

EXECUTION COPY

GUARANTY AGREEMENT

from

JACOBS ENGINEERING GROUP INC.

to

THE CITY OF SAN JOSE, CALIFORNIA

Dated as of

_____, 2018

3076074.1 041956 CTR

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

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GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of _____, 2018, between Jacobs Engineering Group Inc., a corporation organized and existing under the laws of the State of Delaware (together with any permitted successors and assigns hereunder, the “Guarantor”), and the City of San Jose, California (the “City”).

RECITALS

The City and CH2M HILL Engineers, Inc., a corporation organized and existing under the laws of the State of Delaware (the “Design-Builder”), have entered into a Design-Build Contract for the Headworks Facility at the San Jose – Santa Clara Regional Wastewater Facility, dated as of _____, 2018, as amended from time to time (the “Design-Build Contract”), whereby the Design-Builder has agreed to obtain governmental approvals for, design, construct, start up, commission, and acceptance test, certain upgrades and improvements to the City’s San Jose – Santa Clara Regional Wastewater Facility in San Jose, California, all as more particularly described therein.

The Design-Builder is an indirect subsidiary of the Guarantor.

Performance by the City and the Design-Builder of their obligations under the Design-Build Contract will result in a direct and substantial benefit to the Guarantor.

The City will enter into the Design-Build Contract only if, concurrently with its execution and delivery by the Design-Builder, the Guarantor guarantees the performance by the Design-Builder of all of the Design-Builder’s Obligations under the Design-Build Contract as set forth in this Guaranty Agreement.

In order to induce the execution and delivery of the Design-Build Contract by the City and in consideration thereof, the Guarantor agrees as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any other capitalized word or term used but not defined herein is used as defined in the Design-Build Contract.

“Obligations” means the amounts payable by, and the covenants and agreements of, the Design-Builder pursuant to the terms of the Design-Build Contract.

“Transaction Agreement” means any agreement entered into by the Design-Builder or the City in connection with the transactions contemplated by the Design-Build Contract, including the Design-Build Contract, and any supplements thereto.

SECTION 1.2. INTERPRETATION.

In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Guaranty, and the term “hereafter” means after, and the term “heretofore” means before, the date of execution and delivery of this Guaranty.

(B) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the City and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(F) Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of California.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor’s liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the discretion of the party whose approval, consent or acceptance is required.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR.

The Guarantor hereby represents and warrants that:

(A) Existence and Powers. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with the full legal right, power and authority to enter into and perform its obligations under this Guaranty.

(B) Due Authorization and Binding Obligation. This Guaranty has been duly authorized, executed and delivered by all necessary corporate action of the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations in connection with the transaction contemplated hereby or the fulfillment by the Guarantor of the terms and conditions hereof: (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor; (b) conflicts with, violates or results in a breach of any term or condition of the Guarantor's corporate charter or by-laws or any order, judgment or decree, or any contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any of the foregoing; or (c) will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Guaranty by the Guarantor or the performance of its payment or other obligations hereunder, except as such shall have been duly obtained or made.

(E) No Litigation. Except as disclosed in writing to the City, there is no Legal Proceeding, at law or in equity, before or by any Governmental Body pending or, to the best of the Guarantor's knowledge, overtly threatened or publicly announced against the Guarantor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the validity, legality or enforceability of this Guaranty against the Guarantor, or on the ability of the Guarantor to perform its obligations hereunder.

(F) No Legal Prohibition. The Guarantor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.

(G) Consent to Agreements. The Guarantor is fully aware of and consents to the terms and conditions of the Design-Build Contract.

(H) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.

(I) Applicable Law Compliance. Except as disclosed in writing to the City, the Guarantor does not have knowledge of any material violation of any law, order, rule or regulation with respect to any facilities designed or constructed by the Guarantor, Design-Builder or any of their Affiliates.

ARTICLE 3

GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO THE CITY.

The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the City for the benefit of the City (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Design-Builder under the Design-Build Contract (including all amendments and supplements thereto) to, or for the account of, the City, when the same shall become due and payable pursuant to this Guaranty, and (2) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the foregoing or anything to the contrary herein, to the extent the full and prompt performance and observance of the Obligations set forth in (2) above includes the provision of services requiring a contractor license, the City acknowledges and agrees that the Guarantor may cause such Obligations to be satisfied by a properly licensed corporate affiliate experienced in the performance of such Obligations that is approved by the City, which approval shall not be unreasonably withheld. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 3.4 hereof against claims made under this Guaranty. The combined liability of the Guarantor under this Guaranty and the Design-Builder under the Design-Build Contract shall be subject to the applicable limitations set forth in the Design-Build Contract.

SECTION 3.2. RIGHT OF CITY TO PROCEED AGAINST GUARANTOR.

This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Design-Builder to pay or perform any Obligation guaranteed hereunder, the City shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Design-Builder or exhausting any other remedies against the Design-Builder which the City may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the City: (1) file suit or proceed to obtain a personal judgment against the Design-Builder or any other person that may be liable for the Obligations or any part of the Obligations; (2) make any other effort to obtain payment or performance of the Obligations from the Design-Builder other than providing the Design-Builder with any notice of such payment or performance as may be required by the terms of the Design-Build Contract or required to be given to the Design-Builder under Applicable Law; (3) foreclose against or seek to realize upon any security for the Obligations; or (4) exercise any other right or remedy to which the City is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Design-Builder or to the enforcement of remedies under the Design-Build Contract. Upon any unexcused failure by the Design-Builder in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Design-Builder and the Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding the City's right to proceed directly against the Guarantor, the City (or any successor) shall not be entitled to more than a single full performance of the Obligations in regard to any breach or non-performance thereof.

SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL.

The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Design-Builder shall have fully discharged the Obligations in accordance with their respective terms and conditions, and, except

as provided in Section 3.4, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Design-Builder, the City or any other person. Without limiting the foregoing, and except as otherwise provided in Section 3.4, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by, or further consent, of the Guarantor):

(1) the extension or renewal of this Guaranty or the Design-Build Contract up to the specified Terms of each agreement;

(2) any exercise or failure, omission or delay by the City in the exercise of any right, power or remedy conferred on the City with respect to this Guaranty or the Design-Build Contract except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;

(3) any permitted transfer or assignment of rights or obligations under the Design-Build Contract or under any other Transaction Agreement by any party thereto, or any permitted assignment, conveyance or other transfer of any of their respective interests in the Project Improvements or in, to or under any of the Transaction Agreements;

(4) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the City or any other person in any Transaction Agreement or in the Project Improvements;

(5) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Agreement;

(6) any failure of title with respect to all or any part of the respective interests of any person in the Project Site or the Project Improvements;

(7) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Design-Builder or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or any other Transaction Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

(8) except as permitted by Section 4.1 or 4.2 hereof, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Design-Builder now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Design-Builder;

(9) any failure on the part of the Design-Builder for any reason to perform or comply with any agreement with the Guarantor;

(10) the failure on the part of the City to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Design-Builder as a condition to the enforcement of Obligations pursuant to the Design-Build Contract;

(11) any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Design-Builder or the Guarantor under any Transaction Agreement;

(12) the merger or consolidation of any party to the Transaction Agreements into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(13) any legal disability or incapacity of any party to the Transaction Agreements; or

(14) the fact that entering into any Transaction Agreement by the Design-Builder or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (14) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Design-Builder pursuant to the terms of the Design-Build Contract and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Design-Builder's rights, benefits, duties or obligations under the Design-Build Contract. To the extent that any of the matters specified in subparagraphs (1) through (6) and (8) through (14) would provide a defense to, release, discharge or otherwise affect the Design-Builder's Obligations, the Guarantor's obligations under this Guaranty shall be treated the same.

SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS.

Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Design-Builder may have under the Design-Build Contract or under Applicable Law (other than bankruptcy or insolvency of the Design-Builder and other than any defense which the Design-Builder has expressly waived in the Design-Build Contract or the Guarantor has expressly waived in Section 3.5 hereof or elsewhere hereunder), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Design-Builder is permitted to assert pursuant to the Design-Build Contract, if any.

SECTION 3.5. WAIVERS BY THE GUARANTOR.

The Guarantor hereby unconditionally and irrevocably waives:

(i) notice from the City of its acceptance of this Guaranty;

- (ii) notice of any of the events referred to in Section 3.3 hereof, except to the extent that notice is required to be given as a condition to the enforcement of the Obligations;
- (iii) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Design-Builder required pursuant to the Design-Build Contract or Applicable Law as a condition to the performance of any Obligation;
- (iv) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;
- (v) any right to require a proceeding first against the Design-Builder;
- (vi) any right to require a proceeding first against any person or the security provided by or under any Transaction Agreement except to the extent such Transaction Agreement specifically requires a proceeding first against any person (except the Design-Builder) or security;
- (vii) any requirement that the Design-Builder be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;
- (viii) the requirement of, or the notice of, the filing of claims by the City in the event of the receivership or bankruptcy of the Design-Builder; and
- (ix) all demands upon the Design-Builder or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder, unless such omission or delay would relieve or otherwise discharge the Design-Builder from such obligations under the Design-Build Contract.

SECTION 3.6. PAYMENT OF COSTS AND EXPENSES.

The Guarantor agrees to pay the City on demand all Fees and Costs incurred by or on behalf of the City to enforce observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the Fees and Costs that the City incurs in performing any of its obligations under the Design-Build Contract, or other applicable Transaction Agreement where such obligations are a condition to performance by the Design-Builder of its Obligations.

SECTION 3.7. SUBORDINATION OF RIGHTS.

The Guarantor agrees that any right of subrogation or contribution which it may have against the Design-Builder as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the City hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from

the Design-Builder until the Design-Builder and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT.

The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall: (1) to the extent permitted by applicable law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty; (2) give rise to separate and independent causes of action against the Guarantor; and (3) apply irrespective of any indulgence granted from time to time by the City. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Design-Builder is rescinded or must be otherwise restored by the City, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Design-Build Contract, or any applicable Transaction Agreement or the Design-Builder's enforcement of such terms under Applicable Law.

SECTION 3.9. TERM.

This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Design-Builder have been fully paid and performed.

ARTICLE 4

GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE.

(A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Guarantor; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if the successor entity (if other than the Guarantor) (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State of California, (b) delivers to the City an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws; and (c) has a net worth at the time of any such transaction at least equal to the net worth of the Guarantor immediately prior to such time

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section.

SECTION 4.2. ASSIGNMENT.

Except as provided in Section 4.1, this Guaranty may not be assigned by the Guarantor without the prior written consent of the City.

SECTION 4.3. QUALIFICATION IN CALIFORNIA.

The Guarantor agrees that, so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in the State of California.

SECTION 4.4. CONSENT TO JURISDICTION.

The Guarantor irrevocably: (1) agrees that any Legal Proceeding related to this Guaranty or to any rights or relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State courts located in Santa Clara County, California or in federal courts located in the Northern District of California, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; and (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any such court.

SECTION 4.5. BINDING EFFECT.

This Guaranty shall inure to the benefit of the City and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS.

This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the City and the Guarantor.

SECTION 4.7. LIABILITY.

It is understood and agreed to by the City that nothing contained herein shall create any obligation of, or right to look, to any director, officer, employee or stockholder of the Guarantor (or any Affiliate of the Guarantor) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

SECTION 4.8. NOTICES.

Procedure. All notices, demands or written communications given pursuant to the terms of this Guaranty shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by email transmission, if a signed original of the emailed letter or other communication is deposited in the United States mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

City Notice Address. Notices required to be given to the City shall be addressed as follows:

City of San Jose
700 Los Esteros Road, ESB
San Jose, CA 95134
Attn: Kapil Verma
Telephone No.: (408) 635-4045
Facsimile No.: (408) 586-8446

with a copy to:

City of San Jose
City Hall
200 East Santa Clara Street, T-16
San Jose, CA 95113
Attn: City Attorney – Jennifer Pousho
Telephone No.: (408) 535-1922

Guarantor Notice Address. Notices required to be given to the Guarantor shall be addressed as follows:

Jacobs
3161 Michelson Drive, Suite 500
Irvine, CA 92612
Attn: Jeffrey Higgins
Telephone No.: 949-224-7681
Email: Jeffrey.Higgins@jacobs.com

with a copy to:

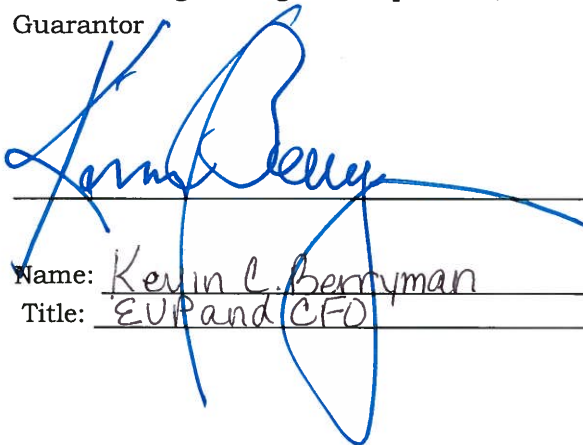
Jacobs
1737 N 1st St, Suite 300
San Jose, CA 95112
Attn: Joe Broughton
Telephone No.: (408) 436-4936
Email: joe.broughton@ch2m.com

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

Jacobs Engineering Group Inc., as Guarantor

By:



Name: Kevin C. Berryman
Title: EVP and CFO

ACCEPTED AND AGREED TO BY:

THE CITY OF SAN JOSE

By:

Name: _____

Title: _____