

SECOND AMENDED AND RESTATED

FEE LETTER AGREEMENT

October 15, 2020

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

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

Ladies and Gentlemen:

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

Section 2.02 of the Agreement makes reference to a Fee Letter Agreement containing an agreement as to certain fees payable by the Authority to the Bank in consideration for the entrance into the Agreement by the Bank, the Bank’s commitment to acquire Notes and make Advances thereunder and certain other circumstances. In connection with the execution and delivery of the Agreement, the Bank, the City and the Authority entered into that certain Fee Letter Agreement dated October 19, 2017 (the “Original Fee Letter Agreement”), as amended and restated by that certain Amended and Restated Fee Letter Agreement dated June 27, 2018 (the “Amended and Restated Fee Letter Agreement”). The Bank, the City and the Authority now wish to amend and restate the Amended and Restated Fee Letter Agreement in its entirety pursuant to this Second Amended and Restated Fee Letter Agreement (the “Fee Letter Agreement”). This is the Fee Letter Agreement referenced in Section 2.02 of the Agreement. The purpose of this Fee Letter Agreement is to confirm the agreement between the Bank and the Authority with respect to the Commitment Fees (as defined herein) and certain other fees and expenses payable to or for the benefit of the Bank. All amounts accruing under the Amended and Restated Fee Letter Agreement prior to the date hereof shall be paid in accordance with the terms of the Amended and Restated Fee Letter Agreement. By countersigning this Fee Letter Agreement where indicated below, the Authority agrees to pay, on and after the date hereof, the following:

1. **Commitment Fees.** Commencing on October 18, 2020 the Authority agrees to pay the Bank a nonrefundable commitment fee (the “Commitment Fee”), calculated on the basis of a 360 day year and actual days elapsed using the rate per annum as specified below in the column captioned “Commitment Fee” on the Level which contains the relevant Obligor Rating, determined as provided below, (the “Commitment Fee Rate”) on the Available Commitment. The Commitment Fee shall be payable quarterly in arrears, on the first Business Day of each January, April, July and October occurring prior to the Termination Date, commencing on January 4, 2021, and on the Termination Date.

<u>LEVEL</u>	<u>MOODY’S RATING</u>	<u>S&P RATING</u>	<u>FITCH RATING</u>	<u>COMMITMENT FEE</u>
Level 1	Aaa	AAA	AAA	35.0 basis points
Level 2	Aa1	AA+	AA+	37.5 basis points
Level 3	Aa2	AA	AA	40.0 basis points
Level 4	Aa3	AA-	AA-	42.5 basis points
Level 5	A1	A+	A+	47.5 basis points
Level 6	A2	A	A	52.5 basis points
Level 7	A3	A-	A-	57.5 basis points

The Bank and the Authority agree that as of the date of this Fee Letter Agreement, the Commitment Fee Rate shall correspond to Level 1 (i.e., 35.0 basis points). The Commitment Fee, computed as described above in this Section 1, is subject to adjustment as described in the following two paragraphs.

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

If one or more of the Obligor Ratings are withdrawn or suspended for credit related reasons, any Obligor Rating falls below A3 by Moody’s, A- by S&P or A- by Fitch, or at any time an Event of Default shall occur and be continuing (whether or not such Event of Default is declared and whether or not waived by the Bank) under the Agreement, the Commitment Fee, computed as

described in this Section, shall be immediately increased, without notice, to a Commitment Fee Rate equal to the Commitment Fee set forth on Level 7 above plus 100 basis points (1.00%).

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

(a) For the period commencing on the Closing Date, to but excluding October 18, 2020, the Applicable Spread for such period shall be determined in accordance with the pricing chart set forth below in this paragraph 2(a):

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

(b) For the period commencing on October 18, 2020 and at all times thereafter, the Applicable Spread for such period shall be determined in accordance with the pricing chart set forth below in this paragraph 2(b):

LEVEL	MOODY'S RATING	S&P RATING	FITCH RATING	APPLICABLE SPREAD	
				TAXABLE RATE	TAX EXEMPT RATE
1	Aaa	AAA	AAA	110.0 bps	95.0 bps
2	Aa1	AA+	AA+	117.5 bps	102.5 bps
3	Aa2	AA	AA	125.0 bps	110.0 bps
4	Aa3	AA-	AA-	132.5 bps	117.5 bps
5	A1	A+	A1	147.5 bps	132.5 bps
6	A2	A	A	162.5 bps	147.5 bps
7	A3	A-	A-	177.5 bps	162.5 bps

The Bank and the Authority agree that as of the date of this Fee Letter Agreement, the Applicable Spread shall correspond to Level 1 (i.e., 110 basis points (1.10%) for the TAXABLE RATE and 95 basis points (.95%) for the TAX EXEMPT RATE). The Applicable Spread, computed as described above in this Section 2, is subject to adjustment as described in the following paragraph.

In the event that Obligor Ratings are assigned by only two or all three Rating Agencies, and only two of such Obligor Ratings are equivalent, the two equivalent Ratings shall be used to determine the Applicable Spread. In the event that Obligor Ratings are assigned by all three Rating Agencies, and no such Obligor Ratings are equivalent, the middle Obligor Rating shall be used to determine the Applicable Spread. In the event that Obligor Ratings are assigned by only two Rating Agencies, the lowest Obligor Rating assigned shall be used to determine the Applicable Spread. In the event that an Obligor Rating is assigned by only one Rating Agency, the Obligor Rating assigned by that Rating Agency shall be used to determine the Applicable Spread. In the event that no Obligor Rating is available, the Authority may seek a private rating from Moody's or S&P on the Notes, which may be used in place of the Obligor Ratings hereof for purposes of determining the Applicable Spread. Any change in the Applicable Spread resulting from a change in Obligor Ratings shall be and become effective as of and on the date of the announcement of the change in such Obligor Ratings. References to Obligor Ratings above are references to rating categories as determined by the Rating Agencies on the date hereof and in the event of adoption of any new or changed rating system by any such Rating Agency, each of the Obligor Ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as in effect on the date hereof.

3. Commitment Fee and Applicable Spread Calculation if no Wastewater System Revenue Bonds are Outstanding. If, at any time, there is no Obligor Rating because the San José-Santa Clara Clean Water Financing Authority Sewer Revenue Refunding Bonds, Series 2009A are no longer outstanding and no other long-term debt constituting, or secured by obligations constituting, Parity Obligations under the Master Resolution which has been assigned a rating is outstanding, and the Authority does not secure a private rating from Moody's or S&P on the Notes, the Commitment Fee and the Applicable Spread shall be determined on the basis of the Debt Service Coverage Ratio, defined below, and the chart below until such time as there is an Obligor Rating. For purposes of this paragraph 3, the following terms shall have the following meanings:

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

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

During any time that this paragraph 3 is applicable, the Debt Service Coverage Ratio ("DSCR" in the table below) will be calculated by the City on the first Business Day of each April and October and upon such calculation the Commitment Fee and the Applicable Spread shall equal the number of basis points on the Level in the chart below that corresponds to the applicable Debt Service Coverage Ratio. In connection with calculating the Tax Exempt Rate, the Applicable Spread shall equal the relevant number of basis points (determined as provided in the preceding sentence) in the column below entitled TAX EXEMPT RATE multiplied by the Margin Rate Factor.

LEVEL	DSCR	APPLICABLE SPREAD		
		COMMITMENT FEE	TAXABLE RATE	TAX EXEMPT RATE
1	>2.0x	35.0 bps	110.0 bps	95.0 bps
2	>1.85x-≤2.0x	37.5 bps	117.5 bps	102.5 bps
3	>1.70x-≤1.85x	40.0 bps	125.0 bps	110.0 bps
4	>1.45-≤1.70x	42.5 bps	132.5 bps	117.5 bps
5	>1.25-≤1.45x	47.5 bps	147.5 bps	132.5 bps
6	≥1.10x-≤1.25x	52.5 bps	162.5 bps	147.5 bps
7	<1.10x	157.5 bps		

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

4. **Legal Fees.** As a condition to the execution and delivery of this Fee Letter Agreement and the First Amendment to Credit Agreement executed on the date hereof, the Authority shall pay the legal fees of Kutak Rock LLP in an amount not to exceed \$10,000 plus fees and expenses.

5. **Amendment Fee; Consent Fee.** The Authority shall pay to the Bank (i) on the date any amendment, modification or supplement to the Agreement is entered into between the parties hereto, an amendment fee of \$2,500.00, plus the reasonable and customary fees of counsel to the Bank; (ii) on the date any consent to an amendment, modification or supplement of any of the other Related Documents or any waiver or consent under the Agreement or any of the Related Documents is granted by the Bank, a fee of \$2,500.00 plus the reasonable and customary fees of counsel to the Bank and (iii) all other fees charged by the Bank pursuant to the Agreement and this Fee Letter Agreement relating to clauses (i) and (ii).

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

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

8. **Counterparts.** This Fee Letter Agreement may be executed in two or more counterparts, each of which shall constitute an original but both or all of which, when taken together, shall constitute but one instrument. Delivery of an executed counterpart of a signature page of this Fee Letter by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Fee Letter.

9. **Severability.** Any provision of this Fee Letter Agreement that is prohibited, unenforceable or not authorized shall be ineffective to the extent of such prohibition,

unenforceability or nonauthorization without invalidating the remaining provisions hereof. The parties shall endeavor, in good faith negotiations, to replace the invalid, illegal or unenforceable provisions with valid provisions, the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

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

11. **Payments.** All payments made to the Bank under this Fee Letter Agreement, the Agreement or the Notes shall be made in immediately available funds and by wire transfer to the Bank pursuant to wire transfer instructions provided by the Bank to the Authority from time to time.

12. **Confidentiality.** The Authority agrees not to post this Fee Letter Agreement on the Electronic Municipal Market Access site ("EMMA") without the prior consent of the Bank, which consent will not be unreasonably withheld or delayed. The Bank acknowledges and agrees that (i) this Fee Letter Agreement is subject to disclosure under the California Public Records Act, (ii) it will be posted to the agenda webpage for the joint meeting of the Authority and the City Council at which it will be considered, (iii) the terms of this Fee Letter Agreement will be described in the City's financial statements which are incorporated in the City's Comprehensive Annual Financial Report and posted to EMMA and (iv) the terms of this Fee Letter Agreement may be described in an official statement used for the offering of securities issued by the City, the Authority or the San Jose-Santa Clara Clean Water Financing Authority, which official statement may be posted to EMMA.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

Very truly yours,

WELLS FARGO BANK, NATIONAL
ASSOCIATION

By: _____
Name: _____
Title: _____

Acknowledged and Agreed to this
18th day of October, 2020

CITY OF SAN JOSE FINANCING
AUTHORITY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED TO AS TO FORM:

_____, City Attorney

By: _____
Name: _____
Title: _____