

THIRD AMENDMENT TO IMPROVEMENT AGREEMENT

by and among

SAN JOSE-SANTA CLARA CLEAN WATER FINANCING AUTHORITY,

CITY OF SAN JOSE,

and

CITY OF SANTA CLARA

Dated as of [_____, 2009]

Relating to

San José-Santa Clara Clean Water Financing Authority
Sewer Revenue Refunding Bonds

[\$_____]
Series 2009A

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THIS THIRD AMENDMENT TO IMPROVEMENT AGREEMENT, made and entered into as of _____, 2009 (the "Third Amendment to Improvement Agreement"), is by and among the SAN-JOSE SANTA CLARA CLEAN WATER FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (the "Authority"), the CITY OF SAN JOSE, a municipal corporation organized and existing in the County of Santa Clara under its charter and the laws of the State of California ("San José") and the CITY OF SANTA CLARA, a municipal corporation organized and existing in the County of Santa Clara under its charter and the laws of the State of California ("Santa Clara").

WITNESSETH:

WHEREAS, San José and Santa Clara have heretofore entered into a joint exercise of powers agreement, dated as of March 1, 1981, as amended and restated by a second amendment and restatement thereof, dated as of October 17, 1995 (the "CWFA Agreement"), regarding the ownership, operation, maintenance and use of the existing wastewater treatment plant known as the "San José-Santa Clara Water Pollution Control Plant" (the "Treatment Plant") and the financing or refinancing of the costs of the construction of additions, improvements and betterments to the Treatment Plant;

WHEREAS, pursuant to that certain Master Indenture, dated as of October 1, 2005, as amended by that certain First Supplemental Indenture, dated as of October 1, 2005, by that certain Second Supplemental Indenture, dated as of October 1, 2005, each by and between the Authority and the Bank of New York Mellon Trust Company, N.A., as successor trustee to J.P. Morgan Trust Company, National Association, (the "Trustee") (together with the Third Supplemental Indenture, as defined herein, the "Indenture"), the Authority previously issued the San José-Santa Clara Clean Water Financing Authority Sewer Revenue Refunding Bonds, Series 2005A in the aggregate principal amount of \$54,020,000 (the "Series 2005A Bonds"), and its Variable Rate Sewer Revenue Refunding Bonds, Series 2005B in the aggregate principal amount of \$27,130,000 (the "Series 2005B Bonds" and, together with the Series 2005A Bonds, the "Series 2005 Bonds") in order to refinance the Authority's Sewer Revenue Bonds, Series 1995A and its Sewer Revenue Bonds, Adjustable Rate Series 1995B, which were issued to finance certain costs of a project (the "Project") to recycle highly treated wastewater from the San José-Santa Clara Water Pollution Control Plant for irrigation and industrial uses;

WHEREAS, the CWFA Agreement and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California authorize the Authority to issue certain indebtedness to refinance the costs of the Project;

WHEREAS, pursuant to an Improvement Agreement, dated as of November 1, 1995, as amended by a First Amendment to the Improvement Agreement, dated as of July 1, 1997, the Second Amendment to the Improvement Agreement, dated as of October 1, 2005, and this Third Amendment to the Improvement Agreement (collectively, the "Improvement Agreement"), each by and among the Authority, San José and Santa Clara, San José is obligated to pay principal of and interest on the Series 2005A Bonds and the Series 2005B Bonds from San José's Net System Revenues (as defined in the Improvement Agreement);

WHEREAS, the Authority has determined that it is advisable to provide for the issuance of revenue refunding bonds, designated the San José-Santa Clara Clean Water Financing Authority Sewer Revenue Refunding Bonds, Series 2009A (the "Series 2009A Bonds"), consisting of [\$ _____] aggregate principal amount of Series 2009A Bonds, payable from Base Payments under the Improvement Agreement, which Base Payments are payable from Net System Revenues of San José, in order to assist San José in refinancing certain costs of the Project by refunding the Series 2005B Bonds, to pay certain costs in connection with the issuance of the Series 2009A Bonds and to fund a reserve account for the benefit of the Series 2009A Bonds and the Series 2005A Bonds;

WHEREAS, in order to proceed with such refunding of the Series 2005B Bonds it is necessary and desirable for San José and Santa Clara to agree for San José to make certain payments to the Authority under and pursuant to the Improvement Agreement to provide for the payment of the Series 2005A Bonds and the Series 2009A Bonds;

WHEREAS, Section 7.4 of the Improvement Agreement provides that the Improvement Agreement may be amended by San José and Santa Clara for the purpose of, among other things, increasing or modifying the amount of Base Payments and Additional Payments payable under the Improvement Agreement; and

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, and for other valuable consideration, the receipt of which is hereby acknowledged, the Authority covenants and agrees with San José and Santa Clara, who each agree with each other and the Authority, for the equal and proportionate benefit of the respective holders from time to time of the Series 2009A Bonds, as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.1. Definitions of Terms. Unless the context otherwise requires, the terms defined in this Section 1.1 shall have the meanings herein specified for all purposes of the Improvement Agreement, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Unless otherwise defined in the Improvement Agreement, all capitalized terms used herein shall have the meanings assigned to such terms in the Indenture (as defined herein).

"Continuing Disclosure Agreements" shall mean the Continuing Disclosure Agreement executed in connection with the Series 2005 Bonds, dated October 5, 2005, by and between San José and the Trustee, and the Continuing Disclosure Certificate executed in connection with the Series 2009A Bonds, dated [____], 2009, by San José.

"Improvement Agreement" shall mean the Improvement Agreement, dated as of November 1, 1995, by and among the Authority, San José and Santa Clara, as amended by the First Amendment to Improvement Agreement, the Second Amendment to Improvement

Agreement, and this Third Amendment to Improvement Agreement, as the same may be amended from time to time.

“Indenture” shall mean the Master Indenture, dated as of October 1, 2005, by and between the Authority and the Trustee, as the same may be amended or supplemented from time to time, including as amended and supplemented by the First Supplemental Indenture, the Second Supplemental Indenture and the Third Supplemental Indenture.

“Series 2009A Bonds” shall mean the Authority’s Sewer Revenue Refunding Bonds, Series 2009A.

“Third Amendment to Improvement Agreement” shall mean this Third Amendment to Improvement Agreement, dated as of [_____, 2009], by and among the Authority, San José and Santa Clara.

“Third Supplemental Indenture” shall mean the Third Supplemental Indenture, dated as of [_____, 2009], by and between the Authority and the Trustee, and any amendments, modifications or supplements thereto.

“Trustee” shall mean The Bank of New York Mellon Trust Company, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States of America, as successor to J.P. Morgan Trust Company, National Association, or any successor Trustee thereto appointed in accordance to the terms and conditions of the Indenture.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. Representations of San José San José covenants with, and makes the following representations and warranties to, the Authority and Santa Clara as follows:

(a) San José is a municipal corporation duly organized and existing under its charter and the laws of the State of California;

(b) The Improvement Agreement has been duly authorized, executed and delivered by San José and, when this Third Amendment to Improvement Agreement has been authorized, executed and delivered by Santa Clara and the Authority, the Improvement Agreement will constitute a legal, valid and binding obligation of San José enforceable in accordance with its terms;

(c) All proceedings legally required to be taken by San José in connection with the authorization and execution of this Third Amendment to Improvement Agreement and the consummation of the transactions contemplated hereby, and all approvals, authorizations, consents or other orders of state or federal regulating agencies, public boards or bodies, if any, as may be legally required to be obtained by San José prior to the date of execution of this Third

Amendment to Improvement Agreement with respect to all or any of such matters, have been taken or obtained;

(d) San José is not a party to or bound by any agreement or instrument or subject to any charter or any other restriction or any judgment, order, writ, injunction, decree, law or regulation which now or in the future may materially and adversely affect the ability of San José to perform its obligations under the Improvement Agreement or which requires the consent of any third person to the execution of this Third Amendment to Improvement Agreement or the consummation of the transactions contemplated by the Improvement Agreement;

(e) The execution and delivery of this Third Amendment to Improvement Agreement and the consummation of the transactions herein contemplated will not conflict with or constitute a breach of or default under any bond, note or other evidence of indebtedness, or any material contract, agreement or lease to which San José is a party;

(f) The Net System Revenues received by San José from which payments will be made to the Authority pursuant to the Improvement Agreement are not subject to any lien, encumbrance or pledge having a priority equal to or greater than the covenants to pay Base Payments and Additional Payment from such Net System Revenues to the Authority contained in the Improvement Agreement; and

(g) San José is in compliance with all covenants set forth in the Improvement Agreement and is not in default thereunder.

SECTION 2.2. Representations of Santa Clara Santa Clara covenants with and makes the following representations and warranties to the Authority and to San José as follows:

(a) Santa Clara is a municipal corporation duly organized and existing under its charter and the laws of the State of California;

(b) The Improvement Agreement has been duly authorized, executed and delivered by Santa Clara and, when this Third Amendment to Improvement Agreement has been authorized, executed and delivered by San José and the Authority, the Improvement Agreement will constitute a legal, valid and binding obligation of Santa Clara enforceable in accordance with its terms;

(c) All proceedings legally required to be taken by Santa Clara in connection with the authorization and execution of this Third Amendment to Improvement Agreement and the consummation of the transactions contemplated hereby, and all approvals, authorizations, consents or other orders of state or federal regulating agencies, public boards or bodies, if any, as may be legally required to be obtained by Santa Clara prior to the date of execution of this Improvement Agreement with respect to all or any of such matters, have been taken or obtained;

(d) Santa Clara is not a party to or bound by any agreement or instrument or subject to any charter or any other restriction or any judgment, order, writ, injunction, decree, law or regulation which now or in the future may materially and adversely affect the ability of Santa

Clara to perform its obligations under the Improvement Agreement or which requires the consent of any third person to the execution of this Third Amendment to Improvement Agreement or the consummation of the transactions contemplated by the Improvement Agreement;

(e) The execution and delivery of this Third Amendment to Improvement Agreement and the consummation of the transactions herein contemplated will not conflict with or constitute a breach of or default under any bond, note or other evidence of indebtedness, or any material contract, agreement or lease to which Santa Clara is a party; and

(f) Santa Clara is in compliance with all covenants set forth in the Improvement Agreement and is not in default thereunder.

SECTION 2.3. Representations of the Authority The Authority makes the following representations and warranties to San José and Santa Clara:

(a) The Authority is a public entity created by the CWFA Agreement and pursuant to the provisions of the Law; and

(b) The Improvement Agreement has been duly authorized, executed and delivered by the Authority and, when this Third Amendment to Improvement Agreement has been authorized, executed and delivered by Santa Clara and San José, the Improvement Agreement will constitute a legal, valid and binding obligation of the Authority, enforceable in accordance with its terms.

ARTICLE 3

ISSUANCE OF SERIES 2009A BONDS

SECTION 3.1. Issuance of Series 2009A Bonds The Authority, pursuant to the Indenture, has authorized the issuance of the Series 2009A Bonds in the not to exceed aggregate principal amount of [\$_____]. The proceeds of the Series 2009A Bonds shall be applied as set forth in the Third Supplemental Indenture.

ARTICLE 4

AMENDMENTS TO IMPROVEMENT AGREEMENT

SECTION 4.1. Amendments to Improvement Agreement The Improvement Agreement is hereby amended as follows:

(a) the following recital is hereby added to the Improvement Agreement:

“WHEREAS, the Santa Clara Resolution is no longer in force or of any effect and, accordingly, all references to the Santa Clara Resolution in the Improvement Agreement shall be disregarded;”

(b) the following definitions are hereby added to Section 1.1 of the Improvement Agreement:

“**Annual Debt Service**” shall mean, as of any date of calculation, the amount of principal and interest becoming due and for any Fiscal Year (or other designated 12 month period) payable on all Bonds and Obligations of the Authority issued or incurred on a parity therewith (“**Authority Parity Obligations**”) in such Fiscal Year (or other designated 12 month period); provided, however, that for the purposes of computing Annual Debt Service:

(a) if the Authority Parity Obligations are Variable Rate Indebtedness, the interest rate on such Authority Parity Obligations for periods when the actual interest rate has not yet been determined shall be assumed to be (i) with respect to Authority Parity Obligations which are Tax-Exempt, the ten year historical average of the SIFMA (formerly, BMA) Index ending with the week preceding the date of calculation is made or if the SIFMA Index is not available for such period, another similar rate or index selected by the Authority, and (ii) with respect to Authority Parity Obligations which are not Tax-Exempt, the ten year historical average of the One Month USD LIBOR Rate ending with the month preceding the date the calculation is made or if the One Month USD LIBOR Rate is not available for such period, another similar rate or index selected by the Authority;

(b) notwithstanding paragraph (a) of this definition, if a Qualified Swap Agreement providing for the Authority to pay a fixed scheduled rate of interest is in effect with respect to any Authority Parity Obligations constituting Variable Rate Indebtedness, the interest rate on such Authority Parity Obligations during the period such Qualified Swap Agreement is scheduled to be in effect shall be assumed to be the interest rate specified in such Qualified Swap Agreement;

(c) notwithstanding paragraph (a) of this definition, if any Qualified Swap Agreement is in effect pursuant to which the Authority pays a variable rate, the Authority Parity Obligations to which it relates shall be assumed to be Variable Rate Indebtedness and interest shall be calculated as provided in (a) above;

(d) if any Authority Parity Obligations are Paired Obligations, the interest rate on such Authority Parity Obligations shall be the collective fixed interest rate to be paid by the Authority with respect to such Paired Obligations;

(e) principal and interest payments on Authority Parity Obligations shall be excluded to the extent such payments are to be paid

from amounts on deposit (and investment earnings thereon) as of the date of calculation with the Authority, the Trustee or any other fiduciary in an escrow or other account irrevocably dedicated therefor and to the extent that such interest payments are to be paid from the proceeds of Authority Parity Obligations held by the Authority, the Trustee or any other fiduciary as capitalized interest specifically to pay such interest;

(f) in determining the principal amount due in any period, payment (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) shall be assumed to be made in accordance with any amortization schedule established for such debt, including any Sinking Account Installments which are dedicated to the annual retirement of such Authority Parity Obligations or any scheduled redemption or payment of Authority Parity Obligations on the basis of Accreted Value; and

(g) with respect to Crossover Refunding Obligations, annual Crossover Refunding Requirements shall be used in the computation of Annual Debt Service.

“Federal Securities” means United States of America Treasury bills, notes, bonds or certificates of indebtedness, or obligations the timely payment of which is guaranteed directly by the United States of America, including evidences of direct ownership of proportionate interests in future interest or principal payments of such obligations; provided that investments in such proportionate interests must be limited to circumstances wherein (a) a bank or trust company acts as custodian and holds the underlying United States obligations; (b) the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor of the underlying United States obligations; (c) the underlying obligations are not redeemable prior to maturity, and (d) the underlying United States obligations are held in a special account, segregated from the custodian’s general assets, and are not available to satisfy any claim of the custodian, any Person claiming through the custodian, or any Person to whom the custodian may be obligated.

“Maximum Annual Debt Service” means, as of any date of calculation, the greatest Annual Debt Service payable in any Fiscal Year (or other designated 12 month period) including the Fiscal Year in which the calculation is made or any subsequent Fiscal Year (or other designated 12 month period).

“Municipal Obligations” means municipal obligations, rated in the highest Rating Category by any Rating Agencies, meeting the following conditions:

(a) the municipal obligations are not to be redeemable prior to maturity, or the trustee with respect to such obligations has been given irrevocable instructions concerning their calling and redemption;

(b) the municipal obligations are secured by Federal Securities, which Federal Securities, except for provisions relating to surplus moneys not required for the payment of the municipal obligations and the substitution of such Federal Securities for other Federal Securities satisfying all criteria for Federal Securities, may be applied only to interest, principal and premium payments of such municipal obligations;

(c) the principal of and interest on the Federal Securities (plus any cash in the escrow fund) are sufficient, without reinvestment, to meet the liabilities of the municipal obligations; and

(d) the Federal Securities serving as security for the municipal obligations are held by an escrow agent or trustee.

“Parity Obligations” means, with respect to either of San José or Santa Clara, as applicable, any obligation, indebtedness, claim, bond, note, lease, mortgage, deed of trust, pledge, security interest, encumbrance, lien of any kind upon, or payable from, Net System Revenues of such City on a parity with the obligation of such City to pay its allocable share of the Base Payments and Additional Payments hereunder.

“Series,” whenever used herein with respect to Bonds, means all of the Bonds designated as being of the same series, authenticated and delivered in a simultaneous transaction, regardless of variations in maturity, interest rate, redemption and other provisions, and any Bonds thereafter authenticated and delivered upon transfer or exchange or in lieu of or in substitution for (but not to refund) such Bonds as herein provided.

(c) The definitions of “San José System,” “San José System Revenues,” “Santa Clara System Revenues,” and “Santa Clara System” are hereby deleted from Section 1.1 of the Improvement Agreement in their entirety and hereby replaced with the following:

“San José System” shall mean the existing system of the City of José for the collection, conveyance, treatment and disposal of sewage and wastewater, and all additions, betterments, extensions and improvements to such system or any part thereof hereafter made.

“San José System Revenues” shall mean all moneys received by San José from rates, fees, charges and subsidies received for, and all other income and receipts derived by San José from, the operation of, the Treatment Plant, the Project and the San José System, including (i) sewer service and use charges imposed by San José with respect to the San José System and (ii) connection

charges imposed for the cost of connecting to the Treatment Plant or the Project (which charges are presently deposited in San José's Treatment Plant Connection Fee Fund), together with San José's allocable share of moneys received from Outside Users as payment of costs of the maintenance and operation of the Project and the Treatment Plant and pursuant to the Supplemental Agreements, but excluding:

(i) Refundable deposits made to establish credit, lease deposits and security deposits;

(ii) Proceeds from bonds issued by San José or proceeds from loans obtained by San José;

(iii) Moneys received from insurance proceeds or from the sale of or upon the taking by or under the threat of eminent domain of all or any part of (i) the Project and the Treatment Plant (which moneys shall be received and disposed of in accordance with the Indenture and (ii) the San José System;

(iv) Sanitary sewer connection fees imposed as a charge for the cost of connecting to the portion of the San José System, other than the Treatment Plant or the Project (which charges are presently deposited in San José's Sanitary Sewer Connection Fee Fund);

(v) Grants of the State of California or the United States of America or local governmental entities which are designated by the grantor for a specific purpose and are therefore not available to be treated as System Revenues pursuant to this Improvement Agreement; and

(vi) Moneys received from the levy of ad valorem taxes by San José.

San José System Revenues also includes all interest, profits or other income derived from the deposit or investment of any moneys in any fund or account established by San José for the deposit of any San José System Revenues and all repayments of any loans made for customer retrofits required for connection to the Project.

Notwithstanding the foregoing, there shall be deducted from San José System Revenues any amounts transferred into a Rate Stabilization Fund established by San José with respect to the San José System, the Treatment Plant or the Project as provided in Section 4.2(d) hereof and there shall be added to San José System Revenues any amounts transferred out of such Rate Stabilization Fund to pay Maintenance and Operation Costs.

“Santa Clara System” shall mean the existing system of the City of Santa Clara for the collection, conveyance, treatment and disposal of sewage and wastewater, and all additions, betterments, extensions and improvements to such system or any part thereof hereafter made.

“Santa Clara System Revenues” shall mean all moneys received by Santa Clara from rates, fees, charges and subsidies received for, and all other income and receipts derived by Santa Clara from, the operation of the Treatment Plant, the Project and the Santa Clara System, including (i) sewer service and use charges imposed by Santa Clara with respect to the Santa Clara System and (ii) to the extent permitted by law, connection charges imposed for the cost of connecting to the Santa Clara System or the Treatment Plant or the Project, together with Santa Clara’s allocable share of moneys received from Outside Users as payment of costs of the maintenance and operation of the Project and the Treatment Plant and pursuant to the Supplemental Agreements, but excluding:

(i) Refundable deposits made to establish credit, lease deposits and security deposits;

(ii) Proceeds from bonds issued by Santa Clara or proceeds from loans obtained by Santa Clara;

(iii) Moneys received from insurance proceeds or from the sale of or upon the taking by or under the threat of eminent domain of all or any part of (i) the Project and the Treatment Plant (which moneys shall be received and disposed of in accordance with the Indenture) and (ii) the Santa Clara System;

(iv) Grants of the State of California or the United States of America or local governmental entities which are designated by the grantor for a specific purpose and are therefore not available to be treated as System Revenues pursuant to this Improvement Agreement; and

(v) Moneys received from the levy of ad valorem taxes by Santa Clara.

Santa Clara System Revenues also includes all interest, profits or other income derived from the deposit or investment of any moneys in any fund or account established by Santa Clara or San José for the deposit of any Santa Clara System Revenues and all repayments of any loans made for customer retrofits required for connection to the Project.

Notwithstanding the foregoing, there shall be deducted from Santa Clara System Revenues any amounts transferred into a Rate Stabilization Fund established by Santa Clara with respect to the Santa Clara System, the Treatment Plant or the Project as provided in Section 4.2(d) hereof and there shall be added

to Santa Clara System Revenues any amounts transferred out of such Rate Stabilization Fund to pay Maintenance and Operation Costs.

(e) Section 4.1(c) of the Improvement Agreement is hereby amended by deleting said subsection and replacing it in its entirety with the following:

“(c) In addition to Base Payments, San José and Santa Clara shall also pay to the Authority or to the Trustee, as the case may be, such Additional Payments allocated between San José and Santa Clara in accordance with Section 4.1(d), as may be necessary to maintain a balance of ten thousand dollars (\$10,000) in the Operating Fund established by the Indenture. The Additional Payments shall be used to pay Administrative Expenses and any payments payable by the Authority or the Trustee pursuant to the Indenture, including any amounts required by the Indenture to be deposited in the Debt Service Reserve Fund.

Such Additional Payments shall be billed to San José and Santa Clara by the Authority or the Trustee from time to time, together with a statement of an official of the Authority or the Trustee, certifying that the amount billed has been incurred or paid by the Authority or the Trustee, or is due and payable, for one or more of the above items, or is necessary to maintain the balance in the Operating Fund as required by the Indenture. After such a demand, amounts so billed shall be paid by San José pursuant to Section 4.3 hereof within thirty (30) days after receipt of the bill by San José.”

(f) Section 4.1(d)(i) of the Improvement Agreement is hereby amended by deleting said subsection and replacing it in its entirety with the following:

“(d)(i) San José’s and Santa Clara’s allocable shares of the aggregate Base Payments due with respect to the Series 2005A Bonds and the Series 2009A Bonds shall be as follows:

<u>Series</u>	<u>San José’s Share</u>	<u>Santa Clara’s Share</u>
Series 2005A Bonds	100.00%	0.000%
Series 2009A Bonds	100.00%	0.000%

(g) Section 4.4 of the Improvement Agreement is hereby amended by deleting said Section and replacing it in its entirety with the following:

“Section 4.4. System Revenues of Santa Clara and San José.

(a) Santa Clara. Santa Clara hereby covenants and agrees that this Improvement Agreement shall constitute a first claim on Net System

Revenues, on a parity with the pledge and lien which secures Parity Obligations issued by Santa Clara under Section 5.1, subordinate only to Santa Clara's obligation to pay Prior Base Payments and Prior Additional Payments pursuant to the Prior Improvement Agreement.

Notwithstanding any provision of this Improvement Agreement to the contrary, the provisions of this Section 4.4(a) shall only be applicable to Santa Clara from and after such time as Santa Clara shall be obligated to pay Base Payments hereunder.

(b) San José. San José hereby covenants and agrees that this Improvement Agreement shall constitute a first claim on Net System Revenues, on a parity with the pledge and lien which secures Parity Obligations issued by San José under Section 5.1, subordinate only to San José's obligation to pay Prior Base Payments and Prior Additional Payments pursuant to the Prior Improvement Agreement."

(h) Section 5.1 of the Improvement Agreement is hereby amended by deleting said Section and replacing it in its entirety with the following:

"Section 5.1. Limitation on Obligations. San José and Santa Clara covenant and agree that they will not (i) increase the amount of Base Payments and Additional Payments payable hereunder or (ii) create, assume or suffer to exist any Parity Obligations ((i) and (ii) being herein referred to as "Obligations") except as provided as follows:

San José and Santa Clara may (i) increase the amount of Base Payments and Additional Payments payable hereunder or (ii) create, assume or suffer to exist Parity Obligations, but only in accordance and upon compliance with the following specific conditions:

(a) There shall be no default under this Improvement Agreement; and

(b) Either (i) the Net System Revenues of such City, as determined from the accounting records of such City and of the Treatment Plant and the Project, for any twelve consecutive month period within the last eighteen months preceding the date of the adoption by the City Council of such City of a resolution providing for the creation of such Obligations, as shown by a certificate of the Authority or such City, or (ii) the estimated Net System Revenues for the first complete twelve consecutive month period when any additions or improvements to be made with the proceeds of such Obligations financed with such Obligations shall be in operation as estimated by and set forth in a certificate of the Consulting Engineer, plus, at the option of the Authority, any or all of the items designated (A) and (B) below, shall have produced an amount equal to at least 1.15 times the sum of (x) with respect to Base Payments hereunder, such City's allocable portion

of Maximum Annual Debt Service, plus (y) such City's additional allocable portion of Additional Payments, if any, plus (z) with respect to all outstanding and proposed Parity Obligations, the "maximum annual debt service" [coming due on such Parity Obligations during the current or any future Fiscal Year], as such amount of "maximum annual debt service" is calculated under the respective documents pursuant to which such Parity Obligations have been or are proposed to be issued or incurred (and if such documents make no provision for such calculation, "maximum annual debt service" for such Parity Obligations shall be calculated by San José or Santa Clara, as applicable, using a formula based substantially on the definition of "Maximum Annual Debt Service" set forth in this Improvement Agreement).

The items which may be added to Net System Revenues for purposes of meeting the requirements of this covenant are as follows:

(A) An allowance for Net System Revenues to be derived from any additions or improvements to be made with the proceeds of such Obligation or with the proceeds of Authority Parity Obligations previously issued and also for such Net System Revenues from any such additions or improvements which have been made from moneys from any source but which, during all or any part of such twelve consecutive month period, were not in service (but less any such Net System Revenues attributable to any such additions or improvements and received during such twelve consecutive month period), all in an amount equal to one hundred percent (100%) of the estimated additional average annual Net System Revenues to be derived by such City from such additions and improvements for the first twenty-four months in which each addition or improvement is respectively to be in operation, all as shown by the certificate of a Consulting Engineer; and

(B) An allowance for additional earnings arising from any increase in the charges made for the use of the System allocable to such City which has become effective prior to the creation of such Obligation, but which, during all or any part of such twelve consecutive month period, was not in effect, in an amount equal to one hundred per cent (100%) of the amount by which the Net System Revenues attributable to such City would have been increased if such increase in charges had been in effect during the whole of such twelve consecutive month period, as shown by the certificate of a Consulting Engineer.

Before any such Obligation shall be issued and delivered, or entered into, such City shall file the following documents with the Trustee:

(1) A certificate of such City certifying that such City is in compliance with all covenants set forth in this Improvement Agreement, and is not in default hereunder; and

(2) A certificate of the Authority or such City or a certificate or opinion of an Independent Certified Public Accountant or a Consulting Engineer, based on an examination of the financial statements of such City, and, if required, reliance on a certificate of the Authority or such City with respect to the allowances provided for in paragraphs (A) or (B) above, as appropriate, that the requirements of paragraph (b) above have been met. The above-referenced certificate or opinion or certificates or opinions shall be filed after the sale of the Obligation proposed to be incurred (but prior to the delivery thereof and receipt of payment therefor).

Notwithstanding any provision of this Improvement Agreement to the contrary, the provisions of this Section 5.1 shall only be applicable to Santa Clara from and after such time as Santa Clara shall be obligated to pay Base Payments hereunder.

(i) Section 5.17 of the Improvement Agreement is hereby amended by deleting said Section and replacing it in its entirety with the following:

“Section 5.17. Continuing Disclosure. San José covenants and agrees to comply with and carry out all provisions of the Continuing Disclosure Agreements. Notwithstanding any other provisions of this Improvement Agreement, failure of San José to comply with the Continuing Disclosure Agreements shall not constitute an Event of Default under this Improvement Agreement.”

(j) Section 7.2 of the Improvement Agreement is hereby amended by deleting said Section and replacing it in its entirety with the following:

“Section 7.2. Notices. All notices, certificates, or other communications shall be deemed sufficiently given on the second day following the day on which the same have been mailed by U.S. mail, postage prepaid and addressed as follows:

if to the Authority: San José-Santa Clara Clean Water Financing Authority
c/o City of San José
Finance Department
200 East Santa Clara Street, 13th Floor
San José, California 95113-1905
Phone: (408) 535-7010
Fax: (408) 292-6480

if to San José: City of San José
Finance Department
Attn: Debt Management
200 East Santa Clara Street, 13th Floor
San José, CA 95113-1905
Phone: (408) 535-7010
Fax: (408) 292-6482

if to Santa Clara: City Clerk
City of Santa Clara
City Hall
1500 Warburton Avenue
Santa Clara, CA 95050

If to Trustee: The Bank of New York Mellon Trust Company, N.A.
Attention: Milly Canessa
550 Kearny Street, Suite 600
San Francisco, CA 94108
Fax: (415) 399-1647

A duplicate copy of each notice, certificate or other communication given hereunder by any party shall also be given to the Trustee and the other parties hereto. The Authority, San José, Santa Clara and the Trustee may by notice given hereunder, designate any different address to which subsequent notices, certificates or other communications shall be sent.”

(k) The first paragraph of Section 7.4 of the Improvement Agreement is hereby amended by deleting said paragraph and replacing it in its entirety with the following:

“Section 7.4. Amendments, Changes and Modifications. Except as otherwise provided in this Improvement Agreement or the Indenture, subsequent to the initial issuance of the Bonds and prior to payment in full of the Bonds, or provision for such payment having been made as provided in the Indenture, this Improvement Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee; provided, however, that no such written consent of the Trustee shall be required to the

extent the amendment relates to Sections 4.2, 4.4 and 5.1 of this Improvement Agreement solely as they relate to Santa Clara as long as Santa Clara is not obligated to pay Base Payments hereunder. The Trustee shall give such consent if the Trustee has been furnished an opinion of counsel that, following such amendment, San Jose and Santa Clara will be obligated under this Improvement Agreement to make Base Payments and Additional Payments to the Authority sufficient to enable the Authority to pay principal of and interest on the Bonds and to meet all its other obligations under the Indenture. In making such determination, the Trustee may rely upon such certificates or opinions from qualified attorneys, engineers or accountants as the Trustee may deem necessary and obtain from the Authority.”

ARTICLE 5

MISCELLANEOUS

SECTION 5.1. Application of Improvement Agreement Except as expressly provided in this Third Amendment to Improvement Agreement, every term and condition contained in the Improvement Agreement shall apply to this Third Amendment to Improvement Agreement with the same force and effect as if it were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this Third Amendment to Improvement Agreement.

SECTION 5.2. Execution in Counterparts This Third Amendment to Improvement Agreement may be executed in any number of counterparts, each of which shall be deemed for all purposes to be an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Santa Clara, the Authority and San José and have caused this Third Amendment to Improvement Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

APPROVED AS TO FORM:

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

Assistant City Attorney

By: _____
JENNIFER SPARACINO
City Manager

Attest:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2230
Facsimile: (408) 249-7846

ROD DIRIDON, JR.
City Clerk

**SAN JOSE-SANTA CLARA CLEAN
WATER FINANCING AUTHORITY,
a joint powers authority**

APPROVED AS TO FORM:

By: _____
Its: _____

Chief Deputy City Attorney

**CITY OF SAN JOSE,
a California municipal corporation**

By: _____
Its: _____