

AMENDED AND RESTATED
FEE LETTER AGREEMENT

June ____, 2018

City of San José
Financing Authority
200 East Santa Clara Street, 13th Floor
San José, CA 95113
Attention: Treasurer

Re: Credit Agreement dated as of October 1, 2017 (as amended, restated, supplemented or otherwise modified from time to time in accordance with its terms, the “Agreement”) among Wells Fargo Bank, National Association (together with its successors and assigns, the “Bank”) the City of San José, California (together with its permitted successors and assigns, the “City”) and the City of San José Financing Authority (together with its permitted successors and assigns, the “Authority”)

Ladies and Gentlemen:

Reference is hereby made to the Agreement. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

Section 2.02 of the Agreement makes reference to a Fee Letter Agreement containing an agreement as to certain fees payable by the Authority to the Bank in consideration for the entrance into the Agreement by the Bank, the Bank’s commitment to acquire Notes and make Advances thereunder and certain other circumstances. In connection with the execution and delivery of the Agreement the Bank, the City and the Authority entered into that Fee Letter Agreement dated October 19, 2017 (the “Original Fee Letter Agreement”). The Bank, the City and the Authority now wish to amend and restate the Original Fee Letter Agreement in its entirety pursuant to this Amended and Restated Fee Letter Agreement (the “Fee Letter Agreement”). This is the Fee Letter Agreement referenced in Section 2.02 of the Agreement. The purpose of this Fee Letter Agreement is to confirm the agreement between the Bank and the Authority with respect to the Commitment Fees (as defined herein) and certain other fees and expenses payable to or for the benefit of the Bank. All amounts accruing under the Original Fee Letter Agreement prior to the date hereof shall be paid in accordance with the terms of the Original Fee Letter Agreement. By countersigning this Fee Letter Agreement where indicated below, the Authority agrees to pay, on and after the date hereof, the following:

1. **Commitment Fees.** The Authority agrees to pay the Bank a nonrefundable commitment fee (the “Commitment Fee”), calculated on the basis of a 360 day year and actual days elapsed using the rate per annum as specified below in the column captioned “Commitment Fee” on the Level which contains the relevant Obligor Rating, determined as provided below, (the “Commitment Fee Rate”) on the Available Commitment. The Commitment Fee shall be payable quarterly in arrears, on the first Business Day of each January, April, July and October (commencing on _____, 2018, for the period from and including the Closing Date to and including _____, 2018) occurring prior to the Termination Date and on the Termination Date.

<u>LEVEL</u>	<u>MOODY’S RATING</u>	<u>S&P RATING</u>	<u>FITCH RATING</u>	<u>COMMITMENT FEE</u>
Level 1	Aaa	AAA	AAA	25.0 basis points
Level 2	Aa1	AA+	AA+	27.5 basis points
Level 3	Aa2	AA	AA	30.0 basis points
Level 4	Aa3	AA-	AA-	32.5 basis points
Level 5	A1	A+	A+	37.5 basis points
Level 6	A2	A	A	42.5 basis points
Level 7	A3	A-	A-	47.5 basis points

The Bank and the Authority agree that as of the date of this Fee Letter Agreement, the Commitment Fee Rate shall correspond to Level 1 (i.e., 25.0 basis points). The Commitment Fee, computed as described above in this Section 1, is subject to adjustment as described in the following two paragraphs.

In the event that Obligor Ratings are assigned by all three Rating Agencies, and only two of such Obligor Ratings are equivalent, the two equivalent Ratings shall be used to determine the Commitment Fee Rate. In the event that Obligor Ratings are assigned by all three Rating Agencies, and no such Obligor Ratings are equivalent, the middle Obligor Rating shall be used to determine the Commitment Fee Rate. In the event that Obligor Ratings are assigned by only two Rating Agencies, the lowest Obligor Rating assigned shall be used to determine the Commitment Fee Rate. In the event that an Obligor Rating is assigned by only one Rating Agency, the Obligor Rating assigned by that Rating Agency shall be used to determine the Commitment Fee Rate. Any change in the Commitment Fee Rate resulting from a change in Obligor Rating(s) shall be and become effective as of and on the date of the announcement of the change in such Obligor Rating(s). References to Obligor Ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, each of the Obligor Ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect.

If one or more of the Obligor Ratings are withdrawn or suspended for credit related reasons, any Obligor Rating falls below A3 by Moody’s, A- by S&P or A- by Fitch, or at any time an Event of Default shall occur and be continuing (whether or not such Event of Default is declared and whether or not waived by the Bank) under the Agreement, the Commitment Fee, computed as described in this Section, shall be immediately increased, without notice, to a

Commitment Fee Rate equal to the Commitment Fee set forth on Level 7 above plus 100 basis points (1.00%).

Applicable Spread. “*Applicable Spread*” means, (a) for the Taxable Rate, the number basis points in the column entitled TAXABLE RATE in the chart below on the Level that contains the Obligor Rating, initially 45.0 basis points (.45%) and, (b) for the Tax Exempt Rate, the product of the number basis points in the column entitled TAX EXEMPT RATE in the chart below on the Level that contains the Obligor Rating, initially 39 basis points (.39%), multiplied by the Margin Rate Factor. The Obligor Rating and the Level used to determine the Applicable Spread shall be determined as provided below in this paragraph 1:

LEVEL	MOODY’S RATING	S&P RATING	FITCH RATING	APPLICABLE SPREAD	
				TAXABLE RATE	TAX EXEMPT RATE
1	Aaa	AAA	AAA	45.0 bps	39.0 bps
2	Aa1	AA+	AA+	52.5 bps	42.5 bps
3	Aa2	AA	AA	60.0 bps	50.0 bps
4	Aa3	AA-	AA-	67.5 bps	57.5 bps
5	A1	A+	A1	82.5 bps	72.5 bps
6	A2	A	A	97.5 bps	87.5 bps
7	A3	A-	A-	112.5 bps	102.5 bps

In the event that Obligor Ratings are assigned by all three Rating Agencies, and only two of such Obligor Ratings are equivalent, the two equivalent Ratings shall be used to determine the Applicable Spread. In the event that Obligor Ratings are assigned by all three Rating Agencies, and no such Obligor Ratings are equivalent, the middle Obligor Rating shall be used to determine the Applicable Spread. In the event that Obligor Ratings are assigned by only two Rating Agencies, the lowest Obligor Rating assigned shall be used to determine the Applicable Spread. In the event that an Obligor Rating is assigned by only one Rating Agency, the Obligor Rating assigned by that Rating Agency shall be used to determine the Applicable Spread. Any change in the Applicable Spread resulting from a change in Obligor Ratings shall be and become effective as of and on the date of the announcement of the change in such Obligor Ratings. References to Obligor Ratings above are references to rating categories as determined by the Rating Agencies on the Closing Date and in the event of adoption of any new or changed rating system by any such Rating Agency, each of the Obligor Ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as in effect on the Closing Date.

2. Commitment Fee and Applicable Spread Calculation if no Wastewater System Revenue Bonds are Outstanding. If, at any time, there is no Obligor Rating because the San José-Santa Clara Clean Water Financing Authority Sewer Revenue Refunding Bonds, Series 2009A are no longer outstanding and no other long-term debt constituting, or secured by obligations constituting, Parity Obligations under the Master Resolution which has been assigned a rating is outstanding, the Commitment Fee and the Applicable Spread shall be determined on the basis of the Debt Service Coverage Ratio, defined below, and the chart below until such time

as there is an Obligor Rating. For purposes of this paragraph 2, the following terms shall have the following meanings:

“Debt Service Coverage Ratio” means the ratio of (a) the amount of Adjusted Net System Revenues received in any 12 consecutive month period (selected by the City) occurring during the 18 months prior to the date of calculation to (b) Maximum Debt Service.

“Maximum Debt Service” means the maximum amount payable by the City in any single Fiscal Year following the date of calculation as Debt Service on all Obligations (as defined in the Master Resolution) outstanding on the date of calculation, calculated as provided in the Master Resolution and the Agreement.

During any time that this paragraph 2 is applicable, the Debt Service Coverage Ratio (“DSCR” in the table below) will be calculated by the City on the first Business Day of each April and October and upon such calculation the Commitment Fee and the Applicable Spread shall equal the number of basis points on the Level in the chart below that corresponds to the applicable Debt Service Coverage Ratio. In connection with calculating the Tax Exempt Rate, the Applicable Spread shall equal the relevant number of basis points (determined as provided in the preceding sentence) in the column below entitled TAX EXEMPT RATE multiplied by the Margin Rate Factor.

LEVEL	DSCR	COMMITMENT FEE	APPLICABLE SPREAD	
			TAXABLE RATE	TAX EXEMPT RATE
1	>2.0x	25.0 bps	45.0 bps	39.0 bps
2	>1.85x-≤2.0x	27.5 bps	50.0 bps	40.0 bps
3	>1.70x-≤1.85x	30.0 bps	57.5 bps	47.5 bps
4	>1.45-≤1.70x	35.0 bps	67.5 bps	57.5 bps
5	>1.25-≤1.45x	40.0 bps	82.5 bps	72.5 bps
6	≥1.10x-≤1.25x	55.0 bps	107.5 bps	97.5 bps
7	<1.10x	155.0 bps		

If at any time an Event of Default shall occur and be continuing (whether or not such Event of Default is declared and whether or not waived by the Bank) under the Agreement, the Commitment Fee, computed as described in this Section, shall be immediately increased, without notice, to a Commitment Fee Rate equal to the Commitment Fee set forth on Level 7 above. If the DSCR falls to Level 7 the Notes shall bear the Default Rate.

3. **Legal Fees.** As a condition to the execution and delivery of this Fee Letter Agreement and the First Amendment to Credit Agreement executed on the date hereof, the Authority shall pay the legal fees of Kutak Rock LLP in an amount not to exceed \$ _____ plus fees and expenses.

4. **Amendment Fee; Consent Fee.** The Authority shall pay to the Bank (i) on the date any amendment, modification or supplement to the Agreement is entered into between the parties hereto, an amendment fee of \$2,500.00, plus the reasonable and customary fees of counsel

to the Bank; and (ii) on the date any consent to an amendment, modification or supplement of any of the other Related Documents or any waiver or consent under the Agreement or any of the Related Documents is granted by the Bank, a fee of \$2,500.00 plus the reasonable and customary fees of counsel to the Bank.

5. **Amendments.** No amendment to this Fee Letter Agreement shall become effective unless made in writing and signed by the Authority and the Bank.

6. **Governing Law.** This Fee Letter Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without giving effect to conflict of law principles.

7. **Counterparts.** This Fee Letter Agreement may be executed in two or more counterparts, each of which shall constitute an original but both or all of which, when taken together, shall constitute but one instrument.

8. **Severability.** Any provision of this Fee Letter Agreement that is prohibited, unenforceable or not authorized shall be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof. The parties shall endeavor, in good faith negotiations, to replace the invalid, illegal or unenforceable provisions with valid provisions, the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

9. **Limited Liability of Authority; Waiver of Personal Liability.** The Authority's obligations under this Fee Letter Agreement shall be limited as provided in Section 8.24 of the Agreement, which is incorporated herein by this reference. No member, officer, official, agent or employee of the Authority or the City shall be individually or personally liable for the payment of any amount under this Fee Letter Agreement or be subject to any personal liability or accountability by reason of the execution and delivery of this Fee Letter Agreement; but nothing herein contained shall relieve any such member, officer, official, agent or employee of the Authority or the City from the performance of any official duty provided by law or by this Fee Letter Agreement.

10. **Payments.** All payments made to the Bank under this Fee Letter Agreement, the Agreement or the Notes shall be made in immediately available funds and by wire transfer to the following account: Wells Fargo Bank, N.A., ABA #: 121-000-248, Account #: 00027124050720, Account Name: Wires in Process, Address: Denver, Colorado, Originator to beneficiary info: _____, Customer Name: San Jose Financing Authority, Obligor number: 5469804551, Obligation Number: (to be provided after Closing) (or such other account as the Bank may specify in writing from time to time).

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If the foregoing Fee Letter Agreement reflects our agreement, please indicate the same by signing in the space provided below.

Very truly yours,

WELLS FARGO BANK, NATIONAL
ASSOCIATION

By: _____
Mary Lou Lopez
Vice President

Acknowledged and Agreed to this
____ day of June, 2018

CITY OF SAN JOSE FINANCING
AUTHORITY

By _____
Julia H. Cooper
Treasurer

By _____
Toni J. Taber, CMC
Secretary

APPROVED TO AS TO FORM:

RICHARD DOYLE, City Attorney

By _____
Danielle Kenealey
Chief Deputy City Attorney