into the Project Fund as provided in Section 3.5.

SECTION 3.2. *Acquisition and Construction of the Project.* The Corporation hereby agrees with due diligence to supervise and provide for, or cause to be supervised and provided for, the acquisition, construction and installation of the Project in accordance with

the plans and specifications, purchase orders, construction contracts and other documents relating thereto and approved by the City under all applicable requirements of law. All contracts for, and all work relating to, the acquisition, construction and installation of the Project are subject to all applicable provisions of law relating to the acquisition and construction of public works by the City. The failure of the Corporation to complete the Project by its expected completion date does not constitute an Event of Default hereunder or a grounds for termination hereof, nor does any such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Installment Payments when due hereunder.

SECTION 3.3. *Appointment of City as Agent.* The Corporation hereby appoints the City as its agent to carry out all phases of the acquisition, construction and installation of the Project under and in accordance with the provisions hereof. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Corporation regarding the acquisition, construction and installation of the Project. As agent of the Corporation hereunder, the City shall execute all duties under this Agreement, including, but not limited to, entering into, administer and enforce all purchase orders or other contracts relating to the Project. Payment of Project Costs will be made by the City from amounts held by it in the Project Fund in accordance with the provisions of this Agreement.

SECTION 3.4. *Project Description.* The City has the right to specify the exact scope, nature and identification of the Project and the respective components thereof. The City may from time to time change or modify the description of the Project or any component thereof.

SECTION 3.5. *Funding of Project Costs.*

(a) Initial Funding on Closing Date. On the Closing Date, Assignee shall advance funds in the amount of \$20,000,000 for payment of Costs of Issuance and other Project Costs. Thereafter, the City may cause an increase in the funded amount and a corresponding deposit into the Project Fund in an amount that does not result in the aggregate amount of deposits into the Project Fund by the Assignee to exceed the Authorized Amount.

(b) Subsequent Funding Requests. The City may request the Assignee to provide additional funds for the payment of Project Costs and deposit such funds into the Project Fund once each month over a 36-month period, commencing July 1, 2020, by submitting to Assignee a Funding Request, substantially in the form attached hereto as Appendix C. Provided that all conditions are met as set forth therein, the Assignee shall approve all such Funding Requests submitted by the City. Any such funded amounts shall be deposited into the Project Fund as set forth in the Funding Request. The Assignee shall fund the draws within three Business Days following receipt of a Funding Request. Following each advance of funds, the funded amount shall be added to the outstanding principal amount of the Installment Payments and shall begin to accrue interest in accordance with Section 4.4. All amounts advanced to the City by the Assignee hereunder shall be deposited in the Project Fund and applied for the purposes thereof.

(c) Election to Reduce Commitment. The City shall have the right to reduce the Commitment at any time upon not less than 30 days' written notification to the Assignee. Such written notification shall be executed by an Authorized Representative and shall (a)

request that the Commitment be reduced, and (b) state that the remaining Commitment is sufficient in the judgment of the City to provide funding for all remaining Project Costs which are intended to be paid by the City.

(d) Final Funding Request. The City may submit written notification at any time that the City does not intend to submit any further Funding Requests and desires to relinquish all or a portion of any unfunded Commitment as specified in such notification.

On the date the City submits written notification to the Assignee that the City does not intend to submit any additional Funding Requests and desires to relinquish all or a portion of any unfunded Commitment, the amount not so advanced shall lapse and the Authorized Amount shall be irrevocably reduced.

SECTION 3.6. *Project Fund.* The City shall establish and maintain a special fund or account designated as the "Project Fund" to be held by the City and which shall be accounted for as a separate fund or account. The City shall deposit all amounts advanced to it by the Assignee under the Assignment Agreement in the Project Fund promptly upon receipt of such amounts. Except as otherwise provided herein, moneys in the Project Fund shall be used solely for the payment of the Project Costs. The City shall disburse moneys in the Project Fund from time to time to pay Project Costs (or to reimburse the City for payment of Project Costs). The City shall maintain accurate records showing all disbursements from the Project Fund. The City shall invest proceeds in the Project Fund in investments authorized by California law and the City's investment policy.

SECTION 3.7. *Certificate of Completion.* Upon the completion of the Project, but in any event not later than 30 days following such completion, an Authorized Representative of the City shall execute and deliver to the Corporation and the Assignee a Written Certificate of the City which (a) states that the construction of the Project has been substantially completed, (b) identifies the total Project Costs thereof, and (c) identifies the amounts, if any, to be reserved in the Project Fund for payment of future Project Costs.

ARTICLE IV

INSTALLMENT SALE OF PROJECT; INSTALLMENT PAYMENTS

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

SECTION 4.2. *Title.* Title to the Project, and each component thereof, will be deemed conveyed by the Corporation to and vested in the City upon the completion of the acquisition, construction and installation thereof. The Corporation and the City will execute, deliver and cause to be recorded any and all documents reasonably required by the City to consummate the transfer of title to the Project.

SECTION 4.3. *Term of this Agreement.* The Term of this Agreement commences on the Closing Date and ends on the Maturity Date (provided the City has paid all

Installment Payments and other amounts due hereunder through such date), unless such term is extended or sooner terminated as provided herein.

SECTION 4.4. *Installment Payments.*

(a) Obligation to Pay. The City agrees to pay to the Corporation, its successors and assigns, as the purchase price of the Project, the Installment Payments consisting of components of principal and interest payable on the Installment Payment Dates. The Installment Payments shall be secured by and payable from Net Revenues as hereinafter provided. The interest components of the Installment Payments shall be calculated in accordance with the provisions set forth in Appendix A which is attached hereto and incorporated herein by this reference.

The principal components of the Installment Payments as of any date shall be equal to the aggregate amounts advanced by the Assignee pursuant to Funding Requests under Section 3.5, less any amount of such principal which has previously been prepaid by the City. The unpaid principal components of the Installment Payments shall be due and payable in full on the Maturity Date.

The amount of each Installment Payment shall be specified by Assignee in a written invoice to City at least fifteen Business Days prior to each Installment Payment Date, which invoice shall include sufficient detail for City to verify the calculated amount of the Installment Payment.

It is understood and agreed by the City and the Assignee that this Agreement shall not be (i) assigned a rating by any rating agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) issued pursuant to any type of offering document or official statement, or (iv) assigned CUSIP numbers by Standard & Poor's CUSIP Service Bureau.

(b) Reduction Upon Partial Prepayment. If the City prepays less than all of the remaining principal components of the Installment Payments under Article VII, the amount of such prepayment shall be applied to reduce the principal components of the Installment Payments in inverse order of payment date, as set forth in a revised schedule of Installment Payments which is provided to the City by the Assignee; *provided, however*, that if the amount set forth in such invoice is understated or overstated due to interest rate fluctuations or otherwise, adjustment shall be made on the following invoice.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section on or before the due date therefor, the Installment Payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid and the City agrees to pay the same with interest thereon, to the extent permitted by law, from the due date thereof at the Default Rate, or, if lower, the maximum rate then permitted by law.

(d) Gross Up of Interest Rate Upon Determination of Taxability. Notwithstanding the foregoing provisions of this Section, in the event a Determination of Taxability occurs, the City shall pay, as interest components of the Installment Payments, to the Assignee on demand therefor:

- (i) an amount equal to the difference between (A) the amount of interest that would have been paid to the Assignee during the Taxable Period, if the interest rate on the unpaid principal components of the Installment Payments had been calculated at a rate sufficient such that the total interest to be paid on the applicable Installment Payment Dates would, after such interest was reduced by the amount of any U.S. federal, state and local income tax actually imposed thereon, equal the amount of interest due with respect to such Installment Payments beginning on the Taxable Date, and (B) the amount of interest actually paid to the Assignee during the Taxable Period, and
- (ii) an amount equal to any interest, penalties or charges owed by the Assignee as a result of the interest components of the Installment Payments becoming includable in the gross income of the Assignee, together with any and all attorneys' fees, court costs, or other out-of-pocket costs incurred by the Assignee in connection therewith.

The obligation of the City to pay the Assignee an amount equal to the difference between the amount of interest that would have been paid to the Assignee during the Taxable Period, and the amount actually paid to the Assignee during the Taxable Period, shall survive the payment of the Installment Payments and the termination of this Agreement. The Assignee shall notify the City of the amounts due under this subsection.

(e) Assignment. The City understands and agrees that all Installment Payments have been assigned by the Corporation to the Assignee under the Assignment Agreement, and the City hereby assents to such assignment. The Corporation hereby directs the City, and the City hereby agrees, to pay to the Assignee all payments payable by the City under this Section and all amounts payable by the City under Article VII.

(f) Maximum Rate. Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any Interest period shall not exceed the Maximum Rate. If for any interest period the applicable interest rate would exceed the Maximum Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Rate, any obligation hereunder will bear interest at the Maximum Rate until the earlier of (x) payment to the Assignee of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the Maturity Date. Upon the Maturity Date or, if no Advance is outstanding, on the date the Commitment is permanently terminated, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by Applicable Law, the City shall pay to the Assignee a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section that has not previously been paid to the Assignee in accordance with the immediately preceding sentence.

SECTION 4.5. Undrawn Fees. In addition to the Installment Payments, the City hereby agrees to pay to the Assignee, in immediately available funds, for the period from and including the Closing Date to and including the earlier of the Maturity Date and the date the Commitment is terminated in full (the "*Commitment End Date*"), and in arrears on each Installment Payment Date occurring thereafter to the Commitment End Date, and on the Commitment End Date (each, an "*Undrawn Fee Payment Date*"), a non-refundable undrawn fee (the "*Undrawn Fee*") in an amount equal for each day during such calculation

period to the product of (x) thirty-two and a half basis points (32.5 bps) per annum (the "Undrawn Fee Rate"), (y) the Unutilized Commitment for such day and (z) a fraction the numerator of which is 1 and denominator of which is 360. The Unutilized Commitment shall be determined for any day as of 5:00 p.m. Pacific time

The Undrawn Fee shall be calculated from and including one Undrawn Fee Payment Date (or, in the case of the first Undrawn Fee payment, the Closing Date) to but excluding the next Undrawn Fee Payment Date (each, a "Payment Period"), and the Assignee shall provide the City with an invoice for each Undrawn Fee. In the event the Assignee fails for any reason to provide the City with an invoice for any Undrawn Fee by the related Undrawn Fee Payment Date, the City shall not be relieved of its obligation to pay such Undrawn Fee, but the City shall not be required to make such payment prior to the receipt of such invoice.

SECTION 4.6. *Pledge and Application of Net Revenues.*

(a) Pledge. The Net Revenues shall be irrevocably pledged to the punctual payment of the Installment Payments. Such pledge constitutes a lien on the Net Revenues for the payment of the Installment Payments in accordance with the terms hereof, which lien shall be (a) subordinate to the pledge and lien which secures the payment of the Trimble Road Installment Payments, and (b) on a parity with the pledge and lien which secures any Parity Debt. Pursuant to Section 5451 of the Government Code of the State of California, the pledge of the Net Revenues by the City for the payment of the Installment Payments constitutes a lien and security interest which immediately attaches to such Net Revenues, and which shall be effective and binding against the City, its successors, creditors and all others asserting rights therein irrespective of whether those parties have notice of the pledge, irrespective of whether such amounts are or may be deemed to be a fixture and without the need for physical delivery, recordation, filing or further act.

(b) Deposit of Net Revenues Into Wastewater Fund; Transfers to Make Payments. The City has previously established the Wastewater Fund, which the City shall continue to hold and maintain for the purposes and uses set forth herein. The City shall deposit all Gross Revenues in the Wastewater Fund immediately on receipt. The City shall apply amounts in the Wastewater Fund as set forth in this Agreement, the Trimble Road ISA and any Parity Debt Documents. The City shall apply amounts on deposit in the Wastewater Fund to pay when due the following amounts in the following order of priority:

- (i) all Operation and Maintenance Costs;
- (ii) the payment when due of the Trimble Road Installment Payments;
- (iii) the payment when due of the Installment Payments and all payments of principal of and interest on any Parity Debt;
- (iv) any deficiency in any reserve fund established for Parity Debt, the notice of which deficiency has been sent to the City in accordance with the related Parity Debt Documents;

- (v) any other payments required to comply with the provisions of this Agreement, the Joint Powers Agreement, the Trimble Road ISA and any Parity Debt Documents; and
- (vi) any other purposes authorized under subsection (c) of this Section.

(c) Other Uses of Net Revenues Permitted. The City shall manage, conserve and apply the Net Revenues on deposit in the Wastewater Fund in such a manner that all deposits required to be made under the preceding subsection (b) will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default has occurred and is continuing, the City may use and apply moneys in the Wastewater Fund for (i) the payment of any subordinate obligations or any unsecured obligations, (ii) the acquisition and construction of improvements to the Wastewater System, (iii) the prepayment of any other obligations of the City relating to the Wastewater System, or (iv) any other lawful purposes of the City.

(d) Budget and Appropriation of Installment Payments. During the Term of this Agreement, the City will adopt all necessary budgets and make all necessary appropriations of the Installment Payments from the Net Revenues. If any Installment Payment requires the adoption by the City of a supplemental budget or appropriation, the City will promptly adopt the same. The covenants on the part of the City contained in this subsection are duties imposed by law and it is the duty of each and every public official of the City to take such actions and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this subsection.

SECTION 4.7. *Establishment of Rate Stabilization Fund.* The City has the right at any time to establish a fund to be held by it and administered in accordance with this Section for the purpose of stabilizing the rates and charges imposed by the City with respect to the Wastewater System. From time to time the City may deposit amounts in the Rate Stabilization Fund from any source of legally available funds, including but not limited to Net Revenues which are released from the pledge and lien which secures the Installment Payments, the Trimble Road Installment Payments, and any Parity Debt, as the City may determine.

The City may, but is not be required to, withdraw amounts on deposit in the Rate Stabilization Fund and deposit such amounts in the Wastewater Fund in any Fiscal Year for the purpose of paying the Installment Payments, the Trimble Road Installment Payments or the principal of and interest on any Parity Debt coming due and payable in such Fiscal Year. Amounts so transferred from the Rate Stabilization Fund to the Wastewater Fund in any Fiscal Year constitute Gross Revenues for that Fiscal Year (except for purposes of Section 5.7(b) relating to the issuance of Parity Debt), and will be applied for the purposes of the Wastewater Fund. Amounts on deposit in the Rate Stabilization Fund are not pledged to and do not secure the Installment Payments, the Trimble Road Installment Payments or any Parity Debt. All interest or other earnings on deposits in the Rate Stabilization Fund will be retained therein or, at the option of the City, be applied for any other lawful purposes. The City has the right at any time to withdraw any or all amounts on deposit in the Rate Stabilization Fund and apply such amounts for any other lawful purposes of the City.

SECTION 4.8. *Special Obligation of the City; Obligations Absolute.* The City's obligation to pay the Installment Payments and any other amounts coming due and payable hereunder will be a special obligation of the City limited solely to the Net Revenues. Under no circumstances is the City required to advance moneys derived from any source of income other than the Net Revenues and other sources specifically identified herein for the payment of the Installment Payments and such other amounts, and no other funds or property of the City are liable for the payment of the Installment Payments.

The obligation of the City to make the Installment Payments from the Net Revenues and to perform and observe the other agreements contained herein is absolute and unconditional and is not subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by the Corporation or the Assignee of any obligation to the City or otherwise with respect to the Wastewater System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Corporation or the Assignee. Until all of the Installment Payments, Additional Payments and other amounts coming due and payable hereunder have been fully paid or prepaid, the City:

- (a) will not suspend or discontinue payment of any Installment Payments, Additional Payments or such other amounts,
- (b) will perform and observe all other agreements contained in this Agreement, and
- (c) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Wastewater System, failure to complete the acquisition and construction of the Project by the estimated completion date thereof, sale of the Wastewater System, the taking by eminent domain of title to or temporary use of any component of the Wastewater System, commercial frustration of purpose, any change in the tax or law other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Corporation or the Assignee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

SECTION 4.9. *Additional Payments.* In addition to the Trimble Road Installment Payments, Installment Payments and any Parity Debt, the City will pay when due the following amounts to the following parties:

- (a) to the Corporation, all costs and expenses incurred by the Corporation to comply with the provisions of this Agreement; and
- (b) all costs and expenses of auditors, engineers and accountants and other professional services relating to the Wastewater System; and
- (c) all Excess Investment Earnings payable under Section 5.10(e).

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

ARTICLE V

COVENANTS OF THE CITY

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

SECTION 5.2. *Sale or Eminent Domain of Wastewater System.* Except as provided herein, the City covenants that the Wastewater System will not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole if such encumbrance, sale, lease, pledge, charge or other disposition would materially impair the ability of the City to pay the Installment Payments, the Trimble Road Installment Payments or the principal of or interest on any Parity Debt, or would materially adversely affect its ability to comply with the terms of this Agreement, the Trimble Road ISA or any Parity Debt Documents. The City may not enter into any agreement which impairs the operation of the Wastewater System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments, the Trimble Road Installment Payments or any Parity Debt, or which otherwise would impair the rights of the Assignee with respect to the Net Revenues. If any substantial part of the Wastewater System is sold, the payment therefor must either (a) be used for the acquisition or construction of improvements and extensions or replacement facilities or (b) be applied on a pro rata basis to prepay the Installment Payments, the Trimble Road Installment Payments and any Parity Debt on the next available prepayment date.

Any amounts received as awards as a result of the taking of all or any part of the Wastewater System by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the City, will either (a) be used for the acquisition or construction of improvements and extension of the Wastewater System, or (b) be applied to prepay on a pro rata basis the Installment Payments, the Trimble Road Installment Payments and any Parity Debt on the next available prepayment date.

SECTION 5.3. *Insurance.* The City will at all times maintain with responsible insurers all such insurance on the Wastewater System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the Wastewater System. All amounts collected from insurance against accident to or destruction of any portion of the Wastewater System will be used, at the option of the City, either (a) to repair or rebuild such damaged or destroyed portion of the Wastewater

System, or (b) to prepay on a pro rata basis the Installment Payments, the Trimble Road Installment Payments and any Parity Debt on the next available prepayment date.

The City will also maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the City, the Corporation and the Assignee.

Any policy of insurance required under this Section may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance.

SECTION 5.4. *Records and Accounts.* The City shall keep proper books of record and accounts of the Wastewater System in which complete and correct entries shall be made of all transactions relating to the Wastewater System. Said books shall, upon prior request, be subject to the reasonable inspection of the Corporation upon not less than two Business Days' prior notice to the City.

The City shall cause the books and accounts of the Wastewater System to be audited annually by an Independent Accountant not more than 270 days after the close of each Fiscal Year and shall file a copy of such report with the Assignee. Such report may be part of a combined financial audit or report covering all or part of the City's finances.

SECTION 5.5. *Rates and Charges.*

(a) Gross Revenues Covenant. The City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Wastewater System during each Fiscal Year, which are at least sufficient, together with amounts held in a Rate Stabilization Fund as provided in Section 4.7, and taking into account allowances for contingencies, to yield Gross Revenues sufficient to pay the following amounts in the following order of priority:

- (i) All Operation and Maintenance Costs estimated by the City to become due and payable in the Fiscal Year.
- (ii) All Trimble Road Installment Payments as they become due and payable during the Fiscal Year.
- (iii) All Installment Payments and payments of principal of and interest on any Parity Debt as they become due and payable during the Fiscal Year.
- (iv) All payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the Gross Revenues or the Net Revenues during such Fiscal Year.

(b) Net Revenues Covenant. In addition, the City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Wastewater System during each Fiscal Year which (together with amounts held in a Rate Stabilization

Fund as provided in Section 4.7, and taking into account allowances for contingencies), are sufficient to yield Net Revenues which are at least equal to 110% of the aggregate amount of the Installment Payments, the Trimble Road Installment Payments and all payments of principal of and interest on any Parity Debt coming due and payable during the Fiscal Year.

SECTION 5.6. *Superior and Subordinate Obligations.* The City may not issue or incur any additional bonds or other obligations during the Term of this Agreement having any priority in payment of principal or interest out of the Gross Revenues or the Net Revenues over the Installment Payments. Nothing herein limits or affects the ability of the City to issue or incur (a) Parity Debt under Section 5.7, or (b) obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established hereunder; *provided, however,* that the City shall not issue any such junior and subordinate obligations unless the amount of Net Revenues (excluding any amounts derived from a Rate Stabilization Fund), calculated in accordance with generally accepted accounting principles, as shown by the books of the City for the most recent completed Fiscal Year for which audited financial statements of the City are available, or for any more recent consecutive 12-month period selected by the City, in either case verified by an Independent Accountant or a Financial Consultant or shown in the audited financial statements of the City, plus (at the option of the City) any Additional Revenues, are at least equal to 110% of Maximum Annual Debt Service (taking into account such junior and subordinate obligations then proposed to be issued).

SECTION 5.7. *Issuance of Parity Debt.* The City may issue or incur any Parity Debt during the Term hereof upon satisfaction of all of the following conditions:

- (a) no Event of Default (or no event with respect to which notice has been given and which, once all notice of grace periods have passed, would constitute an Event of Default) has occurred and is continuing.
- (b) the Net Revenues (excluding any amounts derived from a Rate Stabilization Fund), calculated in accordance with generally accepted accounting principles, as shown by the books of the City for the most recent completed Fiscal Year for which audited financial statements of the City are available, or for any more recent consecutive 12-month period selected by the City, in either case verified by an Independent Accountant or a Financial Consultant or shown in the audited financial statements of the City, plus (at the option of the City) any Additional Revenues, are at least equal to 125% of Maximum Annual Debt Service (taking into account the Parity Debt then proposed to be issued).
- (c) The City will deliver to the Assignee a written certificate of a City Representative certifying that the conditions precedent to the issuance of such Parity Debt set forth in subsections (a) and (b) of this Section have been satisfied.

SECTION 5.8. *Operation of Wastewater System in Efficient and Economical Manner.* The City will operate the Wastewater System in an efficient and economical

manner and to operate, maintain and preserve the Wastewater System in good repair and working order.

SECTION 5.9. *Assignment and Amendment Hereof.* This Agreement may not be assigned by the City in whole or in part. This Agreement may be amended by the City and the Corporation, but only with the prior written consent of the Assignee.

SECTION 5.10. *Tax Covenants.*

(a) Generally. The City shall not take any action, or permit to be taken any action or omission within its control, which would cause or which, with the passage of time if not cured would cause, the interest components of the Installment Payments to become includable in gross income of the Corporation or its Assignee for federal income tax purposes.

(b) Private Activity Bond Limitation. The City shall assure that the proceeds of the Installment Payments are not so used as to cause the Installment Payments to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of section 141(c) of the Tax Code.

(c) Federal Guarantee Prohibition. The City shall not take any action, or permit to be taken any action or omission within its control, if the result of the same would be to cause the Installment Payments to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The City shall not take any action, or permit or suffer to be taken any action or omission within its control, with respect to the proceeds of the Installment Payments which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Installment Payments to constitute "arbitrage bonds" within the meaning of Section 148(a) of the Tax Code.

(e) Arbitrage Rebate. The City shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of Excess Investment Earnings, if any, to the federal government, to the extent that such section is applicable to this Agreement.

(f) Record Retention. The City will retain its records of all accounting and monitoring it carries out with respect to this Agreement for at least three years after the payment or prepayment in full of the Installment Payments, whichever is earlier, or for such lesser period of time as may be permitted under the Tax Code.

(g) Acquisition, Disposition and Valuation of Investments. Except as otherwise provided in the following sentence, the City covenants that all investments of amounts deposited in any fund or account created by or under this Agreement, or otherwise containing gross proceeds of this Agreement (within the meaning of Section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Agreement or the Tax Code) at Fair Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code shall be valued at their present value (within the meaning of Section 148 of the Tax Code).

For purposes of this subsection, the term "Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security – State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City and related parties do not own more than a 10% beneficial interest therein if the return paid by the fund is without regard to the source of the investment.

ARTICLE VI

EVENTS OF DEFAULT

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

- (a) Failure by the City to pay any Installment Payment by the Installment Payment Date or failure to make any other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed in this Agreement other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Assignee or the Corporation; *provided, however*, that if the failure stated in the notice cannot be corrected within such 30-day period, the Corporation shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within such 30-day period and diligently pursued until the default is corrected.
- (c) The filing by the City of a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or the approval by a court of competent jurisdiction of a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or, under the provisions of any other law for the relief or aid of debtors,

any court of competent jurisdiction assumes custody or control of the City or of the whole or any substantial part of its property.

- (d) Any statement, representation or warranty made by the City in or pursuant to this Agreement or its execution, delivery or performance shall prove to have knowingly been false, incorrect, misleading or breached in any material respect on the date when made.
- (e) The occurrence of any event defined to be an event of default under the Trimble Road ISA or any Parity Debt Documents.

SECTION 6.2. *Remedies on Default.* If an Event of Default occurs and is continuing, the interest rate shall increase to the Default Rate, and the Assignee has the right, at its option and without any further demand or notice, to take any one or more of the following actions:

- (a) Apply to and obtain from any court of competent jurisdiction such decree or order as may be necessary to require officials of the City to charge and collect rates for services provided by the City and the Wastewater System sufficient to meet all requirements of this Agreement.
- (b) Take whatever action at law or in equity, including specific enforcement, mandamus, or any equitable remedies available, as may be desirable and permitted by law to collect the Installment Payments then due or thereafter to become due during the Term of this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.
- (c) By written notice to the City, reduce the Commitment to zero and, thereafter, the Assignee will have no further obligation to make Advances hereunder and may terminate the Commitment.

SECTION 6.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article, it is not necessary to give any notice, other than such notice as may be required in this Article or by law.

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

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

SECTION 6.6. *Liability Limited to Net Revenues.* Notwithstanding any provision of this Agreement, the City's liability to pay the Installment Payments and other amounts hereunder is limited solely to Net Revenues as provided in Article IV. If the Net Revenues are insufficient at any time to pay an Installment Payment in full, the City is not liable to pay or prepay such Installment Payment other than from Net Revenues.

SECTION 6.7. *Rights of Assignee.* Such rights and remedies as are granted to the Corporation under this Article or under this Agreement shall be exercised by the Assignee, as assignee of the rights of the Corporation hereunder, in accordance with the provisions of the Assignment Agreement.

ARTICLE VII

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 7.1. *Prepayment.* The City has the right to prepay the Installment Payments, but only in the manner, at the times and in all respects in accordance with the provisions of this Article.

SECTION 7.2. *Optional Prepayment.* Subject to the provisions set forth in Appendix A hereto, the City has the right at its option to prepay the Installment Payments in whole or in part, on any date at a prepayment price equal to 100% of the principal balance outstanding as of the date of prepayment, plus any accrued but unpaid interest.

Notice of prepayment shall be given by the City not less than 30 calendar days prior to the prepayment date, to the Corporation and the Assignee at their respective addresses set forth in Section 8.2 or at such other address as is furnished to the City in writing by the Corporation or the Assignee. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Corporation or the Assignee receives such notice.

If notice of prepayment is given as aforesaid, the Installment Payments shall become due and payable at the prepayment price and on the prepayment date therein designated and if, on the designated prepayment date, money for the payment of the prepayment price have been paid, then from and after the prepayment date, interest on the principal amount of the prepaid Installment Payments shall cease to accrue and become payable.

SECTION 7.3. *No Surrender of Agreement Required.* No surrender of this Agreement shall ever be required as a condition for payment or otherwise. The Corporation, the City, and the Assignee agree that this Agreement shall terminate, excepting those provisions expressly surviving termination of this Agreement.

ARTICLE VIII

MISCELLANEOUS

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

SECTION 8.2. *Notices.* All notices, certificates or other communications hereunder shall be in writing and shall be deemed to have been properly given on the earlier of (i) when delivered in person, (ii) the third Business Day following deposit in the United States Mail, with adequate postage, and sent by registered or certified mail, with return receipt requested to the appropriate party at the address set forth below, or (iii) the first Business Day following deposit with Federal Express, Express Mail or other overnight delivery service for next day delivery, addressed to the appropriate party at the address set out below.

*If to the City
or the Corporation:*

City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Attention: Director of Finance
finance@santalaraca.gov
Fax: (408) 243-8687

If to the Assignee:

JPMorgan Chase Bank, N.A.
560 Mission Street, 4th Floor
San Francisco, California 94105
Attention: Bev Correa

The Corporation, the City and the Assignee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

SECTION 8.3. *Third Party Beneficiary.* The Assignee is hereby made a third-party beneficiary under this Agreement with all rights of a third party beneficiary.

SECTION 8.4. *Governing Law.* This Agreement will be construed in accordance with and governed by the laws of the State of California.

SECTION 8.5. *Binding Effect.* This Agreement inures to the benefit of and is binding upon the Corporation, the City and the Assignee, and their respective successors and assigns.

SECTION 8.6. *Severability of Invalid Provisions.* If any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, then such provision or provisions will be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability will not affect any other provision of this Agreement, and this Agreement

will be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Corporation and the City each hereby declares that it would have entered into this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid or unenforceable.

SECTION 8.7. *Article and Section Headings and References.* The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, will be solely for convenience of reference and do not affect the meaning, construction or effect of this Agreement. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender mean and include words of the feminine and neuter genders.

SECTION 8.8. *Payment on Non-Business Days.* Whenever any payment is required to be made hereunder on a day which is not a Business Day, such payment will be made on the immediately preceding Business Day.

SECTION 8.9. *Execution of Counterparts.* This Agreement may be executed in any number of counterparts, each of which for all purposes is deemed to be an original and all of which together constitutes but one and the same instrument.

SECTION 8.10. *Waiver of Personal Liability.* No member of the City Council, officer, agent or employee of the City has any individual or personal liability for the payment of Installment Payments or Additional Payments or be subject to any personal liability or accountability by reason of this Agreement; but nothing herein contained shall relieve any such member of the City Council, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

SECTION 8.11. *Defeasance.* If and when all of the Installment Payments shall be paid in any one or more of the following ways:

- (a) by paying or causing to be paid the principal and interest with respect to the Installment Payments as and when the same become due and payable in good and indefeasible funds via check or wire transfer as may from time to time be directed by the Assignee;
- (b) with the prior written consent of the Assignee, which shall not unreasonably be withheld, by depositing with an escrow agent or other fiduciary, in trust, at or before the final stated Installment Payment Date, money which is fully sufficient to pay and discharge the Installment Payments, including all principal and interest and prepayment premium, (if any) at or before their respective Installment Payment Dates;
- (c) with the prior written consent of the Assignee, which shall not unreasonably be withheld, by depositing with an escrow agent or other fiduciary, in trust, Federal Securities in such amount as an

independent certified public accountant shall determine in writing will, together with the interest to accrue thereon and without reinvestment, be fully sufficient to pay and discharge the Installment Payments, including all principal and interest and prepayment premium, (if any), at or before their respective Installment Payment Dates; or

- (d) with the prior written consent of the Assignee, which shall not unreasonably be withheld, by depositing with an escrow agent or other fiduciary, under an escrow deposit and trust agreement, security for the payment and discharge of the Installment Payments, including all principal and interest and prepayment premium (if any) in form and substance acceptable to the Corporation, or its assign, in its sole discretion, said security to be applied to pay the Installment Payments, including all principal and interest and prepayment premium (if any) in full on the earliest possible date;

all obligations of the City with respect to this Agreement shall cease and terminate and this Agreement shall be discharged, except for any provision herein which expressly states that it survives termination. The City shall provide to the Corporation and the Assignee at least 30 calendar days prior written notice of its intent to discharge its obligations with respect to this Agreement by satisfying the conditions of this Section, and shall provide the Corporation and the Assignee with an opinion of Bond Counsel stating that (i) the deposit and application of funds under this Section does not, of itself, cause the interest components of the Installment Payments to be includable in gross income for federal tax purposes, and (ii) as a result of the deposit and application of funds under this Section, all obligations of the City with respect to this Agreement have ceased and terminated and this Agreement has been discharged.

SECTION 8.12. *Waiver of Jury Trial; Agreement for Judicial Reference; No Sovereign Immunity.* To the fullest extent permitted by law, the City hereby waives its right to trial by jury in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, this Agreement or any related documents, or the enforcement of any remedy under any law, statute, or regulation. To the extent such waiver is not enforceable, the City hereby consents to the adjudication of any and all such matters pursuant to Judicial Reference as provided in Section 638 of the California Code of Civil Procedure, and the judicial referee shall be empowered to hear and determine any and all issues in such Judicial Reference whether fact or law.

To the extent the foregoing waiver of a jury trial is unenforceable under applicable California law, the City agrees to refer, for a complete and final adjudication, any and all issues of fact or law involved in any litigation or proceeding (including all discovery and law and motion matters, pretrial motions, trial matter and post-trial motions up to and including final judgment), brought to resolve any dispute (whether based on contract, tort or otherwise) between the parties hereto arising out of, in connection with or otherwise related or incidental to this Agreement to a judicial referee who shall be appointed under a general reference pursuant to California Code of Civil Procedure Section 638, which referee's decision will stand as the decision of the court. Such judgment will be entered on the referee's statement of judgment in the same manner as if the action had been tried by the court. The City and the Assignee shall select a single neutral referee, who shall be a retired state or federal judge with at least five years of judicial experience in civil matters;

provided that the event the City and the Assignee cannot agree upon a referee, the referee will be appointed by the court.

The City hereby represents that it does not possess and will not invoke a claim of sovereign immunity for disputes arising out of contractual claims relating to this Agreement. To the extent the City has or hereafter may acquire under any applicable law any rights to immunity from legal proceedings on the grounds of sovereignty, the City hereby waives and agrees not to claim, to the extent permitted by law, such rights to immunity for itself in respect of its obligations arising under or related to this Agreement.

SECTION 8.13. *Compliance with Anti-Corruption Laws, Sanctions Laws and Regulations.* The City has implemented and maintains in effect policies and procedures designed to ensure compliance by the City, its subsidiaries, affiliates and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the City, its subsidiaries, affiliates and their respective officers and employees and to the knowledge of the City its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the City, any subsidiary, affiliate or any of their respective directors, officers or employees, or (b) to the knowledge of the City, any agent of the City, any subsidiary or affiliate that will act in any capacity in connection with or benefit from the issuance of this Agreement, is a Sanctioned Person. No use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

The City (a) will comply with all foreign and domestic laws, rules and regulations (including the USA Patriot Act, foreign exchange control regulations, foreign asset control regulations and other trade-related regulations) now or hereafter applicable to this Agreement, the transactions underlying this Agreement or the City's execution, delivery and performance of this Agreement; (b) will maintain in effect and enforce policies and procedures designed to ensure compliance by the City, its subsidiaries, affiliates and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions; and (c) shall issue this Agreement, and shall not use, and shall procure that its subsidiaries, affiliates and its or their respective directors, officers, employees and agents not use, proceeds of this Agreement (1) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (2) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (3) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

For purposes of this Section, the following terms have the following meanings:

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the City, its subsidiaries or affiliates from time to time concerning or relating to bribery or corruption.

"Patriot Act" or *"USA Patriot Act"* means the USA Patriot Act signed into law on October 26, 2001 (U.S.C. Section 5318), as the same may be amended, supplemented or modified from time to time.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including a

government or political subdivision or any agency or instrumentality thereof.

“Sanctioned Country” means, at any time, a country or territory which is the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union or any EU member state, (b) any person operating, organized or resident in a Sanctioned Country or (c) any person controlled by any such person.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

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

**CITY OF SANTA CLARA PUBLIC
FACILITIES FINANCING CORPORATION**

By: _____
Executive Director

APPROVED AS TO FORM:

By _____
General Counsel

ATTEST:

By _____
Secretary

CITY OF SANTA CLARA

By: _____
City Manager

APPROVED AS TO FORM:

By _____
City Attorney

ATTEST:

By _____
City Clerk

APPENDIX A

CALCULATION OF INTEREST COMPONENTS

The interest components of the Installment Payments shall be calculated in accordance with the following provisions set forth in this Appendix A.

Basis of Calculation. Advances hereunder shall be LIBOR Rate Advances, subject to provisions below on Illegality/Temporary Unavailability and Alternate Rate of Interest. The interest components of the Installment Payments shall be calculated on the unpaid principal components of the Installment Payments, on the basis of the actual number of days elapsed in a year of 360 days, at the Adjusted LIBOR Rate and at the rate of 4.00% Per Annum above the Adjusted LIBOR Rate, at the Assignee's option, upon the occurrence of any Event of Default, whether or not the Assignee elects to accelerate the maturity of the Installment Payments, from the date such increased rate is imposed by the Assignee.

Definitions. As used in this Appendix A, the following terms have the following respective meanings:

"Adjusted LIBOR Rate" means, with respect to the relevant Interest Period, the sum of (i) the Applicable Margin plus (ii) (a) 80% of the LIBOR Rate applicable to such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Adjusted One Month LIBOR Rate" means, with respect to a CB Floating Rate Advance for any day, an interest rate Per Annum equal to the sum of (i) 2.50% plus (ii) the Adjusted LIBOR Rate for a one-month interest period on such day (or if such day is not a Business Day, then the immediately preceding Business Day); provided that, for the avoidance of doubt, the Adjusted LIBOR Rate for any day shall be based on the LIBOR Screen Rate at approximately 11:00 a.m. London time on such day.

"Advance" means a LIBOR Rate Advance or a CB Floating Rate Advance and *"Advances"* means all LIBOR Rate Advances and all CB Floating Rate Advances which are made by the Assignee to the City to finance the payment of Project Costs.

"Applicable Margin" means 0.95% Per Annum.

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the LIBOR Rate:

- (a) a public statement or publication of information by or on behalf of the administrator of the LIBOR Screen Rate announcing that such administrator has ceased or will cease to provide the LIBOR Screen Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBOR Screen Rate;
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBOR Screen Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the LIBOR Screen Rate, a resolution authority

with jurisdiction over the administrator for the LIBOR Screen Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBOR Screen Rate, which states that the administrator of the LIBOR Screen Rate has ceased or will cease to provide the LIBOR Screen Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBOR Screen Rate; or

- (c) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBOR Screen Rate announcing that the LIBOR Screen Rate is no longer representative.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that when used in connection with a LIBOR Rate Advance or the Adjusted One Month LIBOR Rate, the term "Business Day" shall also exclude any day on which banks are not open for general business in London.

"CB Floating Rate" means the Prime Rate; provided that the CB Floating Rate shall, on any day, not be less than the Adjusted One Month LIBOR Rate. The CB Floating Rate is a variable rate and any change in the CB Floating Rate due to any change in the Prime Rate or the Adjusted One Month LIBOR Rate is effective from and including the effective date of such change in the Prime Rate or the Adjusted One Month LIBOR Rate, respectively.

"CB Floating Rate Advance" means any borrowing under the Installment Payments when and to the extent that its interest rate is determined by reference to the CB Floating Rate.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Governmental Authority" means the government of the United States of America, any other nation or 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.

"Interest Period" means, with respect to a LIBOR Rate Advance, a period of one month (reset daily), one (1), two (2), and three (3) month(s) commencing on a Business Day selected by the City pursuant to the Installment Payments. Such Interest Period shall end on the day which corresponds numerically to such date one (1), two (2), or three (3) month(s) thereafter, as applicable, *provided, however*, that if there is no such numerically corresponding day in such first, second, or third succeeding month(s), as applicable, such Interest Period shall end on the last Business Day of such first, second, or third succeeding month(s), as applicable.

"LIBOR Rate" means with respect to any LIBOR advance for any Interest Period, the London interbank offered rate ("LIBOR") as administered by ICE Benchmark Administration (or any other person that takes over the administration of such rate for

Dollars, the "IBA") for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as shall be selected by the Assignee in its reasonable discretion; in each case, the "LIBOR Screen Rate") at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; *provided that*, if any LIBOR Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of the Installment Payments. If no LIBOR Screen Rate is available to the Assignee, the applicable LIBOR Rate for the relevant Interest Period shall instead be the rate determined by the Assignee to be the rate at which the Assignee offers to place U.S. dollar deposits having a maturity equal to such Interest Period with first-class banks in the London interbank market at approximately 11:00 A.M. (London time) two Business Days prior to the first day of such Interest Period.

"*LIBOR Rate Advance*" means any borrowing under the Installment Sales Agreement when and to the extent that its interest rate is determined by reference to the Adjusted LIBOR Rate.

"*Per Annum*" means for a year deemed to be comprised of 360 days.

"*Prime Rate*" means the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Assignee) or any similar release by the Federal Reserve Board (as determined by the Assignee). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"*Statutory Reserve Rate*" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) established by the Federal Reserve Board to which the Assignee is subject with respect to the Adjusted LIBOR Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Federal Reserve Board). Such reserve percentages shall include those imposed pursuant to such Regulation D of the Federal Reserve Board. LIBOR Rate advances shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to the Assignee under such Regulation D of the Federal Reserve Board or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

Prepayment/Funding Loss Indemnification

The City may prepay all or any part of any CB Floating Rate Advance or LIBOR Rate Advance with Interest Period of One Month LIBOR, reset daily, at any time without premium or penalty.

The City shall pay the Assignee amounts sufficient (in the Assignee's reasonable opinion) to compensate the Assignee for any loss, cost, or expense incurred as a result of:

- (a) Any payment of a LIBOR Rate Advance on a date other than the last day of the Interest Period for the Advance (other than One Month LIBOR reset daily), including, without limitation, acceleration of the Advances by the Assignee pursuant to the Installment Payments or the other Related Documents; or
- (b) Any failure by the City to borrow or renew a LIBOR Rate Advance on the date specified in the relevant notice from the City to the Assignee.

Funding Loss Indemnification

If the City pays all or any portion of the principal components of the Installment Payments on a date other than the last day of the Interest Period or the Maturity Date (whether by acceleration, prepayment or otherwise) the City shall pay the Assignee an amount sufficient (in the Assignee's reasonable opinion) to compensate the Assignee for any loss, cost, or expense incurred as a result thereof.

Interest Rates; Libor Notification

LIBOR is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the "IBA") for purposes of the IBA setting LIBOR. As a result, it is possible that commencing in 2022, LIBOR may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurodollar Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of LIBOR. In the event a Benchmark Transition Event occurs, the following provisions of this Agreement provides a mechanism for determining an alternative rate of interest. The Assignee will notify the City, pursuant to clause (c) of the following paragraph, in advance of any change to the reference rate upon which LIBOR Rate is based. However, the Assignee does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to LIBOR or other rates in the definition of "LIBOR Rate" or with respect to any alternative, successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of the LIBOR Rate or have the same volume or liquidity as did LIBOR prior to its discontinuance or unavailability.

Illegality/Temporary Unavailability

If:

- (i) any applicable domestic or foreign law, treaty, rule or regulation now or later in effect (whether or not it now applies to the Assignee) or the

interpretation or administration thereof by a Governmental Authority charged with such interpretation or administration, or compliance by the Assignee with any guideline, request or directive of such a Governmental Authority (whether or not having the force of law), shall make it unlawful or impossible for the Assignee to maintain or fund the advances made under this Agreement, or

- (ii) the Assignee determines that quotations of interest rates for the relevant deposits referred to in the definition of Adjusted LIBOR Rate are not being provided for purposes of determining the interest rate on the advances made under this Agreement, or
- (iii) the Assignee determines that the relevant interest rates referred to in the definition of Adjusted LIBOR Rate do not accurately cover the cost to the Assignee of making funding or maintaining the advances made under this Agreement,

then, upon notice of such circumstances from the Assignee to the City: (a) the obligation of the Assignee to make LIBOR Rate Advances shall be suspended until the Assignee notifies the City that the circumstances giving rise to the suspension no longer exists, and (b) subject to the terms and conditions of this Agreement and the other Related Documents, the entire outstanding balance of any advance shall be replaced with an advance bearing interest at the CB Floating Rate and the City may request advances under this Agreement bearing interest at the CB Floating Rate. When the suspension no longer exists, the Advances shall revert back to LIBOR Rate Advances.

In no event shall the interest rate exceed the maximum rate allowed by law. Any interest payment that would for any reason be unlawful under applicable law shall be applied to principal.

Alternate Rate of Interest

If a Benchmark Transition Event occurs, the Assignee may, by notice to the City, select an alternate rate of interest for LIBOR that gives due consideration to the then-evolving or prevailing market convention for determining a rate of interest for loans in US Dollars at such time (the "**Alternate Rate**"); the City acknowledges that the Alternate Rate may include a mathematical adjustment using any then-evolving or prevailing market convention or method for determining a spread adjustment for the replacement of LIBOR. For avoidance of doubt, all references to LIBOR shall be deemed to be references to the Alternate Rate when the Alternate Rate becomes effective in accordance with this section. In addition, the Assignee will have the right, from time to time by notice to City to make technical, administrative or operational changes (including, without limitation, changes to the definition of "CB Floating Rate", the definition of "Interest Period", timing and frequency of determining rates and making payments of interest and other administrative matters) that the Assignee decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of the Alternate Rate. The Alternate Rate, together with all such technical, administrative and operational changes as specified in any notice, shall become effective at the later of (i) the fifth Business Day after the Assignee has provided notice (including without limitation for this purpose, by electronic means) to the City (the "**Notice Date**") and (ii) a date specified by the Assignee in the notice, without any further

action or consent of the City, so long as Assignee has not received, by 5:00 pm Eastern time on the Notice Date, written notice of objection to the Alternate Rate from the City. Any determination, decision, or election that may be made by the Assignee pursuant to this section, including any determination with respect to a rate or adjustment or the occurrence or non-occurrence of an event, circumstance or date, and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from the City. Until an Alternate Rate shall be determined in accordance with this section, the interest rate shall be the CB Floating Rate. In no event shall the Alternate Rate be less than zero.

Default Rate of Interest

After a default has occurred under the Installment Sale Agreement, whether or not the Assignee elects to accelerate the maturity of the Installment Sales Agreement because of such default, all Advances outstanding under the Installment Sales Agreement, shall bear interest at a Per Annum rate equal to the interest rate being charged on each such Advance plus four percent (4.00%) from the date the Assignee elects to impose such rate. Imposition of this rate shall not affect any limitations contained in the Installment Sales Agreement on the City right to repay principal on any LIBOR Rate Advance before the expiration of the Interest Period for each such Advance.

Notice and Manner of Electing Interest Rates on Advances

The City shall give the Assignee written notice via Appendix C in accordance with established procedures (effective upon receipt) of the City's intent to draw down funds for payment of Project Costs no later than 1:00 p.m. Pacific time, on the date of disbursement, if the full amount of the drawn Advance is to be disbursed as a CB Floating Rate Advance and no later than 1:00 p.m. Pacific time three Business Days before disbursement, if any part of such Advance is to be disbursed as a LIBOR Rate Advance. The City's notice must specify: (a) the disbursement date, (b) the amount of each Advance, and (c) for each LIBOR Rate Advance, the duration of the applicable Interest Period; *provided, however*, that the City may not elect an Interest Period ending after the Maturity Date. Each LIBOR Rate Advance shall be in a minimum amount of \$1,000,000. All notices under this paragraph are irrevocable. By the Assignee's close of business on the disbursement date and upon fulfillment of the conditions set forth herein and in any other of the Related Documents, the Assignee shall disburse the requested Advances in immediately available funds by crediting the amount of such Advances to the City's account with the Assignee.

Conversion and Renewals

The City may elect from time to time to convert one type of Advance into another or to renew any Advance by giving the Assignee written notice via Appendix D no later than 1:00 p.m. Pacific time, on the date of the conversion into or renewal of a CB Floating Rate Advance and 1 p.m. Pacific time three Business Days before conversion into or renewal of a LIBOR Rate Advance, specifying: (a) the renewal or conversion date, (b) the amount of the Advance to be converted or renewed, (c) in the case of conversion, the type of Advance to be converted into (CB Floating Rate Advance or LIBOR Rate Advance), and (d) in the case of renewals of or conversion into a LIBOR Rate Advance, the applicable Interest Period, provided that (i) the minimum principal amount of each LIBOR Rate Advance outstanding after a renewal or conversion shall be \$1,000,000; (ii) a LIBOR Rate

Advance can only be converted on the last day of the Interest Period for the Advance; and (iii) the City may not elect an Interest Period ending after the Maturity Date. All notices given under this paragraph are irrevocable. If the City fails to give the Assignee the notice specified above for the renewal or conversion of a LIBOR Rate Advance by 1:00 p.m. Pacific time three Business Days before the end of the Interest Period for that Advance, the Advance shall automatically be converted to a CB Floating Rate Advance on the last day of the Interest Period for the Advance.

APPENDIX B

DESCRIPTION OF PROJECT

The Project consists of the City's co-ownership interest in the following improvements to the San José-Santa Clara Regional Wastewater Facility:

Treatment Plant Capital Improvement Program

Based on information provided by San Jose, a five-year capital improvement plan is updated annually for the Treatment Plant. The current five-year capital improvement plan for the Treatment Plant totals approximately \$1 billion. The City's share of capital expenditures for the Treatment Plant, which is approximately 23% for 2019-20 and is used as an estimate in forecasts for the next five years, totals approximately \$145 million.

The City has budgeted \$49.8 million in the Wastewater CIP for fiscal year 2019-20 for its share of Treatment Plant capital costs.

The capital improvement projects will repair, replace, and/or upgrade the facilities and treatment processes at the Treatment Plant. The process areas include, but are not limited to, liquids treatment, solids treatment, energy and automation, and support facilities process areas. Projects under the capital improvement plan include repairing, replacing, and/or upgrading the Treatment Plant's electrical system, digester rehabilitation, digester gas line replacement, and plant infrastructure improvements.

City Share of Treatment Plant Capital Improvement Program			
Fiscal Year*	City Share	City Share Amount	Total Expenditures
2015-16	14.03%	\$17,454,796	\$124,446,000
2016-17	11.48%	14,153,869	123,189,000
2017-18	11.98%	25,536,837	213,078,000
2018-19	9.48%	15,665,125	165,105,000
2019-20	23.42%	49,831,212	212,725,421
2020-21	7.25%	31,999,376	441,283,609
2021-22	18.86%	25,604,818	134,523,723
2022-23	19.03%	31,829,013	156,930,678
2023-24	11.45%	6,130,941	53,502,035

* Fiscal years 2019-20 through 2023-24 are projected and subject to change.
Source: City of San Jose.

APPENDIX C

FUNDING REQUEST NO. _____

The undersigned hereby states and certifies that:

(i) I am an "Authorized Representative," as such term is defined in that certain Installment Sale Agreement, dated as of June 1, 2020 (the "Installment Sale Agreement"), between the City and the City of Santa Clara Public Facilities Financing Corporation (the "Corporation"). Capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Installment Sale Agreement.

(ii) Under Section 3.5 of the Installment Sale Agreement, the undersigned hereby requests that the Assignee advance the amount of \$_____ to the City, for deposit into the Project Fund which has been established under the Installment Sale Agreement.

(iii) The City has selected a [one month (reset daily), one (1), two (2), and three (3) month(s)] Interest Period.

(iv) The amount requested for funding shall be spent on Project Costs or used to reimburse the City for Project Costs previously paid for by the City. No portion of the amount herein requested to be disbursed was set forth in any Funding Request previously submitted to Assignee by City.

(v) _____ [if checked] This Funding Request constitutes the final Funding Request. Under Section 3.5(c) of the Installment Sale Agreement, the City hereby relinquishes the remaining Commitment.

(vi) Following the funding of this Funding Request by the Assignee, the total amount funded by the Assignee will be \$_____.

(vii) No Event of Default has occurred or is continuing under the Installment Sale Agreement and each representation and warranty set forth in the Installment Sale Agreement remains true and correct except for such representations and warranties that are no longer true due to the passage of time.

(viii) The City has completed the information set forth in Appendix D attached to the Installment Sale Agreement.

* The City and the Assignee hereby acknowledge and agree that all Advances made hereunder shall be a LIBOR Rate Advance unless and until a Benchmark Transition Event has occurred.

Dated: _____

CITY OF SANTA CLARA, as
Agent of the Corporation

By: _____
Name:
Title:

Acknowledged and Accepted:

JPMORGAN CHASE BANK, N.A.

By: _____
Name:
Title:

APPENDIX D
JPMORGAN COMMERCIAL LENDING FORMS

Thank you for selecting us as your lender. This information provides you with instructions to perform various loan activities and with key contacts to assist in the service of your loan.

- For your convenience, we have included copies of the forms that you may need to use. The completed forms should be sent to:
 - Email: Chase.Borrower.Request@jpmchase.com
 - Fax: (844) 490-5662
- When completing the forms, please include the **Borrower Name**, **Customer ID**, and **Loan #** as listed on your statement:



IL1-1650
10 SOUTH DEARBORN, FLOOR L2
CHICAGO, IL 60603-2300

00002 LI1 001 001 31618 - YNNNNNNNNNNN MM 01 7

BORROWER NAME
Address Line 1
Address Line 2

LOAN STATEMENT

Page 001 of 003

Please note that the amounts set forth in this billing statement may be subject to adjustment as described in more detail below.

Customer ID: 12345678
Statement Date: 02/01/19
Statement Period: 01/01/19 to 01/31/19
Payment Due Date: 01/31/19
Amount Due: 45,865.12
Currency: USD

Activity Details

Statement # 1111112

Effective Date	Transaction Amount	Description	Principal Balance	Interest/ Fees
		Loan # 909123896 LOAN INTEREST TYPE LIBOR		

- For any questions regarding your loan or how to fill out the forms please contact Commercial Lending Services:
 - Phone Number: (800) 472-9029
 - Email: Commercial.Lending.Services@jpmchase.com

Requesting New Loan Renewals, Conversions, and Payments (Pages 3-5)

Complete the *Loan Request* for all loan advances, renewals, conversions, and payments.

- Please submit your LIBOR advance request and same-day Money Market request by **3:00 p.m. CT**, and CB Floating or Prime same-day processing request by **3:00 p.m. local time**.
- Please address all LIBOR advances three (3) business days before the end of the interest period. If you don't renew and elect a LIBOR option, the interest rate for the loan will convert to another rate (typically a non-LIBOR), based on the terms of your loan documents.

Requesting Libor Advance Auto-Renewal (Page 6)

Complete the *Libor Advance Auto-Renewal Request* to auto-renew the interest rate and interest period on your LIBOR loans. Auto-Renewal eliminate the manual renewal process by streamlining interest rate and interest period renewals on LIBOR loans.

Establishing an Automatic Payment (Page 7)

The *Auto-Debit Authorization* form provides the ability to remove the manual payment process by streamlining payments.

Loan Payment by Wire Instructions

Use the following wire instructions to make payments to your loan via wire transfer

To: JPMorgan Chase Bank
ABA# 021000021

Attention: Commercial Bank Servicing
10 South Dearborn, Floor L2
Chicago, IL 60603-2300

Credit: Credit account # 323522211

Further Credit

To (Client Name):

Reference (Customer ID and Loan Number):

LOAN REQUEST - For all loans (single and multiple interest rate options)



IMPORTANT: Please submit your LIBOR advance request and same-day Money Market request by 3:00 p.m. CT, and CB Floating or Prime same-day processing request by 3:00 p.m. local time.

You may complete this form by hand or electronically. Use the Tab key to move from field to field and fill a check box by double clicking in the box. Please complete, print to sign, and return a copy via fax or email.

SECTION A – Borrower Information

Borrower Today's date
Customer ID (from loan statement) Proposed effective date for this request

SECTION B – Request Details (For footnoted items, please refer to Disclosures at the end of this form.)

Select one of the following three options and provide information as requested:

1 [] Advance Amount: \$
Select one of the four advance types below and to the right of the selected type, provide information as requested:
[] New LIBOR Interest period: [] 1 [] 2 [] 3 month(s) [] Other:
[] New Money Market Interest period:
[] CB Floating or Prime whichever applies per your loan documents Loan number: The new CB Floating, Prime or Other advance will be added to your outstanding loan with the same rate.
[] Other
Apply proceeds, select one: [] Per instructions in Section C [] To outstanding principal on loan number:

2 [] Renew or apply changes in principal to an existing LIBOR or Money Market advance Loan number:
Select one of the four options below and provide the information as requested. If renewing, select the interest period.
[] Renew for same amount (no change to principal): \$
[] Renew and change the principal. Specify type and amount. Provide settlement instructions in Section C. [] Increase [] Decrease Amount: \$
Indicate the requested interest period for the renewal: [] 1 [] 2 [] 3 month(s) [] Other:
If applicable, apply difference by selecting "Convert ..." or "Combine ...":
[] Convert to principal on CB Floating or Prime
[] Combine multiple obligations and provide loan numbers to be closed:

3 [] Payments (In full for LIBOR, and full or partial for any other types of advance)
Principal: \$ Interest: \$ Loan number:
Principal: \$ Interest: \$ Loan number:
Principal: \$ Interest: \$ Loan number:
[] Apply payment – Complete Section C – Settlement Instructions
[] Fee payment Facility ID: Fee amount: \$

SECTION C – Settlement Instructions Indicate "Debit ..." or "Credit ..." and provide the account number and amount:

[] Debit for payments
[] Chase checking or savings Account number: Amount: \$
[] Credit for advance or draw
[] Chase checking or savings Account number: Amount: \$
[] Check – Complete Section D – Special Instructions Amount: \$
[] Wire instructions – Complete Section D – Special Instructions Amount: \$



LOAN REQUEST - For all loans (single and multiple interest rate options)

SECTION D – Special Instructions: Use this space to provide specific information for checks or wire instructions:

If requesting a check advance in **Section C**, provide this information:

Addressee name			
Street address		City, State	ZIP

If requesting a wire advance in **Section C**, provide this information.

Name of financial institution			
Bank routing number		Deposit account number:	

Use this space for other instructions as needed. Please note when payments are being made to third parties.

SECTION E – Confirmation of Request

Upon completion of my request, I would like a confirmation:	<input type="checkbox"/>	Faxed to	
	<input type="checkbox"/>	Emailed to	

SECTION F – Borrower Certification

By making a Loan Request and by signing below, the undersigned certifies that:

- The representations and warranties made by the Borrower in the loan documents are true and correct on and as of the dates above as though made on each of those dates.
- The proposed request complies with all provisions of the loan documents.
- No default, event of default or event that would constitute a default or event of default but for the giving of notice, the lapse of time or both, has occurred in any provision of the loan documents and is continuing or would result from the request.
- I have read and understand this Loan Request, including the Disclosures on next page.

By requesting the bank to debit the account number above, as the signer, you represent and warrant that you are authorized to give the bank instructions to debit the account.

Name <i>(Type or print name)</i>		Date:	
Signature <i>(Authorized signer per borrowing resolution or authorized designee)</i>			

Please complete, print to sign, and return a copy via fax or email.

LOAN REQUEST - For all loans (single and multiple interest rate options)**Disclosures****1. Section B - Request Details**

Please consult your loan documents to locate your interest rate and interest period options and elect your interest rate and interest period accordingly. In the event of a default, your loan documents may prohibit conversion to a LIBOR loan or the making of any new advance(s). Your loan documents may also restrict the number of loans that may be outstanding at any one time.

2. Section B - Advance

LIBOR advance requests require a three (3) business day pre-notification period. If the LIBOR interest period you would like to elect ends after the maturity date of the note, please refer to your promissory note for other available options.

3. Section B - Advance

Clients that have established auto-renewal for their LIBOR advances will have all new loan advances for the same line of credit facility put on auto-renew, at the same interest period initially elected.

4. Section B - Payments

Paying down LIBOR or Money Market loan(s) prior to the end of the applicable interest rate period may incur break funding charges and/or prepayment premiums.

5. Section C - Debit for payments

If your loan is set up for auto-debit, all payments billed may be debited automatically from the designated account. Final payments are not auto-debited. To establish or change any standing auto-debit instructions, please complete the Auto-Debit Authorization form.



LIBOR ADVANCE AUTO-RENEWAL REQUEST

You may complete this form by hand or electronically. Use the Tab key to move from field to field and fill a check box by double clicking in the box. Please complete, print to sign and return via fax or email.

Borrower		Customer ID	
Street address		City, State ZIP	

Confirmation Type													
<input type="checkbox"/>	<table border="1"> <tr> <td>Automatic Renewal</td> <td>Effective Date</td> <td></td> </tr> <tr> <td colspan="3"><i>Provide a loan number from each facility <u>or</u> the principal amount and if it is a line of credit or a term loan.</i></td> </tr> <tr> <td>Facility Description(s)</td> <td colspan="2"></td> </tr> <tr> <td colspan="3"> <p>The borrower requests that JPMorgan Chase Bank, N.A. renew all existing and future LIBOR advances at the same interest period initially elected for each such advance, without further notice to or from the borrower. This auto-renewal election will apply to all existing and future LIBOR advances under the facility(ies) specified in this request, subject to the terms of the loan documents. Any existing advance will auto-renew at the interest period currently established for that advance. All new advances will auto-renew at the interest period requested at the time the advance is made. Your election to automatically renew LIBOR advances will continue until you notify us as specified in the loan documents, including at least three (3) business days before the end of any applicable interest period. By setting up this automatic renewal for your convenience, we do not waive any conditions or requirements for making advances, or defaults that may exist at the time of renewal. The Credit Agreement(s) and the other related documents remain the same. This includes your obligations related to conditions precedent for advances and prepayment/funding loss indemnification amounts for payment of a LIBOR advance on a date other than the last day of any interest period.</p> </td> </tr> </table>	Automatic Renewal	Effective Date		<i>Provide a loan number from each facility <u>or</u> the principal amount and if it is a line of credit or a term loan.</i>			Facility Description(s)			<p>The borrower requests that JPMorgan Chase Bank, N.A. renew all existing and future LIBOR advances at the same interest period initially elected for each such advance, without further notice to or from the borrower. This auto-renewal election will apply to all existing and future LIBOR advances under the facility(ies) specified in this request, subject to the terms of the loan documents. Any existing advance will auto-renew at the interest period currently established for that advance. All new advances will auto-renew at the interest period requested at the time the advance is made. Your election to automatically renew LIBOR advances will continue until you notify us as specified in the loan documents, including at least three (3) business days before the end of any applicable interest period. By setting up this automatic renewal for your convenience, we do not waive any conditions or requirements for making advances, or defaults that may exist at the time of renewal. The Credit Agreement(s) and the other related documents remain the same. This includes your obligations related to conditions precedent for advances and prepayment/funding loss indemnification amounts for payment of a LIBOR advance on a date other than the last day of any interest period.</p>		
Automatic Renewal	Effective Date												
<i>Provide a loan number from each facility <u>or</u> the principal amount and if it is a line of credit or a term loan.</i>													
Facility Description(s)													
<p>The borrower requests that JPMorgan Chase Bank, N.A. renew all existing and future LIBOR advances at the same interest period initially elected for each such advance, without further notice to or from the borrower. This auto-renewal election will apply to all existing and future LIBOR advances under the facility(ies) specified in this request, subject to the terms of the loan documents. Any existing advance will auto-renew at the interest period currently established for that advance. All new advances will auto-renew at the interest period requested at the time the advance is made. Your election to automatically renew LIBOR advances will continue until you notify us as specified in the loan documents, including at least three (3) business days before the end of any applicable interest period. By setting up this automatic renewal for your convenience, we do not waive any conditions or requirements for making advances, or defaults that may exist at the time of renewal. The Credit Agreement(s) and the other related documents remain the same. This includes your obligations related to conditions precedent for advances and prepayment/funding loss indemnification amounts for payment of a LIBOR advance on a date other than the last day of any interest period.</p>													

Date	
Signature	
	(Authorized signer per borrowing resolutions or authorized designee, such as a Designated Loan Contact)
Name	
Title	
Telephone	
Email address	

Please complete, print to sign and return via fax or email.



AUTO-DEBIT AUTHORIZATION

This information provides you with instructions to enable Auto-Debit functionality to streamline the activities associated with the service of your loan.

Instructions: You may complete this form by hand or electronically. Use the Tab key to move from field to field and fill a check box by double clicking in the box. Please complete, print to sign and return a copy via fax or email. **Please note, establishing auto-debit takes at least three (3) business days for a JPMorgan Chase Bank, N.A. (JPMC) account and at least seven (7) business days for a non-JPMC account.**

The borrower named below:

- Authorizes JPMC to:
 - Initiate debit entries to its deposit account at the depository bank named below.
 - Debit all amounts (including fees) due on the borrower's existing and future loans with JPMC.
- Represents and warrants that it owns all funds in the account listed below.
- Acknowledges that:
 - Debit entries may cause an overdraft and result in depository's refusal to honor items drawn on account.
 - The borrower will continue to be liable for any amounts (including fees) not debited or otherwise paid.
 - JPMC may, in its sole discretion, choose not to debit the account. JPMC is not responsible for any loss or delay with respect to any debit entry or if it chooses not to debit the account.
 - **Final payments are not auto-debited.** Borrower will refer to final invoice for final payment instructions.
 - JPMC may rely on this document until it has received written notification of its revocation from the borrower and JPMC has a reasonable opportunity to act on such revocation.

As the signer, you represent and warrant that you are authorized to provide the instructions and authorizations above on the borrower's behalf and to bind the borrower to this document. JPMC may rely on your authority without further inquiry.

Borrower		Customer ID <i>(from loan statement)</i>	
Depository bank		Deposit account number	
Bank routing number <i>(not required for JPMC accounts)</i>		Deposit account title	
Date		Signature <i>(Authorized signer per borrowing resolution)</i>	
Name		Title	
Telephone		Email address	

Please complete, print to sign and return via fax or email.

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT (this "Agreement"), dated as of June 1, 2020, is among the CITY OF SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), JPMORGAN CHASE BANK, N.A., as assignee (including its successors and assigns, the "Assignee"), a national banking association and existing under the laws of the United States of America, as assignee (the "Assignee"), and the CITY OF SANTA CLARA, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California (the "City").

BACKGROUND:

1. The City owns and operates facilities and property for the collection and transmission of wastewater within the service area of the City (the "Wastewater System"), and wastewater which is collected by the City is transmitted for treatment to the San José-Santa Clara Regional Wastewater Facility (the "Wastewater Treatment Facility") which is co-owned by the City and the city of San José, pursuant to that certain Sewage Plant Agreement dated March 30, 1959, as amended, between the City and the city of San José (the "Wastewater Treatment Agreement").

2. Under the Wastewater Treatment Agreement, the City is obligated to contribute its share of the capital costs of improvements to the Wastewater Treatment Facility, and the City is currently obligated to contribute funds for the capital costs of improving the Wastewater Treatment Facility (the "Project").

3. The Corporation has been formed for the purpose of assisting the City in the financing of public capital improvements, and in order to provide funds to finance the Project the Corporation has entered into an Installment Sale Agreement dated as of June 1, 2020 (the "Installment Sale Agreement") with the City under which the Corporation agrees to provide financing for the Project and to sell the completed Project to the City in consideration of the agreement by the City to pay the purchase price of the Project in semiannual installments (the "Installment Payments").

4. For the purpose of obtaining the moneys required to finance the construction of the Project in accordance with the terms of the Installment Sale Agreement, the Corporation has agreed to assign and transfer certain of its rights under the Installment Sale Agreement to the Assignee, including but not limited to its right to receive and enforce the payment of the Installment Payments, under this Agreement.

AGREEMENT:

In consideration of the material covenants contained in this Agreement, the parties hereto hereby formally covenant, agree and bind themselves as follows:

SECTION 1. *Defined Terms.* All capitalized terms not otherwise defined herein have the respective meanings given those terms in the Installment Sale Agreement.

SECTION 2. *Assignment.* The Corporation hereby assigns to the Assignee all of the Corporation's rights, title and interest under the Installment Sale Agreement, including but not limited to:

- (a) the right to receive and collect all of the Installment Payments and all of the Undrawn Fees from the City under the Installment Sale Agreement;
- (b) the right to receive and collect any proceeds of any insurance maintained thereunder with respect to the Project, or any eminent domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Project; and
- (c) the right to exercise such rights and remedies conferred on the Corporation under the Installment Sale Agreement as may be necessary or convenient (i) to enforce payment of the Installment Payments, the Undrawn Fees and any amounts required to be credited to the payment or prepayment thereof, or (ii) otherwise to protect the interests of the Corporation in the event of a default by the City under the Installment Sale Agreement.

The assignment made under this Section is absolute and irrevocable, and without recourse to the Corporation.

SECTION 3. *Acceptance.* The Assignee hereby accepts the assignments made herein.

SECTION 4. *Representations and Warranties of the Corporation.* The Corporation hereby represents, warrants and covenants to and with the City and the Assignee as follows:

- (a) The Installment Sale Agreement is free and clear of all claims, liens, security interests, encumbrances of any kind or character created by, through or under the Corporation, except the rights of the City thereunder, and except as contemplated in the Installment Sale Agreement. The Installment Sale Agreement is and shall remain free of all claims, liens, security interests and encumbrances arising through any act or omission of the Corporation.
- (b) The Corporation has complied with and performed all of its obligations under the Installment Sale Agreement and all related documents and instruments.
- (c) The Installment Sale Agreement delivered to the Assignee herewith is an original and constitutes the entire writing, obligation and agreement between the Corporation and City respecting the Installment Payments and the Undrawn Fees due thereunder.

SECTION 5. *Representations and Warranties of the Assignee.* The Assignee hereby certifies, represents, warrants, acknowledges, and covenants to and with the City and the Corporation as follows:

- (a) The Assignee acknowledges that the City will rely on the certifications, representations, warranties, acknowledgements, and covenants contained in this Agreement.
- (b) The Assignee is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it was incorporated or formed and is authorized to acquire an assignment of the Installment Sale Agreement as set forth herein.
- (c) The Assignee is a "qualified institutional buyer" (a "Qualified Institutional Buyer") within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended (the "Securities Act"), or is an "accredited investor" as described in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act (an "Institutional Accredited Investor").
- (d) The Assignee is not acquiring an assignment of the Installment Sale Agreement for more than one account, has no present intention to re-assign the Installment Sale Agreement, and is not acquiring an assignment of the Installment Sale Agreement with a view to distributing the Installment Sale Agreement.
- (e) The Assignee has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of municipal bonds and other obligations similar to the Installment Sale Agreement, to be capable of evaluating the merits and risks of an investment in the Installment Sale Agreement, and the Assignee is able to bear the economic risks of the Installment Sale Agreement.
- (f) The Assignee recognizes that the Installment Sale Agreement involves significant risks, that there is no established market for the Installment Sale Agreement and that none is likely to develop and, accordingly, that the Assignee must bear the economic risk of the Installment Sale Agreement for an indefinite period of time.
- (g) The Assignee is not relying upon the City or any of its employees or agents for advice as to the merits and risks of investment in the Installment Sale Agreement. The Assignee has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision.
- (h) The Assignee has conducted its own independent examination of, and has had an opportunity to ask questions and receive answers concerning the City, the Project, the Wastewater System, the Gross Revenues and the Net Revenues, the Installment Sale Agreement, and the security therefor, and the transactions and documents related to or contemplated by the foregoing.
- (i) The Assignee has been furnished with all documents and information regarding the City, the Project, the Wastewater System, the Gross

Revenues and the Net Revenues, the Installment Sale Agreement, and the security therefor, and the transactions and documents related to or contemplated by the foregoing, and all matters related thereto, that it has requested.

- (j) The Assignee understands that the offering and sale of the Installment Sale Agreement by the City were exempt from Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, pursuant to Section (d)(1)(i) of said Rule.
- (k) The Assignee understands that the Installment Sale Agreement carries no rating from any rating service.
- (l) The Assignee understands that the Installment Sale Agreement is not registered under the Securities Act and is not registered or otherwise qualified for sale under the "blue sky" laws and regulations of any state.
- (m) The person executing this Agreement on behalf of the Assignee is duly authorized to do so on the Assignee's behalf.

SECTION 6. *Limitations on Further Assignments.* The Assignee may resell or otherwise transfer all (but not less than all) of its interest in the Installment Sale Agreement, but only to an institution that (i) the Assignee reasonably believes is either (x) a Qualified Institutional Buyer, (y) an Institutional Accredited Investor and is purchasing the Installment Sale Agreement for its own account, (z) the Federal Reserve Bank, (ii) delivers to the City and the Corporation an executed Investor Letter containing substantially the representations and warranties set forth in Section 5, and (iii) otherwise complies in all respects with the provisions of the Installment Sale Agreement regarding such sale or transfer.

SECTION 7. *Conditions to Closing.* At or prior to the Closing Date, the Assignee shall have received the following documents, in each case satisfactory in form and substance to the Assignee:

- (a) Bond Opinion. The unqualified approving opinion of Bond Counsel, dated the Closing Date, addressed to the City, as to the validity of the Installment Sale Agreement and tax-exempt status of the Installment Payments.
- (b) Reliance Letter. A reliance letter from Bond Counsel permitting the Assignee to rely upon the approving opinion referred to in subparagraph (a), above.
- (c) Supplemental Opinion. A supplemental opinion of Bond Counsel, dated the Closing Date and addressed to the Assignee, to the effect that:
 - (i) the Installment Sale Agreement is exempt from registration under the Securities Act of 1933, as amended; and

- (ii) the Assignment Agreement and the Installment Sale Agreement have been duly authorized, executed and delivered by the City and the Corporation and constitute the legal, valid and binding agreements of the City and the Corporation, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium and other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles (regardless of whether such enforceability is considered in equity or at law), and to the exercise of judicial discretion in appropriate cases.
- (d) Certificates of the Corporation and the City. A certificate signed by a duly authorized official of the Corporation and the City to the effect that (i) the Installment Sale Agreement and this Agreement have been duly executed and delivered, (ii) the representations, warranties and covenants of the City and the Corporation in the Installment Sale Agreement, and of the Corporation and the City in this Agreement, are true and correct in all material respects as of the Closing Date, and (iii) the Corporation and the City have complied with all the terms of the Installment Sale Agreement and this Agreement to be complied with by such party prior to or concurrently with the Closing Date and such documents are in full force and effect.
- (e) Resolutions. Certificates of the authorized official of the Corporation and the City or, in each case, his or her designee, together with a fully executed copy of the Corporation and City resolutions, respectively, to the effect that, (i) such copy is a true and correct copy of such resolution; and (ii) such resolution is duly adopted and has not been modified, amended, rescinded or revoked except as provided herein, and is in full force and effect on the date of the Closing.
- (f) City Attorney Opinion. An opinion of the City Attorney of the City, dated the Closing Date, addressed to the City, the Corporation and the Assignee, as to (i) the due organization and existence of the City and the Corporation, (ii) the due adoption of the Corporation and City resolutions approving the Installment Sale Agreement, (iii) the absence of material litigation affecting the ability of the City and the Corporation to undertake and complete the transactions contemplated by the Installment Sale Agreement, and (iv) the non-existence of any agreement or other instrument to which the City or the Corporation is a party or by which it is bound or any law, regulation, court order or consent decree to which the City or the Corporation is subject, the breach of which or the default under which has or may have a material adverse effect on the ability of the City and the Corporation to perform their respective obligations under the Installment Sale Agreement.
- (g) Tax Certifications. Tax certifications by the City in form and substance acceptable to Bond Counsel.

- (h) CDIAC. Copies of preliminary filings with the California Debt and Investment Advisory Commission ("CDIAC").
- (i) Executed Documents. Executed copies of the Installment Sale Agreement and this Agreement.
- (j) Certificates of Insurance. Certificates of Insurance referenced in Section 5.4 of the Installment Sale Agreement.
- (k) Additional Documents. Such additional legal opinions, certificates, proceedings, instruments and other documents as Bond Counsel or the Assignee may reasonably request to evidence the truth and accuracy, as of the Closing Date, of the representations contained herein and the due performance or satisfaction by the Corporation at or prior to such time of all agreements then to be performed and all conditions then to be satisfied.

SECTION 8. *Expenses*. The fees and disbursements of Bond Counsel, the fees and disbursements of the financial advisor to the City or the Corporation, CDIAC fees, fees of Assignee's Counsel, Nixon Peabody LLP, and other miscellaneous expenses of the City or the Corporation incurred in connection with the offering and delivery of the Installment Sale Agreement shall all be the obligation of the Corporation. The Assignee shall have no responsibility for any expenses associated with the Installment Sale Agreement, including, but not limited to, the expenses identified above as the obligation of the City or the Corporation.

SECTION 9. *Execution in Counterparts*. This Agreement may be executed in any number of counterparts, each of which is an original and all together constitute one and the same agreement. Separate counterparts of this Agreement may be separately executed by the Assignee and the Corporation, both with the same force and effect as though the same counterpart had been executed by the Assignee and the Corporation.

SECTION 10. *Binding Effect*. This Agreement inures to the benefit of and binds the Corporation and the Assignee, and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 11. *Governing Law*. This Agreement is governed by the Constitution and laws of the State of California.

SECTION 12. *Waiver of Jury Trial; Agreement for Judicial Reference; No Sovereign Immunity*. To the fullest extent permitted by law, the Corporation hereby waives its right to trial by jury in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, this Agreement or any related documents, or the enforcement of any remedy under any law, statute, or regulation. To the extent such waiver is not enforceable, the Corporation hereby consents to the adjudication of any and all such matters pursuant to Judicial Reference as provided in Section 638 of the California Code of Civil Procedure, and the judicial referee shall be empowered to hear and determine any and all issues in such Judicial Reference whether fact or law.

To the extent the foregoing waiver of a jury trial is unenforceable under applicable California law, the Corporation agrees to refer, for a complete and final adjudication, any and all issues of fact or law involved in any litigation or proceeding (including all discovery and law and motion matters, pretrial motions, trial matter and post-trial motions up to and including final judgment), brought to resolve any dispute (whether based on contract, tort or otherwise) between the parties hereto arising out of, in connection with or otherwise related or incidental to this Agreement to a judicial referee who shall be appointed under a general reference pursuant to California Code of Civil Procedure Section 638, which referee's decision will stand as the decision of the court. Such judgment will be entered on the referee's statement of judgment in the same manner as if the action had been tried by the court. The Corporation and the Assignee shall select a single neutral referee, who shall be a retired state or federal judge with at least five years of judicial experience in civil matters; provided that the event the Corporation and the Assignee cannot agree upon a referee, the referee will be appointed by the court.

The Corporation hereby represents that it does not possess and will not invoke a claim of sovereign immunity for disputes arising out of contractual claims relating to this Agreement. To the extent the Corporation has or hereafter may acquire under any applicable law any rights to immunity from legal proceedings on the grounds of sovereignty, the Corporation hereby waives and agrees not to claim, to the extent permitted by law, such rights to immunity for itself in respect of its obligations arising under or related to this Agreement.

SECTION 12. *Arm's Length Transaction.* The transaction described in this Agreement is an arm's length, commercial transaction between the Borrower and the Assignee in which: (i) the Assignee is acting solely as a principal (i.e., as a Assignee) and for its own interest; (ii) the Assignee is not acting as a municipal advisor or financial advisor to the Borrower; (iii) the Assignee has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the City or the Corporation with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether the Assignee or any of its affiliates has provided other services or is currently providing other services to the Borrower on other matters); (iv) the only obligations the Assignee has to the Borrower with respect to this transaction are set forth in this Agreement or the Installment Purchase Agreement; and (v) the Assignee is not recommending that the City or the Corporation take an action with respect to the transaction described in this Agreement and the other Basic Documents, and before taking any action with respect to the this transaction, the City or the Corporation should discuss the information contained herein with the City's or the Corporation's own legal, accounting, tax, financial and other advisors, as the City's or the Corporation's deems appropriate.

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

**CITY OF SANTA CLARA PUBLIC
FACILITIES FINANCING CORPORATION,**
as Assignor

By _____
Executive Director

APPROVED AS TO FORM:

By _____
General Counsel

ATTEST:

By _____
Secretary

CITY OF SANTA CLARA

By _____
City Manager

APPROVED AS TO FORM:

By _____
City Attorney

ATTEST:

By _____
City Clerk

JPMORGAN CHASE BANK N.A.,
as Assignee

By _____
Name
Title