

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