

FIRST AMENDMENT TO CREDIT AGREEMENT

THIS FIRST AMENDMENT TO CREDIT AGREEMENT (this “First Amendment”) dated and effective as of June 27, 2018 (the “First Amendment Effective Date”), is entered into by and among **CITY OF SAN JOSE, CALIFORNIA** (together with its successors and permitted assigns, the “City”), **CITY OF SAN JOSE FINANCING AUTHORITY** (together with its successors and permitted assigns, the “Authority”) and **WELLS FARGO BANK, NATIONAL ASSOCIATION** (together with its successors and assigns, the “Bank”).

WITNESSETH:

WHEREAS, the City, the Authority and the Bank have previously entered into a Credit Agreement dated as of October 1, 2017 (the “Original Agreement”), pursuant to which the Bank agreed, upon the terms and conditions therein, to lend to the Authority up to the principal amount of \$300,000,000;

WHEREAS, pursuant to Section 8.04 of the Original Agreement, the City, the Authority and the Bank wish to amend the Original Agreement as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

INTENTION OF PARTIES; AGREEMENT PROVISIONS

The City, the Authority and the Bank have entered into this First Amendment pursuant to Section 8.04 of the Original Agreement to amend their rights and obligations set forth in the Original Agreement. The terms of the Original Agreement, as amended by this First Amendment (as so amended, the “Agreement”), shall govern the rights and obligations of the City, the Authority and the Bank in connection with the transactions contemplated by the Agreement. Capitalized terms used but not defined in this First Amendment shall have the respective meanings assigned thereto in the Original Agreement.

ARTICLE II

AMENDMENTS

Section 2.01. Amendments to Definitions. Section 1.01 of the Original Agreement is hereby amended as follows:

(a) The definition of “Applicable Factor” is deleted in its entirety and in place thereof the following is inserted.

“*Applicable Factor*” means the product of eighty percent (80%) multiplied by the Margin Rate Factor; provided, however, in no event shall the Applicable Factor be less than seventy percent (70%).

(b) The definition of “Fee Letter Agreement” is amended and restated to read as follows:

“*Fee Letter Agreement*” means the Amended and Restated Fee Letter Agreement dated June 27, 2018, between the Authority and the Bank, as amended, supplemented, restated or otherwise modified from time to time in accordance with its terms.

(c) The definition “First Amendment Effective Date” is added in its alphabetical order to read as follows:

“*First Amendment Effective Date*” means June 27, 2018.

(d) The definition of “Margin Rate Factor” is deleted in its entirety and in place thereof the following is inserted:

“*Margin Rate Factor*” means the product of (a) one minus the Maximum Federal Corporate Tax Rate in effect on the date of calculation multiplied by (b) the quotient of (i) one divided by (ii) one minus the Maximum Federal Corporate Tax Rate in effect on the First Amendment Effective Date. The effective date of any change in the Margin Rate Factor shall be the effective date of any increase or decrease in the Maximum Federal Corporate Tax Rate.

(e) The last sentence in the definition of “Maximum Federal Corporate Tax Rate” is deleted in its entirety and in place thereof the following is inserted:

“On the First Amendment Effective Date the Maximum Federal Corporate Tax Rate is 21%.

(f) The definition of “Tax Exempt Applicable Spread” is deleted in its entirety and in place thereof the following is inserted:

“*Tax Exempt Applicable Spread*” means the product of (a) the relevant number of basis points determined as provided in the definition of Applicable Spread in the Fee Letter Agreement set forth in the column entitled Tax Exempt Rate in the chart contained in the definition of Applicable Spread multiplied by (b) the Margin Rate Factor.

(g) The definition of “Tax Exempt Rate” is deleted in its entirety and in place thereof the following is inserted:

“*Tax Exempt Rate*” means a per annum rate of interest established by the Calculation Agent on each Computation Date equal to the sum of (a) the Tax Exempt Applicable Spread plus (b) the product of (i) the LIBOR Index multiplied by (ii) the Applicable Factor. The Tax Exempt Rate shall be rounded upwards to the fifth decimal place. Upon the occurrence and during the occurrence of an Event of Default the Tax Exempt Rate shall equal the Default Rate.

Section 2.02. Amendment to Exhibit D. Exhibit D of the Original Agreement is hereby amended and restated with the Exhibit D attached hereto. On the First Amendment Effective Date the original Series A Tax-Exempt Note shall be amended and restated to conform to Exhibit D hereto. In order to amend and restate the original Series A Tax-Exempt Note on the First Amendment Effective Date, the Bank shall present the original Series A Tax-Exempt Note to the Authority for cancellation and the Authority shall execute and deliver to the Bank a new Series A Tax-Exempt Note in exchange therefore modified to conform to Exhibit D hereto (the “Replacement Series A Tax-Exempt Note”) equal in aggregate principal amount to the original Series A Tax-Exempt Note and having the same maturity. Upon the execution and delivery of the Replacement Series A Tax-Exempt Note to the Bank and satisfaction of the other conditions precedent specified in Section 3.01 of this First Amendment, the Authority shall cancel the original Series A Tax-Exempt Note and the original Series A Tax-Exempt Note shall no longer be outstanding under the Agreement. The execution and delivery of the Replacement Series A Tax-Exempt Note shall not be deemed to be an issuance of an additional Tax-Exempt Note under the Agreement but shall be deemed to be an amendment and restatement of the original Series A Tax-Exempt Note.

ARTICLE III

CONDITIONS PRECEDENT

Section 3.01. Conditions Precedent. The parties hereto agree that this First Amendment shall become effective on the First Amendment Effective Date but only upon the Bank’s receipt of the following, each in form and substance satisfactory to the Bank:

(a) *First Amendment.* Counterparts of this First Amendment and the Fee Letter Agreement, each signed by the City, the Authority, and the Bank;

(b) *Tax Exempt Note.* Executed original Replacement Series A Tax-Exempt Note.

(c) *Incumbency of City.* A certificate of the City Clerk certifying as to the names and true signatures of officers of the City and the Authority authorized to execute this First Amendment, the Fee Letter Agreement and the Replacement Series A Tax-

Exempt Note and any other document to be delivered by the City or the Authority hereunder.

(d) *Opinion of Bond Counsel.* Opinion of Orrick Herrington & Sutcliffe LLP, bond counsel to the Authority, which shall include such matters as the Bank may reasonably request.

(e) *Other Documents.* Such other documents, instruments, approvals and, if requested by the Bank, certified duplicates of executed copies thereof, and opinions as the Bank may reasonably request.

Section 3.02. Fees. On the First Amendment Effective Date, the City and the Authority shall pay reasonable fees and expenses of the Bank (which shall include the reasonable fees and expenses of counsel to the Bank incurred in connection with the negotiation, execution and delivery of this First Amendment, the Replacement Series A Tax-Exempt Note and the Fee Letter Agreement).

ARTICLE IV

FULL FORCE AND EFFECT

The Original Agreement is hereby amended to the extent provided in this First Amendment and, except as specifically provided herein, the Original Agreement shall remain in full force and effect in accordance with its terms.

ARTICLE V

GOVERNING LAW

THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS FIRST AMENDMENT SHALL BE GOVERNED AS PROVIDED IN SECTION 8.09 OF THE ORIGINAL AGREEMENT.

ARTICLE VI

HEADINGS

Section headings in this First Amendment are included herein for convenience of reference only and shall not have any effect for purposes of interpretation or construction of the terms of this First Amendment.

ARTICLE VII

COUNTERPARTS

This First Amendment may be signed in any number of counterpart copies, but all such copies shall constitute one and the same instrument.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

Each party hereto represents and warrants to the other that this First Amendment has been duly authorized and validly executed by it and that the Original Agreement as hereby amended constitutes its valid obligation, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and subject to the application of general principles of equity including but not limited to the right of specific performance.

The City and the Authority each further represents and warrants to the Bank that: (a) no Default has occurred and is continuing on the First Amendment Effective Date and after giving effect to this First Amendment, (b) each Note has been duly authorized and validly executed by it and constitutes its valid obligation, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and subject to the application of general principles of equity including but not limited to the right of specific performance and (c) except as disclosed in writing by the Authority and the City to the Bank on or before the First Amendment Effective Date, the representations and warranties of the City and of the Authority contained in the Agreement are true and correct on and as of the First Amendment Effective Date and after giving effect to this First Amendment, as though made on and as of the First Amendment Effective Date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date).

ARTICLE IX

SEVERABILITY

In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Credit Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

Approved as to form:

RICHARD DOYLE, City Attorney

By: _____
Chief Deputy City Attorney

CITY OF SAN JOSE FINANCING
AUTHORITY

By: _____
Julia H. Cooper
Treasurer

Attested to:

By: _____
Toni J. Taber, CMC
Secretary

[Signatures continued on next page]

[Signature page of First Amendment to Credit Agreement]

CITY OF SAN JOSE

By: _____
Julia H. Cooper
Director of Finance

Attested to:

By: _____
Toni J. Taber, CMC
City Clerk

[Signatures Continued On Next Page]

[Signature page of First Amendment to Credit Agreement]

WELLS FARGO BANK, NATIONAL
ASSOCIATION

By: _____
Mary Lou Lopez
Vice President

EXHIBIT D

[FORM OF TAX EXEMPT NOTE]

NUMBER PRINCIPAL AMOUNT
R-__ \$ _____

CITY OF SAN JOSE FINANCING AUTHORITY
SUBORDINATE WASTEWATER REVENUE NOTE, SERIES [__]

INTEREST RATE DATED CUSIP
Variable

REGISTERED OWNER: WELLS FARGO BANK, NATIONAL ASSOCIATION

CITY OF SAN JOSE FINANCING AUTHORITY, a joint powers authority and public entity of the State of California (the "Authority"), for value received, hereby promises to pay (but only out of the Authority Revenues pledged therefor as hereinafter mentioned) to the Registered Owner specified above (the "Registered Owner"), on the Termination Date (as defined in the Credit Agreement, dated as of October 1, 2017, among the Authority, the City of San José (the "City") and Wells Fargo Bank, National Association (the "Bank") (as amended from time to time in accordance with its terms, the "Credit Agreement")) the principal amount specified above or so much of such maximum authorized principal amount as may have been Advanced hereunder as provided in the Credit Agreement, in lawful money of the United States of America; and to pay interest thereon (but only from said Authority Revenues) in like lawful money on the dates provided in the Credit Agreement at the rates per annum determined pursuant to the Credit Agreement. All payments of principal hereof, and interest hereon, are payable to the Registered Owner not later than the time specified in the Credit Agreement on the day when due, in federal or other funds immediately available as provided in the Fee Letter Agreement (as defined in the Credit Agreement). This Note is issuable in denominations of \$1,000,000 and any amount in excess thereof. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

This Note is one of a duly authorized issue of notes of the Authority designated as "City of San José Financing Authority Subordinate Wastewater Revenue Notes, Series [__]" (the "Notes"), limited in aggregate principal amount to \$[_____], and issued pursuant to the provisions of the Joint Exercise of Powers Act, constituting Title 1, Division 7, Chapter 5 of the Government Code of the State of California (the "Act"), and the Credit Agreement. The Notes are issued for the purpose of financing the acquisition, construction and installation from time to time of certain improvements, additions, and betterments to, and extensions and replacements of, the Treatment Plant for the City and/or, subject to the terms of the Credit Agreement, the

refunding of any bonds, notes or other evidences of indebtedness of the Authority or the City issued or incurred for such purpose.

The Notes and the interest thereon are limited obligations of the Authority payable solely from the Authority Revenues (as that term is defined in the Credit Agreement), constituting installment payments (the “Installment Payments”) to be made by the City to the Authority pursuant to the Subordinate Installment Purchase Contract, dated as of October 1, 2017 (as amended from time to time in accordance with its terms and the terms of the Credit Agreement, the “Installment Purchase Agreement”), between the Authority and the City, and are secured by a pledge and assignment of said Authority Revenues, subject only to the provisions of the Credit Agreement permitting the application thereof for the purposes and on the terms and conditions set forth in the Credit Agreement. The Notes are further secured by an assignment of the right, title and interest of the Authority in the Installment Purchase Agreement (to the extent and as more particularly described in the Credit Agreement).

The Notes are limited obligations of the Authority and the principal thereof, premium, if any, and interest thereon, are payable solely from, and secured in accordance with their terms and the provisions of the Credit Agreement solely by, the Authority Revenues. The Notes are not a debt or liability of the State of California, the City or of any other political subdivision of the State of California other than the Authority or a pledge of the faith and credit of the State of California, the City or of any other political subdivision of the State of California, but shall be payable solely from the Authority Revenues. None of the State of California, the City, any other political subdivision of the State of California, or the Authority shall be obligated to pay the principal of, premium, if any, or interest on the Notes except from the Authority Revenues and neither the faith and credit nor the taxing power of the State of California, the City or of any political subdivision of the State of California is pledged to the payment of the principal of, premium, if any, or the interest on the Notes. The issuance of the Notes shall not directly or indirectly or contingently obligate the State of California, the City or any other political subdivision of the State of California to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. Notwithstanding anything herein or in the Credit Agreement, the Authority shall have no pecuniary liability under the Notes except that which can be satisfied from the Authority Revenues, and the Authority shall not be required to advance any moneys derived from any source other than the Authority Revenues for the payment of the principal of, premium, if any, or the interest on the Notes.

Reference is hereby made to the Credit Agreement (a copy of which is on file with the Authority) and to the Act for a description of the rights thereunder of the Registered Owner, of the nature and extent of the security for the Notes, and of the rights and obligations of the Authority thereunder, all of the provisions of which Credit Agreement are incorporated herein and to which the Registered Owner of this Note, by acceptance hereof, assents and agrees.

Interest

This Note shall bear interest on the outstanding principal amount hereof, for each day from and including the date the initial Advance is made hereunder until it is paid in full, at the Tax Exempt Rate.

“Tax Exempt Rate” means a per annum rate of interest established by the Calculation Agent on each Computation Date equal to the sum of (a) the Tax Exempt Applicable Spread plus (b) the product of (i) the LIBOR Index multiplied by (ii) the Applicable Factor. The Tax Exempt Rate shall be rounded upwards to the fifth decimal place. Upon the occurrence and during the occurrence of an Event of Default the Tax Exempt Rate shall equal the Default Rate.

The Calculation Agent shall determine the applicable interest rate for this Note as of each applicable Computation Date, and such rate shall become effective on the Rate Reset Date next succeeding such Computation Date. Interest on the outstanding principal amount of this Note shall accrue each day during the applicable Interest Period. Interest on this Note shall be computed on the basis specified in the Credit Agreement.

Interest on the outstanding principal amount of this Note is payable monthly in arrears on each Interest Payment Date, on the date the outstanding principal of this Note is paid in full and, solely with respect to the portion of this Note being prepaid, on the date any portion of the principal of this Note is prepaid in part.

Taxability

On and after a Taxable Date for this Note, this Note shall bear interest at the Taxable Rate until such time as another interest rate shall apply pursuant to the terms hereof.

“Taxable Rate” means a per annum rate of interest established by the Calculation Agent on each Computation Date equal to the sum of the Taxable Applicable Spread plus the LIBOR Index. The Taxable Rate shall be rounded upwards to the fifth decimal place. Upon the occurrence and during the continuance of an Event of Default the Taxable Rate shall equal the Default Rate.

Optional Prepayment

The Authority may prepay this Note in whole at any time, or from time to time in part in amounts aggregating \$1,000,000 and any amount in excess thereof or, if the outstanding principal amount of this Note being prepaid is less than \$1,000,000, the total amount of this Note which is then outstanding, by giving notice to the Registered Owner by 11:00 a.m. on the date which is at least two Business Days prior to the date on which such prepayment is to be made and by paying to the Registered Owner the principal amount thereof to be prepaid together with accrued interest to the date of prepayment. Any such notice shall be irrevocable once received by the Registered Owner.

Payment of Principal after Termination Date

Notwithstanding anything to the contrary contained herein or in the Credit Agreement, in the event the Registered Owner does not receive repayment of the outstanding principal of this Note on or before the Termination Date, and provided that (A) no Default or Event of Default shall have occurred and be continuing and (B) the representations and warranties set forth in the Credit Agreement shall be true and correct on the Termination Date, then the Authority shall pay the outstanding principal amount of this Note (the “Amortization Amount”) in installments

payable on each Amortization Principal Payment Date (each such payment, an “Amortization Principal Payment”), with the final installment in an amount equal to the remaining balance of the Amortization Amount on the Amortization End Date (the period commencing on the Termination Date and ending on the Amortization End Date is herein referred to as the “Amortization Period”). Each Amortization Principal Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Principal Payments over the Amortization Period so the Amortization Amount is fully repaid by the end of the Amortization Period. The Authority may prepay, or cause to be prepaid, some or all of the Amortization Amount on any date upon one Business Days’ notice to the Registered Owner, such prepayment to be accompanied by interest accrued thereon at the Bank Rate to the date of prepayment.

During the Amortization Period, interest on the Notes shall accrue at the Bank Rate and shall be payable in arrears on each Amortization Interest Payment Date.

Maximum Interest Rate

If the amount of interest payable on this Note for any period in accordance with the terms hereof or the Credit Agreement exceeds the amount of interest that would be payable on this Note for such period had interest for such period been calculated at the Maximum Interest Rate, then interest for such period shall be payable in an amount calculated at the Maximum Interest Rate for such period.

Any interest that would have been due and payable for any period but for the operation of the immediately preceding paragraph shall accrue and be payable on this Note as provided in this paragraph and shall, less interest actually paid to the Registered Owner, as applicable, for such period, constitute the “Excess Interest Amount.” If there is any accrued and unpaid Excess Interest Amount as of any date with respect to this Note then the principal amount of this Note shall bear interest at the Maximum Interest Rate, until payment to the Registered Owner, of the entire Excess Interest Amount.

The Authority shall treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority shall not be affected by any notice to the contrary.

THIS NOTE IS BEING ISSUED AS A DRAW-DOWN NOTE, IN THAT THE REGISTERED OWNER OF THIS NOTE WILL PURCHASE THE PRINCIPAL AMOUNT OF THIS NOTE IN INSTALLMENTS BY MAKING ADVANCES IN ACCORDANCE WITH THE TERMS OF THE CREDIT AGREEMENT. ACCORDINGLY, THE PRINCIPAL AMOUNT OF THIS NOTE WHICH HAS BEEN PURCHASED AND IS OUTSTANDING AT ANY GIVEN TIME MAY BE LESS THAN THE MAXIMUM PRINCIPAL AMOUNT OF THIS NOTE AS SET FORTH ON THE FACE OF THIS NOTE. THE REGISTERED OWNER OF THIS NOTE MAY MAKE A NOTATION ON THIS NOTE ON THE SCHEDULE ATTACHED HERETO AS TO THE DATE AND THE AMOUNT OF EACH ADVANCE AND AS TO EACH PAYMENT OF PRINCIPAL OF THIS NOTE, BUT THE FAILURE TO MAKE A NOTATION SHALL NOT RELIEVE THE AUTHORITY OF ITS OBLIGATIONS

TO PAY THE OUTSTANDING PRINCIPAL OF THIS NOTE, TOGETHER WITH INTEREST HEREON, AS PROVIDED HEREIN AND IN THE CREDIT AGREEMENT.

PAYMENTS OF THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON THIS NOTE MAY BE MADE DIRECTLY TO THE REGISTERED OWNER HEREOF WITHOUT NOTATION HEREON. IT CANNOT BE DETERMINED FROM THE FACE OF THIS NOTE WHETHER ALL OR ANY PART OF SUCH PAYMENTS HAVE BEEN PAID.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to have happened and to have been performed precedent to and in the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by the provisions of the Act and by the Constitution and laws of the State of California, and that the amount of this Note, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Act or the Constitution and laws of the State of California, and is not in excess of the amount of Notes permitted to be issued under the Credit Agreement.

IN WITNESS WHEREOF, CITY OF SAN JOSÉ FINANCING AUTHORITY has caused this Note to be executed in its name and on its behalf by the manual signature of its [Treasurer] as of the date set forth above.

CITY OF SAN JOSE FINANCING AUTHORITY

By: _____
[Treasurer]

ADVANCES AND PAYMENTS OF PRINCIPAL

Date	Amount Of Advance	Amount Of Principal Repaid	Unpaid Principal Balance	Notation Made By
-------------	------------------------------	---	---	-----------------------------