
TRUST AGREEMENT

Dated as of October 1, 2023

among

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Trustee**

CITY OF SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION,

and the

CITY OF SANTA CLARA

Relating to

**\$ _____
Wastewater Revenue Certificates of Participation,
Series 2023**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	
Definitions	
Section 1.01.	Definitions2
Section 1.02.	Authorization.....2
Section 1.03.	Interpretation.....2
ARTICLE II	
The Certificates of Participation	
Section 2.01.	Authorization.....3
Section 2.02.	Date3
Section 2.03.	Terms of Certificates3
Section 2.04.	Fully Registered Form; Interest4
Section 2.05.	Book Entry System4
Section 2.06.	Form and Execution of Certificates6
Section 2.07.	Transfer and Exchange6
Section 2.08.	Certificates Mutilated, Lost, Destroyed or Stolen6
Section 2.09.	Payment.....7
Section 2.10.	Execution of Documents and Proof of Ownership7
Section 2.11.	Registration Books8
ARTICLE III	
Disposition of Proceeds of Sale	
Section 3.01.	Application of Proceeds.....8
Section 3.02.	Costs of Issuance Fund.....9
Section 3.03.	Refunding Fund9
Section 3.04.	Project Fund9
ARTICLE IV	
Prepayment of Certificates	
Section 4.01.	Prepayment10
Section 4.02.	Selection of Certificates for Prepayment.....10
Section 4.03.	Notice of Prepayment.....11
Section 4.04.	Partial Prepayment of Certificates.....12
Section 4.05.	Effect of Notice of Prepayment.....12
Section 4.06.	Purchase of Certificates12
ARTICLE V	
Installment Payments; Installment Payment Fund	
Section 5.01.	Assignment of Rights in Installment Sale Agreement.....13
Section 5.02.	Establishment of Installment Payment Fund.....13
Section 5.03.	Application of Moneys13
Section 5.04.	Surplus.....14
ARTICLE VI	
Moneys in Funds; Investment	
Section 6.01.	Held in Trust14
Section 6.02.	Investments Authorized.....14
Section 6.03.	Accounting15

Section 6.04.	Allocation of Earnings.....	15
Section 6.05.	Valuation and Disposition of Investments	15

ARTICLE VII
The Trustee

Section 7.01.	Appointment of Trustee	16
Section 7.02.	Acceptance of Trusts.....	17
Section 7.03.	Fees, Charges and Expenses of Trustee.....	20
Section 7.04.	Notice to Certificate Owners of Default	21
Section 7.05.	Removal of Trustee	21
Section 7.06.	Resignation by Trustee.....	21
Section 7.07.	Appointment of Successor Trustee	21
Section 7.08.	Merger or Consolidation	22
Section 7.09.	Concerning any Successor Trustee	22
Section 7.10.	Non-Liability of Trustee.....	22
Section 7.11.	Actions Through Agents	22
Section 7.12.	Nature of Trust Engagement	22

ARTICLE VIII

Modification or Amendment of Agreements

Section 8.01.	Amendments Permitted Without Consent of Owners	23
Section 8.02.	Amendments Permitted With Consent of Owners	23
Section 8.03.	Execution and Effect of Supplemental Agreement	24
Section 8.04.	Endorsement or Replacement of Certificates Delivered After Amendments.....	25
Section 8.05.	Amendatory Endorsement of Certificates	25
Section 8.06.	Notice to Rating Agencies	25

ARTICLE IX

Other Covenants

Section 9.01.	Compliance With and Enforcement of Installment Sale Agreement.....	25
Section 9.02.	Observance of Laws and Regulations	25
Section 9.03.	Recordation and Filing.....	25
Section 9.04.	Tax Covenants	26
Section 9.05.	Continuing Disclosure.....	26
Section 9.06.	Further Assurances	27

ARTICLE X

Limitation of Liability

Section 10.01.	Limited Liability of District and Corporation.....	27
Section 10.02.	No Liability for Trustee Performance.....	27
Section 10.03.	Indemnification of Corporation and Trustee	27
Section 10.04.	Opinion of Counsel	27
Section 10.05.	Limitation of Rights to Parties and Certificate Owners	28

ARTICLE XI

Events of Default and Remedies of Certificate Owners

Section 11.01.	Assignment of Rights.....	28
Section 11.02.	Remedies.....	28
Section 11.03.	Application of Funds.....	28
Section 11.04.	Institution of Legal Proceedings	29
Section 11.05.	Non-waiver.....	29
Section 11.06.	Remedies Not Exclusive.....	29

Section 11.07.	Power of Trustee to Control Proceedings	29
Section 11.08.	Limitation on Certificate Owners' Right to Sue.....	29

ARTICLE XII

Miscellaneous

Section 12.01.	Discharge of this Trust Agreement.....	30
Section 12.02.	Notices.....	31
Section 12.03.	Records	31
Section 12.04.	Payment of Certificates After Discharge	32
Section 12.05.	Governing Law	32
Section 12.06.	Binding Effect; Successors; Benefits Limited to Parties	32
Section 12.07.	Execution in Counterparts	32
Section 12.08.	Delivery of Cancelled Certificates	32
Section 12.09.	Corporation and City Representatives	32
Section 12.10.	Headings.....	33
Section 12.11.	Waiver of Notice	33
Section 12.12.	Severability of Invalid Provisions.....	33

APPENDIX A	Definitions
APPENDIX B	Form of Certificate of Participation

TRUST AGREEMENT

This TRUST AGREEMENT, made and entered into as of October 1, 2023, is among THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee"), 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"), 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"). Wastewater 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 the amount of \$_____ to the capital costs of improving the Wastewater Treatment Facility (the "2023 Project").

3. The City and the Corporation have previously entered into an Installment Sale Agreement dated as of June 1, 2020 (the "2020 Installment Sale Agreement"), for the purpose of providing financing for the City's share of certain capital costs of improvements to the Wastewater Treatment Facility (the "2020 Project").

4. The Corporation has been formed for the purpose of assisting the City in the financing of public capital improvements.

5. In order to provide funds to finance the 2023 Project, and to refinance the 2020 Project through the prepayment in full of the City's obligations under the 2020 Installment Sale Agreement, the Corporation and the City have entered into an Installment Sale Agreement dated as of October 1, 2023 (the "Installment Sale Agreement"), under which the Corporation agrees to provide financing for the 2023 Project and refinancing of the 2020 Project, and to sell the completed 2023 Project and 2020 Project to the City in consideration of the agreement by the City to pay the purchase price thereof in semiannual installments (the "Installment Payments").

6. For the purpose of obtaining the moneys required for the foregoing purposes the Corporation has agreed to assign and transfer certain of its rights under the Installment Sale Agreement to the Trustee under this Trust Agreement, under which the Trustee will at the written direction of the Corporation execute and deliver Wastewater Revenue Certificates of Participation, Series 2023, in the aggregate principal amount of \$_____, evidencing direct, undivided fractional interests in the Installment Payments.

7. The City and the Corporation have previously entered into an Installment Sale Agreement dated November 8, 2016 (the "2016 Trimble Road Installment Sale Agreement"), 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 "Prior Installment Payments").

8. The 2016 Trimble Road Installment Sale Agreement provides that the City may incur additional indebtedness to finance improvements to the Wastewater System upon satisfaction of the conditions set forth in Section 5.8 thereof, and the City has determined that such conditions have been met and that the Installment Payments may be payable from and secured by a pledge of and lien on the Net Revenues of the Wastewater System on a parity with the Prior Installment Payments.

A G R E E M E N T :

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

ARTICLE I DEFINITIONS

SECTION 1.01. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms defined in Appendix A attached to this Trust Agreement have the respective meanings specified in that Appendix when used in this Trust Agreement.

SECTION 1.02. *Authorization.* Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Trust Agreement, and has taken all actions necessary to authorize the execution hereof by the officers and persons signing it.

SECTION 1.03. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and 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 Trust Agreement; the words

“herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

THE CERTIFICATES OF PARTICIPATION

SECTION 2.01. *Authorization.* The Trustee is hereby authorized and directed upon written request from the Corporation to register, execute and deliver the Certificates to the Original Purchaser in the aggregate principal amount of \$_____, which represent the direct, undivided fractional ownership interests of the Owners thereof in the Installment Payments.

SECTION 2.02. *Date.* Each Certificate shall be dated as of the Closing Date. Interest represented by a Certificate is payable from the Interest Payment Date next preceding the date of execution thereof, unless:

- (a) it is executed after a Record Date and on or before the following Interest Payment Date, in which event interest represented thereby is payable from such Interest Payment Date; or
- (b) it is executed on or before the first Record Date, in which event interest represented thereby is payable from the Closing Date; or
- (c) interest represented by such Certificate is in default as of the date of its execution, in which event interest represented thereby is payable from the Interest Payment Date to which interest represented thereby has previously been paid or made available for payment.

SECTION 2.03. *Terms of Certificates.* Principal represented by the Certificates is payable on February 1 in each of the respective years and in the respective amounts, and interest represented thereby will be computed at the respective rates, as follows:

<u>Maturity Date</u> <u>(February 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
---	-----------------------------------	--------------------------------

SECTION 2.04. *Fully Registered Form; Interest.* The Certificates shall be delivered in the form of fully registered Certificates without coupons in the authorized denominations of \$5,000 or any integral multiple thereof, except that no Certificate shall represent principal payable in more than one year. The Certificates shall be assigned such alphabetical and numerical designation as shall be deemed appropriate by the Trustee.

Interest represented by the Certificates shall be payable on each Interest Payment Date to and including the date of maturity or prepayment, whichever is earlier. Said interest represents the portion of Installment Payments designated as interest and coming due on each of the respective Interest Payment Dates. The share of the portion of Installment Payments designated as interest with respect to any Certificate shall be computed by multiplying the portion of Installment Payments designated as principal represented by such Certificate by the rate of interest represented by such Certificate (calculated on the basis of a 360-day year comprised of twelve 30-day months).

SECTION 2.05. *Book Entry System.*

(a) Original Delivery. The Certificates shall be initially delivered in the form of a separate single fully registered Certificate (which may be typewritten) for each maturity of the Certificates. Upon initial delivery, the ownership of each such Certificate shall be registered on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Certificates shall be registered in the name of the Nominee on the Registration Books.

With respect to Certificates the ownership of which is registered in the name of the Nominee, the City and the Trustee have no responsibility or obligation to any Depository System Participant or to any person on behalf of which the City holds an interest in the Certificates. Without limiting the generality of the immediately preceding sentence, the City and the Trustee have no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Certificates, (ii) the delivery to any Depository System Participant or any other person, other than a Certificate Owner as shown in the Registration Books, of any notice with respect to the Certificates, including any notice of prepayment, (iii) the selection by the Depository of the beneficial interests in the Certificates to be prepaid if the City elects to prepay the Certificates in part, (iv) the payment to any Depository System Participant or any other person, other than a Certificate Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest represented by the Certificates or (v) any consent given or other action taken by the Depository as Owner of the Certificates. The City and the Trustee may treat and consider the person in whose name each Certificate is registered as the absolute owner of such Certificate for the purpose of payment of principal, premium, if any, and interest represented by such Certificate, for the purpose of giving notices of prepayment and other matters with respect to such Certificate, for the purpose of registering transfers of ownership of such Certificate, and for all other purposes whatsoever. The Trustee will pay the principal, interest and premium, if any, represented by the Certificates only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal, interest and premium, if any, represented by the Certificates to the extent of the sum or sums so paid. No person other than a Certificate Owner shall receive a Certificate evidencing the obligation of the City to make payments of principal, interest and premium, if any, under this Trust Agreement.

Upon delivery by the Depository to the Nominee of written notice to the effect that the Depository has determined to substitute a new Nominee in its place, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the City shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Certificates for the Depository's book-entry system, the City and the Trustee will execute and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Certificates. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the City or the Trustee any obligation whatsoever with respect to persons having interests in the Certificates other than the Certificate Owners. Upon the written acceptance by the Trustee, the Trustee will agree to take all action reasonably necessary for all representations of the City in such letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of such letter, the City may take any other actions, not inconsistent with this Trust Agreement, to qualify the Certificates for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. If either (i) the Depository determines not to continue to act as Depository for the Certificates, or (ii) the City determines to terminate the Depository as such, then the City shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the City and the Trustee in the issuance of replacement Certificates by providing the Trustee with a list showing the interests of the Depository System Participants in the Certificates, and by surrendering the Certificates, registered in the name of the Nominee, to the Trustee on or before the date such replacement Certificates are to be issued. The Depository, by accepting delivery of the Certificates, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the City fails to identify another Securities Depository to replace the Depository, then the Certificates shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Certificates shall designate, in accordance with the provisions hereof.

If the City determines that it is in the best interests of the Owners of the Certificates that they be able to obtain certificated Certificates, the City may notify the Depository System Participants of the availability of such certificated Certificates through the Depository. In such event, the Trustee will execute, transfer and exchange Certificates as required by the Depository and others in appropriate amounts; and whenever the Depository requests, the Trustee and the City shall cooperate with the Depository in taking appropriate action (i) to make available one or more separate certificates evidencing the Certificates to any Depository System Participant having Certificates credited to its account with the Depository, or (ii) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Certificates, all at the City's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Trust Agreement to the contrary, so long as any Certificate is registered in the name of the Nominee, all payments with respect to principal, interest and premium, if any, represented by such Certificate and all notices with respect to such Certificate shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

SECTION 2.06. *Form and Execution of Certificates.* The Certificates shall be substantially in the form set forth in Appendix A attached hereto and by this reference incorporated herein. The Certificates shall be executed by and in the name of the Trustee by the manual signature of an authorized signatory of the Trustee. If any person whose signature appears on any Certificate ceases to be an authorized signatory before the date of delivery of said Certificate, such signature shall nevertheless be as effective as if such person had remained an authorized signatory until such date.

SECTION 2.07. *Transfer and Exchange.*

(a) Transfer of Certificates. The registration of any Certificate may, in accordance with its terms, be transferred upon the Registration Books by the person in whose name it is registered, in person or by a duly authorized attorney, upon surrender of such Certificate for cancellation at the Office of the Trustee, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. Whenever any Certificate or Certificates shall be surrendered for registration of transfer, the Trustee will execute and deliver a new Certificate or Certificates representing the same maturity, interest rate and aggregate principal amount, in any authorized denominations. The City shall pay all costs of the Trustee incurred in connection with any such transfer, except that the Trustee may require the payment by the Certificate Owner of any tax or other governmental charge required to be paid with respect to such transfer.

Prior to any transfer of the Certificates outside the book-entry system (including, but not limited to, the initial transfer outside the book-entry system) the transferor shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045, as amended. The Trustee shall conclusively rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

(b) Exchange of Certificates. Certificates may be exchanged at the Office of the Trustee, for a like aggregate principal amount of Certificates representing other authorized denominations of the same interest rate and maturity. The City shall pay all costs of the Trustee incurred in connection with any such exchange, except that the Trustee may require the payment by the Certificate Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

(c) Limitations on Transfer or Exchange. The Trustee may refuse to transfer or exchange either (i) any Certificate during the period established by the Trustee for the selection of Certificates for prepayment, or (ii) the portion of any Certificate which the Trustee has selected for prepayment under the provisions of Section 4.02.

SECTION 2.08. *Certificates Mutilated, Lost, Destroyed or Stolen.* If any Certificate is mutilated, the Trustee, at the expense of the Owner of such Certificate, shall execute and deliver a new Certificate of like principal amount, interest rate and maturity in replacement for the Certificate so mutilated, but only upon surrender to the Trustee of the Certificate so mutilated. The Trustee will cancel and destroy every mutilated Certificate surrendered to it and shall deliver a certificate of destruction to the City at its request. If any Certificate is lost, destroyed or stolen, evidence of such loss, destruction or theft must be submitted to the Trustee, and, if such evidence is satisfactory to the Trustee and the City and, if an indemnity satisfactory to the Trustee and the City shall be given, the Trustee,

at the expense of the Certificate Owner, shall execute and deliver a new Certificate of like principal amount, interest rate and maturity and numbered as the Trustee will determine in lieu of and in replacement for the Certificate so lost, destroyed or stolen. The Trustee may require payment of an appropriate fee for each replacement Certificate delivered under this Section and of the expenses which may be incurred by the Trustee in carrying out the duties under this Section. Any Certificate issued under the provisions of this Section in lieu of any Certificate alleged to be lost, destroyed or stolen shall be equally entitled to the benefits of this Trust Agreement with all other Certificates secured by this Trust Agreement. The Trustee is not required to treat both the original Certificate and any replacement Certificate as being Outstanding for the purpose of determining the principal amount of Certificates which may be executed and delivered hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and replacement Certificate shall be treated as one and the same. Notwithstanding any other provision of this Section, in lieu of delivering a replacement for a Certificate which has been mutilated, lost, destroyed or stolen, and which has matured, the Trustee may make payment with respect to such Certificate upon receipt of indemnity satisfactory to the Trustee and the City.

SECTION 2.09. *Payment.* The Trustee will pay interest represented by the Certificates on each Interest Payment Date, to the person appearing on the Registration Books as the Owner thereof as of the close of business on the Record Date immediately preceding such Interest Payment Date, by check mailed to the Owner by first class mail at the Owner's address appearing on the Registration Books. At the written request of the Owner of Certificates in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of the Record Date preceding any Interest Payment Date, the Trustee will pay interest represented by the Certificates by wire transfer in immediately available funds to such account in the United States as is specified in the written request. The principal and prepayment price represented by any Certificate at maturity or upon prior prepayment is payable in lawful money of the United States of America upon surrender of such Certificate at the Office of the Trustee. The provisions of this Section are subject in all respects to the provisions of Section 2.05 which shall govern the payment of principal of and interest on the Certificates at all times while they are held in book-entry form.

SECTION 2.10. *Execution of Documents and Proof of Ownership.* Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this Trust Agreement to be signed or executed by Certificate Owners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such Certificates. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the ownership of Certificates shall be sufficient for any purpose of this Trust Agreement (except as otherwise herein provided), if made in the following manner:

- (a) The fact and date of the execution by any Owner, attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to take acknowledgments of deeds to be

recorded in such jurisdictions, that the persons signing such instruments acknowledged before him the execution thereof. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate shall also constitute sufficient proof of authority.

- (b) The fact of the ownership of Certificates by any person and the amount, the maturity and the numbers of such Certificates and the date of holding the same shall be proved by the Registration Books.

Nothing contained in this Section limits the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which the Trustee may deem sufficient. Any request or consent of the Owner of any Certificate binds every future Owner of the same Certificate in respect of anything done or suffered to be done by the Trustee under such request or consent.

SECTION 2.11. *Registration Books.* The Trustee shall keep or cause to be kept sufficient records for the registration and registration of transfer of the Certificates, which shall at all reasonable times upon prior notice be open to inspection by the City and the Corporation during regular business hours; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Certificates as hereinbefore provided.

ARTICLE III

DISPOSITION OF PROCEEDS OF SALE

SECTION 3.01. *Application of Proceeds.* The proceeds of the Certificates in the amount of \$_____ (representing the par amount of the Certificates, net of Original Purchaser's discount in the amount of \$_____ and [plus the amount of [net] original issue premium received on the sale of the Certificates in the amount of \$_____][less the amount of [net] original issue discount on the sale of the Certificates in the amount of \$_____]) received by the Trustee on the Closing Date shall forthwith be deposited by the Trustee in the following respective funds and in the following order of priority:

- (a) The Trustee will deposit the amount of \$_____ in the Costs of Issuance Fund.
- (b) The Trustee will deposit the amount of \$_____ in the Refunding Fund.
- (c) The Trustee will deposit the amount of \$_____, constituting the remainder of such proceeds, in the Project Fund.

The Trustee may, in its discretion, establish a temporary fund or account in its books and records to facilitate such deposits.

SECTION 3.02. *Costs of Issuance Fund.* The Trustee shall establish and maintain a special fund designated as the “Costs of Issuance Fund” to be held by the Trustee in trust for the benefit of the City and the Owners of the Certificates, and applied solely as provided herein. The Trustee shall disburse amounts in the Costs of Issuance Fund to pay Costs of Issuance from time to time in accordance with one or more written requisitions signed by a City Representative and filed by the City with the Trustee substantially the form attached hereto as Appendix C. Each requisition shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee has no duty to confirm the accuracy of such facts. On the date falling 90 days after the Closing Date, the Trustee shall transfer any funds remaining in the Costs of Issuance Fund to the Interest Account of the Installment Payment Fund to be credited towards amounts required to be transferred by the City for deposit therein for the payment of interest on the Certificates pursuant to Section 5.02(a), and the Trustee shall thereupon close the Costs of Issuance Fund.

SECTION 3.03. *Refunding Fund.* The Trustee shall establish and maintain a separate fund to be known as the “Refunding Fund.” Except as otherwise provided herein, moneys in the Refunding Fund will be used solely for the prepayment of the 2020 Installment Payments.

On [the Closing Date][_____, 2023], the Trustee will disburse moneys in the Refunding Fund to the 2020 Assignee in accordance with a written requisition filed by the City with the Trustee specifying the amount of such disbursement and the name and address of the firm or corporation to whom payment is to be made. Such requisition will be sufficient evidence to the Trustee of the facts stated therein and the Trustee has no duty to confirm the accuracy of such facts. The Trustee has no responsibility for payments made in accordance with this Section. Following such disbursement, the Trustee shall transfer any funds remaining on deposit in the Refunding Fund to the Interest Account of the Installment Payment Fund to be credited towards amounts required to be transferred by the City for deposit therein for the payment of interest on the Certificates pursuant to Section 5.02(a), and the Trustee shall close the Refunding Fund.

SECTION 3.04. *Project Fund.* The Trustee shall establish and maintain a separate fund to be known as the “Project Fund.” Except as otherwise provided herein, moneys in the Project Fund shall be used solely for the payment of the Project Costs. The Trustee 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) in accordance with one or more written requisitions signed by a City Representative and filed by the City with the Trustee substantially the form attached hereto as Appendix D. Each requisition shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee has no duty to confirm the accuracy of such facts. The Trustee has no responsibility for payments made in accordance with this Section. The City shall maintain accurate records showing all disbursements from the Project Fund.

Upon the completion of the 2023 Project, the City shall deliver to the Trustee a written certificate of a City Representative as required by Section 3.5 of the Installment Sale Agreement stating that the 2023 Project has been substantially completed, stating that no further amounts are intended to be requisitioned from the Project Fund, and directing the Trustee to either (a) transfer all or a portion of the amounts remaining in the Project Fund to the Installment Payment Fund to be applied to pay the interest components of the Installment Payments next coming due and payable, or (b) transfer all

or a portion of the amounts remaining in the Project Fund to the Installment Payment Fund to be applied the prepayment of Installment Payments under Section 7.2 of the Installment Sale Agreement and the corresponding prepayment of the Certificates under Section 4.01(a). Following disbursement of all amounts remaining in the Project Fund, the Trustee shall thereupon close the Project Fund.

If an Event of Default occurs under Section 6.1(a) of the Installment Sale Agreement prior to the closure of the Project Fund by the Trustee, the Trustee shall transfer all amounts remaining on deposit in the Project Fund to the Installment Payment Fund, to be credited to the payment of the Installment Payment then in default.

ARTICLE IV

PREPAYMENT OF CERTIFICATES

SECTION 4.01. *Prepayment.*

(a) Optional Prepayment. The Certificates maturing on or before February 1, 20__, are not subject to optional prepayment before their respective stated maturities. The Certificates maturing on or after February 1, 20__, are subject to prepayment prior to their stated maturity, at the option of the City, in whole, or in part by lot, on February 1, 20__, or on any date thereafter, from prepayments of the Installment Payments made under Section 9.2 of the Installment Sale Agreement from any legally available source of funds of the City, upon payment of a prepayment price equal to 100% of the principal amount to be prepaid, together with accrued interest to the date fixed for prepayment, without premium.

(b) Mandatory Sinking Fund Prepayment. The Term Certificates are subject to mandatory prepayment in part by lot, at a prepayment price equal to 100% of the principal amount thereof to be prepaid, without premium, in the aggregate respective principal amounts and on February 1 in the respective years as set forth in the following table; *provided, however,* that if some but not all of the Term Certificates have been prepaid under subsection (a) of this Section, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of the Term Certificates so prepaid, to be allocated among such sinking fund payments in integral multiples of \$5,000 (as set forth in a schedule provided by the City to the Trustee).

**Term Certificates Maturing
February 1, 20__**

Sinking Fund
Prepayment Date
(February 1)

Principal Amount
To Be Prepayment

\$

SECTION 4.02. *Selection of Certificates for Prepayment.* Whenever provision is made in this Trust Agreement for the prepayment of Certificates and less than all

Outstanding Certificates of any maturity are called for prepayment, the Trustee shall select Certificates of such maturity for prepayment from such maturities as are designated by the City (or if the City fails to designate such maturities, by lot within a maturity. For the purposes of such selection, Certificates shall be deemed to be composed of \$5,000 portions, and any such portion may be separately prepaid.

SECTION 4.03. *Notice of Prepayment.* When prepayment is authorized or required under Section 4.01, the Trustee shall give notice of the prepayment of the Certificates on behalf and at the expense of the City. Such notice shall:

- (a) state the prepayment date and prepayment price;
- (b) state the numbers or maturities of the Certificates to be prepaid, if less than all of the then Outstanding Certificates are to be called for prepayment;
- (c) if a Certificate is to be prepaid only in part, identify the portion of the Certificate which is to be prepaid;
- (d) require that such Certificates be surrendered on the prepayment date at the Office of the Trustee for prepayment at said prepayment price;
- (e) state that interest represented by the Certificates will not accrue from and after the prepayment date; and
- (f) state that on the prepayment date the principal represented by each Certificate will become due and payable, together with accrued interest represented thereby to the prepayment date, and that from and after such date interest represented thereby ceases to accrue and be payable.

The Trustee has no liability for any designation of the CUSIP numbers of the Certificates to be prepaid, and neither the failure to identify the CUSIP numbers of the Certificates to be prepaid nor any incorrect designation of such CUSIP numbers will affect the sufficiency of the proceedings for the prepayment of such Certificates or the cessation of accrual of interest represented thereby from and after the date fixed for prepayment.

The Trustee shall give notice of prepayment to the Owners of Certificates designated for prepayment at their respective addresses appearing on the Registration Books, and shall cause a notice of prepayment to be posted on the Electronic Municipal Market Access (EMMA) website of the Municipal Securities Rulemaking Board, at least 20 days but not more than 60 days prior to the prepayment date. Neither the failure to receive any such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of such Certificates or the cessation of accrual of interest represented thereby from and after the date fixed for prepayment.

The City may rescind any optional prepayment of the Certificates, and notice thereof, for any reason on any date prior to the date fixed for such optional prepayment by causing written notice of the rescission to be given to the Owners of the Certificates so called for prepayment. Notice of rescission of optional prepayment will be given in the same manner in which the notice of prepayment was originally given. The actual receipt

of notice of such rescission is not a condition precedent to rescission and failure to receive such notice or any defect in such notice will not affect the validity of the rescission. None of the City, the Corporation, or the Trustee shall have any liability to the Owners of any Certificates, or any other party, as a result of the City's decision to rescind an optional prepayment of the Certificates.

SECTION 4.04. *Partial Prepayment of Certificates.* Upon surrender of any Certificate prepaid in part only, the Trustee shall execute, register, and deliver to the Owner thereof, at the expense of the City, a new Certificate or Certificates of authorized denominations equal in aggregate principal amount to the unprepaid portion of the Certificate surrendered and of the same interest rate and the same maturity.

SECTION 4.05. *Effect of Notice of Prepayment.* Moneys for the prepayment (including the interest to the applicable date of prepayment) of Certificates having been set aside in the Installment Payment Fund, the Certificates shall become due and payable on the date of such prepayment, and, upon presentation and surrender thereof at the Office of the Trustee, said Certificates shall be paid at the unpaid principal amount (or applicable portion thereof) represented thereby plus interest accrued and unpaid to said date of prepayment.

If, on said date of prepayment, moneys for the prepayment of all the Certificates to be prepaid, together with interest represented thereby to said date of prepayment, shall be held by the Trustee so as to be available therefor on such date of prepayment, then, from and after said date of prepayment, interest represented by the Certificates shall cease to accrue and become payable. All moneys held by the Trustee for the prepayment of Certificates shall be held in trust for the account of the Owners of the Certificates so to be prepaid, and shall be held by the Trustee in cash uninvested.

All Certificates paid at maturity or prepaid prior to maturity under the provisions of this Article shall be canceled upon surrender thereof.

SECTION 4.06. *Purchase of Certificates.* In lieu of prepayment of Certificates as provided in this Article, amounts held by the Trustee for such prepayment may, at the written request of the City Representative received by the Trustee at least 75 days prior to the selection of Certificates for prepayment, be applied by the Trustee to the purchase of Certificates at public or private sale as and when and at such prices (including brokerage, accrued interest and other charges) as the City may in its discretion direct, but not to exceed the prepayment price which would be payable if such Certificates were prepaid.

ARTICLE V

INSTALLMENT PAYMENTS; INSTALLMENT PAYMENT FUND

SECTION 5.01. *Assignment of Rights in Installment Sale Agreement.* The Corporation hereby irrevocably transfers, assigns and sets over to the Trustee, without recourse to the Corporation, all of its rights in the Installment Sale Agreement (excepting only the Corporation's rights to receive Additional Payments under Section 4.8 and the Corporation's rights to give approvals and consents thereunder), including but not limited to all of the Corporation's rights to receive and collect all of the Installment Payments and all other amounts required to be deposited in the Installment Payment Fund, and the Trustee hereby accepts such assignment.

The City shall pay to the Trustee all Installment Payments and other amounts which have been assigned to the Trustee hereunder. Any Installment Payments collected or received by the Corporation shall be deemed to be held and to have been collected or received by the Corporation as the agent of the Trustee, and the Corporation shall immediately transfer all such Installment Payments and other amounts to the Trustee.

SECTION 5.02. *Establishment of Installment Payment Fund.* The Trustee shall establish and maintain a special fund designated as the "Installment Payment Fund," into which the Trustee shall deposit all amounts paid to the Trustee for such purpose under the Installment Sale Agreement. Within the Installment Payment Fund, the Trustee shall establish separate accounts designated as the "Interest Account," "Principal Account" and "Redemption Account."

All moneys at any time deposited by the Trustee in the Installment Payment Fund shall be held by the Trustee in trust for the benefit of the City and the Owners of the Certificates, and are hereby pledged to secure the payment of the principal of and interest and premium (if any) represented by the Certificates. This pledge constitutes a lien on and security interest in the Installment Payment Fund and shall attach, be perfected and be valid and binding from and after the Closing Date, without the need for any physical delivery thereof or further act. So long as any Certificates are Outstanding, neither the City nor the Corporation have any beneficial right or interest in the Installment Payment Fund or the moneys deposited therein, except only as provided in the Installment Sale Agreement or herein, and such moneys shall be used and applied by the Trustee as hereinafter set forth.

SECTION 5.03. *Application of Moneys.* Except as provided in Sections 5.04 and 11.03, the Trustee shall apply amounts in the Installment Payment Fund solely for the purpose of paying the principal, interest and prepayment premiums (if any) represented by the Certificates as the same shall become due and payable, in accordance with the provisions of Article II and Article IV, and in the following manner and order of priority:

- (a) *Interest Account.* The Trustee shall deposit to the Interest Account on or before the last Business Day of each January and July an amount equal to the amount of interest to be paid on Outstanding Certificates on the next Interest Payment Date. Moneys in the Interest Account shall be used to pay interest on the Certificates as it becomes due.

- (b) *Principal Account.* The Trustee shall deposit to the Principal Account on or before the last Business Day of each January (in each Bond Year ending on a date on which Certificates mature), an amount equal to the principal amount at maturity plus an amount equal to any mandatory sinking fund redemption requirement of Section 4.01(b) of Certificates Outstanding that will mature or be subject to mandatory redemption on the last day of such Bond Year. Moneys in the Principal Account shall be used to retire Certificates by payment at their scheduled maturity or to redeem Certificates on their mandatory sinking fund prepayment dates.
- (c) *Redemption Account.* If the City makes an optional prepayment of any installment of principal which is to be applied to prepay Certificates in accordance with Section 4.01(a) and specifying the amount and maturities of Certificates to be redeemed and the optional redemption date, the amount so paid shall be credited to the Redemption Account and applied promptly by the Trustee, first, to cause the amounts credited to the Interest Account or the Principal Account of the Installment Payment Fund, in that order, to be not less than the amounts then required to be credited thereto, and, second, to retire Certificates by purchase, redemption or both purchase and redemption in accordance with the City's directions.

SECTION 5.04. *Surplus.* At the written request of the City any surplus remaining in the Installment Payment Fund, after prepayment and payment of all Certificates, including all premiums and accrued interest (if any) and payment of any applicable fees and expenses to the Trustee, will be withdrawn by the Trustee and remitted to the City to be used for any lawful purpose of the City.

ARTICLE VI

MONEYS IN FUNDS; INVESTMENT

SECTION 6.01. *Held in Trust.* The moneys and Permitted Investments held by the Trustee under this Trust Agreement are irrevocably held in trust for the benefit of the City and the Owners of the Certificates solely for the purposes herein specified, and such moneys, and any income or interest earned thereon, shall be expended only as provided in this Trust Agreement, and is not subject to levy or attachment or lien by or for the benefit of any creditor of the Corporation, the Trustee, the City or the Owner of any Certificates.

SECTION 6.02. *Investments Authorized.* Upon the written request of the City filed with the Trustee from time to time, moneys held by the Trustee in any fund or account established hereunder shall be invested and reinvested by the Trustee in Permitted Investments which mature not later than the date such moneys are required or estimated by the City to be required to be expended hereunder. In the absence of any written request of the City directing the investment of uninvested moneys held by the Trustee hereunder, the Trustee shall hold such moneys uninvested. Such investments, if registrable, shall be registered in the name of the Trustee, as trustee or in the name of its nominee, and shall be held by the Trustee. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section and shall be entitled to its customary fee therefor. Such investments and reinvestments shall be made giving full consideration to the time at which funds are required to be available. The Trustee or any

of its affiliates may act as purchaser or agent in the making or disposing of any investment. Whenever in this Trust Agreement any moneys are required to be transferred by the City to the Trustee, such transfer may be accomplished by transferring a like amount of Permitted Investments. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee is not responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with this Section. The Trustee may rely conclusively and without liability upon investment direction of the City as to the suitability and legality of the directed investments.

The City shall invest amounts held by it in any fund or account established hereunder or under the Installment Sale Agreement in any investments which are authorized for the investment of City funds under the laws of the State of California.

Ratings of Permitted Investments referred to herein shall be determined at the time of purchase of such Permitted Investments and without regard to rating subcategories. The Trustee shall have no responsibility to monitor the ratings of Permitted Investments after the initial purchase of such Permitted Investments or the responsibility to validate the ratings of Permitted Investments prior to the initial purchase.

SECTION 6.03. *Accounting.* The Trustee shall furnish to the City, not less than monthly, an accounting (in the form customarily used by the Trustee) of all investments and other transactions made by the Trustee under this Trust Agreement. The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, at no additional cost, the City specifically waives receipt of such confirmations to the extent permitted by law.

SECTION 6.04. *Allocation of Earnings.* Any income, profit or loss on such investments shall be deposited in or charged to the respective funds and accounts from which such investments were made.

SECTION 6.05. *Valuation and Disposition of Investments.*

(a) Except as otherwise provided in subsection (b) of this Section, all investments of amounts deposited in any fund or account created by or under this Trust Agreement, or otherwise containing gross proceeds of the Certificates (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 Trust Agreement or the Tax Code) at Fair Market Value as such term is defined in subsection (d) below. The Trustee has no duty in connection with the determination of Fair Market Value other than to follow (i) the investment directions of the City in any written directions of a City Representative, and (ii) its normal practices in the purchase, sale and determining the value of Permitted Investments. The Trustee may use and rely conclusively and without liability upon any generally recognized pricing information service (including brokers and dealers in securities) available to it.

(b) Investments in any funds or accounts (or portions thereof) that are subject to a yield restriction under the Tax Code shall be valued at their present value (within the meaning of Section 148 of the Tax Code). The City shall inform the Trustee which funds are subject to a yield restriction.

(c) Except as provided in subsection (b), for the purpose of determining the amount in any fund, the value of Permitted Investments credited to such fund shall be valued by the Trustee at least quarterly at the Fair Market Value thereof. The Trustee may sell or present for prepayment, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal, or disbursement from the fund to which such Permitted Investment is credited, and the Trustee is not liable or responsible for any loss resulting from any such Permitted Investment.

(d) For purposes of this Section, 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 any 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 VII

THE TRUSTEE

SECTION 7.01. *Appointment of Trustee.* The Bank of New York Mellon Trust Company, N.A. is hereby appointed Trustee by the Corporation and the City for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Trust Agreement. The Corporation and the City agree that they shall maintain a Trustee having a corporate trust office in the State of California and having a combined capital and surplus (or whose related bank holding company has a combined capital and surplus) of at least \$50,000,000, and which shall be subject to supervision or examination by federal or state authority, so long as any Certificates are Outstanding. If such bank or trust company publishes a report of condition at least annually under law or to the requirements of any supervising or examining authority above referred to then for the purpose of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The City and the Corporation covenant that they shall maintain a Trustee qualified under the provisions of the foregoing provisions of this Section, so long as any Certificates are Outstanding.

The Trustee is hereby authorized to pay or prepay the Certificates when duly presented as provided herein for payment at maturity, or on prepayment, or on purchase by the Trustee as directed by the City prior to maturity in accordance with Section 4.06, and to cancel all Certificates upon payment thereof. The Trustee shall keep accurate records of all funds administered by it and of all Certificates paid and discharged. The Trustee shall be compensated for its services rendered under the provisions of this Trust Agreement.

SECTION 7.02. *Acceptance of Trusts.* The Trustee hereby accepts the express trusts imposed upon it by this Trust Agreement, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

- (a) The Trustee, prior to the occurrence of an Event of Default and after curing or waiver of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Trust Agreement. In case an Event of Default has occurred (which has not been cured or waived) the Trustee may exercise such of the rights and powers vested in it by this Trust Agreement, and shall use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of its own affairs.
- (b) No provision in this Trust Agreement requires the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.
- (c) The Trustee is not responsible or liable for any recital herein, or in the Certificates, or for any of the supplements thereto or instruments of further assurance, or for the validity or sufficiency of the security for the Certificates executed and delivered hereunder or intended to be secured hereby and the Trustee shall not be bound at any time to ascertain or inquire as to the observance or performance of any covenants, conditions or agreements on the part of the Corporation or the City under the Installment Sale Agreement. The Trustee is not responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance herewith.
- (d) The Trustee is not accountable for the use of any Certificates delivered hereunder. The Trustee may become the Owner of Certificates with the same rights which it would have if not the Trustee; may acquire and dispose of other bonds or evidence of indebtedness of the City with the same rights it would have if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Certificates, whether or not such committee shall represent the Owners of the majority in aggregate principal amount of the Certificates then Outstanding.

- (e) The Trustee shall be protected in acting upon any notice, request, requisition, consent, certificate, order, affidavit, letter, telegram, direction, facsimile transmission, electronic mail or other paper or document believed by the trust officer responsible for the administrative of the trusts created hereunder to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken or omitted to be taken by the Trustee in good faith under this Trust Agreement upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Certificate, shall be conclusive and binding upon all future Owners of the same Certificate and upon Certificates delivered in exchange therefor or in place thereof. The Trustee is not bound to recognize any person as an Owner of any Certificate or to take any action at such person's request unless such Certificate shall be deposited with the Trustee or satisfactory evidence of the ownership of such Certificate shall be furnished to the Trustee.
- (f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed by a Corporation Representative or a City Representative as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default of which the Trustee has been given notice or is deemed to have notice, as provided in Section 7.02(h), shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed by it to be necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of a Corporation Representative or a City Representative to the effect that an authorization in the form therein set forth has been adopted by the Corporation or the City, as the case may be, as conclusive evidence that such authorization has been duly adopted, and is in full force and effect.
- (g) The permissive right of the Trustee to do things enumerated in this Trust Agreement may not be construed as a duty and the Trustee is not answerable for other than its negligence or willful misconduct. The immunities and exceptions from liability of the Trustee extend to its officers, directors, employees and agents.
- (h) The Trustee is not required to take notice or be deemed to have notice of any Event of Default hereunder except failure by the City to make any of the Installment Payments to the Trustee required to be made by the City under the Installment Sale Agreement or failure by the Corporation or the City to file with the Trustee any document required by this Trust Agreement or the Installment Sale Agreement to be so filed subsequent to the delivery of the Certificates, unless the Trustee shall be specifically notified in writing of such default by the Corporation, the City or the Owners of at least 25% in aggregate

principal amount of Certificates then Outstanding. All notices or other instruments required by this Trust Agreement to be delivered to the Trustee must, in order to be effective, be delivered at the Office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Event of Default except as aforesaid.

- (i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, have the right (but not any duty) fully to inspect the books, papers and records of the Corporation or the City pertaining to the Certificates, and to take such memoranda from and with regard thereto as may be desired.
- (j) The Trustee is not required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.
- (k) Notwithstanding anything elsewhere in this Trust Agreement with respect to the execution of any Certificates, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Trust Agreement, the Trustee has the right, but is not required, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action, which may be deemed desirable by the Trustee for the purpose of establishing the right of the Corporation or the City to the execution of any Certificates, the withdrawal of any cash, or the taking of any other action by the Trustee.
- (l) Before taking any action referred to in Section 11.03 at the direction of the Certificate Owners, the Trustee may require that a satisfactory indemnity bond be furnished by the Certificate Owners, or any of them, for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any such action.
- (m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. The Trustee has no liability for interest on any moneys received hereunder except such as may be agreed upon, other than interest derived from investments made or required to be made under Section 6.02.
- (n) The Trustee is not responsible for the sufficiency of the Installment Sale Agreement, or its right to receive moneys under the Installment Sale Agreement.

- (o) The Trustee is not liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of a majority in aggregate principal amount of the Outstanding Certificates relating to the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Trust Agreement.
- (p) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers and the Trustee is not responsible for any misconduct or negligence on the part of any attorney, agent, or receiver appointed with due care. The Trustee shall be entitled to advice or an opinion of counsel concerning all matters of trust and its duty hereunder and shall be protected in any action taken or suffered by it hereunder in reliance on such advice or opinion.
- (q) The Trustee is not liable for any error of judgment made in good faith, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.
- (r) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the 2023 Project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.
- (s) The Trustee agrees to accept and act upon facsimile transmission of written instructions and/or directions under this Trust Agreement provided, however, that: (i) subsequent to such facsimile transmission of written instructions and/or directions the Trustee, if provided to the Trustee, shall forthwith receive the originally executed instructions and/or directions, (ii) such originally executed instructions and/or directions shall be signed by a person as may be designated and authorized to sign for the party signing such instructions and/or directions, and (iii) the Trustee has received a current incumbency certificate containing the specimen signature of such designated person.

SECTION 7.03. *Fees, Charges and Expenses of Trustee.* The Trustee shall be entitled to payment and reimbursement by the City for reasonable fees for its services

rendered hereunder and all advances, agent and counsel fees (including expenses) and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. The Trustee has a first lien with right of payment prior to payment on account of principal and interest represented by any Certificate upon the amounts held hereunder for the foregoing fees, charges and expenses incurred by it respectively. The Trustee shall be entitled to interest on all moneys advanced by it in the performance of its duties hereunder at the maximum legal rate allowable.

SECTION 7.04. *Notice to Certificate Owners of Default.* If an Event of Default occurs of which the Trustee has been given or is deemed to have notice, as provided in Section 7.02(h), then the Trustee shall promptly give written notice thereof by first class mail, postage prepaid, to the Owner of each Outstanding Certificate, unless such Event of Default has been cured before the giving of such notice; *provided, however* that unless such Event of Default consists of the failure by the City to make any Installment Payment when due, the Trustee may elect not to give such notice to the Certificate Owners if and so long as the Trustee in good faith determines that it is in the best interests of the Certificate Owners not to give such notice.

SECTION 7.05. *Removal of Trustee.* The City may remove the Trustee upon 30 days' prior written notice, unless an Event of Default has occurred and is continuing, and shall remove the Trustee (a) if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of a majority in aggregate principal amount of the Certificates then Outstanding (or their attorneys duly authorized in writing) or (b) if at any time the Trustee ceases to be eligible in accordance with Section 7.01, or shall become incapable of acting, or shall be adjudged as bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation, or liquidation. In each case such removal shall be accomplished by the giving of 30 days' prior written notice of such removal by the City to the Trustee, whereupon the City shall appoint a successor Trustee in accordance with Section 7.07.

SECTION 7.06. *Resignation by Trustee.* The Trustee and any successor Trustee may at any time resign by giving written notice by registered or certified mail to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor Trustee in accordance with Section 7.07. Any resignation or removal of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. Upon such acceptance, the City shall mail notice thereof to the Certificate Owners at their respective addresses set forth on the Registration Books.

SECTION 7.07. *Appointment of Successor Trustee.* If the Trustee resigns or is removed under Sections 7.05 or 7.06, respectively, the City shall promptly appoint a successor Trustee. If the City for any reason whatsoever fails to appoint a successor Trustee within 30 days following the delivery to the Trustee of the instrument described in Section 7.05 or within 30 days following the receipt of notice by the City under Section 7.06, the Trustee may apply, at the expense of the City, to any federal or state court for the appointment of a successor Trustee meeting the requirements of Section 7.01. Any such successor Trustee appointed by such court will become the successor Trustee hereunder notwithstanding any action by the City purporting to appoint a successor Trustee following the expiration of such 30 day period.

SECTION 7.08. *Merger or Consolidation.* Any company or association into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company or association to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company or association shall be eligible under Section 7.01, shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

SECTION 7.09. *Concerning any Successor Trustee.* Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Corporation and the City an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the written request of the City, or of its successor, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Should any instrument in writing from the City be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

SECTION 7.10. *Non-Liability of Trustee.* The recitals, statements and representations by the City and the Corporation contained in this Trust Agreement or in the Certificates shall be taken and construed as made by and on the part of the City and the Corporation, as the case may be, and not by the Trustee, and the Trustee has no responsibility, obligation or liability for the correctness of any thereof.

The Trustee is not (a) responsible for the sufficiency or enforceability of the Installment Sale Agreement or the assignment hereunder of its rights to receive Installment Payments, (b) deemed to have knowledge of any Event of Default unless and until it has received written notice thereof or has actual knowledge thereof or except as provided in Section 7.02(h) or (c) accountable for the use or application by the City or the Corporation of any funds which the Trustee has released under this Trust Agreement.

SECTION 7.11. *Actions Through Agents.* The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the Trustee is not answerable for the default or misconduct of any such attorney, agent, or receiver selected by it with reasonable care. The Trustee is not answerable for the exercise of any discretion or power under this Trust Agreement or for anything whatever in connection with the funds and accounts established hereunder, except only for its own negligence or willful misconduct.

SECTION 7.12. *Nature of Trust Engagement.* The Trustee undertakes to perform such duties and only such duties as are expressly and specifically set forth in the Trust Agreement and no implied covenants or obligations whatsoever shall be read into the Trust Agreement against the Trustee. In accepting the trusts hereby created, the Trustee

acts solely as Trustee and not in its individual capacity. All persons, including without limitation the Owners, the City and the Corporation having any claim against the Trustee arising from the Trust Agreement shall look only to the funds and accounts hereunder for payment except as otherwise provided herein; *provided, however*, that nothing in this sentence is intended or shall be construed to apply to, or limit the source of payment of, claims against the Trustee arising from the negligence or willful misconduct of the Trustee. Under no circumstances is the Trustee liable in its individual capacity for payment of the obligations represented by the Certificates.

ARTICLE VIII

MODIFICATION OR AMENDMENT OF AGREEMENTS

SECTION 8.01. *Amendments Permitted Without Consent of Owners.* This Trust Agreement and the rights and obligations of the Owners of the Certificates, and the Installment Sale Agreement and the rights and obligations of the respective parties thereto, may be modified or amended at any time by a supplemental agreement, without the consent of any of the Certificate Owners, only to the extent permitted by law and only for any one or more of the following reasons:

- (a) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein reserved to the City,
- (b) to cure, correct or supplement any ambiguous or defective provision contained herein or therein,
- (c) in any respect whatsoever in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and which do not, in the opinion of Bond Counsel, materially adversely affect the interests of the Owners of the Certificates, or
- (d) to provide for matters relating to the issuance of Additional Parity Debt.

Any such supplemental agreement entered into under this Section will become effective upon execution and delivery by the parties hereto or thereto as the case may be. The Trustee will mail a notice thereof to each Rating Agency at least 15 days prior to the effective date of the supplement agreement.

SECTION 8.02. *Amendments Permitted With Consent of Owners.* Except as permitted under Section 8.01, this Trust Agreement and the rights and obligations of the Owners of the Certificates, and the Installment Sale Agreement and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental agreement which will become effective when the written consents of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding have been filed with the Trustee.

No modification or amendment under this Section may (a) extend or have the effect of extending the fixed maturity of any Certificate or reducing the interest rate with respect thereto or extending the time of payment of interest, or reducing the amount of principal thereof or reducing any premium payable upon the prepayment thereof, without the express consent of the Owner of such Certificate, or (b) reduce or have the effect of reducing the percentage of Certificates required for the affirmative vote or written consent to an amendment or modification of the Installment Sale Agreement, without the consent of the Owners of 100% in aggregate principal amount of the Outstanding Certificates, or (c) modify any of the rights or obligations of the Trustee without its written assent thereto.

Any such supplemental agreement may not become effective unless there is filed with the Trustee the written consents of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding and the Trustee has given the notice required below. Each such consent shall be effective only if accompanied by proof of ownership of the Certificates for which such consent is given, which proof shall be such as is permitted by Section 2.10. Any such consent shall be binding upon the Owner of the Certificate giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

After the Owners of the required percentage of Certificates have filed their consents to such supplemental agreement, the Trustee will mail a notice thereof to the Owners of the Certificates in the manner hereinbefore provided in this Section for the mailing of such supplemental agreement of the notice of adoption thereof, The notice mailed under the preceding sentence must state in substance that such supplemental agreement has been consented to by the Owners of the required percentage of Certificates and will be effective as provided in this Section (but failure to mail copies of said notice will not affect the validity of such supplemental agreement or consents thereto). A record, consisting of the papers required by this Section to be filed with the Trustee, shall be conclusive proof of the matters therein stated. Such supplemental agreement shall become effective and shall be deemed conclusively binding upon the parties hereto, the Owners of all Certificates at the expiration of 60 days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such 60-day period.

SECTION 8.03. *Execution and Effect of Supplemental Agreement.* Prior to executing any amendment hereof, the Trustee shall be entitled to receive and rely upon an opinion of counsel stating the execution of such amendment is authorized or permitted hereunder. From and after the time any supplemental agreement becomes effective under this Article, this Trust Agreement or the Installment Sale Agreement, as the case may be, shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners of Certificates Outstanding, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any supplemental agreement shall be deemed to be part of the terms and conditions of this Trust Agreement or the Installment Sale Agreement for any and all purposes.

SECTION 8.04. *Endorsement or Replacement of Certificates Delivered After Amendments.* The City may determine that Certificates shall bear a notation, by endorsement or otherwise, in form approved by the City, as to such action. In that case, upon demand of the Owner of any Certificate Outstanding at such effective date and presentation of such Owner's Certificate for the purpose at the Office of the Trustee, a suitable notation shall be made on such Certificate. The City may determine that the delivery of substitute Certificates, so modified as in the opinion of the City is necessary to conform to such Certificate Owner's action, which shall thereupon be prepared, executed and delivered at the expense of the City. In that case, upon demand of the Owner of any Certificate then Outstanding, such substitute Certificate shall be exchanged at the Office of the Trustee, without cost to such Owner, for a Certificate of the same character then Outstanding, upon surrender of such Outstanding Certificate.

SECTION 8.05. *Amendatory Endorsement of Certificates.* The provisions of this Article do not prevent any Certificate Owner from accepting any amendment as to the particular Certificates held by such Owner, provided that proper notation thereof is made on such Certificates.

SECTION 8.06. *Notice to Rating Agencies.* The City shall mail copies of any proposed amendment or modification hereof to each Rating Agency at least 10 days prior to the effective date of any such amendment or modification.

ARTICLE IX

OTHER COVENANTS

SECTION 9.01. *Compliance With and Enforcement of Installment Sale Agreement.* The City covenants and agrees with the Trustee, for the benefit of the Owners of the Certificates, to perform all obligations and duties imposed on it under the Installment Sale Agreement. The City will not do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be a ground for cancellation or termination of the Installment Sale Agreement by the Corporation thereunder.

SECTION 9.02. *Observance of Laws and Regulations.* The City will well and truly keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State of California, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by the City, including its right to exist and carry on business as a public agency, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

SECTION 9.03. *Recordation and Filing.* The City shall record and file all such documents as may be required by law (and shall take all further actions which may be necessary or be reasonably required by the Trustee), all in such manner, at such times and in such places as may be required by law in order fully to preserve, protect and perfect the security of the Trustee and the Certificate Owners.

SECTION 9.04. *Tax Covenants.*

(a) Private Business Use Limitation. The City will assure that the proceeds of the Certificates are not used in a manner which would cause any of the obligations of the City under the Installment Sale Agreement to become “private activity bonds” under and within the meaning of Section 141(a) of the Tax Code.

(b) Private Loan Limitation. The City will assure that no more than 5% of the aggregate amount of the proceeds of the Certificates are used, directly or indirectly, to make or finance a loan (other than loans constituting nonpurpose obligations as defined in the Tax Code or constituting assessments) to persons other than state or local government units.

(c) Federal Guarantee Prohibition. The City will not take any action or permit or suffer any action to be taken if the result of the same would be to cause the obligations of the City under the Installment Sale Agreement to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The City will not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Certificates or of any other obligations 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 obligations of the City under the Installment Sale Agreement to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(e) Rebate of Excess Investment Earnings to United States. The City will calculate or cause to be calculated the Excess Investment Earnings in all respects at the times and in the manner required under the Tax Code. The City will pay the full amount of Excess Investment Earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code. Such payments will be made by the City from any source of legally available funds of the City.

The City will keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Certificates, records of the determinations made under this subsection (e). In order to provide for the administration of this subsection (e), the City may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the City may deem appropriate. The Trustee has no duty or obligation to monitor or enforce compliance by the City of any of the requirements herein.

SECTION 9.05. *Continuing Disclosure.* The City hereby covenants and agrees that it will comply with and carry out all of the provisions of that certain Continuing Disclosure Certificate executed by the City as of the Closing Date, as originally executed and as it may be amended from time to time in accordance with its terms. Notwithstanding any other provision of this Trust Agreement, failure of the City to comply with such Continuing Disclosure Certificate shall not constitute an Event of Default; *provided, however,* that any Participating Underwriter (as such term is defined in such Continuing Disclosure Certificate) or any Owner of the Certificates may take such actions as may be necessary and appropriate to compel performance by the City of its obligations under this Section, including seeking mandate or specific performance by court order.

SECTION 9.06. *Further Assurances.* The Corporation and the City will make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and of the Installment Sale Agreement, and for the better assuring and confirming unto the Owners of the Certificates the rights and benefits provided herein.

ARTICLE X

LIMITATION OF LIABILITY

SECTION 10.01. *Limited Liability of City and Corporation.* Except for the payment of Installment Payments when due in accordance with the Installment Sale Agreement and the performance of the other covenants and agreements of the City contained in the Installment Sale Agreement and herein, the City has no pecuniary obligation or liability to the Corporation, the Trustee or the Owners of the Certificates with respect hereto or the terms, execution, delivery or transfer of the Certificates, or the distribution of Installment Payments to the Owners by the Trustee, except as expressly set forth herein.

The Corporation has no pecuniary obligation or liability to the City or the Trustee, or to any of the Owners of the Certificates, with respect to the performance by the City of its obligations under the Installment Sale Agreement or this Trust Agreement, with respect hereto or the terms, execution, delivery or transfer of the Certificates, or with respect to the distribution of Installment Payments to the Owners by the Trustee.

SECTION 10.02. *No Liability for Trustee Performance.* Neither the City nor the Corporation have any obligation or liability to any of the other parties or to the Owners of the Certificates with respect to the performance by the Trustee of any duty imposed upon it hereunder.

SECTION 10.03. *Indemnification of Corporation and Trustee.* To the extent permitted by law, the City shall indemnify the Corporation and Trustee, and their respective officers, directors, agents and employees, against all claims, losses, costs, expenses, liability and damages, including legal fees and expenses, arising out of or in connection with any of the following: (a) the failure by the City to observe and perform any of its obligations under the Installment Sale Agreement, (b) the Trustee's exercise and performance of its powers and duties hereunder or in connection with the Installment Sale Agreement, or (c) the execution, delivery and sale of the Certificates.

No indemnification will be made under this Section or elsewhere herein for willful misconduct or negligence hereunder by the Trustee or the Corporation, or their respective officers, agents, employees, successors or assigns. The City's obligations under this Section shall remain valid and binding notwithstanding maturity and payment of the Certificates and the resignation or removal of the Trustee.

SECTION 10.04. *Opinion of Counsel.* Before being required to take any action, the Trustee may require an opinion of counsel acceptable to the Trustee, or an opinion of Bond Counsel acceptable to the Trustee with respect to any federal tax matters, or a verified certificate of any party hereto, or both, concerning the proposed action. If it does so in good faith, Trustee shall be absolutely protected in relying on any such opinion or certificate obtained by the Trustee.

SECTION 10.05. *Limitation of Rights to Parties and Certificate Owners.* Nothing herein or in the Certificates expressed or implied is intended or shall be construed to give any person other than the City, the Corporation, the Trustee and the Owners of the Certificates, any legal or equitable right, remedy or claim under or in respect hereof or any covenant, condition or provision hereof; and all such covenants, conditions and provisions are and shall be for the sole and exclusive benefit of the City, the Corporation, the Trustee and the Owners.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES OF CERTIFICATE OWNERS

SECTION 11.01. *Assignment of Rights.* Under Section 5.01, the Corporation transfers, assigns and sets over to the Trustee all of the Corporation's rights in and to the Installment Sale Agreement (excepting only the Corporation's rights under Sections 4.7 and 6.4 thereof and its rights to give approvals or consents thereunder), including without limitation all of the Corporation's rights to exercise such rights and remedies conferred on the Corporation under the Installment Sale Agreement as may be necessary or convenient (a) to enforce payment of the Installment Payments and any other amounts required to be deposited in the Installment Payment Fund, and (b) otherwise to exercise the Corporation's rights and take any action to protect the interests of the Trustee or the Certificate Owners upon the occurrence of an Event of Default.

SECTION 11.02. *Remedies.* If an Event of Default occurs, then and in each and every such case during the continuance of such Event of Default, the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding the Trustee (to the extent indemnified as provided herein) shall, exercise any and all remedies available under law or granted under the Installment Sale Agreement.

SECTION 11.03. *Application of Funds.* All moneys received by the Trustee under any right given or action taken under the provisions of this Article or Article VI of the Installment Sale Agreement and any other funds then held by the Trustee shall be applied by the Trustee in the following order:

First, to the payment of the fees, costs and expenses of the Trustee in declaring and enforcing such Event of Default and in the performance of its powers and duties under the Trust Agreement including reasonable compensation to its agents, attorneys and counsel, and then to the Certificate Owners in declaring and enforcing an Event of Default, including compensation to their agents, attorneys and counsel;

Second, to the payment of the whole amount then owing and unpaid with respect to the Certificates for principal and interest, with interest on the overdue principal and installments of interest at the rate or rates of interest borne by the respective Certificates (but such interest on overdue installments of interest shall be paid only to the extent funds are available therefor following payment of principal and interest and interest on overdue

principal, as aforesaid), and in case such moneys are insufficient to pay in full the whole amount so owing and unpaid with respect to the Certificates, then to the payment of such principal and interest without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and interest.

SECTION 11.04. *Institution of Legal Proceedings.* If one or more Events of Default shall happen and be continuing, the Trustee in its discretion may, and upon the written request of the Owners of a majority in principal amount of the Certificates then Outstanding, and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of the Owners of Certificates by a suit in equity or action at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as shall be deemed most effectual in support of any of its rights or duties hereunder. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Certificate Owner any plan of reorganization, arrangement, adjustment, or composition affecting the Certificates or the rights of any Certificate Owner thereof, or to authorize the Trustee to vote in respect of the claim of any Certificate Owner in any such proceeding without the approval of the Certificate Owners so affected.

SECTION 11.05. *Non-waiver.* Nothing in this Article or in any other provision hereof or in the Certificates, shall affect or impair the obligation of the City, which is absolute and unconditional, to pay or prepay the Installment Payments as provided in the Installment Sale Agreement, or affect or impair the right of action, which is also absolute and unconditional, of the Certificate Owners to institute suit to enforce and collect such payment. No delay or omission of the Trustee or any Owner of any of the Certificates to exercise any right or power arising upon the happening of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein, and every power and remedy given by this Article to the Trustee or the Owners of Certificates may be exercised from time to time and as often as shall be deemed expedient by the Trustee or the Certificate Owners.

SECTION 11.06. *Remedies Not Exclusive.* No remedy herein conferred upon or reserved to the Trustee or the Certificate Owners is intended to be exclusive of any other remedy, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise.

SECTION 11.07. *Power of Trustee to Control Proceedings.* If the Trustee, upon the happening of an Event of Default, has taken any action, by judicial proceedings or otherwise, under its duties hereunder, whether upon its own discretion or upon the request of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, it has full power, in the exercise of its discretion for the best interests of the Owners of the Certificates, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action.

SECTION 11.08. *Limitation on Certificate Owners' Right to Sue.* No Owner of any Certificate issued hereunder has the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Trust Agreement, unless:

- (a) such Owner has previously given to the Trustee written notice of the occurrence of an Event of Default hereunder;
- (b) the Owners of a majority in aggregate principal amount of all the Certificates then Outstanding have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name;
- (c) the Owners have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and
- (d) the Trustee has refused or omitted to comply with such request for a period of 60 days after such written request has been received by, and said tender of indemnity has been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Certificates of any remedy hereunder; it being understood and intended that no one or more Owners of Certificates has any right in any manner whatever by its or their action to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity with respect to an Event of Default shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Certificates.

The right of any Owner of any Certificate to receive payment of said Owner's direct, undivided fractional interest in the Installment Payments as the same become due, or to institute suit for the enforcement of such payment, shall not be impaired or affected without the consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision hereof.

ARTICLE XII

MISCELLANEOUS

SECTION 12.01. *Discharge of this Trust Agreement.* If and when the obligations represented by any Outstanding Certificates are paid and discharged in any one or more of the following ways:

- (a) by paying or causing to be paid the principal and interest represented by such Certificates, as and when the same become due and payable; or
- (b) by irrevocably depositing with the Trustee or any other fiduciary, security for the payment of Installment Payments relating to such Certificates as more particularly described in Section 7.1 of the Installment Sale Agreement, said security to be held by the Trustee on behalf of the City to be applied by the Trustee or by such other

fiduciary to pay or prepay such Installment Payments as the same become due, under Section 7.1 of the Installment Sale Agreement;

then, notwithstanding that such Certificates have not been surrendered for payment, all rights hereunder of the Owners of such Certificates and all obligations of the Corporation, the Trustee and the City with respect to such Certificates shall cease and terminate, except only the obligations of the City and the Corporation under Section 7.03, the obligations of the City under Section 10.03, the obligations of the Trustee under Sections 2.07 and 2.08, and the obligation of the Trustee to pay or cause to be paid, from Installment Payments paid by or on behalf of the City from funds deposited under the preceding paragraph (b) of this Section, to the Owners of such Certificates not so surrendered and paid all sums represented thereby when due and in the event of deposits under the preceding paragraph (b), such Certificates shall continue to represent direct, undivided fractional interests of the Owners thereof in the Installment Payments.

Any funds held by the Trustee, at the time of discharge of the obligations represented by all Outstanding Certificates as a result of one of the events described in the preceding paragraphs (a) or (b) of this Section, which are not required for the payment to be made to Owners, shall, upon payment in full of all fees and expenses of the Trustee (including attorneys' fees and expenses) then due, be paid over to the City to be used for any lawful purpose.

SECTION 12.02. *Notices.* Any notice, request, complaint, demand or other communication hereunder shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopier or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by fax or other form of telecommunication, (b) upon actual receipt after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The City, the Corporation, the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the City
or the Corporation:*

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

If to the Trustee:

The Bank of New York Mellon Trust Company, N.A.
333 South Hope Street, Suite 2525
Los Angeles, California 90071
Attention: Corporate Trust Services

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

SECTION 12.03. *Records.* The Trustee will keep complete and accurate records of all moneys received and disbursed hereunder, which shall be available for inspection

by the City, the Corporation and any Owner, or the agent of any of them, upon prior written request during regular business hours.

SECTION 12.04. *Payment of Certificates After Discharge.* Notwithstanding any provisions hereof, but subject to any applicable laws of the State of California relating to the escheat of funds or property, any moneys held by the Trustee for the payment of the principal or interest represented by any Certificates and remaining unclaimed for two years after the principal represented by all of the Certificates has become due and payable (whether at maturity or upon call for prepayment or by acceleration as provided herein), if such moneys were so held at such date, or two years after the date of deposit of such moneys if deposited after said date when all of the Certificates became due and payable, shall be repaid to the City free from the trusts created hereby upon receipt of an indemnification agreement acceptable to the City and the Trustee indemnifying the Trustee with respect to claims of Owners of Certificates which have not yet been paid, and all liability of the Trustee with respect to such moneys shall thereupon cease; *provided, however,* that before the repayment of such moneys to the City as aforesaid, the Trustee may (at the cost of the City) first mail, by first class mail postage prepaid, to the Owners of Certificates which have not yet been paid, at the respective addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Certificates so payable and not presented and with respect to the provisions relating to the repayment to the City of the moneys held for the payment thereof. Any moneys so held by the Trustee will be held uninvested.

SECTION 12.05. *Governing Law.* This Trust Agreement shall be construed and governed in accordance with the laws of the State of California.

SECTION 12.06. *Binding Effect; Successors; Benefits Limited to Parties.* This Trust Agreement is binding upon and inures to the benefit of the parties, and their respective successors and assigns. Whenever herein the Corporation, the City or the Trustee is named or referred to, such reference includes the successors or assigns thereof, and all the covenants and agreements contained herein by or on behalf of the Corporation, the City or the Trustee will bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not. Nothing herein expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Corporation, the City, the Trustee or the Certificate Owners, any right, remedy or claim hereunder or by reason hereof or of any covenant, condition or stipulation contained herein. All covenants, stipulations, promises, and agreements contained herein by or on behalf of the Corporation or the City shall be for the sole and exclusive benefit of the Corporation, the City, the Trustee and the Certificate Owners.

SECTION 12.07. *Execution in Counterparts.* This Trust Agreement may be executed in several counterparts, each of which is an original and all of which constitute but one and the same agreement.

SECTION 12.08. *Delivery of Cancelled Certificates.* Whenever provision is made herein for the surrender to or cancellation by the Trustee of any Certificates, the Trustee will cancel and destroy such Certificates and, upon the City's request, shall deliver a certificate of destruction with respect thereto to the City.

SECTION 12.09. *Corporation and City Representatives.* Whenever under the provisions hereof the approval of the Corporation or the City is required, or a written

certificate, requisition, direction or order is required to be delivered by the City or the Corporation to the Trustee, or the Corporation or the City is required to take some action at the request of the other, such approval or such request shall be given, and such certificate, requisition, direction or order shall be executed, for the Corporation by a Corporation Representative and for the City by a City Representative, and any party hereto shall be authorized to rely upon any such approval, request, certificate, requisition, direction or order.

SECTION 12.10. *Headings.* The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, are solely for convenience of reference and do not affect the meaning, construction or effect hereof. All references herein to "Articles", "Sections", and other subdivisions are to the corresponding Articles, Sections or subdivisions hereof; and the words "herein", "hereof", "hereunder" and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision hereof.

SECTION 12.11. *Waiver of Notice.* Whenever the giving of notice by mail or otherwise is required hereunder, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any case the giving or receipt of such notice are not a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 12.12. *Severability of Invalid Provisions.* In case any one or more of the provisions contained herein or in the Certificates shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Trust Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The parties hereto hereby declare that they would have entered into this Trust Agreement and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the delivery of the Certificates irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases hereof may be held illegal, invalid or unenforceable.

IN WITNESS WHEREOF, the parties have executed this Trust Agreement as of the date and year first above written.

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.,
*as Trustee***

By: _____
Authorized Officer

**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

DEFINITIONS

Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Trust Agreement have the respective meanings specified in this Appendix A.

“Additional Parity Debt” means any bonds, notes, 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 of the Installment Sale Agreement.

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

“Additional Payments” means the amounts payable by the City under Section 4.8 of the Installment Sale Agreement.

“Additional Revenues” means, with respect to the issuance of any Additional 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 Additional 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) of the Installment Sale Agreement, 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 Additional 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.

“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.

“Bond Year” means a twelve-month period beginning February 2 of the calendar and ending on the next succeeding February 1.

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

“Certificates” means the \$_____ aggregate principal amount of certificates of participation, designated the Wastewater Revenue Certificates of Participation, Series 2023, executed and delivered and at any time Outstanding hereunder.

“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.

“City Representative” means the City Manager, any Assistant City Manager, the Chief Operating Officer, the Director of Finance, the designee of any of them, or any other person authorized by resolution of the City Council of the City to act on behalf of the City under or with respect to the Installment Sale Agreement and this Trust Agreement.

“Closing Date” means _____, 2023, being the day when the Certificates, duly executed by the Trustee, are delivered to the Original Purchaser.

“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.

“Corporation Representative” means the Executive Director, Chief Financial Officer, Secretary or any other person authorized by resolution of the Board of Directors of the Corporation to act on behalf of the Corporation under or with respect hereto.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City relating to the execution, sale and delivery of the Certificates. Costs of Issuance include (but are not limited to) the following: filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Trustee (which may include legal fees and the first annual administration fee), financing discounts, legal fees and charges, insurance fees and charges, financial and other professional consultant fees, costs of rating agencies for credit ratings, fees for execution, transportation and safekeeping of the Certificates, and any charges and fees in connection with the foregoing.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee under Section 3.02.

“Depository System Participant” means any participant in the Depository’s book-entry system.

“DTC” or “Depository” means The Depository Trust Company, New York, New York, and its successors and assigns.

“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 Certificates at a yield in excess of the yield represented by the Certificates.

“Event of Default” means an event of default under the Installment Sale Agreement, as described in Section 6.1 thereof.

“Federal Securities” means: (a) non-callable direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America; (b) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America; (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America.

“Financial Consultant” means any consultant or firm of such 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.

“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 to the extent permitted by law; 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.

Notwithstanding the foregoing, the term “Gross Revenues” does not include (i) customers' deposits or any other deposits subject to refund until such deposits have become the property of the City, (ii) 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, and (iii) the proceeds of any special assessments or special taxes levied upon real property within any improvement City for the purpose of paying special assessment bonds or special tax obligations of the City relating to the Wastewater System.

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

“Installment Payment Date” means, with respect to any Interest Payment Date, the 5th Business Day preceding such Interest Payment Date.

“Installment Payment Fund” means the fund by that name established and held by the Trustee under Section 5.02.

“Installment Sale Agreement” means the Installment Sale Agreement dated as of October 1, 2023, between the City and the Corporation, together with any duly authorized and executed amendments thereto.

“Interest Payment Date” means, with respect to any Certificate, February 1, 2024, and each August 1 and February 1 thereafter to and including the date of maturity or the date of prepayment of such Certificate.

“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.

“Maximum Annual Debt Service” means, as of the date of any calculation, the maximum sum obtained for the current or any future Fiscal Year so long as any of the Certificates remain Outstanding by totaling the following amounts for such Fiscal Year:

- (a) the aggregate amount of the Installment Payments coming due and payable in such Fiscal Year, except to the extent payable from any security deposit under Section 7.1 of the Installment Sale Agreement; and
- (b) the aggregate amount of the Prior Installment Payments coming due and payable in such Fiscal Year, except to the extent payable from any security deposit under Section 8.11 of the Trimble Road ISA; and
- (c) the amount of principal of and interest on all outstanding Additional Parity Debt coming due and payable in such Fiscal Year.

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

“Nominee” means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated under Section 2.05(a).

“Office” means, with respect to the Trustee, the corporate trust office of the Trustee at its address set forth in Section 12.02.

“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 Wastewater Treatment Facility.

“Operation and Maintenance Costs” do not include (i) payments of debt service on any Wastewater System Obligations, (ii) depreciation, replacement and obsolescence charges or reserves therefor, (iii) non-cash items, including non-realized gains and losses reported on investments, non-realized gains and losses reported on pension liabilities and other post-employment retirement benefits, realized gain or loss or other bookkeeping entries of a similar nature, (iv) amortization of intangibles or other bookkeeping entries of a similar nature; and (v) amounts paid by the City under the Joint Powers Agreement as capital costs of the Wastewater Treatment Facility..

“Original Purchaser” means _____, as original purchaser of the Certificates at the public sale thereof.

“Outstanding”, when used as of any particular time with respect to Certificates, means all Certificates theretofore executed and delivered by the Trustee hereunder except (a) Certificates theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (b) Certificates paid and discharged in accordance with Section 12.01, provided that, if such Certificates are to be prepaid prior to maturity, notice of such prepayment has been given as provided in Section 4.03 or provision satisfactory to the Trustee has been made for the giving of such notice; and (c) Certificates in lieu of or in exchange for which other Certificates have been executed and delivered by the Trustee under Section 2.08.

“Owner”, when used with respect to a Certificate, means the person in whose name the ownership of such Certificate shall be registered on the Registration Books.

“Permitted Investments” means any of the following which at the time of investment are legal investments under the laws of the State of California for the moneys proposed to be invested therein:

- (a) Federal Securities;
- (b) Obligations of any agency, department or instrumentality of the United States of America which are rated A or better by S&P.
- (c) Interest-bearing deposit accounts (including certificates of deposit) in federal or State of California chartered savings and loan associations or in federal or State of California banks (including the Trustee and its affiliates), provided that: (i) the unsecured obligations of such commercial bank or savings and loan association are rated A or better by S&P; or (ii) such deposits are fully insured by the Federal Deposit Insurance Corporation; and demand deposits, including interest bearing money market accounts, time deposits, trust funds, trust accounts, overnight bank deposits, interest-bearing deposits, other deposit products, certificates of deposit, including those placed by a third party pursuant to an agreement between the Trustee and the District, or bankers acceptances of depository institutions, including the Trustee or any of its affiliate.
- (d) Commercial paper rated “A-1+” or better by S&P at the time of the purchase thereof.
- (e) Federal funds or bankers acceptances with a maximum term of one year of any bank, including the Trustee and its affiliates, which an unsecured, uninsured and unguaranteed obligation rating of “A-1+” or better by S&P.
- (f) Money market mutual funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of at least AAAm-G, AAAM or AAm, which funds may include funds for which the Trustee, its affiliates, parent or subsidiaries receives and retains

a fee for services provided to the fund, whether as a custodian, transfer agent, investment advisor or otherwise.

- (g) Obligations the interest on which is excludable from gross income pursuant to Section 103 of the Internal Revenue Code of 1986, as amended, and which are either (a) rated A or better by S&P, or (b) fully secured as to the payment of principal and interest by Permitted Investments described in clauses (a) or (b).
- (h) Bonds or notes issued by any state or municipality which are rated A or better by S&P.
- (i) The Local Agency Investment Fund of the State of California, created pursuant to Section 16429.1 of the California Government Code, to the extent the Trustee is authorized to register such investment in its name.

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

“Project Costs” means, with respect to the 2023 Project, all costs of the acquisition, construction and installation thereof 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 2023 Project;
- (b) obligations incurred for labor and materials in connection with the acquisition, construction and installation of the 2023 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 2023 Project;
- (d) all costs of engineering and architectural services, including the actual out-of-pocket costs for test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees, sales commissions, and 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 2023 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 2023 Project;
- (f) all financing costs incurred in connection with the acquisition, construction and installation of such Project; and

- (g) the interest components of the Installment Payments during the period of acquisition, construction and installation of the 2023 Project.

“Project Fund” means the fund by that name established and held by the Trustee under Section 3.04.

“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 4.6 of the Installment Sale Agreement.

“Rating Agency” means, as of any date, each nationally-recognized municipal bond rating agency which then maintains a rating on the Certificates.

“Record Date” means the close of business on the 15th day of the month preceding each Interest Payment Date, whether or not such 15th day is a Business Day.

“Refunding Fund” means the fund by that name established and held by the Trustee under Section 3.03.

“Registration Books” means the records maintained by the Trustee under Section 2.11 for registration of the ownership and transfer of ownership of the Certificates.

“S&P” means S&P Global Ratings, of New York, New York, and its successors.

“Securities Depository” means DTC and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the City may designate in a written request of the City delivered to the Trustee.

“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.

“Term” means, when used with respect to the Installment Sale Agreement, the time during which the Installment Sale Agreement is in effect, as provided in Section 4.2 thereof.

“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.

“Trust Agreement” means this Trust Agreement, together with any amendments or supplements hereto permitted to be made hereunder.

“Trustee” means The Bank of New York Mellon Trust Company, N.A., or any successor thereto acting as Trustee hereunder.

“2020 Assignee” means JPMorgan Chase Bank, N.A., the assignee of the Corporation under the 2020 Installment Sale Agreement.

“2020 Installment Payments” means the payments made by the City under the 2020 Installment Sale Agreement.

“2020 Installment Sale Agreement” means the Installment Sale Agreement dated as of June 1, 2020, between the City and the Corporation, as amended by the First Amendment to Installment Sale Agreement dated as of April 1, 2023, together with any duly authorized and executed amendments thereto.

“2020 Project” means the facilities, improvements and other property described more fully in Appendix B attached to the 2020 Installment Sale Agreement.

“2023 Project” means the facilities, improvements and other property described more fully in Appendix B attached to the Installment Sale Agreement, as may be amended from time to time in accordance with the Installment Sale Agreement.

“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.

“Wastewater Treatment Facility” means the San José-Santa Clara Regional Wastewater Facility, which is co-owned by the City and the city of San José pursuant to the Wastewater Treatment Agreement.

“Wastewater Treatment Agreement” means that certain Sewage Plant Agreement dated March 30, 1959, as amended, between the City and the city of San José.

APPENDIX B

[FORM OF CERTIFICATE OF PARTICIPATION]

R-__

\$_____

WASTEWATER REVENUE CERTIFICATE OF PARTICIPATION, SERIES 2023

Evidencing the Direct, Undivided Fractional Interest of the Owner Hereof in Installment Payments to be Made by the

CITY OF SANTA CLARA, CALIFORNIA

As the Purchase Price For Certain Property Under an Installment Sale Agreement with City of Santa Clara Public Facilities Financing Corporation

RATE OF INTEREST: MATURITY DATE: ORIGINAL ISSUE DATE: CUSIP:

REGISTERED OWNER:

PRINCIPAL AMOUNT: DOLLARS

THIS IS TO CERTIFY THAT the Registered Owner identified above, or registered assigns, as the registered owner (the "Registered Owner") of this Certificate of Participation (this "Certificate") is the owner of a direct, undivided fractional interest in Installment Payments (the "Installment Payments") payable by the City of Santa Clara, a charter city and municipal corporation duly organized and existing under the laws of the State of California (the "City") under an Installment Sale Agreement dated as of October 1, 2023 (the "Installment Sale Agreement"), between the City and 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 the purchase price for certain property which is to be used in the water collection, treatment and disposal system of the City (the "Wastewater System"). The Installment Payments and certain other rights and interests under the Installment Sale Agreement have been assigned to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), having a corporate trust office in San Francisco, California or such other place as designated by the Trustee (the "Office").

The Registered Owner of this Certificate is entitled to receive, subject to the terms of the Installment Sale Agreement, on the Maturity Date identified above, or any earlier prepayment date, the Principal Amount identified above representing a direct, undivided fractional share of the portion of the Installment Payments designated as principal, and to receive on February 1 and August 1 of each year, commencing February 1, 2024 (the

“Interest Payment Dates”) until payment in full of said principal, the Registered Owner’s direct, undivided fractional share of the Installment Payments designated as interest coming due during the interest period immediately preceding each of the Interest Payment Dates. Interest represented hereby shall be payable from the Interest Payment Date next preceding the date of execution of this Certificate unless (a) this Certificate is executed after the close of business on the 15th day of the month immediately preceding an Interest Payment Date and on or before such Interest Payment Date, in which event interest shall be payable from such Interest Payment Date, or (b) unless this Certificate is executed on or before January 15, 2024, in which event interest shall be payable from the Original Issue Date identified above. The Registered Owner’s share of the portion of the Installment Payments designated as interest is the result of the multiplication of the aforesaid share of the portion of the Installment Payments designated as principal by the Rate of Interest per annum identified above, calculated on the basis of a 360-day year comprised of twelve 30-day months.

Principal and prepayment premium (if any) represented hereby is payable in lawful money of the United States of America upon surrender hereof at the Office of the Trustee. Interest represented hereby is payable by check mailed by first class mail by the Trustee on each Interest Payment Date to the Registered Owner at such Owner’s address as it appears on the registration books of the Trustee as of the close of business on the 15th day of the preceding month; *provided, however*, that at the written request of the owner of Certificates in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of the 15th day of the month preceding an Interest Payment Date, interest represented by such Certificates shall be paid on such Interest Payment Date by wire transfer in immediately available funds to such account within the United States of America as shall be specified in such request.

This Certificate has been executed and delivered by the Trustee under a Trust Agreement dated as of October 1, 2023, among the Trustee, the Corporation and the City (the “Trust Agreement”). The City has certified that it is authorized to enter into the Installment Sale Agreement and the Trust Agreement under the laws of the State of California, for the purpose of financing the acquisition, construction and improvement of properties used for the public purposes of the City relating to the Wastewater System. Reference is hereby made to the Installment Sale Agreement and the Trust Agreement (copies of which are on file at the Office of the Trustee) for a description of the terms on which the Certificates are delivered, the rights thereunder of the owners of the Certificates, the rights, duties and immunities of the Trustee and the rights and obligations of the City under the Installment Sale Agreement, to all of the provisions of the Installment Sale Agreement and the Trust Agreement the Registered Owner of this Certificate, by acceptance hereof, assents and agrees.

The City is obligated under the Installment Sale Agreement to pay the Installment Payments from the Net Revenues of the Wastewater System (as such terms are defined in the Installment Sale Agreement). The obligation of the City to pay the Installment Payments does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The obligation of the City to pay the Installment Payments does not constitute a debt of the City, the State of California or any of its political subdivisions, and does not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

The Certificates maturing on or before February 1, 20__, are not subject to optional prepayment prior to the respective stated maturities. The Certificates maturing on or after February 1, 20__, are subject to optional prepayment in whole or in part, on any date on or after February 1, 20__, from prepayments of the Installment Payments made at the option of the City under the Installment Sale Agreement. Certificates shall be subject to prepayment under this subsection at a prepayment price equal to 100% of the principal amount of Certificates or portions thereof to be prepaid together with accrued interest represented thereby to the prepayment date, without premium.

The Certificates maturing on February 1, 20__ (the "Term Certificates") are subject to mandatory prepayment in part by lot, at a prepayment price equal to 100% of the principal amount thereof to be prepaid, without premium, in the aggregate respective principal amounts and on February 1 in the respective years as set forth in the following table; *provided, however*, that if some but not all of the Term Certificates have been prepaid under the foregoing optional prepayment provision, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of the Term Certificates so prepaid, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of \$5,000 (as set forth in a schedule provided by the City to the Trustee).

**Term Certificates Maturing
February 1, 20__**

Sinking Fund Prepayment Date (February 1)	Principal Amount <u>To Be Prepayment</u>
	\$

As provided in the Trust Agreement, notice of prepayment shall be mailed by the Trustee by first class mail, postage prepaid, not less than 20 nor more than 60 days before the prepayment date, to the registered owners of the Certificates to be prepaid, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for prepayment or the cessation of accrual of interest represented thereby. If this Certificate is called for prepayment and payment is duly provided therefor as specified in the Trust Agreement, interest represented hereby shall cease to accrue from and after the date fixed for prepayment.

This Certificate is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Trust Agreement and upon surrender and cancellation of this Certificate. Upon such transfer a new Certificate or Certificates, of authorized denomination or denominations, representing the same aggregate principal amount and representing the same rate of interest, will be delivered to the transferee in exchange herefor. The City, the Corporation and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes,

whether or not this Certificate shall be overdue, and the City, the Corporation and the Trustee will not be affected by any notice to the contrary.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement may be amended by the parties thereto with the written consent of the owners of a majority in aggregate principal amount of the Certificates then outstanding, and may be amended without such consent under certain circumstances; provided that no such amendment shall extend the fixed maturity of any Certificate or reduce the interest or principal represented thereby, without the express consent of the owner of such Certificate.

Unless this Certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Trustee for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein. The Trustee has no obligation or liability to the Registered Owners of the Certificates for the payment of interest, principal or prepayment premium, if any, with respect to the Certificates out of the Trustee's own funds; the Trustee's sole obligations are those described in the Trust Agreement. The recitals of facts herein shall be taken as statements of the City and the Corporation and the Trustee does not have any responsibility for the accuracy thereof.

The City has certified, recited and declared that all things, conditions and acts required by the laws of the State of California, the Installment Sale Agreement and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the delivery of the Certificates, do exist, have happened and have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, this Certificate has been executed and delivered by The Bank of New York Mellon Trust Company, N.A., as trustee, acting under the Trust Agreement.

Execution Date:

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.,**
as Trustee

By: _____
Authorized Officer

ASSIGNMENT

For value received the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within registered Certificate and hereby irrevocably constitute(s) and appoint(s) _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

Note: Signature guarantee shall be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Certificate in every particular without alteration or enlargement or any change whatsoever.

APPENDIX C

**\$ _____
CITY OF SANTA CLARA
WASTEWATER REVENUE CERTIFICATES OF PARTICIPATION
SERIES 2023**

**WRITTEN REQUISITION NO. ____ FOR
DISBURSEMENT FROM COSTS OF ISSUANCE FUND**

The undersigned hereby states and certifies as follows:

(i) I am the duly appointed, qualified and acting _____ of 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"), and as such, I am familiar with the facts herein certified and am authorized and qualified to certify the same on behalf of the City.

(ii) I am a duly designated "City Representative" of the City, as such term is defined in the Trust Agreement dated as of October 1, 2023 (the "Trust Agreement"), among The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), the City of Santa Clara Public Facilities Financing Corporation and the City.

(iii) Under Section 3.02 of the Trust Agreement, the Trustee is hereby requested to disburse this date, from the Costs of Issuance Fund established under the Trust Agreement, to the payees set forth on Appendix A attached hereto and by this reference incorporated herein, at the addresses identified thereon, the amount set forth opposite such payee for payment or reimbursement of Costs of Issuance.

(iv) Each item of cost identified herein has been properly incurred, constitutes payment of Costs of Issuance and has not been the basis of any previous disbursement.

(v) Attached hereto is an invoice or statement of account for each disbursement to be made under this Requisition.

Capitalized terms used herein and not otherwise defined have the respective meanings given them in the Trust Agreement.

Dated:

CITY OF SANTA CLARA

By: _____

Name:

Title:

Exhibit to Costs of Issuance Fund Requisition

<u>Payee Name</u>	<u>Payee Address</u>	<u>Purpose of Payment</u>	<u>Amount</u>
-------------------	----------------------	-------------------------------	---------------

APPENDIX D

\$ _____
CITY OF SANTA CLARA
WASTEWATER REVENUE CERTIFICATES OF PARTICIPATION
SERIES 2023

WRITTEN REQUISITION NO. ____ FOR
DISBURSEMENT FROM PROJECT FUND

The undersigned hereby states and certifies as follows:

(i) I am the duly appointed, qualified and acting _____ of 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"), and as such, I am familiar with the facts herein certified and am authorized and qualified to certify the same on behalf of the City.

(ii) I am a duly designated "City Representative" of the City, as such term is defined in the Trust Agreement dated as of October 1, 2023 (the "Trust Agreement"), among The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), the City of Santa Clara Public Facilities Financing Corporation and the City.

(iii) Under Section 3.04 of the Trust Agreement, the Trustee is hereby requested to disburse this date, from the Project Fund established under the Trust Agreement, to the payees set forth on Appendix A attached hereto and by this reference incorporated herein, at the addresses identified thereon, the amount set forth opposite such payee for payment or reimbursement of Project Costs.

(iv) Each item of cost identified herein has been properly incurred, constitutes payment of Project Costs and has not been the basis of any previous disbursement.

Capitalized terms used herein and not otherwise defined have the respective meanings given them in the Trust Agreement.

Dated:

CITY OF SANTA CLARA

By: _____
Name:
Title:

Exhibit to Project Fund Requisition

<u>Payee Name</u>	<u>Payee Address</u>	<u>Purpose of Payment</u>	<u>Amount</u>
-------------------	----------------------	-------------------------------	---------------