

---

**FISCAL AGENT AGREEMENT**

**By and Between**

**CITY OF SAN JOSE**

**and**

**Wilmington Trust, N.A.,  
as Fiscal Agent**

**Dated as of July 1, 2019**

**Relating to**

**\$ \_\_\_\_\_  
City of San José  
General Obligation Bonds  
Series 2019A-1  
(Disaster Preparedness, Public Safety, and  
Infrastructure)**

**\$ \_\_\_\_\_  
City of San José  
Taxable General Obligation Bonds  
Series 2019A-2  
(Disaster Preparedness, Public Safety, and  
Infrastructure)**

**\$ \_\_\_\_\_  
City of San José  
Taxable General Obligation Bonds  
Series 2019B  
(Disaster Preparedness, Public Safety, and Infrastructure)**

**\$ \_\_\_\_\_  
City of San José  
General Obligation Bonds  
Series 2019C  
(Refunding, Libraries, Parks, and Public  
Safety Projects)**

**\$ \_\_\_\_\_  
City of San José  
Taxable General Obligation Bonds  
Series 2019D  
(Refunding, Libraries, Parks, and Public  
Safety Projects)**

TABLE OF CONTENTS

ARTICLE I  
DEFINITIONS; AUTHORITY

Section 1.01.	Definitions. ....	5
Section 1.02.	Authority for this Agreement. ....	17

ARTICLE II  
THE BONDS

Section 2.01.	Authorization. ....	19
Section 2.02.	Terms of Bonds. ....	19
Section 2.03.	Redemption. ....	21
Section 2.04.	Form of Bonds. ....	25
Section 2.05.	Execution of Bonds. ....	25
Section 2.06.	Transfer of Bonds. ....	25
Section 2.07.	Exchange of Bonds. ....	25
Section 2.08.	Bond Register. ....	26
Section 2.09.	Temporary Bonds. ....	26
Section 2.10.	Bonds Mutilated, Lost, Destroyed or Stolen. ....	26
Section 2.11.	Book-Entry; Limited Obligation of City. ....	26
Section 2.12.	Representation Letter. ....	27
Section 2.13.	Transfers Outside Book-Entry System. ....	27
Section 2.14.	Payments and Notices to the Nominee. ....	28

ARTICLE III  
ISSUANCE OF BONDS; APPLICATION OF BOND PROCEEDS;  
SECURITY FOR THE BONDS

Section 3.01.	Issuance and Delivery of Bonds. ....	29
Section 3.02.	Application of Proceeds of Sale of Bonds. ....	29
Section 3.03.	Validity of Bonds. ....	31
Section 3.04.	Security for the Bonds. ....	31

ARTICLE IV  
FUNDS AND ACCOUNTS

Section 4.01.	Project Fund. ....	33
Section 4.02.	Establishment and Application of Costs of Issuance Account. ....	34
Section 4.03.	Debt Service Account. ....	35
Section 4.04.	Administration and Disbursements From Debt Service Account. ....	35
Section 4.05.	Bond Service Fund. ....	35
Section 4.06.	Investment of Moneys. ....	36

ARTICLE V  
OTHER COVENANTS OF THE CITY

Section 5.01.	Punctual Payment. ....	37
Section 5.02.	Extension of Time for Payment. ....	37
Section 5.03.	Books and Accounts. ....	37
Section 5.04.	Protection of Security and Rights of Bondowners. ....	37
Section 5.05.	Further Assurances. ....	37
Section 5.06.	Continuing Disclosure. ....	37
Section 5.07.	No Arbitrage. ....	38
Section 5.08.	Federal Guarantee Prohibition. ....	38
Section 5.09.	Private Activity Bond Limitation. ....	38

Section 5.10.	Maintenance of Tax-Exemption .....	38
Section 5.11.	Rebate Fund. ....	38

## ARTICLE VI THE FISCAL AGENT

Section 6.01.	Appointment of Fiscal Agent. ....	40
Section 6.02.	Fiscal Agent May Hold Bonds. ....	40
Section 6.03.	Liability of Agents. ....	40
Section 6.04.	Notice to Agents. ....	41
Section 6.05.	Compensation, Indemnification. ....	41
Section 6.06.	Funds and Accounts. ....	41
Section 6.07.	Information. ....	41

## ARTICLE VII EVENTS OF DEFAULT AND REMEDIES OF BONDOWNERS

Section 7.01.	Events of Default. ....	43
Section 7.02.	Remedies of Bondowners. ....	43
Section 7.03.	Non-Waiver. ....	43
Section 7.04.	Remedies Not Exclusive. ....	43

## ARTICLE VIII SUPPLEMENTAL AGREEMENTS

Section 8.01.	Amendments Permitted. ....	45
Section 8.02.	Owners' Meetings. ....	46
Section 8.03.	Procedure for Amendment with Written Consent of Owners. ....	46
Section 8.04.	Disqualified Bonds. ....	46
Section 8.05.	Effect of Supplemental Agreement. ....	46
Section 8.06.	Endorsement or Replacement of Bonds Issued After Amendments. ....	47
Section 8.07.	Amendatory Endorsement of Bonds. ....	47

## ARTICLE IX MISCELLANEOUS

Section 9.01.	Benefits of Agreement Limited to Parties. ....	48
Section 9.02.	Successor is Deemed Included in All References to Predecessor. ....	48
Section 9.03.	Discharge of Agreement. ....	48
Section 9.04.	Execution of Documents and Proof of Ownership by Owners. ....	49
Section 9.05.	Waiver of Personal Liability. ....	49
Section 9.06.	Notices to and Demands on City and Fiscal Agent. ....	49
Section 9.07.	Partial Invalidity. ....	50
Section 9.08.	Unclaimed Moneys. ....	50
Section 9.09.	Applicable Law. ....	50
Section 9.10.	Conflict with Act. ....	50
Section 9.11.	Conclusive Evidence of Regularity. ....	50
Section 9.12.	Payment on Business Day. ....	50
Section 9.13.	Counterparts. ....	50

EXHIBIT A	FORMS OF BONDS	
EXHIBIT B	FORM OF PROJECT FUND DISBURSEMENT REQUEST	
EXHIBIT C	FORM OF COSTS OF ISSUANCE ACCOUNT REQUISITION	

## FISCAL AGENT AGREEMENT

This Fiscal Agent Agreement (the "Agreement") is made and entered into as of July 1, 2019, by and between the CITY OF SAN JOSE, a charter city organized and existing under the laws of the State of California (the "City") and Wilmington Trust, N.A., a national banking association duly organized and existing under the laws of the United States, as Fiscal Agent (the "Fiscal Agent");

### WITNESSETH:

**WHEREAS**, an election was duly and regularly held in the City of San José (the "City") on November 7, 2000, at which there was submitted to the qualified electors of the City the proposition of whether bonds should be issued in the principal amount of not to exceed \$211,790,000 for the purpose of acquiring property for and constructing improvements to the neighborhood library facilities throughout the City (the "Libraries Proposition"), which proposition was entitled "San José Neighborhood Libraries Bond"; and

**WHEREAS**, more than two-thirds of the votes cast at said election were in favor of the issuance of said bonds (the "Libraries Bonds"); and

**WHEREAS**, an election was duly and regularly held in the City on November 7, 2000, at which there was submitted to the qualified electors of the City the proposition of whether bonds should be issued in the principal amount of not to exceed \$228,030,000 for the purpose of acquiring property for and constructing improvements to parks and recreation facilities (the "Parks Proposition"), which proposition was entitled "San José Safe Neighborhood Parks and Recreation Bond"; and

**WHEREAS**, more than two-thirds of the votes cast at said election were in favor of the issuance of said bonds (the "Parks Bonds"); and

**WHEREAS**, an election was duly and regularly held in the City on March 5, 2002, at which there was submitted to the qualified electors of the City the proposition of whether bonds should be issued in the principal amount of not to exceed \$159,000,000 for the purpose of acquiring property for and constructing improvements in order to add and improve police and fire stations and training facilities and to create state of the art 911 communications facilities (the "Public Safety Proposition"), which proposition was entitled "San José 911, Fire, Police, Paramedic, and Neighborhood Security Act"; and

**WHEREAS**, more than two-thirds of the votes cast at said election were in favor of the issuance of said bonds (the "Public Safety Bonds"); and

**WHEREAS**, an election was duly and regularly held in the City on November 6, 2018, at which there was submitted to the qualified electors of the City the proposition of whether bonds should be issued in the principal amount of not to exceed \$650,000,000 for the purpose of acquiring property for and constructing improvements in order to improve emergency and disaster response, repair deteriorating bridges vulnerable to earthquakes, repave streets and potholes in the worst condition, prevent flooding and water contamination including the acquisition of land in the Coyote Valley for these purposes, and repair critical infrastructure (the "Infrastructure Proposition"), which proposition was entitled "San José Disaster Preparedness, Public Safety and Infrastructure Bond"; and

**WHEREAS**, more than two-thirds of the votes cast at said election were in favor of the issuance of said bonds (the “Infrastructure Bonds”); and

**WHEREAS**, the City is empowered to issue general obligation bonds which are authorized by at least two-thirds of the qualified electors of the City pursuant to Chapter 14.28 of the San José Municipal Code (the “Act”); and

**WHEREAS**, pursuant to the authorizations received at the November 7, 2000 election and the authorization contained in the Act, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2001 in a principal amount equal to \$71,000,000, with \$31,000,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition and \$40,000,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition; and

**WHEREAS**, pursuant to the authorizations received at the November 7, 2000 election and the March 5, 2002 election, and the authorization contained in the Act, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of July 1, 2002 in a principal amount equal to \$116,090,000, with \$30,000,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition, \$46,715,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition and \$39,375,000 of such bonds constituting Public Safety Bonds issued pursuant to the Public Safety Proposition; and

**WHEREAS**, pursuant to the authorizations received at the November 7, 2000 election and the March 5, 2002 election, and the authorization contained in the Act, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of July 1, 2004, in a principal amount equal to \$118,700,000, with \$58,300,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition, \$46,000,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition and \$14,400,000 of such bonds constituting Public Safety Bonds issued pursuant to the Public Safety Proposition; and

**WHEREAS**, pursuant to the authorization for Libraries Bonds received at the November 7, 2000 election and the authorization received at the March 5, 2002 election, and the authorization contained in the Act, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2005, in a principal amount equal to \$46,300,000, with \$21,300,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition and \$25,000,000 of such bonds constituting Public Safety Bonds issued pursuant to the Public Safety Proposition; and

**WHEREAS**, pursuant to the authorizations received at the November 7, 2000 election and the authorization contained in the Act, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2006, in a principal amount equal to \$105,400,000, with \$60,000,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition and \$45,400,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition; and

**WHEREAS**, pursuant to the authorization for Parks Bonds received at the November 7, 2000 election and the authorization received at the March 5, 2002 election, and the authorization contained in the Act, the City has heretofore issued general obligation bonds

pursuant to a fiscal agent agreement dated as of June 1, 2007, in a principal amount equal to \$90,000,000, with \$22,100,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition, and \$67,900,000 of such bonds constituting Public Safety Bonds issued pursuant to the Public Safety Proposition; and

**WHEREAS**, pursuant to the authorizations received at the November 7, 2000 election and the authorization contained in the Act, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2008, in a principal amount equal to \$33,100,000, with \$5,285,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition and \$27,815,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition; and

**WHEREAS**, pursuant to the authorization received at the March 5, 2002 election and the authorization contained in the Act, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2009, in a principal amount equal to \$9,000,000, all of which were Public Safety Bonds issued pursuant to the Public Safety Proposition; and

**WHEREAS**, the City has no further voter approved authorization to issue general obligation bonds pursuant to the Parks Proposition; and

**WHEREAS**, the City is additionally empowered to issue general obligation refunding bonds pursuant to Articles 9 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53550 of said Code (the "Refunding Law," and together with the Act, the "Bond Law") following a determination by the City Council of the City (the "Council") that the prudent management of the fiscal affairs of the City require it to do so; and

**WHEREAS**, pursuant to the authorization received at the November 6, 2018 election and the authorization contained in the Act, the City has determined to issue at this time its City of San José General Obligation Bonds, Series 2019A-1 (Disaster Preparedness, Public Safety, and Infrastructure) in an aggregate principal amount of \$\_\_\_\_\_ (the "Series 2019A-1 Bonds"), its City of San José Taxable General Obligation Bonds, Series 2019A-2 (Disaster Preparedness, Public Safety, and Infrastructure) in an aggregate principal amount of \$\_\_\_\_\_ (the "Taxable Series 2019A-2 Bonds") and its City of San José Taxable General Obligation Bonds, Series 2019B (Disaster Preparedness, Public Safety, and Infrastructure), in an aggregate principal amount of \$\_\_\_\_\_ (the "Taxable Series 2019B Bonds," which, together with the Series 2019A-1 Bonds and the Taxable Series 2019A-2 Bonds, constitute Infrastructure Bonds; and

**WHEREAS**, pursuant to the authorizations received at the November 7, 2000 election and the March 5, 2002 election, and the authorization contained in the Bond Law, the City intends to issue general obligation bonds (the "Prior Authorization Bonds"), together with general obligation refunding bonds (the "Refunding Bonds") for the purpose of refunding, on a current basis, all outstanding general obligation bonds heretofore issued pursuant to the Libraries Proposition, the Parks Proposition and the Public Safety Proposition (collectively, the "Refunded Bonds"), designated as "City of San José General Obligation Bonds, Series 2019C (Refunding, Libraries, Parks, and Public Safety Projects)," in an aggregate principal amount not to exceed \$\_\_\_\_\_ (the "Series 2019C Bonds"), and the "City of San José Taxable General Obligation Bonds, Series 2019D (Refunding, Libraries, Parks, and Public Safety Projects)" in an

aggregate principal amount not to exceed \$\_\_\_\_\_ (the "Taxable Series 2019D Bonds" and, together with the Series 2019C Bonds, the "Refunding and Prior Authorization Bonds"); and

**WHEREAS**, following the issuance of the Refunding and Prior Authorization Bonds, there will be no further voter approved authorization to issue general obligation bonds pursuant to the Libraries Proposition or the Public Safety Proposition; and

**WHEREAS**, the City has sold the Bonds pursuant to an Official Notice Inviting Bids (hereinafter defined) as previously approved in the Resolution (hereinafter defined);

**NOW THEREFORE**, the City and the Fiscal Agent agree as follows:

## **ARTICLE I DEFINITIONS; AUTHORITY**

**Section 1.01. Definitions.** The terms defined in this Section 1.01, as used and capitalized herein, shall, for all purposes of this Agreement, have the meanings ascribed to them below, unless the context clearly requires some other meaning.

**"Act"** means Chapter 14.28 of the San José Municipal Code, as in effect on the date hereof and as amended hereafter.

**"Agreement"** means this Fiscal Agent Agreement, dated as of July 1, 2019, as it may hereafter be supplemented or amended.

**"Articles," "Sections"** and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

**"Assistant Director of Finance"** means any Assistant Director of Finance, or such other duly appointed officer of the City authorized by the City to perform the functions of the debt manager or debt administrator of the City.

**"Authorized Investments"** means any of the following which at the time acquired or made are legal investments for the City, under applicable State of California laws and the Investment Policy (unless compliance with the Investment Policy is waived in writing by the Director of Finance of the City), for the moneys held hereunder then proposed to be invested therein:

(i) Federal Securities;

(ii) obligations of any of the following federal agencies, which obligations represent the full faith and credit of the United States of America: (A) Export-Import Bank, (B) Farm Credit System Financial Assistance Corporation, (C) Rural Economic Community Development Administration (formerly the Farmers Home Administration), (D) General Services Administration, (E) U.S. Maritime Administration, (F) Small Business Administration, (G) Government National Mortgage Association (GNMA), (H) U.S. Department of Housing & Urban Development (PHA's), (I) Federal Housing Administration, and (J) Federal Financing Bank;

(iii) direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America: (A) senior debt obligations issued by Fannie Mae, the Federal Home Loan Mortgage Corporation (FHLMC) or the Student Loan Marketing Association (SLMA), (B) obligations of the Resolution Funding Corporation (REFCORP), (C) senior debt obligations of the Federal Home Loan Bank System, (D) consolidated systemwide bonds and notes of the Farm Credit System, and (E) senior debt obligations of other government-sponsored agencies;

(iv) U.S. dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of A-1 or A-1+ by S&P and P-1 by Moody's and maturing no more than 360 days after the date of purchase, provided that a rating on a holding company is not considered to be the rating of the bank;

(v) commercial paper which is rated at the time of purchase in the single highest classification, A-1+ by S&P and P-1 by Moody's and which matures not more than 270 days after the date of purchase;

(vi) investments in a money market fund registered under the Federal Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, comprised of investments described in clauses (i), (ii) or (iii) or of repurchase agreements comprised of such investments, which fund may include a fund for which the Fiscal Agent, its affiliates or subsidiaries provide investment, advisory or other services;

(vii) municipal obligations with a rating of at least A2/A or higher by both Moody's and S&P;

(viii) investment agreements, supported by appropriate opinions of counsel, with notice to Fitch, S&P and Moody's;

(ix) the Local Agency Investment Fund of the State of California, created pursuant to 11429.1 of the California Government Code, but only, in the case of funds held by the Fiscal Agent, to the extent any monies invested by the Fiscal Agent are subject to deposit and withdrawal solely by the Fiscal Agent;

(x) obligations with a maximum remaining maturity of not more than five years issued by any corporation organized and operating within the United States of America having assets in excess of \$500,000,000, which obligations are rated in one of the two highest rating categories (without regard to numeric or other modifier) by Moody's and S&P and Fitch, if such obligations are rated by Fitch;

(xi) other forms of investments (including repurchase agreements) with notice to Fitch, S&P and Moody's; and

(xii) the City's Investment Pool.

**"Beneficial Owner"** means any person who has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds, including persons holding Bonds through nominees or depositories including, but not limited to, through the Nominee.

**"Bond Counsel"** means any attorney or firm of attorneys nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

**"Bond Law"** means, collectively, the Act and the Refunding Law.

**"Bond Service Fund"** means the Series 2019 Bond Service Fund established pursuant to Section 4.05 hereof.

**"Bond Year"** means the twelve-month period beginning on \_\_\_\_\_ and ending on the following \_\_\_\_\_, except that the last Bond Year will end on the date of payment of the Bonds in full.

**"Bonds"** means, collectively, the Series 2019A-1 Bonds, the Taxable Series 2019A-2 Bonds, the Taxable Series 2019B Bonds, the Series 2019C Bonds and the Taxable Series 2019D Bonds, at any time Outstanding pursuant to this Agreement.

**"Business Day"** means a day which is not a Saturday or Sunday or a day on which banks in San Francisco and Los Angeles, California, and New York, New York, are not required or permitted to be closed.

**"City"** means the City of San José, a charter city duly organized and existing under the laws of the State of California.

**"City Manager"** means the City Manager or such other duly appointed officer of the City authorized by the City to perform the functions of the manager of the City.

**"City Representative"** means the City Manager, the Director of Finance, the Assistant Director of Finance, the Debt Administrator, or any other person authorized by the City to act on behalf of the City with respect to this Agreement.

**"Closing Date"** means \_\_\_\_\_, 2019, being the date upon which there is an exchange of Bonds for the proceeds representing the purchase price of the Bonds by the Purchasers.

**"Code"** means the Internal Revenue Code of 1986.

**"Comparable Treasury Issue"** means, with respect to any redemption date for a particular Taxable Bond, the U.S. Treasury security or securities selected by the Designated Investment Banker that has or have an actual maturity closest to (one equal to or one earlier and one later than) the remaining average life of the Taxable Bonds to be redeemed, and that would be utilized in accordance with customary financial practice in pricing new issues of debt securities of comparable maturity to the remaining average life of such Taxable Bonds to be redeemed.

**"Comparable Treasury Price"** means, with respect to any redemption date for a particular Taxable Bond, the average of five Reference Treasury Dealer Quotations for that redemption date, after excluding the highest and lowest such Reference Treasury Dealer Quotations, or if the Designated Investment Banker obtains fewer than five Reference Treasury Dealer Quotations, the average of all such quotations.

**"Continuing Disclosure Certificate"** means that certain Continuing Disclosure Certificate dated the Closing Date and executed by the City, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

**"Contractor"** means the contractor(s) or vendor(s) from whom the City has ordered or caused to be ordered or with whom the City has contracted or caused to be contracted with respect to the construction of the Project, or any portion of the Project.

**"Costs of Issuance Account"** means the Series 2019 Costs of Issuance Account established within the Project Fund pursuant to Section 4.02 hereof.

**"Debt Administrator"** means the Debt Administrator in the City's Department of Finance.

**"Debt Service"** means the scheduled amount of interest and principal, including principal paid pursuant to mandatory sinking fund redemption, payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

**"Debt Service Account"** means the Series 2019 Debt Service Account within the General Fund established pursuant to Section 4.03 hereof.

**"Defeasance Obligations"** means any of the following which at the time acquired or made are legal investments for the City, under applicable State of California laws and the Investment Policy (unless compliance with the Investment Policy is waived in writing by the Director of Finance of the City), for the moneys held hereunder then proposed to be invested therein:

- (a) cash;
- (b) non-callable Federal Securities;
- (c) Direct non-callable obligations of the Treasury which have been stripped by the Treasury itself;
- (d) The interest component of Resolution Funding Corporation strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form;
- (e) Pre-refunded municipal bonds, provided that the pre-refunded municipal bonds must have been pre-refunded with cash, direct Federal obligations or obligations guaranteed by the Federal government; and
- (f) Non-callable bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): (i) direct obligations or fully guaranteed certificates of beneficial ownership of the U.S. Export-Import Bank; (ii) certificates of beneficial ownership of the Rural Economic Community Development Administration (formerly the Farmers Home Administration); (iii) obligations of the Federal Financing Bank; (iv) debentures of the Federal Housing Administration; (v) participation certificates of the General Services Administration; (vi) guaranteed Title XI financings of the U.S. Maritime Administration; and (vii) project

notes, local authority bonds, new communities debentures and U.S. public housing notes and bonds of the U.S. Department of Housing and Urban Development.

**"Depository"** means any securities depository appointed to act as Depository under Section 2.11 hereof.

**"Designated Investment Banker"** means a Reference Treasury Dealer appointed by the City.

**"Director of Finance"** means the Director of Finance or such other duly appointed officer of the City authorized by the City to perform the function of the finance director of the City.

**"Event of Default"** shall have the meaning assigned to such term in Section 7.01.

**"Excess Investment Earnings"** means an amount equal to the sum of:

- (i) the excess of
  - (A) the aggregate amount earned on all Nonpurpose Investments (other than amounts attributable to such excess), over
  - (B) the amount which would have been earned if the Yield on such Nonpurpose Investments (other than amounts attributable to such excess) had been equal to the Yield on the Bonds,
- (ii) any income attributable to the excess described in clause (i).

**"Fair Market Value"** means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City and related parties do not own more than a ten percent (10%) beneficial interest if the return paid by the fund is without regard to the source of investment.

**"Federal Securities"** means United States Treasury notes, bonds, bills or certificates of indebtedness or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

**"Fiscal Agent"** means Wilmington Trust, N.A., or its successor as fiscal agent hereunder.

**"Fitch"** means Fitch Ratings, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

**"General Fund"** means the General Fund of the City.

**"Gross Proceeds"** means the sum of the following amounts:

(a) original proceeds, namely, net amounts received by or for the City as a result of the sale of the Bonds, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Bonds;

(b) investment proceeds, namely, amounts received at any time by or for the City, such as interest and dividends, resulting from the investment of any original proceeds (as referenced in paragraph (a) above) or investment proceeds (as referenced in this paragraph (b)) in Nonpurpose Investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Bonds;

(c) sinking fund proceeds, namely, amounts, other than original proceeds or investment proceeds (as referenced in paragraphs (a) and (b) above) of the Bonds, which are held in the Debt Service Account and any other fund to the extent that the City reasonably expects to use such other fund to pay Debt Service on the Bonds;

(d) amounts in any fund established as a reasonably required reserve or replacement fund;

(e) Investment Property pledged as security for payment of Debt Service on the Bonds by the City;

(f) amounts, other than as specified in this definition, used to pay Debt Service on the Bonds; and

(g) amounts received as a result of investing amounts described in this definition.

**"Infrastructure Account"** means the Series 2019 A/B Infrastructure Account established within the Project Fund pursuant to Section 4.01 hereof.

**"Infrastructure Bonds"** shall have the meaning assigned to such term in the recitals hereof.

**"Infrastructure Project"** means the acquisition and construction of certain public improvements as provided in the Infrastructure Proposition.

**"Infrastructure Project Costs"** means:

(a) all costs of payment of, or reimbursement for, acquisition, construction and installation of the Infrastructure Project including, but not limited to, architect and engineering fees, Contractor payments, costs of feasibility and other reports, inspection costs, performance bond premiums, and permit fees, provided that any such costs are directly related to the acquisition or improvement of real property;

(b) Issuance Costs; and

(c) costs (proportionately allocated to the Infrastructure Project) directly related to the administration of the funds and accounts created under this Agreement.

**"Infrastructure Proposition"** shall have the meaning assigned to such term in the recitals hereof.

**"Investment Policy"** means the City's Investment Policy, as previously adopted and as most recently amended by the City Council of the City prior to the Closing Date, and as may hereafter may be amended or revised.

**"Investment Property"** means any security (as said term is defined in section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations (other than specified private activity bonds as defined in section 57(e)(5)(6) of the Code) the interest on which is excluded from gross income, under section 103 of the Code, for federal income tax purposes.

**"Issuance Costs"** means all items of expense directly or indirectly reimbursable to the City relating to the execution and delivery of the Bonds including, but not limited to, filing and recording costs, settlement costs, underwriting fees, printing costs, reproduction and binding costs, legal fees and charges, bond insurance premiums, fees and expenses of the Fiscal Agent, fees and expenses of the City, financial and other professional consultant fees, costs of obtaining credit ratings and bond insurance premiums.

**"Libraries Account"** means the Series 2019C Libraries Account established within the Project Fund pursuant to Section 4.01 hereof.

**"Libraries Bonds"** shall have the meaning assigned to such term in the recitals hereof.

**"Libraries Project"** means the acquisition and construction of certain public improvements as provided in the Libraries Proposition.

**"Libraries Project Costs"** means:

(a) all costs of payment of, or reimbursement for, acquisition, construction and installation of the Libraries Project including, but not limited to, architect and engineering fees, Contractor payments, costs of feasibility and other reports, inspection costs, performance bond premiums, and permit fees, provided that any such costs are directly related to the acquisition or improvement of real property;

(b) Issuance Costs; and

(c) costs (proportionately allocated to the Libraries Project) directly related to the administration of the funds and accounts created under this Agreement.

**"Libraries Proposition"** shall have the meaning assigned to such term in the recitals hereof.

**"Moody's"** means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency for any reason, the term "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

**"Net Proceeds,"** when used with reference to the Bonds, means the face amount of the Bonds, plus accrued interest and premium, if any, less original issue discount, if any.

**"Nominee"** means the nominee of the Depository as determined from time to time in accordance with Section 2.11.

**"Nonpurpose Investments"** means any Investment Property which is acquired with the Gross Proceeds of the Bonds and is not acquired in order to carry out the governmental purpose of the Bonds.

**"Office of the Fiscal Agent"** means the principal corporate trust office of the Fiscal Agent in \_\_\_\_\_, or such other location as approved by the City.

**"Official Notice Inviting Bids"** means the Official Notice Inviting Bids relating to the Bonds dated as of \_\_\_\_\_, 2019.

**"Outstanding,"** when used as of any particular time with reference to Bonds, means all Bonds except:

(a) Bonds theretofore canceled by the Fiscal Agent or surrendered to the Fiscal Agent for cancellation;

(b) Bonds paid or deemed to have been paid within the meaning of Section 9.03 hereof; and

(c) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the City pursuant to the Agreement.

**"Owner" or "Bondowner"** mean any person who shall be the registered owner of any Outstanding Bond, as shown in the registration books maintained by the Fiscal Agent pursuant to Section 2.08.

**"Parks Bonds"** shall have the meaning assigned to such term in the recitals hereof.

**"Parks Project"** means the acquisition and construction of certain public improvements as provided in the Parks Proposition.

**"Parks Project Costs"** means:

(a) all costs of payment of, or reimbursement for, acquisition, construction and installation of the Parks Project including, but not limited to, architect and engineering fees, Contractor payments, costs of feasibility and other reports, inspection costs, performance bond premiums, and permit fees, provided that any such costs are directly related to the acquisition or improvement of real property;

(b) Issuance Costs; and

(c) costs (proportionately allocated to the Parks Project) directly related to the administration of the funds and accounts created under this Agreement.

**"Participant"** means those broker-dealers, banks and other financial institutions from time to time for which the Depository holds Bonds as a securities depository.

**"Participating Underwriter"** has the meaning assigned to such term in the Continuing Disclosure Certificate.

**"Person"** means an individual, corporation, firm, association, partnership, trust or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

**"Prior Authorization Bonds"** means that portion of the Series 2019C Bonds and the Taxable Series 2019D Bonds issued pursuant to the authorizations received at the November 7, 2000 election and the March 5, 2002 election, and the authorization contained in the Act.

**"Prior Fiscal Agent"** means Wells Fargo Bank National Association, as fiscal agent for the Refunded Bonds.

**"Private Business Use"** means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a governmental unit and use as a member of the general public.

**"Project Fund"** means the fund established pursuant to Section 4.01 hereof.

**"Projects"** means, collectively, the Libraries Project, the Parks Project, the Public Safety Project and the Infrastructure Project.

**"Public Safety Account"** means the Series 2019C/D Public Safety Account established within the Project Fund pursuant to Section 4.01 hereof.

**"Public Safety Bonds"** shall have the meaning assigned to such term in the recitals hereof.

**"Public Safety Project"** means the acquisition and construction of certain public improvements as provided in the Public Safety Proposition.

**"Public Safety Project Costs"** means:

(a) all costs of payment of, or reimbursement for, acquisition, construction and installation of the Public Safety Project including, but not limited to, architect and engineering fees, Contractor payments, costs of feasibility and other reports, inspection costs, performance bond premiums, and permit fees, provided that any such costs are directly related to the acquisition or improvement of real property;

(b) Issuance Costs; and

(c) costs (proportionately allocated to the Public Safety Project) directly related to the administration of the funds and accounts created under this Agreement.

**"Public Safety Proposition"** shall have the meaning assigned to such term in the recitals hereof.

**"Purchase Price"** (i) for the purpose of computation of the Yield of the Bonds, has the same meaning as the term "issue price" in sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesales) at which price a substantial amount of the Bonds are sold or, if the Bonds are privately placed, the price paid by the first buyer of the Bonds or the acquisition cost of the first buyer, and (ii) for the purpose of computation of the Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Bonds.

**"Purchasers"** means, collectively, the Series 2019A-1 Purchaser, the Taxable Series 2019A-2 Purchaser, the Taxable Series 2019B Purchaser, the Series 2019C Purchaser and the Taxable Series 2019D Purchaser.

**"Rebate Fund"** means the Tax-Exempt Bonds Rebate Fund established pursuant to Section 5.11 hereof.

**"Reference Treasury Dealer"** means each of five firms, specified by the City from time to time, that are primary U.S. Government securities dealers in the City of New York (each, a **"Primary Treasury Dealer"**); provided, however, that if any of them ceases to be a Primary Treasury Dealer, the City will substitute another Primary Treasury Dealer.

**"Reference Treasury Dealer Quotations"** means, with respect to each Reference Treasury Dealer and any redemption date for a particular Taxable Bond, the average, as determined by the Designated Investment Banker, of the bid and asked prices for the Comparable Treasury Issue or Comparable Treasury Issues, as applicable (expressed in each case as a percentage of its principal amount), quoted in writing to the City and the Fiscal Agent by such Reference Treasury Dealer at 3:30 p.m. (New York City time) on the Valuation Date.

**"Refunded Bonds"** shall have the meaning assigned to such term in the recitals hereof, and consists of the outstanding amounts of the following series of general obligation bonds:

- City of San José General Obligation Bonds, Series 2001 (Libraries and Parks Project);

- City of San José General Obligation Bonds, Series 2002 (Libraries, Parks and Public Safety Projects);
- City of San José General Obligation Bonds, Series 2004 (Libraries, Parks and Public Safety Projects);
- City of San José General Obligation Bonds, Series 2005 (Libraries and Public Safety Projects);
- City of San José General Obligation Bonds, Series 2006 (Libraries and Parks Projects);
- City of San José General Obligation Bonds, Series 2007 (Parks and Public Safety Projects);
- City of San José General Obligation Bonds, Series 2008 (Libraries and Parks Projects); and
- City of San José General Obligation Bonds, Series 2009 (Public Safety Projects).

**“Refunding and Prior Authorization Bonds”** means, collectively the Series 2019C Bonds and the Taxable Series 2019D Bonds, comprised collectively of the Prior Authorization Bonds and the Refunding Bonds.

**“Refunding Bonds”** means that portion of the Series 2019C Bonds and the Taxable Series 2019D Bonds issued for the purpose of refunding, on a current basis, all outstanding general obligation bonds heretofore issued pursuant to the Libraries Proposition, the Parks Proposition and the Public Safety Proposition, issued pursuant to the Refunding Law.

**“Refunding Instructions”** means the Irrevocable Refunding Instructions (Libraries, Parks, and Public Safety Projects) relating to the current refunding of the Refunded Bonds being refinanced by the Refunding Bonds, dated \_\_\_\_, 2019, between the City and the Prior Fiscal Agent.

**“Refunding Law”** means Articles 9 and 11(commencing with Section 53550) of Chapter 3 of Division 2 of Title 5 of the Government Code of the State of California, as in effect on the date hereof and as amended hereafter.

**"Regulations"** means temporary and permanent regulations promulgated under the Code.

**"Resolution"** means the Resolution of the City Council adopted on June 25, 2019, authorizing the issuance of the Bonds.

**"S&P"** means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency for any reason, the term

"S&P" shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

**"Securities Depositories"** means The Depository Trust Company or, in accordance with the then current guidelines promulgated by the Securities and Exchange Commission at such other addresses and/or to such other securities depositories as the City may designate in writing to the Fiscal Agent.

**"Series 2019A-1 Bonds"** means the City of San José General Obligation Bonds, Series 2019A (Disaster Preparedness, Public Safety, and Infrastructure), being issued hereunder in the aggregate principal amount of \$\_\_\_\_\_.

**"Series 2019C Bonds"** means the City of San José General Obligation Bonds, Series 2019C (Refunding, Libraries, Parks and Public Safety), being issued hereunder in the aggregate principal amount of \$\_\_\_\_\_.

**"Series 2019A-1 Purchaser"** means \_\_\_\_\_, as winning bidder for the Series 2019A-1 Bonds.

**"Series 2019C Purchaser"** means \_\_\_\_\_, as winning bidder for the Series 2019C Bonds.

**"Supplemental Agreement"** means any agreement supplemental to or amendatory of this Agreement entered into in accordance with Article VIII hereof.

**"Tax Certificate"** means, collectively, the Certificate as to Arbitrage and the Certificate Regarding Use of Proceeds, each dated the Closing Date and each executed by the City.

**"Tax-Exempt Bonds"** means, collectively, the Series 2019A-1 Bonds and the Series 2019C Bonds, the interest on which is intended to be excluded from gross income for federal income tax purposes under Section 103 of the Tax Code

**"Tax-Exempt Escrow Subaccount"** means the Tax-Exempt Escrow Subaccount established by the Tax-Exempt Refunding Instructions and held by the Prior Fiscal Agent.

**"Taxable Bonds"** means, collectively, the Taxable Series 2019A-2 Bonds, Taxable Series 2019A-2 Bonds, the Taxable Series B Bonds and the Taxable Series 2019D Bonds, the interest on which is not intended to be excluded from gross income for federal income tax purposes under Section 103 of the Tax Code.

**"Taxable Escrow Subaccount"** means the Taxable Escrow Subaccount established by the Refunding Instructions and held by the Prior Fiscal Agent.

**"Taxable Libraries Account"** means the Taxable Series 2019D Libraries Account established within the Project Fund pursuant to Section 4.01 hereof.

**"Taxable Parks Account"** means the Taxable Series 2019D Parks Account established within the Project Fund pursuant to Section 4.01 hereof.

**"Taxable Series 2019A-2 Bonds"** means City of San José Taxable General Obligation Bonds, Series 2019A-2 (Disaster Preparedness, Public Safety, and Infrastructure), being issued hereunder in the aggregate principal amount of \$\_\_\_\_\_.

**"Taxable Series 2019B Bonds"** means City of San José Taxable General Obligation Bonds, Series 2019B (Disaster Preparedness, Public Safety, and Infrastructure), being issued hereunder in the aggregate principal amount of \$\_\_\_\_\_.

**"Taxable Series 2019D Bonds"** means the City of San José Taxable General Obligation Bonds, Series 2019D (Refunding, Libraries, Parks, and Public Safety Projects) being issued hereunder in the aggregate principal amount of \$\_\_\_\_\_.

**"Taxable Series 2019A-2 Purchaser"** means \_\_\_\_\_, as winning bidder for the Taxable Series 2019A-2 Bonds.

**"Taxable Series 2019B Purchaser"** means \_\_\_\_\_, as winning bidder for the Taxable Series 2019B Bonds.

**"Taxable Series 2019D Purchaser"** means \_\_\_\_\_, as winning bidder for the Taxable Series 2019D Bonds.

**"Treasury Rate"** means, with respect to any redemption date for particular Taxable Bonds, the rate per annum, expressed as a percentage of the principal amount, equal to the actual or interpolated rate based on (a) the most recent yield data for the applicable U.S. Treasury maturity index or indices, as applicable, from the Federal Reserve Statistical Release H.15 Daily Update (or any comparable or successor publication) reported, as of 11:00 a.m. New York City time, on the Valuation Date; or (b) if the yield described in (a) above is not reported as of such date and time or the yield reported as of such date and time is not ascertainable, the semi-annual equivalent yield to maturity of the Comparable Treasury Issue or Comparable Treasury Issues, assuming that such Comparable Treasury Issue or Comparable Treasury Issues are purchased on the redemption date for a price equal to the applicable Comparable Treasury Price, as calculated by the Designated Investment Banker.

**"Valuation Date"** means a date, as determined by the City, after consultation with the Designated Investment Banker, that is no earlier than 45 days prior to the redemption date.

**"Written Request of the City"** means an instrument in writing signed by an officer of the City and approved by a City Representative.

**"Yield"** means that yield which, when used in computing the present worth of all payments of principal and interest (or other payments in the case of Nonpurpose Investments which require payments in a form not characterized as principal and interest) on a Nonpurpose Investment or on the Bonds produces an amount equal to the Purchase Price of such Nonpurpose Investment or the Bonds, all computed as prescribed in applicable Regulations.

**Section 1.02. Authority for this Agreement.** This Agreement is being entered into pursuant to the authority set forth in the Bond Law and the Resolution constitutes a continuing agreement with the Owners of all of the Bonds issued or to be issued hereunder and then

Outstanding to secure the full and final payment of principal of and premiums, if any, and the interest on all pursuant to the provisions of the Bond Law.

## **ARTICLE II THE BONDS**

**Section 2.01. Authorization.** Bonds in the combined aggregate principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) are hereby authorized to be issued by the City under and subject to the terms of the Bond Law and which may from time to time be executed and delivered hereunder, subject to the covenants, agreements, provisions and conditions herein contained.

The Bonds shall be designated the "City of San José General Obligation Bonds Series 2019A-1 (Disaster Preparedness, Public Safety, and Infrastructure)," "City of San José Taxable General Obligation Bonds Series 2019A-2 (Disaster Preparedness, Public Safety, and Infrastructure)," "City of San José Taxable General Obligation Bonds Series 2019B (Disaster Preparedness, Public Safety, and Infrastructure)," "City of San José General Obligation Bonds Series 2019C (Refunding, Libraries, Parks, and Public Safety Projects)," and "City of San José Taxable General Obligation Bonds Series 2019D (Refunding, Libraries, Parks, and Public Safety Projects)," respectively.

The Infrastructure Bonds are being issued in the aggregate principal amount of \$\_\_\_\_\_, all pursuant to the Act. The Refunding and Prior Authorization Bonds are being issued in the aggregate principal amount of \$\_\_\_\_\_. Of such amount, \$\_\_\_\_\_ shall constitute Libraries Bonds issued pursuant to the Act, \$\_\_\_\_\_ shall constitute Public Safety Bonds issued pursuant to the Act, and \$\_\_\_\_\_ shall constitute Refunding Bonds issued pursuant to the Refunding Law.

### **Section 2.02. Terms of Bonds.**

(a) Form; Numbering. The Bonds shall be issued as fully registered Bonds, without coupons, in the denomination of \$5,000 each or any integral multiple thereof, but in an amount not to exceed the aggregate principal amount of Bonds maturing in the year of maturity of the Bond for which the denomination is specified. Bonds shall be lettered and numbered as the Fiscal Agent shall prescribe.

(b) Date of Bonds. The Bonds shall be dated their date of delivery.

(c) CUSIP Identification Numbers. "CUSIP" identification numbers shall be imprinted on the Bonds, but such numbers shall not constitute a part of the contract evidenced by the Bonds and any error or omission with respect thereto shall not constitute cause for refusal of a Purchaser to accept delivery of and pay for the Bonds. In addition, failure on the part of the City to use such CUSIP numbers in any notice to Owners of the Bonds shall not constitute an event of default or any violation of the City's contract with such Owners and shall not impair the effectiveness of any such notice.

(d) Maturities; Interest. The Bonds shall bear interest at the rate or rates set forth below, payable on March 1 and September 1 of each year, commencing March 1, 2020 (each an "Interest Payment Date"), and shall mature and become payable as to principal on September 1 of the years and in the amounts as set forth below.

Series 2019A-1 Bonds

Maturity Date  
(September 1)

Principal  
Amount

Interest  
Rate

Taxable Series 2019A-2 Bonds

Maturity Date  
(September 1)

Principal  
Amount

Interest  
Rate

Taxable Series 2019B Bonds

Maturity Date  
(September 1)

Principal  
Amount

Interest  
Rate

Series 2019C Bonds

Maturity Date  
(September 1)

Principal  
Amount

Interest  
Rate

## Taxable Series 2019D Bonds

Maturity Date  
(September 1)

Principal  
Amount

Interest  
Rate

Each Bond shall bear interest from the Interest Payment Date next preceding the date of registration and authentication thereof unless (i) it is registered and authenticated as of an Interest Payment Date, in which event it shall bear interest from such date, or (ii) it is registered and authenticated prior to an Interest Payment Date and after the close of business on the fifteenth day of the month preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (iii) it is registered and authenticated on or prior to \_\_\_\_\_, in which event it shall bear interest from the date of original issuance and authentication of the Bonds; provided, however, that if at the time of registration and authentication of a Bond, interest is in default thereon, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Interest on the Bonds shall be calculated on the basis of a 360-day year composed of twelve 30-day months.

(e) Payment. Interest on the Bonds (including the final interest payment upon maturity or earlier redemption) is payable by check mailed on the applicable Interest Payment Date to the Owner thereof at his or her address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the fifteenth (15th) day of the month preceding the Interest Payment Date, or at such other address as the Owner may have filed with the Fiscal Agent for that purpose; provided that an Owner of \$1,000,000 or more aggregate principal amount of Bonds, or the Owner of all of the Bonds at the time Outstanding, shall, at his or her option, receive payment of interest by wire transfer to an account in the United States of America designated by such Owner to the Fiscal Agent no later than the fifteenth (15) day of the month immediately preceding the applicable Interest Payment Date. Principal of the Bonds is payable in lawful money of the United States of America at the Office of the Fiscal Agent.

### **Section 2.03. Redemption.**

(a) Optional Redemption. The Tax-Exempt Bonds maturing on or before September 1, 20\_\_ are not subject to redemption prior to their respective maturity dates. The Tax-Exempt Bonds maturing on or after September 1, 20\_\_, shall be subject to redemption prior to their respective maturity dates as a whole, or in part, on any date, from any moneys provided at the option of the City, in each case on and after September 1, 20\_\_, at a redemption price equal to the principal amount of Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

The Taxable Series 2019A-2 Bonds are not subject to optional redemption prior to maturity.

The Taxable Bonds may be redeemed in whole or in part at any time, from any moneys that may be provided for such purpose, at a redemption price for such Taxable Bonds to be redeemed determined by the Designated Investment Banker equal to the greater of (i) 100% of the principal amount of the Taxable Bonds to be redeemed, or (ii) an amount equal to the sum of the present values of the remaining scheduled payments of principal and interest on each of Taxable Bonds to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which the Taxable Bonds are to be redeemed, discounted to the date on which such Taxable Bonds are to be redeemed on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the applicable Treasury Rate plus 15 basis points, plus accrued and unpaid interest on the Taxable Bonds to be redeemed on the redemption date.

(b) Notice and Selection. The City shall provide notice to the Fiscal Agent of any such optional redemption at least thirty (30) days prior to the date set for redemption. In the case of a redemption in part, a City Representative shall designate to the Fiscal Agent, in writing from a City Representative, those maturities to be redeemed in whole or in part (including as a maturity, for such purposes, principal due on the Bonds on a particular September 1 as a result of a scheduled mandatory sinking fund redemption). In the event a City Representative does not designate the maturities of the Bonds to be redeemed, the Fiscal Agent shall select Bonds for redemption on a proportionate basis among maturities. In the event a particular maturity of the Tax-Exempt Bonds is to be redeemed in part only, the Fiscal Agent shall select the Bonds of such maturity to be redeemed by lot. In the event a particular maturity of the Taxable Bonds is to be redeemed in part only, the particular Taxable Bonds to be redeemed will be selected on a pro-rata pass-through distribution of principal basis in accordance with the rules and procedures of the book-entry system of the Depository.

(c) Mandatory Sinking Fund Redemption.

(i) The Tax-Exempt Bonds maturing September 1, 20\_\_, are subject to mandatory sinking fund redemption in part, by lot, prior to their stated maturity date, on each September 1 on and after September 1, 20\_\_, at a redemption price equal to 100% of the principal amount thereof called for redemption, plus accrued interest to the redemption date, without premium, as follows:

Series 2019A-1 Term Bonds Maturing September 1, 20\_\_

Redemption Date  
(September 1)

Principal Amount of Bonds  
to be Redeemed

Series 2019C Term Bonds Maturing September 1, 20\_\_

Redemption Date  
(September 1)

Principal Amount of Bonds  
to be Redeemed

(ii) The Taxable Bonds maturing September 1, 20\_\_, are subject to mandatory sinking fund redemption in part, on a pro rata pass-through distribution of principal basis, prior to their stated maturity date, on each September 1 on and after September 1, 20\_\_, at a redemption price equal to 100% of the principal amount thereof called for redemption, plus accrued interest to the redemption date, without premium, as follows:

Taxable Series 2019A-2 Term Bonds Maturing September 1, 20\_\_

Redemption Date  
(September 1)

Principal Amount of Bonds  
to be Redeemed

Taxable Series 2019B Term Bonds Maturing September 1, 20\_\_

Redemption Date  
(September 1)

Principal Amount of Bonds  
to be Redeemed

Taxable Series 2019D Term Bonds Maturing September 1, 20\_\_

Redemption Date  
(September 1)

Principal Amount of Bonds  
to be Redeemed

(d) **Redemption Procedure.** Regardless of whether the City has deposited funds sufficient for any redemption with the Fiscal Agent, the Fiscal Agent shall cause notice of any redemption to be mailed, first class mail, postage prepaid, at least twenty (20) days but not more than sixty (60) days prior to the date fixed for redemption, to the respective Owners of any Bonds designated for redemption, at their addresses appearing on the Bond registration books maintained by the Fiscal Agent and to the Securities Depositories and the Municipal Securities Rulemaking Board; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice shall not affect the validity of the proceedings for the redemption of such Bonds.

Such notice shall state the redemption date, the redemption price and the CUSIP numbers of the Bonds to be redeemed, and, if less than all of the then Outstanding Bonds are to be called for redemption, shall designate the serial numbers of the Bonds to be redeemed by giving the individual number of each Bond or by stating that all Bonds between two stated numbers, both inclusive, or by stating that all of the Bonds of one or more maturities have been called for redemption, and shall require that such Bonds be then surrendered at the Office of the Fiscal Agent for redemption at the said redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

The City has the right to rescind any notice of the redemption of Bonds by written notice to the Fiscal Agent on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default. The City and the Fiscal Agent shall have no liability to the Bond Owners or any other party related to or arising from such rescission of redemption. The Fiscal Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this Section. In the event term bonds are redeemed in part, the City shall deliver a revised sinking fund schedule to the Fiscal Agent.

Upon surrender of Bonds redeemed in part only, the City shall execute and the Fiscal Agent shall authenticate and deliver to the Owner, at the expense of the City, a new Bond or Bonds, of the same maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds.

From and after the date fixed for redemption, if notice of such redemption shall have been duly given and funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption shall have been duly provided, such Bonds so called shall cease to be entitled to any benefit under this Agreement other than the right to receive payment of the redemption price, and no interest shall accrue thereon on or after the redemption date specified in such notice.

All Bonds redeemed pursuant to this Section 2.03 shall be canceled by the Fiscal Agent, and a certificate of cancellation shall be submitted by the Fiscal Agent to the City.

**Section 2.04. Form of Bonds.** The Bonds, the form of the Fiscal Agent's certificate of authentication and registration and the form of assignment to appear thereon shall be substantially in the forms, respectively, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Agreement, as are set forth in Exhibit A attached hereto.

**Section 2.05. Execution of Bonds.** The Bonds shall be executed on behalf of the City by the manual or facsimile signatures of its City Manager, Director of Finance or Assistant Director of Finance, and attested by the manual or facsimile signature of its City Clerk or an authorized deputy thereof, who are in office on the date of execution of this Agreement or at any time thereafter. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to a Purchaser, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to such Purchaser. Any Bond may be signed and attested on behalf of the City by such persons as at the actual date of the execution of such Bond shall be the proper officers of the City although at the nominal date of such Bond any such person shall not have been such officer of the City.

Only such Bonds as shall bear thereon a certificate of authentication and registration in the forms set forth in Exhibit A attached hereto, executed and dated by the Fiscal Agent, shall be valid or obligatory for any purpose or entitled to the benefits of this Agreement, and such certificate of the Fiscal Agent shall be conclusive evidence that the Bonds so registered have been duly authenticated, registered and delivered hereunder and are entitled to the benefits of this Agreement.

**Section 2.06. Transfer of Bonds.** Any Bond may, in accordance with its terms, be transferred, upon the books required to be kept pursuant to the provisions of Section 2.08 hereof, by the person in whose name it is registered, in person or by his or her duly authorized attorney, upon surrender of such Bond for cancellation at the Office at the Fiscal Agent, accompanied by delivery of a written instrument of transfer in a form approved by the Fiscal Agent, duly executed. The Fiscal Agent shall require the payment by the Owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer.

Whenever any Bond or Bonds shall be surrendered for transfer, the City shall execute and the Fiscal Agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount of the same maturity.

No transfers of Bonds shall be required to be made (a) fifteen days prior to the date established for selection of Bonds for redemption or (b) with respect to a Bond after such Bond has been selected for redemption (except with respect to the unredeemed portion thereof).

**Section 2.07. Exchange of Bonds.** Bonds may be exchanged at the Office of the Fiscal Agent for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The Fiscal Agent shall require the payment by the Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

No exchanges of Bonds shall be required to be made (a) fifteen days prior to the date established for selection of Bonds for redemption or (b) with respect to a Bond after such Bond has been selected for redemption (except with respect to the unredeemed portion thereof).

**Section 2.08. Bond Register.** The Fiscal Agent shall keep or cause to be kept sufficient books for the registration and transfer of the Bonds, which shall at all times be open to inspection by the City upon reasonable notice; and, upon presentation for such purpose, the Fiscal Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, Bonds as herein before provided.

**Section 2.09. Temporary Bonds.** The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the City, and may contain such reference to any of the provisions of this Agreement as may be appropriate. Every temporary Bond shall be executed by the City upon the same conditions and in substantially the same manner as the definitive Bonds. If the City issues temporary Bonds it will execute and furnish definitive Bonds without delay, and thereupon the temporary Bonds may be surrendered, for cancellation, in exchange therefor at the Office of the Fiscal Agent and the Fiscal Agent shall deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits pursuant to this Agreement as definitive Bonds executed and delivered hereunder.

**Section 2.10. Bonds Mutilated, Lost, Destroyed or Stolen.** If any Bond shall become mutilated the City, at the expense of the Owner of said Bond, shall execute, and the Fiscal Agent shall thereupon authenticate and deliver, a new Bond of like maturity and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Fiscal Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Fiscal Agent shall be canceled by it and delivered to, or upon the order of, the City. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and, if such evidence be satisfactory to the City and indemnity satisfactory to it shall be given, the City, at the expense of the Owner, shall execute, and the Fiscal Agent shall thereupon authenticate and deliver, a new Bond of like maturity and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen. The City may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the City and the Fiscal Agent. Any Bond issued under the provisions of this Section 2.10 in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the City whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Agreement with all other Bonds issued pursuant to this Agreement.

**Section 2.11. Book-Entry; Limited Obligation of City.** The Bonds may be issued in the form of a separate single fully registered Bond (which may be typewritten) for each maturity. The ownership of such Bond shall be registered in the registration books kept by the Fiscal Agent in the name of the Nominee, as nominee of the Depository. The initial Depository is The Depository Trust Company and the initial Nominee is Cede & Co.

With respect to Bonds registered in the registration books kept by the Fiscal Agent in the name of the Nominee, the City and the Fiscal Agent shall have no responsibility or obligation to

such Participant or to any Person on behalf of which such a Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Fiscal Agent shall have no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee, or any Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Participant or any other Person, other than as shown in the registration books kept by the Fiscal Agent, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository and its Participants of the beneficial interests in the Bonds to be redeemed in the event the Bonds are redeemed in part, or (iv) the payment to any Participant or any other Person, other than a Nominee as shown in the registration books kept by the Fiscal Agent, of any principal of, premium, if any, or interest on the Bonds. The City and the Fiscal Agent may treat and consider the Person in whose name each Bond is registered in the registration books kept by the Fiscal Agent as the absolute Owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purposes of registering transfers with respect to such Bond, and for all other purposes whatsoever.

The Fiscal Agent shall pay all principal, premium, if any, and interest with respect to the Bonds, only to or upon the order of the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than an Owner shall receive a Bond evidencing the obligation of the City to make payments of principal, premium, if any, and interest pursuant to this Fiscal Agent Agreement. Upon delivery by the Depository to the Nominee, the Fiscal Agent and the City of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, and subject to the provisions regarding the payment of the principal of and interest on the Bonds set forth in Section 2.02(e), the word Nominee in this Agreement shall refer to such new nominee of the Depository.

**Section 2.12. Representation Letter.** In order to qualify the Bonds for the Depository's book-entry system, the City has executed, or shall execute, and deliver to such Depository a letter from the City representing such matters as shall be necessary to so qualify the Bonds (the "Representation Letter"). The execution and delivery of the Representation Letter shall not in any way limit the provisions of Section 2.11 hereof or in any other way impose upon the City or the Fiscal Agent any obligation whatsoever with respect to Persons having interests in the Bonds other than the Owners. In the written acceptance of the Fiscal Agent, such Fiscal Agent shall agree to take all actions necessary for all representations of the City in the Representation Letter with respect to the Fiscal Agent to at all times be complied with. In addition to the execution and delivery of the Representation Letter, the City shall take any other actions, not inconsistent with this Agreement, to qualify the Bonds for the Depository's book-entry system.

**Section 2.13. Transfers Outside Book-Entry System.** The City may, by written request, at any time or for any reason, remove the Depository and appoint a successor or successors thereto. In the event (i) the Depository determines not to continue to act as securities depository for the Bonds, or (ii) the City determines that the Depository shall no longer so act, then the City will discontinue the book-entry system with the Depository. If the City fails to identify another qualified securities depository to replace the Depository then the Bonds shall no longer be restricted to being registered in the registration books kept by the Fiscal Agent in the name of the Nominee, but shall be registered in whatever name or names Owners of such

Bonds transferring or exchanging such Bonds shall designate, in accordance with the provisions of Section 2.06.

**Section 2.14. Payments and Notices to the Nominee.** Notwithstanding any other provision of this Agreement to the contrary, so long as any Bond is registered in the name of the Nominee, all payments of principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the Representation Letter or as otherwise instructed in writing by the Depository.

**ARTICLE III  
ISSUANCE OF BONDS; APPLICATION OF  
BOND PROCEEDS; SECURITY FOR THE BONDS**

**Section 3.01. Issuance and Delivery of Bonds.** At any time after the execution of this Agreement the City may issue and deliver Series 2019A-1 Bonds in the aggregate principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), Taxable Series 2019A-2 Bonds in the aggregate principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), Taxable Series 2019B Bonds in the aggregate principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), Series 2019C Bonds in the aggregate principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), and Taxable Series 2019D Bonds in the aggregate principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_).

The City Manager, the Director of Finance, the Assistant Director of Finance or the Debt Administrator shall cause the Bonds substantially in the forms attached hereto as Exhibit A, respectively, to be printed and signed, and to be delivered to the respective Purchasers through the Depository on receipt of the purchase price therefor and upon performance of the conditions contained in the Official Notice Inviting Bids. The appropriate officials of the City shall take any and all action any of them deem reasonable in order to enable the City to issue and deliver the Bonds.

The Fiscal Agent shall deliver the Bonds to or upon the order of the Purchasers, upon receipt of a Written Request of the City.

**Section 3.02. Application of Proceeds of Sale of Bonds.**

Upon the receipt of payment for the Bonds, the proceeds thereof (including the good faith deposits), being \$\_\_\_\_\_ (constituting the par amount of the Bonds (\$\_\_\_\_\_)), plus a [net] original issue [premium/discount] in the amount of \$\_\_\_\_\_, less the discount of the Purchasers in the amount of \$\_\_\_\_\_, shall be paid to the Fiscal Agent who shall forthwith set aside, pay over and deposit such proceeds as set forth below.

(a) Proceeds of the Series 2019A-1 Bonds (including applicable portion of the good faith deposit), being \$\_\_\_\_\_ (constituting the par amount of the Series 2019A-1 Bonds (\$\_\_\_\_\_)), plus a [net] original issue [premium/discount] in the amount of \$\_\_\_\_\_, less the discount of the Series 2019A-1 Purchaser in the amount of \$\_\_\_\_\_, shall be paid to the Fiscal Agent who shall forthwith set aside, pay over and deposit such proceeds as follows:

(i) Deposit in the Bond Service Fund \$\_\_\_\_\_, representing the premium on the Series 2019A-1 Bonds;

(ii) Deposit in the Costs of Issuance Account \$\_\_\_\_\_, representing a portion of proceeds of the Series 2019A-1 Bonds; and

(iii) Deposit in the Public Safety Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, deposit in the Traffic Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, deposit in the Storm Sewer Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, deposit in the Municipal Improvements Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, and deposit in the Parks and Community Facilities Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, collectively representing net proceeds of the Series 2019A-1 Bonds.

(b) Proceeds of the Taxable Series 2019A-2 Bonds (including the applicable portion of the good faith deposit), being \$\_\_\_\_\_ (constituting the par amount of the Taxable Series 2019A-2 Bonds (\$\_\_\_\_\_)), plus a [net] original issue [premium/discount] in the amount of \$\_\_\_\_\_, less the discount of the Taxable Series 2019A-2 Purchaser in the amount of \$\_\_\_\_\_, shall be paid to the Fiscal Agent who shall forthwith set aside, pay over and deposit such proceeds as follows:

(i) Deposit in the Bond Service Fund \$\_\_\_\_\_, representing the premium on the Series 2019A-1 Bonds; and

(ii) Deposit in the Taxable Public Safety Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, deposit in the Taxable Traffic Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, deposit in the Taxable Storm Sewer Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, deposit in the Taxable Municipal Improvements Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, and deposit in the Taxable Parks and Community Facilities Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, collectively representing net proceeds of the Taxable Series 2019A-2 Bonds.

(c) Proceeds of the Taxable Series 2019B Bonds (including applicable portion of the good faith deposit), being \$\_\_\_\_\_ (constituting the par amount of the Taxable Series 2019B Bonds (\$\_\_\_\_\_)), plus a [net] original issue [premium/discount] in the amount of \$\_\_\_\_\_, less the discount of the Taxable Series 2019B Purchaser in the amount of \$\_\_\_\_\_, shall be paid to the Fiscal Agent who shall forthwith set aside, pay over and deposit such proceeds as follows:

(i) Deposit in the Bond Service Fund \$\_\_\_\_\_, representing the premium on the Taxable Series 2019B Bonds;

(ii) Deposit in the Costs of Issuance Account \$\_\_\_\_\_, representing a portion of proceeds of the Taxable Series 2019B Bonds; and

(iii) Deposit in the Taxable Public Safety Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, deposit in the Taxable Traffic Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, deposit in the Taxable Storm Sewer Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, deposit in the Taxable Municipal Improvements Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, and deposit in the Taxable Parks and Community Facilities Subaccount of the Series 2019A/B Infrastructure Account, \$\_\_\_\_\_, collectively representing net proceeds of the Taxable Series 2019B Bonds.

(d) Proceeds of the Series 2019C Bonds (including the good faith deposit), being \$\_\_\_\_\_ (constituting the par amount of the Series 2019C Bonds (\$\_\_\_\_\_)), plus a [net] original issue [premium/discount] in the amount of \$\_\_\_\_\_, less the discount of the Series 2019C Purchaser in the amount of \$\_\_\_\_\_, shall be paid to the Fiscal Agent who shall forthwith set aside, pay over and deposit such proceeds as follows:

(i) Deposit in the Costs of Issuance Account \$\_\_\_\_\_, representing a portion of proceeds of the Series 2019C Bonds; and

(ii) Deposit in the Series 2019C Libraries Account an amount equal to \$\_\_\_\_\_, representing net proceeds of the Prior Authorization Bonds authorized by the Libraries Proposition;

(iii) Deposit in the Series 2019C/D Public Safety Account an amount equal to \$\_\_\_\_\_, \$\_\_\_\_\_ of which shall be deposited in the Taxable Police Subaccount, \$\_\_\_\_\_ of which shall be deposited in the Fire Subaccount and \$\_\_\_\_\_ of which shall be deposited in the Taxable Fire Subaccount, representing net proceeds of the Prior Authorization Bonds authorized by the Public Safety Proposition;

(iv) Transfer an amount equal to \$\_\_\_\_\_ to the Prior Fiscal Agent, for deposit in the Tax-Exempt Escrow Subaccount, representing proceeds of the Series 2019C Bonds, to be applied as set forth in the Refunding Instructions.

(e) Proceeds of the Taxable Series 2019D Bonds (including the applicable portion of the good faith deposit), being \$\_\_\_\_\_ (constituting the par amount of the Taxable Series 2019D Bonds (\$\_\_\_\_\_), plus a [net] original issue [premium/discount] in the amount of \$\_\_\_\_\_, less the discount of the Taxable Series 2019D Purchaser in the amount of \$\_\_\_\_\_, shall be paid to the Fiscal Agent who shall forthwith set aside, pay over and deposit such proceeds as follows:

(i) Deposit in the Costs of Issuance Account \$\_\_\_\_\_, representing a portion of proceeds of the Taxable Series 2019D Bonds; and;

(ii) Transfer an amount equal to \$\_\_\_\_\_ to the Prior Fiscal Agent, for deposit in the Taxable Escrow Subaccount, representing proceeds of the Taxable Series 2019D Bonds, to be applied as set forth in the Refunding Instructions.

In addition, the Prior Fiscal Agent shall transfer to the Fiscal Agent the amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_, consisting of unspent proceeds of general obligation bonds previously issued pursuant to the Libraries Proposition shall be deposited in the Taxable Series 2019D Libraries Account, \$\_\_\_\_\_, consisting of unspent proceeds of general obligation bonds previously issued pursuant to the Parks Proposition shall be deposited in the Taxable Series 2019D Parks Account, and \$\_\_\_\_\_, consisting of unspent proceeds of general obligation bonds previously issued pursuant to the Public Safety Proposition shall be deposited in the Taxable Series 2019D Public Safety Fund, with \$\_\_\_\_\_ of such amount deposited in the Taxable Police Subaccount and \$\_\_\_\_\_ of such amount deposited in the Taxable Fire Subaccount.

All of the Account and Subaccounts referenced in this Section 3.02 are created in Section 4.01 and are held by the Fiscal Agent.

**Section 3.03. Validity of Bonds.** The validity of the authorization and issuance of the Bonds shall not be dependent upon the completion of any of the Projects or upon the performance by any person of his or her obligation with respect to any of the Projects.

**Section 3.04. Security for the Bonds.** The Bonds are general obligations of the City payable from ad valorem taxes and the City has the power, is obligated and hereby covenants to levy ad valorem taxes upon all property within the City subject to taxation by the City, without limitation of rate or amount (except with respect to certain personal property which is taxed at

limited rates), for the payment of the Bonds and the interest thereon, in accordance with all relevant provisions of law. The City hereby covenants to direct the County of Santa Clara to collect such ad valorem taxes in such amounts and at such times as is necessary to ensure the timely payment of Debt Service.

## **ARTICLE IV FUNDS AND ACCOUNTS**

**Section 4.01. Project Fund.** (a) There is hereby established with the Fiscal Agent as a separate fund, to be maintained distinct from all other funds of the City, the Project Fund. Within the Project Fund, there is hereby established with the Fiscal Agent separate accounts, being:

(i) the Series 2019A/B Infrastructure Account, within which there are also hereby created ten subaccounts, being;

- (a) the Public Safety Subaccount;
- (b) The Taxable Public Safety Subaccount;
- (c) the Traffic Subaccount;
- (d) the Taxable Traffic Subaccount;
- (e) the Storm Sewer Subaccount;
- (f) the Taxable Storm Sewer Subaccount;
- (g) the Municipal Improvements Subaccount;
- (h) the Taxable Municipal Improvements Subaccount;
- (i) the Parks and Community Facilities Subaccount; and
- (j) the Taxable Parks and Community Facilities Subaccount.

(ii) the Series 2019C Libraries Account;

(iii) the Series 2019C/D Public Safety Account, within which there are also hereby created three subaccounts, being:

- (a) the Taxable Police Subaccount;
- (b) the Fire Subaccount; and
- (c) the Taxable Fire Subaccount; and

(iv) the Taxable Series 2019D Libraries Account;

(v) the Taxable Series 2019D Parks Account;

There shall be credited to each of the above-mentioned accounts and subaccounts the amounts as required by clauses (a), (b), (c) and (d) of Section 3.02. At such time that no amounts remain on deposit in the Project Fund, the City shall close the Project Fund.

(b) The Fiscal Agent shall, from time to time, disburse amounts on deposit in accounts and subaccounts established in Section 4.01(a) to pay Library Projects, Parks Projects, Public Safety Projects and Infrastructure Projects, respectively, in each case promptly after receipt of, and in accordance with, a Written Request of the City in the form attached hereto as Exhibit B. In making such payments, the Fiscal Agent may rely upon the representations made in the Written Request of the City. If for any reason the City should decide prior to the payment of any item in said Written Request of the City not to pay such item, then it shall give written notice of such decision to the Fiscal Agent and thereupon the Fiscal Agent shall not make such payment, and the Fiscal Agent shall have no liability to the City or the designated payee as a result of such nonpayment. The Fiscal Agent may conclusively rely upon such Written Request of the City received by the Fiscal Agent as complete authorization to release funds in accordance with this paragraph.

In no event shall the Fiscal Agent be responsible for the adequacy of any contracts relating to the Projects, the due performance of such contracts, or for the use or application of money properly disbursed pursuant to requests made under this Section 4.01(b). Upon the Written Request of a City Representative, the Fiscal Agent shall transfer amounts on deposit in the respective subaccounts. Upon the completion of the Infrastructure Project, as certified in writing by a City Representative, the Fiscal Agent shall transfer any remaining balance in the Series 2019A/B Infrastructure Account, less the amount of any reasonable retention, to the Bond Service Fund. Thereafter, the Series 2019A/B Infrastructure Account shall be closed. Upon the completion of the Libraries Project, as certified in writing by a City Representative, the Fiscal Agent shall transfer any remaining balance in the Series 2019C Libraries Account, less the amount of any reasonable retention, to the Bond Service Fund. Thereafter, the Series 2019C Libraries Account and the Taxable Series 2019D Libraries Account shall be closed. Upon the completion of the Parks Project, as certified in writing by a City Representative, the Fiscal Agent shall transfer any remaining balance in the Taxable Series 2019D Parks Account, less the amount of any reasonable retention, to the Bond Service Fund. Thereafter, the Taxable Series 2019D Parks Account shall be closed. Upon the completion of the Public Safety Project, as certified in writing by a City Representative, the Fiscal Agent shall transfer any remaining balance in the Public Safety Account, less the amount of any reasonable retention, to the Bond Service Fund. Thereafter, the Public Safety Account shall be closed.

(c) The City shall have the option, at any time, of directing the Fiscal Agent to transfer any amounts in any account or subaccount established in Section 4.01(a) any other account or subaccount established in Section 4.01(a), or to the City to be held and invested by the City prior to the disbursement thereof for Project costs.

(d) Notwithstanding any other provision herein to the contrary, investment earnings on amounts on deposit in each of the accounts within the Project Fund shall be retained in the respective accounts and subaccounts in the Project Fund unless the Fiscal Agent receives written instructions from the City executed by a City Representative directing that such investment earnings be transferred to the City for deposit in the Debt Service Account (provided that no such written instructions need be delivered if the City holds the Project Fund).

**Section 4.02. Establishment and Application of Costs of Issuance Account.** The Fiscal Agent shall also establish, maintain and hold in trust a separate account within the Project Fund to be known as the Series 2019 Costs of Issuance Account. The Fiscal Agent shall deposit a portion of the proceeds of the Bonds in the Costs of Issuance Account pursuant to Section 3.02(b). The moneys in the Costs of Issuance Account shall be used and withdrawn

by the Fiscal Agent to pay Issuance Costs upon submission of Written Requests of the City in substantially the form attached hereto as Exhibit C stating the Person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against the Costs of Issuance Account. On \_\_\_\_\_, 2019, or upon the earlier Written Request of City, any amounts remaining in the Costs of Issuance Account shall be transferred by the Fiscal Agent to the Project Fund for deposit in the accounts and subaccounts, proportionately, based on the ratio of the amount initially deposited to each such account and subaccount to the sum of the amounts initially deposited to such account and subaccounts; provided that the Fiscal Agent shall notify the City of its intention to transfer such remaining amount to such accounts and subaccounts no more than 60 days but no less than 30 days prior to making such transfer. Thereafter, the Costs of Issuance Account shall be closed.

**Section 4.03. Debt Service Account.** There is hereby established with the City as a separate account within the General Fund, to be maintained distinct from all other funds of the City, the Series 2019 Debt Service Account. The City hereby irrevocably pledges all amounts on deposit in the Debt Service Fund to the payment of Debt Service on the Bonds. The City shall deposit into the Debt Service Account the proceeds of the ad valorem property taxes levied to pay Debt Service on the Bonds.

The Debt Service Account shall be administered and disbursements made in the manner and in the order set forth in Section 4.04 hereof.

**Section 4.04. Administration and Disbursements From Debt Service Account.** All moneys in the Debt Service Account shall be used and withdrawn by the City solely for the purpose of paying the principal of and interest on the Bonds as the same shall become due and payable. Not later than the last day of February and August in each year, commencing February 29, 2020, the City shall transfer to the Fiscal Agent for deposit in the Bond Service Fund pursuant to Section 4.05 moneys on deposit in the Debt Service Account for application by the Fiscal Agent on the next succeeding Interest Payment Date to the payment of principal of and interest on the Bonds (taking into account amounts already on deposit in the Bond Service Fund prior to each such transfer).

**Section 4.05. Bond Service Fund.** There is hereby established as a separate fund the Series 2019 Bond Service Fund, to be held by the Fiscal Agent. All moneys received by the Fiscal Agent from the City pursuant to Section 4.04 shall be deposited into the Bond Service Fund. The Fiscal Agent shall also deposit in the Bond Service Fund the amounts required to pay amount due as required by Section 3.02(a). The moneys on deposit in the Bond Service Fund shall be used solely to pay principal and interest on the Bonds when due. The moneys on deposit in the Bond Service Fund shall be invested only in Federal Securities maturing on or before the date needed for disbursement or in investments described in clause (vi) of the definitions of Authorized Investments (including any fund for which the Fiscal Agent or any its affiliates maintains or acts as sponsor or advisor).

Amounts transferred from the Public Safety Subaccount, the Traffic Subaccount, the Storm Sewer Subaccount and the Municipal Improvements Subaccount of the Series 2019A/B Infrastructure Account shall be used solely for payment of the Series 2019A-1 Bonds. Amounts transferred from the Series 2019C Libraries Account shall be used solely for payment of the Series 2019C Bonds. Amounts transferred from the Fire Subaccount of the Public Safety Account shall be used solely for payment of the Series 2019C Bonds. Accounts transferred

from other Accounts and Subaccounts established in Section 4.01(a) may be used for the payment of debt service on any of the Bonds.

**Section 4.06. Investment of Moneys.** Subject to the provisions of Section 4.01(d) and Section 5.08 hereof, amounts on deposit in the Project Fund and the Costs of the Issuance Account may be invested in Authorized Investments, and earnings on such investments shall remain in the respective fund or account. Authorized Investments may be purchased at such prices as the City may determine, but in no event at more than their Fair Market Value. Amounts on deposit in the Debt Service Account shall be invested in obligations in which the City is authorized to invest its own funds, and earnings on such amounts shall be retained in the Debt Service Account.

## **ARTICLE V OTHER COVENANTS OF THE CITY**

**Section 5.01. Punctual Payment.** The City will punctually pay, or cause to be paid, the principal of and interest on the Bonds, in strict conformity with the terms of the Bonds and of this Agreement, and it will faithfully observe and perform all of the conditions, covenants and requirements of this Agreement and of the Bonds. Nothing herein contained shall prevent the City from making advances of its own moneys, howsoever derived, to any of the uses or purposes permitted by law.

**Section 5.02. Extension of Time for Payment.** In order to prevent any accumulation of claims for interest after maturity, the City will not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and will not, directly or indirectly, approve any such arrangement by purchasing or funding said claims for interest or in any other manner. In case any such claim for interest shall be extended or funded, whether or not with the consent of the City, such claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Agreement, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have so extended or funded.

**Section 5.03. Books and Accounts.** The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City in which complete and correct entries shall be made of all transactions relating to the projects financed with proceeds of the Bonds. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Fiscal Agent and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives authorized in writing.

**Section 5.04. Protection of Security and Rights of Bondowners.** The City will preserve and protect the security of the Bonds and the rights of the Bondowners, and will warrant and defend their rights against all claims and demands of all persons. From and after the sale and delivery of any of the Bonds by the City, the Bonds shall be incontestable by the City.

**Section 5.05. Further Assurances.** The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement, and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Agreement.

**Section 5.06. Continuing Disclosure.** The City hereby covenants and agrees that it will comply with and carry out all of the terms of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Agreement, failure of the City to comply with the Continuing Disclosure Certificate shall not be an Event of Default under Section 7.01 hereof; provided, however, any Participating Underwriter, any Owner or any Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Section 5.06 and the Continuing Disclosure Certificate.

**Section 5.07. No Arbitrage.** The City shall not take, or permit or suffer to be taken by the Fiscal Agent or otherwise, any action with respect to the proceeds of the Tax-Exempt Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Tax-Exempt Bonds would have caused the Tax-Exempt Bonds (i) to be "arbitrage bonds" within the meaning of section 148 of the Code or (ii) otherwise not described in Section 103(a) of the Code.

**Section 5.08. Federal Guarantee Prohibition.** The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Tax-Exempt Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

**Section 5.09. Private Activity Bond Limitation.** The City shall assure that the proceeds of the Tax-Exempt Bonds are not so used as to cause the Tax-Exempt Bonds to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

**Section 5.10. Maintenance of Tax-Exemption.** The City shall take all actions necessary to assure the exclusion of interest on the Tax-Exempt Bonds from the gross income of the Owners of the Tax-Exempt Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Tax-Exempt Bonds.

**Section 5.11. Rebate Fund.**

(a) In addition to the other funds and accounts created herein, the Fiscal Agent shall establish and maintain a fund separate from any other fund or account established and maintained hereunder designated as the Rebate Fund. There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to instructions given by the City pursuant to a Written Request of the City. The City's instructions regarding the Rebate Fund will be consistent with the Tax Certificate. All money at any time deposited in the Rebate Fund shall be held by the Fiscal Agent in trust for payment to the United States of America. Notwithstanding any other provision of this Agreement, all amounts required to be deposited into or on deposit in the Rebate Fund shall be governed exclusively by this Section 5.11 and by the Tax Certificate (which is incorporated herein by reference). The Fiscal Agent shall invest all amounts held in the Rebate Fund in Authorized Investments, as directed by the City pursuant to the Tax Certificate.

(b) The City will pay or cause to be paid to the United States Department of the Treasury Excess Investment Earnings, if any, required by Section 148(f) of the Code and any Regulations promulgated thereunder at the times required thereby. The Fiscal Agent shall disburse the amounts on deposit in the Rebate Fund in accordance with Written Requests of the City.

(c) In the event that at any time the City is of the opinion that for purposes of this Section 5.11 it is necessary to restrict or to limit the yield on the investment of any moneys held by the Fiscal Agent under this Agreement, the City shall so instruct the Fiscal Agent by Written Requests of the City containing instructions as to the yield or yields to which such investments must be restricted. The Fiscal Agent shall take such action as may be necessary in accordance with such instructions.

(d) In order to provide for the administration of this Section 5.11, the City may provide for the employment of independent attorneys, accountants and consultants, who shall be selected by the City with reasonable care and compensated on such reasonable basis as the City may deem appropriate, and the Fiscal Agent may rely conclusively upon the opinions, calculations, determinations and advice of such attorneys, accountants and consultants employed hereunder.

(e) Notwithstanding any provisions of this Section 5.11 if the City shall provide to the Fiscal Agent an opinion of nationally recognized bond counsel that any specified action required under this Section 5.11 is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest with respect to the Bonds, the Fiscal Agent and the City may conclusively rely on such opinion in complying with the requirements of this section, and, notwithstanding Article VIII hereof, the covenants hereunder shall be deemed to be modified to that extent.

(f) Notwithstanding any other provisions of this Agreement, including in particular Section 9.03 hereof, the obligation to remit Excess Investment Earnings to the United States of America and to comply with all other requirements of this Section and the Tax Certificate shall survive the defeasance or payment in full of the Tax-Exempt Bonds.

(g) The Fiscal Agent shall be deemed to have complied with the provisions of this Section if it follows the instructions of the City as provided herein and shall have no duty to enforce the compliance by the City of the covenants in this Section.

## **ARTICLE VI THE FISCAL AGENT**

**Section 6.01. Appointment of Fiscal Agent.** Wilmington Trust, N.A., at the Office of the Fiscal Agent in \_\_\_\_\_, or in such other location as approved by the City, is hereby appointed Fiscal Agent for the Bonds. The Fiscal Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Agreement, and, even during the continuance of an Event of Default, no implied covenants or obligations shall be read into this Agreement against the Fiscal Agent. The Fiscal Agent shall signify its acceptance of the duties and obligations imposed upon it by this Agreement by executing and delivering to the City this Agreement.

The City may remove the Fiscal Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank or trust company doing business in the State of California, having (or, if such bank or trust company is a member of a bank holding company, its parent holding company has) a combined capital (exclusive of borrowed capital) and surplus of at least fifty million dollars (\$50,000,000), and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 6.01 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Fiscal Agent may at any time resign by giving sixty (60) days' prior written notice to the City of such resignation. Upon receiving notice of such resignation, the City shall promptly appoint a successor Fiscal Agent by an instrument in writing. Any resignation or removal of the Fiscal Agent and appointment of a successor Fiscal Agent shall become effective upon acceptance of appointment by the successor Fiscal Agent.

**Section 6.02. Fiscal Agent May Hold Bonds.** The Fiscal Agent may become the owner of any of the Bonds in its own or any other capacity with the same rights it would have if it were not Fiscal Agent.

**Section 6.03. Liability of Agents.** The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the City, and the Fiscal Agent assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Agreement or of the Bonds, nor shall incur any responsibility in respect thereof, other than as set forth in this Agreement. The Fiscal Agent shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful default.

In the absence of bad faith, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Fiscal Agent and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions by which any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement.

The Fiscal Agent shall not be liable for any error of judgment made in good faith by a responsible officer unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts.

No provision of this Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The Fiscal Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Fiscal Agent shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

**Section 6.04. Notice to Agents.** The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Fiscal Agent may consult with counsel, who may be of counsel to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of its duties under this Agreement the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of the City (executed by a City Representative), and such certificate shall be full warrant to the Fiscal Agent for any action taken or suffered under the provisions of this Agreement upon the faith thereof, but in its discretion the Fiscal Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

**Section 6.05. Compensation, Indemnification.** The City shall pay to the Fiscal Agent from time to time reasonable compensation for all services rendered under this Agreement, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of their attorneys, agents and employees, incurred in and about the performance of their powers and duties under this Agreement, provided that the City shall not be liable for any expense, charge, fee or disbursement of the Fiscal Agent as may arise from the Fiscal Agent's negligence or willful misconduct. The City further agrees to indemnify and save the Fiscal Agent harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or bad faith.

**Section 6.06. Funds and Accounts.** The Fiscal Agent may establish such funds, accounts and subaccounts as it reasonably deems necessary or appropriate to perform its obligations under this Agreement.

**Section 6.07. Information.** The Fiscal Agent shall provide to the City such information relating to the Bonds and the funds, accounts and subaccounts maintained by the Fiscal Agent

hereunder as the City shall reasonably request, including but not limited to monthly statements reporting funds held and transactions by the Fiscal Agent.

## **ARTICLE VII EVENTS OF DEFAULT AND REMEDIES OF BONDOWNERS**

**Section 7.01. Events of Default.** The following shall constitute Events of Default under this Agreement:

(a) if default shall be made by the City in the due and punctual payment of the principal of or redemption premium, if any, on any Bond when and as the same shall become due and payable, whether at maturity as therein expressed or by declaration or otherwise; and

(b) if default shall be made by the City in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable.

**Section 7.02. Remedies of Bondowners.** Upon the occurrence of an Event of Default, any Bondowner shall have the right, for the equal benefit and protection of all Bondowners similarly situated:

(a) by mandamus, suit, action or proceeding, to compel the City and its members, officers, agents or employees to perform each and every term, provision and covenant contained in this Agreement and in the Bonds, and to require the carrying out of any or all such covenants and agreements of the City and the fulfillment of all duties imposed upon it; or

(b) by suit, action or proceeding in equity, to enjoin any acts or things which are unlawful, or the violation of any of the Bondowners' rights.

**Section 7.03. Non-Waiver.** Nothing in this Article VII or in any other provision of this Agreement, or in the Bonds, shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the principal of and interest on the Bonds to the respective Owners of the Bonds at the respective dates of maturity, as herein provided, or affect or impair the right of action, which is also absolute and unconditional, of such Owners to institute suit to enforce such payment by virtue of the contract embodied in the Bonds.

A waiver of any default by any Bondowner shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of any Owner of any of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Bondowners by this Article VII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Owners of the Bonds.

If a suit, action or proceeding to enforce any right or exercise any remedy be abandoned or determined adversely to the Bondowners, the City and the Bondowners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

**Section 7.04. Remedies Not Exclusive.** No remedy herein conferred upon the Owners of Bonds shall be exclusive of any other remedy and that each and every remedy shall

be cumulative and shall be in addition to every other remedy given hereunder or thereafter conferred on the Bondowners.

## ARTICLE VIII SUPPLEMENTAL AGREEMENTS

**Section 8.01. Amendments Permitted.** This Agreement and the rights and obligations of the City and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Agreement pursuant to the affirmative vote at a meeting of Owners, or with the written consent without a meeting, of the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 8.04. No such modification or amendment shall (i) extend the maturity of any Bond or reduce the interest rate thereon, or otherwise alter or impair the obligation of the City to pay the principal of, and the interest and any premium on, any Bond, without the express consent of the Owner of such Bond, or (ii) permit the creation by the City of any pledge or lien upon the ad valorem taxes of the taxes superior to or on a parity with the pledge and lien created for the benefit of the Bonds (except as otherwise permitted by the Act, the laws of the State of California or this Agreement), or reduce the percentage of Bonds required for the amendment hereof. Any such amendment may not modify any of the rights or obligations of the Fiscal Agent without its written consent.

This Agreement and the rights and obligations of the City and of the Owners may also be modified or amended at any time by a Supplemental Agreement, without the consent of any Owners, only to the extent permitted by law and only for any one or more of the following purposes:

- (a) to add to the covenants and agreements of the City in this Agreement contained, other covenants and agreements thereafter to be observed, or to limit or surrender any right or power herein reserved to or conferred upon the City;
- (b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Agreement, or in regard to questions arising under this Agreement, as the City and the Fiscal Agent may deem necessary or desirable and not inconsistent with this Agreement, and which shall not adversely affect the rights of the Owners of the Bonds; and
- (c) to make such additions, deletions or modifications as may be necessary or desirable to assure compliance with Section 148 of the Code or otherwise as may be necessary to assure exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds or to conform with the Regulations.

No supplement, modification or amendment to this Agreement shall be made unless the Fiscal Agent shall have received an opinion of Bond Counsel, upon which the Fiscal Agent may conclusively rely, stating that such supplement, modification or amendment:

- (i) has been duly and lawfully adopted by the City in accordance with the provisions of this Agreement, is authorized and permitted by this Agreement, and is valid and binding upon the City and enforceable in accordance with its terms; and
- (ii) will not, by itself, adversely affect the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes.

**Section 8.02. Owners' Meetings.** The City may at any time call a meeting of the Owners. In such event the City is authorized to fix the time and place of said meeting and to provide for the giving of notice thereof, and to fix and adopt rules and regulations for the conduct of said meeting.

**Section 8.03. Procedure for Amendment with Written Consent of Owners.** The City and the Fiscal Agent may at any time adopt a Supplemental Agreement amending the provisions of the Bonds or of this Agreement or any Supplemental Agreement, to the extent that such amendment is permitted by Section 8.01, to take effect when and as provided in this Section. A copy of such Supplemental Agreement, together with a request to Owners for their consent thereto, shall be mailed by first class mail, by the Fiscal Agent to each Owner of Bonds Outstanding, but failure to mail copies of such Supplemental Agreement and request shall not affect the validity of the Supplemental Agreement when assented to as in this Section provided.

Such Supplemental Agreement shall not become effective unless there shall be filed with the Fiscal Agent the written consents of the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding (exclusive of Bonds disqualified as provided in Section 8.04) and a notice shall have been mailed as hereinafter in this Section provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 9.04. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Fiscal Agent prior to the date when the notice hereinafter in this Section provided for has been mailed.

After the Owners of the required percentage of Bonds shall have filed their consents to the Supplemental Agreement, the City shall mail a notice to the Owners in the manner hereinbefore provided in this Section for the mailing of the Supplemental Agreement, stating in substance that the Supplemental Agreement has been consented to by the Owners of the required percentage of Bonds and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of the Supplemental Agreement or consents thereto). Proof of the mailing of such notice shall be filed with the Fiscal Agent. A record, consisting of the papers required by this Section 8.03 to be filed with the Fiscal Agent, shall be proof of the matters therein stated until the contrary is proved. The Supplemental Agreement shall become effective upon the filing with the Fiscal Agent of the proof of mailing of such notice, and the Supplemental Agreement shall be deemed conclusively binding (except as otherwise hereinabove specifically provided in this Article) upon the City and the Owners of all Bonds at the expiration of sixty (60) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such sixty-day period.

**Section 8.04. Disqualified Bonds.** Bonds owned or held for the account of the City, excepting any pension or retirement fund, shall not be deemed Outstanding for the purpose of any vote, consent or other action or any calculation of Outstanding Bonds provided for in this Article VIII, and shall not be entitled to vote upon, consent to, or take any other action provided for in this Article VIII.

**Section 8.05. Effect of Supplemental Agreement.** From and after the time any Supplemental Agreement becomes effective pursuant to this Article VIII, this Agreement shall

be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations under this Agreement of the City and all owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such Supplemental Agreement shall be deemed to be part of the terms and conditions of this Agreement for any and all purposes.

**Section 8.06. Endorsement or Replacement of Bonds Issued After Amendments.**

The City may determine that Bonds issued and delivered after the effective date of any action taken as provided in this Article VIII shall bear a notation, by endorsement or otherwise, in form approved by the City, as to such action. In that case, upon demand of the Owner of any Bond Outstanding at such effective date and presentation of such Owner's Bond for that purpose at the Office of the Fiscal Agent or at such other office as the City may select and designate for that purpose, a suitable notation shall be made on such Bond. The City may determine that new Bonds, so modified as in the opinion of the City is necessary to conform to such Owners' action, shall be prepared, executed and delivered. In that case, upon demand of the Owner of any Bonds then Outstanding, such new Bonds shall be exchanged at the Office of the Fiscal Agent without cost to any Owner, for Bonds then Outstanding, upon surrender of such Bonds.

**Section 8.07. Amendatory Endorsement of Bonds.** The provisions of this Article VIII shall not prevent any Owner from accepting any amendment as to the particular Bonds held by him or her.

## **ARTICLE IX MISCELLANEOUS**

**Section 9.01. Benefits of Agreement Limited to Parties.** Nothing in this Agreement, expressed or implied, is intended to give to any person other than the City, the Fiscal Agent and the Owners, any right, remedy, claim under or by reason of this Agreement. Any covenants, stipulations, promises or agreements in this Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the Owners and the Fiscal Agent.

**Section 9.02. Successor is Deemed Included in All References to Predecessor.** Whenever in this Agreement or any Supplemental Agreement either the City or the Fiscal Agent is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Fiscal Agent shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 9.03. Discharge of Agreement.** The City shall have the option to pay and discharge the entire indebtedness on all or any portion of the Bonds Outstanding (including the principal due on the Bonds on any date as a result of a scheduled mandatory sinking fund redemption) in any one or more of the following ways:

- (a) by paying or causing to be paid the principal of, and interest and any premium on, such Bonds Outstanding, as and when the same become due and payable;
- (b) by depositing with the Fiscal Agent or other escrow agent, in trust, at or before maturity, money which, together with, in the event of a discharge of all of the Bonds, the amounts then on deposit in the funds and accounts provided for in Sections 4.03 and 4.05 is fully sufficient to pay such Bonds Outstanding, including all principal, interest and redemption premiums; or
- (c) by irrevocably depositing with the Fiscal Agent or other escrow agent, in trust, Defeasance Obligations in such amount as the City shall determine as confirmed by an independent certified public accountant will, together with the interest to accrue thereon and, in the event of a discharge of all of the Bonds, moneys then on deposit in the fund and accounts provided for in Sections 4.03 and 4.05, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates.

If the City shall have taken any of the actions specified in (a), (b) or (c) above, and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption shall have been given as in this Agreement provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, then, at the election of the City, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the funds and moneys provided for in this Agreement and all other obligations of the City under this Agreement with respect to such Bonds Outstanding shall cease and terminate. Notice of such election shall be filed with the Fiscal Agent. Notwithstanding the foregoing, the obligation of the City to pay or cause to be paid to the Owners of the Bonds not so surrendered and paid all sums due thereon and all amounts owing to the Fiscal Agent pursuant to Section 6.05 shall continue in any event.

Upon compliance by the City with the foregoing with respect to all Bonds Outstanding, any funds held by the Fiscal Agent after payment of all fees and expenses of the Fiscal Agent, which are not required for the purposes of the preceding paragraph, shall be paid over to the City.

**Section 9.04. Execution of Documents and Proof of Ownership by Owners.** Any request, declaration or other instrument which this Agreement may require or permit to be executed by Owners may be in one or more instruments of similar tenor, and shall be executed by Owners in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his or her attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which the notary public purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to the notary public the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number and date of holding the same shall be proved by the registry books as provided in Section 2.08.

Any request, declaration or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Fiscal Agent in good faith and in accordance therewith.

**Section 9.05. Waiver of Personal Liability.** No member, officer, agent or employee of the City shall be individually or personally liable for the payment of the principal of, or interest or any premium on, the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

**Section 9.06. Notices to and Demands on City and Fiscal Agent.** Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the Fiscal Agent to or on the City may be given or served by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the City with the Fiscal Agent) to:

Debt Management  
Finance  
City of San José  
200 East Santa Clara Street, 13<sup>th</sup> Floor  
San José, California 95113-1905

Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the City to or on the Fiscal Agent may be given or served by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the Fiscal Agent with the City) to:

Wilmington Trust, N.A.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 9.07. Partial Invalidity.** If any Section, paragraph, sentence, clause or phrase of this Agreement shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Agreement. The City hereby declares that it would have adopted this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Agreement may be held illegal, invalid or unenforceable.

**Section 9.08. Unclaimed Moneys.** Subject at all times to applicable unclaimed property law and anything contained herein to the contrary notwithstanding, any moneys held by the Fiscal Agent in trust for the payment and discharge of the principal of, and the interest and any premium on, the Bonds which remains unclaimed for two (2) years after the date when the payments of such principal, interest and premium have become payable, if such moneys was held by the Fiscal Agent at such date, shall be repaid by the Fiscal Agent to the City as its absolute property free from any trust, and the Fiscal Agent shall thereupon be released and discharged with respect thereto and the Owners shall look only to the City for the payment of the principal of, and interest and any premium on, such Bonds.

**Section 9.09. Applicable Law.** This Agreement shall be governed by and enforced in accordance with the laws of the State of California applicable to contracts made and performed in the State of California.

**Section 9.10. Conflict with Act.** In the event of a conflict between any provision of this Agreement with any provision of the Act as in effect on the Closing Date, the provision of the Act shall prevail over the conflicting provision of this Agreement.

**Section 9.11. Conclusive Evidence of Regularity.** Bonds issued pursuant to this Agreement shall constitute conclusive evidence of the regularity of all proceedings under the Act relative to their issuance and the levy of the ad valorem taxes securing the payment of the Bonds.

**Section 9.12. Payment on Business Day.** In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds or the date fixed for redemption of any Bonds or the date any action is to be taken pursuant to this Agreement is other than a Business Day, the payment of interest or principal (and premium, if any) or the action need not be made on such date but may be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period after such date.

**Section 9.13. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name and the Fiscal Agent has caused this Agreement to be executed in its name, all as of the date first written above.

APPROVED AS TO FORM:  
Richard Doyle  
City Attorney

CITY OF SAN JOSE

By: \_\_\_\_\_  
Chief Deputy City Attorney

By: \_\_\_\_\_  
Director of Finance

WILMINGTON TRUST, N.A.,  
as Fiscal Agent

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**FORM OF INFRASTRUCTURE BOND**

No. \_\_\_\_\_

\$ \_\_\_\_\_

**UNITED STATES OF AMERICA  
STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**CITY OF SAN JOSE  
[TAXABLE] GENERAL OBLIGATION BOND, SERIES 2019[A-1/A-2/B]  
(DISASTER PREPAREDNESS, PUBLIC SAFETY AND INFRASTRUCTURE)**

Interest Rate

Maturity Date  
September 1, 20\_\_

Issue Date  
June \_\_, 2019

CUSIP

REGISTERED OWNER: Cede & Co.

PRINCIPAL SUM: \_\_\_\_\_ DOLLARS

The CITY OF SAN JOSE, a charter city duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), for value received hereby promises to pay to the Registered Owner stated above, or registered assigns (the "Owner"), on the Maturity Date stated above (subject to any right of prior redemption hereinafter provided for), the Principal Sum stated above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the interest payment date next preceding the date of registration and authentication of this Bond (unless (i) this Bond is registered and authenticated on an interest payment date, in which event it shall bear interest from such date of registration and authentication, or (ii) this Bond is registered and authenticated prior to an interest payment date and after the close of business on the fifteenth day of the month preceding such interest payment date, in which event it shall bear interest from such interest payment date, or (iii) this Bond is registered and authenticated on or prior to \_\_\_\_\_, in which event it shall bear interest from the Issue Date stated above; provided however, that if at the time of registration and authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the interest payment date to which interest has previously been paid or made available for payment on this Bond) until payment of such Principal Sum in full, at the rate per annum stated above, payable on March 1 and September 1 in each year, commencing March 1, 2020, calculated on the basis of 360-day year composed of twelve 30-day months. Principal hereof and premium, if any, upon early redemption hereof are payable at the corporate trust office of Wilmington Trust, N.A. (the "Fiscal Agent"), in \_\_\_\_\_, or in such other location as approved by the City. Interest hereon (including the final interest payment upon maturity or earlier redemption) is payable by check mailed on the applicable Interest Payment Date to the Owner at his or her address as it appears on the registration books maintained by the Fiscal

Agent as of the close of business on the fifteenth day of the month next preceding such interest payment date, or at such other address as the Owner may have filed with the Fiscal Agent for that purpose.

This Bond is one of a duly authorized issue of bonds of the City designated as "City of San José [Taxable] General Obligation Bonds, Series 2019[A/B] (Disaster Preparedness, Public Safety, and Infrastructure)" (the "Bonds"), in an aggregate principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates or redemption and other provisions) and all issued pursuant to the provisions of Chapter 14.28 of the San José Municipal Code (the "Act"), pursuant to a resolution of the City Council of the City adopted June 25, 2019 (the "Resolution"), authorizing the issuance of the Bonds and a Fiscal Agent Agreement dated as of July 1, 2019 (the "Agreement") between the City and the Fiscal Agent. Reference is hereby made to the Resolution and the Agreement (copies of which are on file at the office of the Fiscal Agent) and the Act for a description of the terms on which the Bonds are issued and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Fiscal Agent and the rights and obligations of the City thereunder, to all of the provisions of which Resolution and Agreement the Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued for the purpose of acquiring property for and constructing improvements in order to improve emergency and disaster response, repair deteriorating bridges vulnerable to earthquakes, repave streets and potholes in the worst condition, prevent flooding and water contamination including the acquisition of land in the Coyote Valley for these purposes, and repair critical infrastructure.

This Bond and the interest hereon and on all other Bonds and the interest thereon (to the extent set forth in the Agreement) are general obligations of the City and the City has the power, is obligated and has covenanted to levy ad valorem taxes for the payment of the Bonds and the interest thereon, in accordance with all relevant provisions of law. The City has covenanted in the Agreement to direct the County of Santa Clara to levy and collect such ad valorem taxes in such amounts and at such times is necessary to ensure the timely payment of debt service on the Bonds.

[The Bonds maturing on or before September 1, 20\_\_ are not subject to redemption prior to their respective maturity dates. Bonds maturing on or after September 1, 20\_\_ shall be subject to redemption prior to their respective maturity dates as a whole, or in part, on any date, from any moneys provided at the option of the City, in each case on and after September 1, 20\_\_, at a redemption price equal to the principal amount of Bonds called for redemption plus accrued interest to the date fixed for redemption, without premium.][The Bonds are not subject to optional redemption prior to maturity.]

The Bonds maturing September 1, 20\_\_ are subject to mandatory sinking fund redemption in part, by lot, prior to their stated maturity date, on each September 1 on and after September 1, 20\_\_, at a redemption price equal to 100% of the principal amount thereof called for redemption, plus accrued interest to the redemption date, without premium, as follows:

Term Bonds Maturing September 1, 20\_\_

Redemption Date  
(September 1)

Principal Amount of Bonds  
to be Redeemed

As provided in the Agreement, notice of redemption shall be given by mail no less than twenty (20) nor more than sixty (60) days prior to the redemption date to the respective registered owners of any Bonds designated for redemption at their addresses appearing on the Bond registration books maintained by the Fiscal Agent, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption. The City shall have the right to cancel the notice of any optional redemption as provided in the Agreement.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Agreement, interest shall cease to accrue hereon from and after the date fixed for redemption.

If an Event of Default, as defined in the Agreement, shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Agreement, but such declaration and its consequences may be rescinded and annulled as further provided in the Agreement.

The Bonds are issuable as fully registered Bonds, without coupons, in denominations of \$5,000 and any integral multiple thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Agreement, Bonds may be exchanged for a like aggregate principal amount of Bonds of other authorized denominations and of the same maturity.

This Bond is transferable by the Owner hereof, in person or by his or her attorney duly authorized in writing, at said office of the Fiscal Agent in \_\_\_\_\_, but only in the manner and subject to the limitations provided in the Agreement, and upon surrender and cancellation of this Bond. Upon registration of such transfer a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor.

The City and the Fiscal Agent may treat the Owner hereof as the absolute owner hereof for all purposes, and the City and the Fiscal Agent shall not be affected by any notice to the contrary.

The Agreement may be amended without the consent of the Owners of the Bonds to the extent set forth in the Agreement.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist,

have happened or have been performed in due and regular time and manner as required by the laws of the State of California, and that the amount of this Bond, together with all other indebtedness of the City, does not exceed any limit prescribed by any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Agreement.

This Bond shall not be entitled to any benefit under the Agreement or become valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by the Fiscal Agent.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, the City of San José has caused this Bond to be executed in its name and on its behalf with the manual or facsimile signature of its Director of Finance and attested by the manual or facsimile signature of its City Clerk, all as of the Issue Date stated above.

CITY OF SAN JOSE

By: \_\_\_\_\_  
Director of Finance

ATTEST:

\_\_\_\_\_  
City Clerk

**[FORM OF FISCAL AGENT'S CERTIFICATE OF AUTHENTICATION]**

**CERTIFICATE OF AUTHENTICATION**

This is one of the Bonds described in the within-mentioned Agreement.

Date of Authentication: \_\_\_\_\_

WILMINGTON TRUST, N.A.,  
as Fiscal Agent

\_\_\_\_\_  
Authorized Signatory

## ASSIGNMENT

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

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

the within Bond and do(es) hereby irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer the same on the registration books of the Fiscal Agent, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notice: The signature(s) on this assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
Notice: Signature(s) must be guaranteed by a qualified guarantor institution

**FORM OF REFUNDING BOND**

No. \_\_\_\_\_

\$ \_\_\_\_\_

**UNITED STATES OF AMERICA  
STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**CITY OF SAN JOSE  
[TAXABLE] GENERAL OBLIGATION BOND, SERIES 2019[C/D]  
(REFUNDING, LIBRARIES, PARKS AND PUBLIC SAFETY PROJECTS)**

Interest Rate

Maturity Date  
September 1, 20\_\_

Issue Date  
June \_\_, 2019

CUSIP

REGISTERED OWNER: Cede & Co.

PRINCIPAL SUM: \_\_\_\_\_ DOLLARS

The CITY OF SAN JOSE, a charter city duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), for value received hereby promises to pay to the Registered Owner stated above, or registered assigns (the "Owner"), on the Maturity Date stated above (subject to any right of prior redemption hereinafter provided for), the Principal Sum stated above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the interest payment date next preceding the date of registration and authentication of this Bond (unless (i) this Bond is registered and authenticated on an interest payment date, in which event it shall bear interest from such date of registration and authentication, or (ii) this Bond is registered and authenticated prior to an interest payment date and after the close of business on the fifteenth day of the month preceding such interest payment date, in which event it shall bear interest from such interest payment date, or (iii) this Bond is registered and authenticated on or prior to \_\_\_\_\_, in which event it shall bear interest from the Issue Date stated above; provided however, that if at the time of registration and authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the interest payment date to which interest has previously been paid or made available for payment on this Bond) until payment of such Principal Sum in full, at the rate per annum stated above, payable on March 1 and September 1 in each year, commencing March 1, 2020, calculated on the basis of 360-day year composed of twelve 30-day months. Principal hereof and premium, if any, upon early redemption hereof are payable at the corporate trust office of Wilmington Trust, N.A. (the "Fiscal Agent"), in \_\_\_\_\_, or in such other location as approved by the City. Interest hereon (including the final interest payment upon maturity or earlier redemption) is payable by check mailed on the applicable Interest Payment Date to the Owner at his or her address as it appears on the registration books maintained by the Fiscal

Agent as of the close of business on the fifteenth day of the month next preceding such interest payment date, or at such other address as the Owner may have filed with the Fiscal Agent for that purpose.

This Bond is one of a duly authorized issue of bonds of the City designated as "City of San José [Taxable] General Obligation Bonds, Series 2019[C/D] (Refunding, Libraries, Parks, and Public Safety Projects)" (the "Bonds"), in an aggregate principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates or redemption and other provisions) and all issued pursuant to Articles 9 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53550 of said Code (the "Refunding Law"), pursuant to a resolution of the City Council of the City adopted June 25, 2019 (the "Resolution"), authorizing the issuance of the Bonds and a Fiscal Agent Agreement dated as of July 1, 2019 (the "Agreement") between the City and the Fiscal Agent. Reference is hereby made to the Resolution and the Agreement (copies of which are on file at the office of the Fiscal Agent), the Act and the Refunding Law for a description of the terms on which the Bonds are issued and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Fiscal Agent and the rights and obligations of the City thereunder, to all of the provisions of which Resolution and Agreement the Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued for the purposes of issuing general obligation bonds for the purposes of acquisition of property for and construction of library and public safety projects, and refunding certain previously-issued and outstanding general obligation bonds of the City.

This Bond and the interest hereon and on all other Bonds and the interest thereon (to the extent set forth in the Agreement) are general obligations of the City and the City has the power, is obligated and has covenanted to levy ad valorem taxes for the payment of the Bonds and the interest thereon, in accordance with all relevant provisions of law. The City has covenanted in the Agreement to direct the County of Santa Clara to levy and collect such ad valorem taxes in such amounts and at such times is necessary to ensure the timely payment of debt service on the Bonds.

[The Bonds maturing on or before September 1, 20\_\_ are not subject to redemption prior to their respective maturity dates. Bonds maturing on or after September 1, 201\_\_ shall be subject to redemption prior to their respective maturity dates as a whole, or in part, on any date, from any moneys provided at the option of the City, in each case on and after September 1, 20\_\_, at a redemption price equal to the principal amount of Bonds called for redemption plus accrued interest to the date fixed for redemption, without premium. ][The Bonds are not subject to optional redemption prior to maturity.]

[The Bonds maturing September 1, 20\_\_ are subject to mandatory sinking fund redemption in part, by lot, prior to their stated maturity date, on each September 1 on and after September 1, 20\_\_, at a redemption price equal to 100% of the principal amount thereof called for redemption, plus accrued interest to the redemption date, without premium, as follows:

Term Bonds Maturing September 1, 20\_\_

Redemption Date  
(September 1)

Principal Amount of Bonds  
to be Redeemed]

As provided in the Agreement, notice of redemption shall be given by mail no less than twenty (20) nor more than sixty (60) days prior to the redemption date to the respective registered owners of any Bonds designated for redemption at their addresses appearing on the Bond registration books maintained by the Fiscal Agent, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption. The City shall have the right to cancel the notice of any optional redemption as provided in the Agreement.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Agreement, interest shall cease to accrue hereon from and after the date fixed for redemption.

If an Event of Default, as defined in the Agreement, shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Agreement, but such declaration and its consequences may be rescinded and annulled as further provided in the Agreement.

The Bonds are issuable as fully registered Bonds, without coupons, in denominations of \$5,000 and any integral multiple thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Agreement, Bonds may be exchanged for a like aggregate principal amount of Bonds of other authorized denominations and of the same maturity.

This Bond is transferable by the Owner hereof, in person or by his or her attorney duly authorized in writing, at said office of the Fiscal Agent in \_\_\_\_\_, but only in the manner and subject to the limitations provided in the Agreement, and upon surrender and cancellation of this Bond. Upon registration of such transfer a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor.

The City and the Fiscal Agent may treat the Owner hereof as the absolute owner hereof for all purposes, and the City and the Fiscal Agent shall not be affected by any notice to the contrary.

The Agreement may be amended without the consent of the Owners of the Bonds to the extent set forth in the Agreement.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist,

have happened or have been performed in due and regular time and manner as required by the laws of the State of California, and that the amount of this Bond, together with all other indebtedness of the City, does not exceed any limit prescribed by any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Agreement.

This Bond shall not be entitled to any benefit under the Agreement or become valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by the Fiscal Agent.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, the City of San José has caused this Bond to be executed in its name and on its behalf with the manual or facsimile signature of its Director of Finance and attested by the manual or facsimile signature of its City Clerk, all as of the Issue Date stated above.

CITY OF SAN JOSE

By: \_\_\_\_\_  
Director of Finance

ATTEST:

\_\_\_\_\_  
City Clerk

**[FORM OF FISCAL AGENT'S CERTIFICATE OF AUTHENTICATION]**

**CERTIFICATE OF AUTHENTICATION**

This is one of the Bonds described in the within-mentioned Agreement.

Date of Authentication: \_\_\_\_\_

WILMINGTON TRUST, N.A.,  
as Fiscal Agent

\_\_\_\_\_  
Authorized Signatory

## ASSIGNMENT

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

the within Bond and do(es) hereby irrevocably constitute and appoint

\_\_\_\_\_,  
attorney, to transfer the same on the registration books of the Fiscal Agent, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notice: The signature(s) on this assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
Notice: Signature(s) must be guaranteed by a qualified guarantor institution

**EXHIBIT B**

**FORM OF PROJECT FUND DISBURSEMENT REQUEST**

\$ \_\_\_\_\_  
City of San José  
[Taxable] General Obligation Bonds, Series 2019\_\_  
(\_\_\_\_\_)

**DISBURSEMENT REQUEST NO.: \_\_\_\_\_**

For Libraries Projects [Series 2019C Libraries Account] [Tax]able Series 2019D Libraries Account

For Parks Projects [Taxable Series 2019D Parks Account]

[For Public Safety Projects: [Taxable] Police Subaccount \_\_\_\_; Fire Subaccount \_\_\_\_; [Taxable] Fire Subaccount (check one)]

[For Infrastructure Projects: Public Safety Subaccount \_\_\_\_; Traffic Subaccount \_\_\_\_; [Taxable] Traffic Subaccount \_\_\_\_; Storm Sewer Subaccount \_\_\_\_ Municipal Improvements Subaccount \_\_\_\_; [Taxable] Municipal Improvements Subaccount \_\_\_\_; [Taxable] Parks and Community Facilities Subaccount \_\_\_\_ (check one)]

Wilmington Trust, N.A.

\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Re: \$ \_\_\_\_\_ City of San José [Taxable] General Obligation Bonds, Series 2019\_\_  
(\_\_\_\_\_)

Ladies and Gentlemen:

In accordance with the terms of a Fiscal Agent Agreement, by and between you and the undersigned, dated as of July 1, 2019 (the "Fiscal Agent Agreement"), you are hereby authorized and requested to make immediate disbursement of funds held by you in the [\_\_\_\_\_] Subaccount] of the \_\_\_\_\_ Account of the Project Fund for costs of the [Libraries/Parks/Public Safety/Infrastructure Project] (as defined in the Fiscal Agent Agreement) pursuant to Section 4.01 of the Fiscal Agent Agreement.

You are hereby requested to pay from such [Subaccount/Account] (check one) of the Project Fund established by the Fiscal Agent Agreement, to the person(s), corporation(s) or other entity(ies) designated on Schedule A attached hereto as Payee(s), the sum set forth on said Schedule, in payment of all or a portion of the costs of the Improvements described on said Schedule.

The undersigned hereby certifies that (i) no part of the amount requested herein has been included in any other request previously filed with you; (ii) to the knowledge of the undersigned, there has not been filed with or served upon the City of San José any notice of any lien or attachment upon or claim (except for any preliminary notice of lien as may be filed in accordance with law) affecting the right of the person, corporation or other entity stated below to receive payment of the amount stated below, which lien has not been released or will not be released simultaneously with the payment requested hereunder; and (iii) the labor, services and/or materials covered hereby have been performed upon or furnished to the Libraries/Parks/Public Safety/Infrastructure Projects and the payment requested herein is due and payable under a purchase order, contract or other authorization.

Dated: \_\_\_\_\_, 20\_\_

CITY OF SAN JOSE

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved:

CITY OF SAN JOSE

By: \_\_\_\_\_  
Director of Finance

## Schedule A

Payee  
(include address)

Description  
of Costs

Amount

**EXHIBIT C**

**FORM OF COSTS OF ISSUANCE ACCOUNT REQUISITION**

**REQUISITION NO. \_\_\_\_  
COST OF ISSUANCE ACCOUNT**

**\$\_\_\_\_\_  
City of San José  
[Taxable] General Obligation Bonds, Series 2019\_\_\_\_  
(\_\_\_\_\_)**

1. The City of San José (the "City") hereby requests Wilmington Trust, N.A., as fiscal agent (the "Fiscal Agent"), under that certain Fiscal Agent Agreement, dated as of July 1, 2019 (the "Fiscal Agent Agreement"), between the City and the Fiscal Agent, relating to the bonds captioned above, to pay to the persons listed on Schedule I attached hereto the amounts shown for the purposes indicated from the Costs of Issuance Account established pursuant to the Fiscal Agent Agreement.
2. The City hereby certifies that each item in the amounts stated above is an Issuance Cost and a proper charge against the Costs of Issuance Account, and that each such item has not previously been paid.

Dated: \_\_\_\_\_

CITY OF SAN JOSE

By: \_\_\_\_\_  
City Representative

SCHEDULE I

PAYEE ( <u>Include Address</u> )	<u>AMOUNT</u>	<u>PURPOSE</u>
-------------------------------------	---------------	----------------