

## CUSTODY AGREEMENT

\$9,000,000\*  
CITY OF SAN JOSE  
GENERAL OBLIGATION BONDS, SERIES 2009  
(PUBLIC SAFETY PROJECTS)

This Agreement, dated June 16, 2009 (this "Agreement") has been entered into by and between the City of San José (the "City") and Wells Fargo Bank, National Association (the "Custodian"). The City has appointed the Custodian to act as custodian for monies deposited by the City in connection with the issuance and administration of the above-captioned bonds (the "Bonds"). This Agreement sets out the terms and conditions of said appointment.

The City and the Custodian agree as follows:

1. The City shall deposit with or cause to be delivered to the Custodian on or about June 17, 2009, \$90,000. The Custodian shall deposit the funds in a custody account (the "Custody Account") established with the Custodian. All such deposits shall be delivered by wire transfer as follows:

Wells Fargo Bank, NA  
ABA 121000248  
Acct: 1038377  
Ref: SJ GO 2009 Good Faith Deposit  
Attn: Dania Samai, 213-614-3328

2. Upon the issuance of the Bonds, the Custodian shall distribute funds in the Custody Account as follows, with no further direction from the City:

(a) \$90,000 shall be transferred to the Issuer for deposit in the Project Fund as defined by and established under that certain Fiscal Agent Agreement dated as of June 1, 2009 between the Custodian in its capacity as fiscal agent and the City.

(b) If the Bonds are not delivered on or before June 25, 2009, or such later date as directed by the City, the Custodian shall deliver all funds to the City in accordance with the City's written instructions.

3. The Custodian shall hold and invest the funds in \_\_\_\_\_ shares and the City acknowledges that the Custodian may receive compensation from such mutual fund or its distributor. The Custodian shall distribute all investment earnings in accordance with instructions from the City.

4. This Agreement will terminate upon transfer of all the fund in accordance with Section 2 hereof.

5. The duties and responsibilities of Custodian shall be limited to those expressly set forth in this Agreement. In no event shall the Custodian be liable for any special, indirect or consequential damages. The Custodian will not be liable for any action taken or neglected to be taken by it in good faith in any exercise of reasonable care and reasonably believed by it to be within the discretion of power conferred upon it by this Agreement. The City agrees to indemnify and hold Custodian harmless from all loss, cost, damages, expenses, liabilities, judgments and attorneys' fees (including without limitation, allocated costs of in-house counsel) suffered or incurred by Custodian arising out of or in connection with this Agreement, except that this indemnity obligation shall not apply in the event of the negligence or willful misconduct of the Custodian. This indemnity obligation shall survive termination of this Agreement.

This Agreement is hereby executed as of the date first above written.

CITY OF SAN JOSE

By: \_\_\_\_\_  
Name: Julia H. Cooper  
Title: Deputy Director of Finance

Approved as to Legal Form:

By: \_\_\_\_\_  
Name: Danielle Kenealey  
Title: Chief Deputy City Attorney

WELLS FARGO BANK, NATIONAL  
ASSOCIATION,  
as custodian

By: \_\_\_\_\_  
Name: Dania D. Samai  
Title: Vice President