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9/21/17

CITY OF SAN JOSE

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SAN JOSE PROVIDING FOR THE ALLOCATION OF
WASTEWATER SYSTEM REVENUES, THE PLEDGE OF
WASTEWATER NET SYSTEM REVENUES AND
ESTABLISHING COVENANTS TO SECURE THE PAYMENT
OF OBLIGATIONS PAYABLE FROM WASTEWATER NET
SYSTEM REVENUES

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CITY OF SAN JOSE

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE PROVIDING FOR THE ALLOCATION OF WASTEWATER SYSTEM REVENUES, THE PLEDGE OF WASTEWATER NET SYSTEM REVENUES AND ESTABLISHING COVENANTS TO SECURE THE PAYMENT OF OBLIGATIONS PAYABLE FROM WASTEWATER NET SYSTEM REVENUES

WHEREAS, the City of San José (the “City”) is empowered by its charter to own, operate and maintain systems, plants, buildings, works and other facilities for the collection, treatment and disposal of sewage, waste and storm water, including sewage treatment and disposal plants and works and facilities in connection therewith;

WHEREAS, pursuant to such authority, the City owns and operates a Wastewater System (as defined herein);

WHEREAS, pursuant to such authority, on May 6, 1959, the City and the City of Santa Clara entered into that certain Agreement Between San Jose and Santa Clara Respecting Sewage Treatment Plant regarding the ownership, operation, maintenance and use of the Treatment Plant (as defined herein);

WHEREAS, the City has previously entered into the Improvement Agreement (as defined herein), the obligations of the City under which are secured by and payable from a portion of the Net System Revenues (as defined herein);

WHEREAS, the City has previously entered into Contracts (as defined herein) and expects to enter into additional Contracts, the obligations of the City under which will be payable from Net System Revenues;

WHEREAS, the City now desires to provide for the allocation of System Revenues (as defined herein) and the pledge of Net System Revenues; and

WHEREAS, the City also desires to establish covenants to secure the payment of Obligations (as defined herein) payable from Net System Revenues;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE, AS FOLLOWS:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof or supplement hereto and of any report or other document mentioned herein or therein have the meanings

defined herein, all of the following definitions shall be equally applicable to both the singular and plural forms of any of the terms defined herein:

Accountant's Report

“Accountant's Report” means a report signed by an Independent Certified Public Accountant.

Accreted Value

“Accreted Value” means, with respect to any Capital Appreciation Obligation, the principal amount thereof plus the interest accrued thereon, compounded at the approximate interest rate thereon on each date specified therein. The Accreted Value of any Capital Appreciation Obligation at any date shall be the amounts set forth in the accreted value table for the Capital Appreciation Obligation as of such date, if such date is a compounding date, and if not, as of the immediately preceding compounding date.

Adjusted Net System Revenues

“Adjusted Net System Revenues” means, for any period, Net System Revenues for such period less: (1) until such time as all of the payments required to be paid by the City under the Improvement Agreement have been paid or deemed paid pursuant to the terms of the Improvement Agreement, all payments required to be paid by the City during such period under the Improvement Agreement and all deposits and transfers required to be made by the City under the Improvement Agreement for such period, in each case at the times and in the amounts required by the terms of the Improvement Agreement; (2) to the extent included in the calculation of Net System Revenues for such period and taken into account in the calculation of Debt Service under subparagraph (h) of the definition thereof for such period, all Subsidy Payments received or expected to be received in such period; and (3) to the extent included in the calculation of Net System Revenues for such period and taken into account in the calculation of Debt Service under subparagraph (h) thereof for such period, the City's allocable share of moneys received or expected to be received in such period from other users of the Treatment Plant as payment of debt service related to the Treatment Plant payable by other users of the Treatment Plant pursuant to any agreement entered into by such users.

Annual Debt Service

“Annual Debt Service” means, with respect to any Obligations and for any Fiscal Year, the aggregate amount of Debt Service on such Obligations becoming due and payable during such Fiscal Year.

Average Annual Debt Service

“Average Annual Debt Service” means with respect to any Obligations and as of any date of calculation, the quotient obtained by dividing (1) the sum of the Annual Debt Service on such Obligations for all Fiscal Years during the period commencing with the Fiscal Year in which such calculation is made (or, if appropriate, the first full Fiscal Year following the issuance or

incurrence of such Obligations) and terminating in the last Fiscal Year in which any Debt Service on such Obligations is due by (2) the number of such Fiscal Years.

Balloon Indebtedness

“Balloon Indebtedness” means, with respect to any Obligations twenty-five percent (25%) or more of the principal or other similar amount of which matures or becomes due on the same date or within a 12-month period (with sinking fund payments deemed to be payments of matured principal), that portion of the principal or other similar amount of such Obligations which matures or becomes due on such date or within such 12-month period.

Capital Appreciation Obligation

“Capital Appreciation Obligation” means any Obligation designated as such in the Contract providing for the creation of such Obligation and on which interest is compounded and paid at maturity or on prior redemption.

City

“City” means the City of San José, a municipal corporation, duly organized and existing under and by virtue of its charter and the Constitution of the State of California.

Code

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations thereunder and any successor to the Internal Revenue Code of 1986.

Consultant

“Consultant” means the consultant, consulting firm, engineer, architect, engineering firm, architectural firm, accountant or accounting firm retained by the City to perform acts or carry out the duties provided for such consultant hereunder.

Contracts

“Contracts” means (1) the Existing Contracts, (2) the 2017 Contract, and (3) any other indenture, trust agreement, installment purchase agreement, lease, contract or other instrument or agreement (including any Hedge Agreement) designated as a “Contract” under this Master Resolution by the City, the payments under which are payable from the Net System Revenues.

Coverage Requirement

“Coverage Requirement” means, with respect to any specified period, an amount of Adjusted Net System Revenues for the specified period equal, in each case, to at least (1) 110% of the Debt Service on all Outstanding Parity Obligations for the specified period, (2) 100% of the Debt Service on all Outstanding Parity Obligations and Outstanding Subordinate Obligations for the specified period, and (3) 100% of all obligations of the City payable from Net System

Revenues in the specified period other than the City's obligations under the Improvement Agreement during the specified period.

Debt Service

"Debt Service," when used with respect to any Obligations, means, for any period, the sum of (1) the interest payable during such period on such Obligations, (2) the principal or sinking fund payments to be paid with respect to such Obligations during such period, and (3) any other scheduled payments coming due on such Obligations in such period and not otherwise included in clauses (1) and (2) of this definition, all of which are to be computed on the assumption that no portion of such Obligations shall cease to be Outstanding during such period except by reason of the application of scheduled payments; provided that, for purposes of such computation:

(a) unless a different subsection of this definition applies for purposes of determining maturities or amortization, in determining the amount due in any period, payment shall be assumed to be made in accordance with any amortization schedule established for such Obligations, including any sinking fund payments or any scheduled redemption or payment of Obligations on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date and any contingencies that may result in a request for earlier payment shall be disregarded;

(b) Balloon Indebtedness may, at the option of the City, be treated as if it were to be amortized with substantially level debt service over a term of up to 40 years (which period shall be designated by the City), from the date of calculation, and the interest rate used for such computation shall be assumed by the City to be equal to (i) the interest rate in effect for such Balloon Indebtedness on the date of calculation, if the interest rate determination method in effect for such Balloon Indebtedness on the date of calculation provides for interest rates that are fixed for at least 12 months from the date such interest rates are determined or (ii) if the interest rate determination method in effect for such Balloon Indebtedness on the date of calculation provides for interest rates that are not fixed for at least 12 months from the date such interest rates are determined, the average of (x) the SIFMA Swap Index if the interest on such Balloon Indebtedness is excluded or expected to be excluded from gross income for federal income tax purposes or (y) the One Month USD LIBOR Rate if the interest on such Balloon Indebtedness is included or expected to be included in gross income for federal income tax purposes, in each case over the 12 months preceding the date of calculation (provided, however, that if any such index is no longer published, the interest rate to be used by the City for such computation shall be calculated based upon such similar index as is determined by the City);

(c) if any Obligations bear, or if any Obligations proposed to be created will bear, interest at a variable interest rate for which a Hedge Agreement is not in place and the interest on which is excluded or expected to be excluded from gross income for federal income tax purposes, the interest rate on such Obligations for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to the average of the SIFMA Swap Index for the 12 months preceding such date of calculation (provided, however, that if such index is no longer

published, the interest rate on such Obligations shall be calculated based upon such similar index as is determined by the City);

(d) if any Obligations bear, or if any Obligations proposed to be created will bear, interest at a variable interest rate for which a Hedge Agreement is not in place and the interest on which is included or expected to be included in gross income for federal income tax purposes, the interest rate on such Obligations for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to 100% of the average One Month USD LIBOR Rate during the 12 months preceding such date of calculation (provided, however, that if such index is no longer published, the interest rate on such Obligations shall be calculated based upon such similar index as is determined by the City);

(e) with respect to any Obligations bearing interest, or expected to bear interest, at a variable interest rate for which a Hedge Agreement is in place providing for a synthetic fixed interest rate to maturity or for a specific term with respect to such Obligations, the interest rate on such Obligations shall be assumed to be the synthetic fixed interest rate specified in such Hedge Agreement for such term;

(f) with respect to any Obligations bearing interest, or expected to bear interest, at a fixed interest rate for which a Hedge Agreement is in place providing for a net variable interest rate with respect to such Obligations for a specific term, the interest rate on such Obligations shall be assumed to be equal for such term to the sum of (i) the fixed interest rate or rates to be paid on the Obligations, minus (ii) the fixed interest rate or rates receivable by the City under such Hedge Agreement, plus (iii) the variable interest rate to be paid by the City under the Hedge Agreement, calculated, for periods in which the actual variable rate under the Hedge Agreement cannot be determined, at the average interest rate of the index on which the Hedge Agreement is based, or, if not based on an identifiable index, then the average of (x) the SIFMA Swap Index if the interest on the related Obligations is excluded or expected to be excluded from gross income for federal income tax purposes or (y) the One Month USD LIBOR Rate if the interest on the related Obligations is included or expected to be included in gross income for federal income tax purposes, in each case over the 12 months preceding the date of calculation (provided, however, that if any such index is no longer published, the variable interest rate to be paid by the City under the Hedge Agreement shall be calculated based upon such similar index as is determined by the City);

(g) if any Obligations feature an option, on the part of the owners or a requirement under the terms of such Obligations, to tender all or a portion of such Obligations to the City, or other fiduciary or agent, and to purchase such Obligations or portion thereof if properly presented, then for purposes of determining the amounts due in any period with respect to such Obligations, the options or obligations of the owners of such Obligations to tender the same for purchase or payment shall be ignored;

(h) payments on Obligations shall be excluded to the extent such payments are (1) to be paid from amounts on deposit with a trustee or other fiduciary in escrow specifically therefor or (2) paid or expected to be paid from the City's allocable share of moneys received from other users of the Treatment Plant as payment of debt service related to the Treatment Plant payable by other users of the Treatment Plant pursuant to any agreement entered into by such users, and interest payments shall be excluded to the extent that such interest payments are (1) to be paid from the proceeds of Obligations, including any investment earnings thereon, held by a trustee or other fiduciary as capitalized interest specifically to pay such interest or (2) paid or expected to be paid from Subsidy Payments;

(i) with respect to Obligations for which a reserve fund is in place, the calculation of Debt Service for such Obligations for any period shall be reduced by the amount of investment earnings on amounts on deposit in such reserve fund used or expected to be used to pay Debt Service on such Obligations during such period, as estimated by the City;

(j) with respect to Obligations for which a reserve fund is in place, the amount on deposit in such reserve fund on any date of calculation of Debt Service shall be deducted from the amount due on the final maturity or due date of such Obligations if such amount on deposit in such reserve fund would be released at such maturity or due date and, to the extent the amount on deposit in such reserve fund is in excess of the amount due on the final maturity or due date of such Obligations, such excess shall be applied to the full amount due on each preceding payment date for such Obligations, in inverse order, until such amount on deposit in such reserve fund is exhausted;

(k) Reimbursement Obligations or potential Reimbursement Obligations shall be ignored; and

(l) payments or potential payments under Hedge Agreements may, at the option of the City, be ignored except as provided in clauses (e) and (f) of this definition.

Existing Contracts

"Existing Contracts" means, collectively, (1) the State Revolving Fund Loan Program Contract relating to Loan No. C-06-4220-110, dated June 24, 1997, between the California State Water Resources Control Board and the City; (2) the State Revolving Fund Loan Program Contract relating to Loan No. C-06-4220-120, dated June 24, 1997, between the California State Water Resources Control Board and the City; (3) the State Revolving Fund Loan Program Contract relating to Loan No. C-06-4220-130, dated June 24, 1997, between the California State Water Resources Control Board and the City; (4) the State Revolving Fund Loan Program Contract relating to Loan No. C-06-4220-140, dated July 8 1997, between the California State Water Resources Control Board and the City; (5) the State Revolving Fund Loan Program Contract relating to Loan No. C-06-4220-150, dated June 24, 1997, between the California State Water Resources Control Board and the City; (6) the State Revolving Fund Loan Program Contract relating to Loan No. C-06-4220-160, dated September 12, 1997, between the California State Water Resources Control Board and the City; (7) the State Revolving Fund Loan Program Contract relating to Loan No. C-06-4220-170, dated July 8, 1997, between the California State Water Resources Control Board and the City; (8) the State Revolving Fund Loan Program

Contract relating to Loan No. C-06-4220-180, dated June 24, 1997, between the California State Water Resources Control Board and the City; (9) the State Revolving Fund Loan Program Contract relating to Loan No. C-06-4220-190, dated July 8, 1997, between the California State Water Resources Control Board and the City; (10) the State Revolving Fund Loan Program Contract relating to Loan No. C-06-4220-310, dated November 10, 1997, between the California State Water Resources Control Board and the City; and (11) the State Revolving Fund Loan Program Contract relating to Loan No. C-06-4220-320, dated June 24, 1997, between the California State Water Resources Control Board and the City.

Fiscal Year

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

Hedge Agreement

“Hedge Agreement” means an interest rate swap, cap, collar, option, floor, forward, derivative, or other hedging agreement, arrangement, or security, however denominated, entered into between the City and a counterparty, in connection with or incidental to the issuance, incurrence, or carrying of Obligations, including an interest rate swap, cap, collar, option, floor, forward, derivative, or other hedging agreement, arrangement, or security entered into in advance of the issuance or incurrence of Obligations.

Improvement Agreement

“Improvement Agreement” means the Improvement Agreement, dated as of November 1, 1995, among the San Jose-Santa Clara Clean Water Financing Authority, the City and the City of Santa Clara, as amended and supplemented to the date hereof.

Independent Certified Public Accountant

“Independent Certified Public Accountant” means any firm of certified public accountants appointed by the City, and each of whom:

- (1) is in fact independent and not under the domination of the City;
- (2) does not have a substantial financial interest, direct or indirect, in the operations of the City; and
- (3) is not connected with the City as a council member, officer or employee of the City, but may be regularly retained to make reports to the City.

Maintenance and Operation Costs

“Maintenance and Operation Costs” means the City’s reasonable and necessary costs of and charges for maintenance and operation of the Wastewater System and the City’s allocable share of the reasonable and necessary costs of and charges for maintenance and operation of the

Treatment Plant, each determined in accordance with generally accepted accounting principles; provided, however, that Maintenance and Operation Costs shall not include depreciation or obsolescence charges or reserves therefor, capital asset expenditures, amortization of intangibles or other bookkeeping entries of a similar nature, interest charges and charges for the payment of bonded or other indebtedness. Maintenance and Operation Costs include (among other things) the City's reasonable expenses of management, repair and other expenses necessary to maintain and preserve the Wastewater System in good repair and working order, the City's allocable share of the reasonable expenses of management, repair and other expenses necessary to maintain and preserve the Treatment Plant in good repair and working order, reasonable amounts for administration, overhead, taxes (if any) and other similar costs; provided, that Maintenance and Operation Costs shall not include costs, or charges made therefor, for capital additions, replacement (except for capital expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the service life of the Treatment Plant to maintain the capacity and performance for which the Treatment Plant was designed and constructed and do not constitute major rehabilitation needed as individual unit processes or other facilities near the end of their useful lives, structural rehabilitation, or Treatment Plant expansions or upgrades to meet future user demands), betterments, extensions or improvements to or retirements from the Wastewater System or the Treatment Plant, and shall not include losses from the sale, abandonment, reclassification, revaluation or other disposition of any properties of the Wastewater System or the Treatment Plant, such property-items which are capitalized pursuant to then-existing accounting practices of the City, or Maintenance and Operation Costs payable from amounts identified in clause (e) of the definition of System Revenues. Maintenance and Operation Costs shall also include (1) until such time as all of the payments required to be paid by the City under the Improvement Agreement have been paid or deemed paid pursuant to the terms of the Improvement Agreement, any fees, compensation or expenses payable by the City to any credit or liquidity provider with respect to the Bonds (as defined in the Improvement Agreement) and any amounts required to be rebated to the federal government by the City with respect to the Bonds (as defined in the Improvement Agreement); (2) once all of the payments required to be paid by the City under the Improvement Agreement have been paid or deemed paid pursuant to the terms of the Improvement Agreement, all fees, compensation or expenses required to be paid by the City pursuant to any Contract or other agreement relating to an Obligation, including fees, compensation or expenses of trustees, paying agents, credit enhancement providers, liquidity providers, hedge providers, remarketing agents or similar entities (for the avoidance of doubt, payments made under any such Contract that is or may be taken into account in connection with the calculation of Debt Service shall be excluded from Maintenance and Operation Costs and any payment owed pursuant to a Hedge Agreement by reason of an event of default under or termination of such Hedge Agreement shall be excluded from Maintenance and Operation Costs); and (3) Qualified Take or Pay Obligations.

Net Proceeds

"Net Proceeds" means, when used with respect to any insurance, self-insurance or condemnation award, the proceeds from such award remaining after payment of all expenses (including attorneys' fees) incurred in the collection of such proceeds.

Net System Revenues

“Net System Revenues” means, for any period, the System Revenues for such period less Maintenance and Operation Costs for such period.

Obligations

“Obligations” means (1) the City’s obligations to make payments under the Existing Contracts, (2) the City’s obligation to make payments under the 2017 Contract, and (3) any other obligation of the City payable from Net System Revenues as set forth in any other Contract and, as the context may require and without duplication, the portion of any obligation secured by such obligation of the City with the approval of the City.

One Month USD LIBOR Rate

“One Month USD LIBOR Rate” means the rate for deposits in U.S. dollars for a one-month maturity that appears on Reuters Screen LIBOR01 Page (or such other page as may replace that page on that service, or such other service as may be nominated by the British Bankers Association, for the purpose of displaying London interbank offered rates for U.S. dollar deposits) as of 11:00 a.m., London time on the date of determination of such rate.

Outstanding

“Outstanding,” when used as of any particular time with respect to Obligations, means all Obligations theretofore created by the City, except (1) Obligations theretofore cancelled or terminated or surrendered for cancellation or termination; (2) Obligations paid or deemed to be paid within the meaning of the Contract providing for the creation of such Obligations; (3) Obligations owned or held by the City; and (4) Obligations in lieu of or in substitution for which other Obligations have been created pursuant to the terms of the Contract providing for the creation of such Obligations.

Owner

“Owner” means, with respect to any Obligations, the party entitled to receive payments of such Obligations as set out in the Contracts providing for the creation of such Obligations.

Parity Obligation Contracts

“Parity Obligation Contracts” means (1) the Existing Contracts and (2) all other Contracts pursuant to which Parity Obligations are created.

Parity Obligations

“Parity Obligations” means (1) the City’s obligations to make payments under the Existing Contracts and (2) all other Obligations designated as such in the Contracts creating such Obligations and which are created in accordance with Sections 2.04(b), (c) or (d) hereof.

Qualified Take or Pay Obligation

“Qualified Take or Pay Obligation” means the obligation of the City to make use of any facility, property or services, or some portion of the capacity thereof, or to pay therefor from System Revenues, or both, whether or not such facilities, properties or services are ever made available to the City for use.

Rate Stabilization Fund

“Rate Stabilization Fund” means the fund by that name maintained by the City pursuant to Section 2.03 hereof.

Reimbursement Obligations

“Reimbursement Obligations” means any obligation of the City to repay, from Net System Revenues, amounts provided by a credit enhancement provider or a liquidity facility provider as credit or liquidity support relating to any Obligations.

SIFMA Swap Index

“SIFMA Swap Index” means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association (formerly the Bond Market Association) (“SIFMA”) or by any person acting in cooperation with or under the sponsorship of SIFMA and effective from such date.

Subordinate Obligation Contracts

“Subordinate Obligation Contracts” means (1) the 2017 Contract and (2) all other Contracts pursuant to which Subordinate Obligations are created.

Subordinate Obligations

“Subordinate Obligations” means (1) the City’s obligation to make payments under the 2017 Contract and (2) all other Obligations designated as such in the Contracts creating such Obligations and created in accordance with Section 2.04(f) hereof.

Subsidy Payments

“Subsidy Payments” means payments with respect to the interest due on Obligations made by the United States Treasury to the City or a trustee or fiduciary pursuant to Section 54AA of the Code, Section 6431 of the Code, or Section 1400U-2 of the Code or any successor to or extension or replacement of any of such provisions of the Code, or any provisions of the Code that create similar direct-pay subsidy programs.

System Revenues

“System Revenues” means all moneys received by the City from rates, fees, charges and subsidies received for, and all other income and receipts derived by the City from, the operation of the Wastewater System and the Treatment Plant, including (1) sewer service and use charges imposed by the City with respect to the Wastewater System and the Treatment Plant; (2) direct payments by users of the Wastewater System made to cover capital costs of the Wastewater System; (3) connection charges imposed for the cost of connecting to the Treatment Plant; (4) connection fees imposed for the cost of connecting to the Wastewater System; and (5) the City’s allocable share of moneys received from other users of the Treatment Plant as (i) payment of the costs of the maintenance and operation of the Treatment Plant, (ii) payment of debt service related to the Treatment Plant payable by other users of the Treatment Plant pursuant to any agreement entered into by such users or (iii) direct payments by such other users made to cover capital costs of the Treatment Plant, but excluding (a) refundable deposits made to establish credit, lease deposits and security deposits; (b) the proceeds of any Obligations or indebtedness; (c) insurance proceeds or condemnation awards; (d) grants to the City which are designated by the grantor for a specific purpose and are therefore not available to be treated as System Revenues; and (e) moneys received from the levy of ad valorem taxes by the City. System Revenues also includes all interest, profits or other income derived from the deposit or investment of any moneys in any fund or account established by the City for the deposit of System Revenues and all repayments of any loans made for customer retrofits required for connection to the Treatment Plant. Notwithstanding the foregoing, there shall be deducted from current System Revenues any amounts transferred into the Rate Stabilization Fund from current System Revenues as provided in Section 2.03 hereof and there shall be added to current System Revenues any amounts transferred out of the Rate Stabilization Fund as provided in Section 2.03 hereof.

Treatment Plant

“Treatment Plant” means the existing wastewater treatment plant formerly known as the “San Jose-Santa Clara Water Pollution Control Plant” and currently known as the “San José-Santa Clara Regional Wastewater Facility” and all improvements, additions and betterments thereto and extensions and replacements thereof.

Trustee

“Trustee” means any financial institution acting in its capacity as trustee or fiduciary with respect to any Obligations, and its successors and assigns.

2017 Contract

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

Wastewater Service

“Wastewater Service” means the wastewater services made available or provided by the Wastewater System.

Wastewater System

“Wastewater System” means the whole and each and every part of the wastewater collection and conveyance system of the City including the portion thereof existing on the date of this Resolution, and including all additions, betterments, extensions and improvements to such system or any part thereof and hereafter acquired or constructed but excluding the Treatment Plant.

Wastewater Treatment System Fund

“Wastewater Treatment System Fund” means the existing enterprise fund established on the City’s books and records for the purpose, among others, of accounting for the System Revenues.

ARTICLE II

SYSTEM REVENUES

SECTION 2.01. Pledge of the Net System Revenues.

(a) The City hereby pledges the Net System Revenues to secure the payment of all Parity Obligations and Subordinate Obligations with the priorities set forth herein; provided that out of Net System Revenues there may be apportioned such sums for such purposes as are expressly permitted by this Article II. Such pledge shall constitute an exclusive lien on Net System Revenues subordinate and junior in priority only to the lien thereon granted by the City pursuant to the Improvement Agreement and on parity with any lien thereon granted by the City pursuant to the Existing Contracts or the documents relating thereto. The City hereby represents and states that it has not previously granted any lien or charge on any of the Net System Revenues other than as provided in the Improvement Agreement and as may be provided in the Existing Contracts or the documents relating thereto.

(b) If all of the payments required to be paid by the City under the Improvement Agreement shall hereafter be paid or deemed to be paid pursuant to the terms of the Improvement Agreement, and if the lien on Net System Revenues created thereby shall be terminated and discharged, then immediately upon such termination and discharge and automatically without any further act, the lien on Net System Revenues granted pursuant to Section 2.01(a) shall become and be deemed to be a first and exclusive lien on the Net System Revenues and shall no longer be subordinate and junior in priority to the lien on Net System Revenues granted by the City pursuant to the Improvement Agreement.

SECTION 2.02. Allocation of System Revenues.

(a) In order to carry out and effectuate the pledge contained in Section 2.01, the City agrees and covenants that all System Revenues shall be accounted for in the Wastewater Treatment System Fund, which fund the City agrees and covenants to maintain on its books and records so long as any Parity Obligations or Subordinate Obligations remain Outstanding, and all System Revenues accounted for in the Wastewater Treatment System Fund shall be applied and used only in the following order as provided herein:

(1) The City shall pay all Maintenance and Operation Costs as they become due and payable and shall make such deposits to the Rate Stabilization Fund as it may determine from time to time in accordance with Section 2.03;

(2) The City shall pay all payments required to be paid by the City under the Improvement Agreement and make any deposits or transfers required to be made by the City under the Improvement Agreement, in each case at the times and in the amounts required by the Improvement Agreement;

(3) The City shall pay all payments that are Parity Obligations and make any deposits or transfers required to be made by the City pursuant to all Parity Obligation Contracts, in each case at the times and in the amounts required by each Parity Obligation Contract;

(4) The City shall pay all payments that are Subordinate Obligations and make any deposits or transfers required to be made by the City pursuant to all Subordinate Obligation Contracts, in each case at the times and in the amounts required by each Subordinate Obligation Contract.

(b) As long as all payments required to be paid by the City pursuant to this section have been paid and all deposits or transfers required to be made by the City pursuant to this section have been made at the times and in the amounts required by this section, System Revenues accounted for in the Wastewater Treatment System Fund may be applied and used by the City for any lawful purpose.

SECTION 2.03. Rate Stabilization Fund. The City has previously established a fund denominated the Rate Stabilization Fund. From time to time the City may deposit into the Rate Stabilization Fund, from current System Revenues, such amounts as the City shall determine and the amount of available current System Revenues shall be reduced by the amount so transferred. The City may also deposit amounts in the Rate Stabilization Fund from any lawfully available source other than current System Revenues and the amount of available current System Revenues shall not be reduced by the amounts so transferred. Amounts may be transferred from the Rate Stabilization Fund and deposited in the System Revenue Fund, and any amounts so transferred shall be deemed System Revenues when so transferred. Deposits to and transfers from the Rate Stabilization Fund for each Fiscal Year shall be made within 270 days after the end of such Fiscal Year. All interest or other earnings upon amounts in the Rate Stabilization Fund may be withdrawn therefrom and accounted for as System Revenues.

SECTION 2.04. Additional Obligations.

(a) The City may not hereafter create or assume any obligations payable from the Net System Revenues the payments of which are senior or prior in right to the payment by the City of Parity Obligations hereunder. Without limiting the generality of the foregoing, the City shall not increase the amount of any payments required to be paid by the City under the Improvement Agreement or create, assume or suffer to exist any obligation payable from the Net System Revenues on a parity with the City's obligations to make payments under the Improvement Agreement.

(b) Without regard to Section 2.04(c), the City may at any time create Parity Obligations that are Reimbursement Obligations or create Parity Obligations under a Hedge Agreement provided that (1) the Obligations to which such Reimbursement Obligations or Hedge Agreement relate are Parity Obligations or expected to be Parity Obligations, as the case may be, (2) there shall not have occurred and be continuing an "Event of Default" under the terms of any Parity Obligation Contract or Subordinate Obligation Contract that will not be cured in connection with the creation of such Parity Obligations and (3) the creation of such Parity Obligations will not constitute either an "Event of Default" under any Parity Obligation Contract or Subordinate Obligation Contract or an event which, with the giving of notice or the passage of time or both, would constitute an "Event of Default" under any Parity Obligation Contract or Subordinate Obligation Contract.

(c) After the initial creation of Parity Obligations hereunder (other than the City's obligations to make payments under the Existing Contracts), the City may at any time and from time to time create any other Parity Obligations, provided:

(1) There shall not have occurred and be continuing any "Event of Default" under the terms of any Parity Obligation Contract or Subordinate Obligation Contract that will not be cured in connection with the creation of such additional Parity Obligations and the creation of such additional Parity Obligations will not constitute either an "Event of Default" under any Parity Obligation Contract or Subordinate Obligation Contract or an event which, with the giving of notice or the passage of time or both, would constitute an "Event of Default" under any Parity Obligation Contract or Subordinate Obligation Contract; and

(2) The City obtains or provides a certificate or certificates, prepared by the City or at the City's option by a Consultant, showing that either:

(A) the Adjusted Net System Revenues for either the most recent Fiscal Year for which audited financial statements are available or any 12 consecutive calendar month period (selected by the City) during the 18 consecutive calendar month period ending immediately prior to the creation of such additional Parity Obligations were at least equal to the Coverage Requirement for the most recently completed Fiscal Year, including in the calculation of the Coverage Requirement for this purpose the Average Annual Debt Service for the additional Parity Obligations to be created; and for the purpose of providing such certificate or certificates, the City or the City's

Consultant, as applicable, may adjust the Adjusted Net System Revenues for such Fiscal Year or 12 calendar month period, as the case may be, to reflect:

(i) an allowance for Net System Revenues that would have been derived from each new connection to the Wastewater System and the Treatment Plant that was made prior to the creation of such additional Parity Obligations but which was not in existence during all or any part of such Fiscal Year or 12 calendar month period under consideration, in an amount equal to the estimated additional Net System Revenues that would have been derived from each such connection if it had been made prior to the beginning of such Fiscal Year or 12 calendar month period,

(ii) an allowance for Net System Revenues that would have been derived from any increase in the rates, fees and charges fixed and prescribed for Wastewater Service or use of the Treatment Plant which became effective prior to the creation of such additional Parity Obligations but which was not in effect during all or any part of such Fiscal Year or 12 calendar month period, in an amount equal to the estimated additional Net System Revenues that would have been derived from such increase in rates, fees and charges if it had been in effect prior to the beginning of such Fiscal Year or 12 calendar month period; and

(iii) an allowance for Net System Revenues that would have been derived from any increase in the amounts chargeable to other users of the Treatment Plant pursuant to any contract with those users, which increase became effective prior to the creation of such additional Parity Obligations but which was not in effect during all or any part of such Fiscal Year or 12 calendar month period, in an amount equal to the estimated additional Net System Revenues that would have been derived from such increase if it had been in effect prior to the beginning of such Fiscal Year or 12 calendar month period; or

(B) the estimated Adjusted Net System Revenues for each of the five full Fiscal Years next following the earlier of (i) the end of the period during which interest on such additional Parity Obligations is to be capitalized or, if no interest is capitalized, the Fiscal Year in which such additional Parity Obligations are incurred, or (ii) the date on which substantially all projects financed with the proceeds of such additional Parity Obligations plus all projects financed with all existing Parity Obligations are expected to commence operations, will be at least equal to the Coverage Requirement for each such Fiscal Year; and for the purpose of providing such certificate or certificates, the City or the City's Consultant, as applicable, may adjust the foregoing estimated Adjusted Net System Revenues to reflect:

(i) an allowance for Net System Revenues that are estimated to be derived from any increase in the rates, fees and charges for Wastewater Service or use of the Treatment Plant which have been

adopted and which will be in effect during all or any portion of the period for which such estimates are provided;

(ii) an allowance for Net System Revenues that are estimated to be derived from new connections to the Wastewater System and the Treatment Plant reasonably expected during all or any portion of the period for which such estimates are provided in an amount equal to the additional Net System Revenues that are estimated to be derived from such connections; and

(iii) an allowance for Net System Revenues that are estimated to be derived from any increase in the amounts chargeable to other users of the Treatment Plant pursuant to any contract with those users, which increase will be in effect during all or any portion of the period for which such estimates are provided.

For purposes of clause (B) above, with respect to Maintenance and Operation Costs, the City or the City's Consultant, as applicable, shall use such assumptions (which shall be set forth in such certificate or certificates) as such believes to be reasonable, taking into account: (i) historical Maintenance and Operation Costs, (ii) Maintenance and Operation Costs associated with any additions, improvements or betterments to or extensions or replacements of the Wastewater System and the Treatment Plant to be financed with the proceeds of such additional Parity Obligations and any other new additions, improvements or betterments to or extensions or replacements of the Wastewater System and the Treatment Plant during the period for which such estimates are provided and (iii) such other factors, including inflation and changing operations or policies, as the City or the City's Consultant, as applicable, believes to be appropriate.

(d) Without regard to Section 2.04(c), the City may at any time create Parity Obligations for the purpose of refunding, refinancing or prepaying any obligation payable from Net System Revenues (including the payment of any costs incurred in connection with such refunding, refinancing or prepayment and the creation of such Parity Obligations and the creation of reserve funds, if any, for such Parity Obligations) provided that (1) there shall not have occurred and be continuing an "Event of Default" under the terms of any Parity Obligation Contract or Subordinate Obligation Contract that will not be cured in connection with the creation of such Parity Obligations and (2) the creation of such Parity Obligations will not constitute either an "Event of Default" under any Parity Obligation Contract or Subordinate Obligation Contract or an event which, with the giving of notice or the passage of time or both, would constitute an "Event of Default" under any Parity Obligation Contract or Subordinate Obligation Contract.

(e) Without regard to Section 2.04(c), the City may create the Parity Obligations evidenced by the Existing Contracts and the Subordinate Obligations evidenced by the 2017 Contract.

(f) Without regard to Section 2.04(c), the City may create additional Subordinate Obligations as long as there shall not have occurred and be continuing an "Event of Default"

under the terms of any Parity Obligation Contract or Subordinate Obligation Contract that will not be cured in connection with the creation of such Subordinate Obligations and the creation of such Subordinate Obligations will not constitute either an “Event of Default” under any Parity Obligation Contract or Subordinate Obligation Contract or an event which, with the giving of notice or the passage of time or both, would constitute an “Event of Default” under any Parity Obligation Contract or Subordinate Obligation Contract.

(g) Nothing contained herein shall limit the ability of the City to create obligations payable from the Net System Revenues on a basis that is subordinate in both payment and lien priority to the Subordinate Obligations as long as there shall not have occurred and be continuing an “Event of Default” under the terms of any Parity Obligation Contract or Subordinate Obligation Contract that will not be cured in connection with the creation of such obligations and the creation of such obligations will not constitute either an “Event of Default” under any Parity Obligation Contract or Subordinate Obligation Contract or an event which, with the giving of notice or the passage of time or both, would constitute an “Event of Default” under any Parity Obligation Contract or Subordinate Obligation Contract.

ARTICLE III

COVENANTS OF THE CITY

SECTION 3.01. Against Encumbrances. The City will not hereafter make any pledge of or place any lien on the Net System Revenues having priority over or having parity with the pledge and lien on Net System Revenues created pursuant hereto except as provided herein; provided, that nothing contained herein shall limit the ability of the City to create obligations that are secured by a pledge, lien or other encumbrance on Net System Revenues that is subordinate to the pledge and lien on Net System Revenues created pursuant hereto.

SECTION 3.02. Against Sale or Other Disposition of Property. The City will not sell, lease or otherwise dispose or permit the sale, lease or disposition of the Wastewater System or the Treatment Plant or any part thereof essential to the proper operation of the Wastewater System or the Treatment Plant or to the maintenance of the System Revenues, except as provided herein. Further, except as provided herein, the City will not enter into any agreement or lease or permit any other party to enter into any agreement or lease which impairs the operation of the Wastewater System or the Treatment Plant or any part thereof necessary to secure adequate Net System Revenues for the payment of Parity Obligations and Subordinate Obligations or which would otherwise impair the System Revenues or the operation of the Wastewater System or the Treatment Plant. Notwithstanding the foregoing, any real or personal property which has become non-operative or which is not needed for the efficient and proper operation of the Wastewater System or the Treatment Plant, or any material or equipment which has become worn out, as determined by the City, may be sold, leased or otherwise disposed of if such sale, lease or other disposition will not materially reduce the Net System Revenues.

SECTION 3.03. Maintenance and Operation of the Wastewater System and Treatment Plant. The City will maintain and preserve or cause to be maintained and preserved the Wastewater System and the Treatment Plant in good repair and working order at all times and will operate or cause to be operated the Wastewater System and the Treatment Plant in an

efficient and economical manner and will pay all Maintenance and Operation Costs as they become due and payable.

SECTION 3.04. Amount of Rates and Charges.

(a) The City will fix and prescribe rates and charges for the Wastewater Service and cause to be fixed and prescribed rates and charges for use of the Treatment Plant in each Fiscal Year that are reasonably estimated to yield during each Fiscal Year Adjusted Net System Revenues for such Fiscal Year equal to at least the Coverage Requirement for such Fiscal Year. The City may make adjustments from time to time in such rates and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates and charges then in effect unless the Adjusted Net System Revenues from such reduced rates and charges will at all times be sufficient to meet the requirements of this section.

(b) So long as the City has complied with its obligations set forth in subsection (a) of this Section 3.04, the failure of the Adjusted Net System Revenues for any Fiscal Year to be equal to at least the Coverage Requirement for such Fiscal Year shall not constitute a default by the City under this Resolution.

SECTION 3.05. Payment of Claims. The City will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien on the Net System Revenues, but the City shall not be required to pay such claims if the validity thereof shall be contested in good faith.

SECTION 3.06. Compliance with Contracts. The City will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Wastewater System and the Treatment Plant and all other contracts affecting or involving the Wastewater System and the Treatment Plant to the extent that the City is a party thereto.

SECTION 3.07. Insurance. The City will procure and maintain or cause to be procured and maintained such insurance which it shall deem advisable or necessary to protect its interests, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with wastewater systems and wastewater system treatment plants similar to the Wastewater System and the Treatment Plant; provided that the City shall not be required to procure or maintain or cause to be procured or maintained any such insurance unless such insurance is commercially available at reasonable cost; and provided further that any such insurance may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner usually maintained in connection with wastewater systems and wastewater treatment plants similar to the Wastewater System and the Treatment Plant.

SECTION 3.08. Accounting Records and Financial Statements.

(a) The City will keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Wastewater Treatment System Fund, which records shall be available for inspection at reasonable hours and under reasonable conditions.

(b) The City will prepare (commencing with the Fiscal Year ending June 30, 2017), within two hundred and seventy (270) days after the end of each Fiscal Year, financial statements of the City (which shall include the Wastewater Treatment System Fund) or financial statements of the Wastewater Treatment System Fund, in either case for the preceding Fiscal Year and prepared in accordance with generally accepted accounting principles, together with an Accountant's Report thereon.

SECTION 3.09. Payment of Taxes and Compliance with Governmental Regulations. The City will pay and discharge or cause to be paid and discharged all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Wastewater System or the Treatment Plant or any part thereof or upon the System Revenues when the same shall become due. The City will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Wastewater System and the Treatment Plant or any part thereof, but the City shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith.

SECTION 3.10. Collection of Rates and Charges. The City will have in effect or cause to be in effect at all times rules and regulations for the payment of bills for Wastewater Service and the use of the Treatment Plant.

SECTION 3.11. Eminent Domain and Insurance Proceeds. If all or any part of the Wastewater System or the Treatment Plant shall be taken by eminent domain proceedings, or if the City receives any insurance proceeds resulting from a casualty loss to the Wastewater System or the Treatment Plant, then the Net Proceeds thereof shall be applied to the replacement of the property or facilities so taken or destroyed, unless the City determines that such property or facility is not necessary to the efficient or proper operation of the Wastewater System or the Treatment Plant and therefore determines not to replace such property or facilities. Any Net Proceeds of such award not applied to replacement or remaining after such work has been completed shall be accounted for in the Wastewater Treatment System Fund and be available for other proper uses of funds accounted for in the Wastewater Treatment System Fund.

SECTION 3.12. Further Assurances. The City will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming the rights and benefits provided herein.

ARTICLE IV

MISCELLANEOUS

SECTION 4.01. Benefits of Resolution Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than the City, any Trustee, any Owner of Obligations or the parties to any Contracts any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the City shall be for the sole and exclusive benefit of such other party.

SECTION 4.02. Amendments.

(a) This Resolution and the rights and obligations of the City and Owners of Obligations hereunder may be modified, amended or supplemented with the written consent of the Owners of a majority in aggregate principal amount of Parity Obligations then Outstanding and the written consent of the Owners of a majority in aggregate principal amount of Subordinate Obligations then Outstanding. The written consent of the Owners of any Obligations may be effected (a) through a consent by the underwriter of such Obligations or the underwriter of obligations secured by such Obligations at the time of the creation of such Obligations and (b) through a provision of a Contract providing for the creation of Obligations that deems (i) any Owners of such Obligations or the owners of obligations secured by such Obligations to consent for purposes of this Section 4.02 by virtue of their purchase of such Obligations or the obligations secured by such Obligations or (ii) any guarantor, credit enhancer, liquidity provider, or similar entity with respect to such Obligations or obligations secured by such Obligations to be the Owner of such Obligations for purposes of granting consent.

(b) This Resolution and the rights and obligations of the City and the Owners of Obligations hereunder may also be modified, amended or supplemented at any time, without the written consents of any Owner of any Obligation, but only to the extent permitted by law, and only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the City contained herein other covenants and agreements thereafter to be observed or to surrender any right or power herein reserved to or conferred upon the City;

(2) to make such provisions for the purpose of curing any ambiguity, inconsistency, or omission, or of curing or correcting any defective provision, contained herein, or in regard to matters or questions arising hereunder, as the City may deem necessary or desirable, and which shall not materially and adversely affect the interests of the Owners of Outstanding Obligations; and

(3) for any other purpose that does not materially adversely affect the interests of the Owners of Outstanding Obligations.

SECTION 4.03. Discharge of Obligations. If the City shall pay or cause to be paid any Obligations in accordance with the terms of the applicable Contract or if any Obligations shall be deemed to have been paid at the times and in the manner stipulated in the applicable

Contract, then all agreements, covenants and other obligations of the City hereunder with respect to such Obligations shall thereupon cease, terminate and become void and be discharged and satisfied.

SECTION 4.04. Successor Is Deemed Included in all References to Predecessor. Except as otherwise provided herein, whenever the City is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the City, and all agreements and covenants required hereby to be performed by or on behalf of the City shall bind and inure to the benefit of the successors thereof whether so expressed or not.

SECTION 4.05. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to “Articles,” “Sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words “hereby,” “herein,” “hereof,” “hereto,” “herewith” and other words of similar import refer to this Resolution as a whole and not to any particular article, section, subdivision or clause hereof.

SECTION 4.06. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the City shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof.

SECTION 4.07. Repeal of Inconsistent Resolution. Resolution No. 77577, adopted on November 10, 2015, is hereby repealed.

SECTION 4.08. Effective Date. This Resolution shall take effect from and after its adoption.

ADOPTED this 3rd day of October, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO, Mayor

ATTEST:

TONI TABER, City Clerk