# LETTER OF CREDIT REIMBURSEMENT AGREEMENT

Dated as of October 1, 2010

by and among the

CITY OF SAN JOSE FINANCING AUTHORITY

and

CITY OF SAN JOSE

and

UNION BANK, N.A.,
as Bank

relating to

$17,640,000
City of San José Financing Authority
Lease Revenue Bonds Series 2008B-2
(Civic Center Garage Refunding Project)

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# LETTER OF CREDIT REIMBURSEMENT AGREEMENT

This LETTER OF CREDIT REIMBURSEMENT AGREEMENT, dated as of October 1, 2010 (the "Agreement"), by and among the CITY OF SAN JOSE FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under and by virtue of the laws of the State of California (the "Authority"), the CITY OF SAN JOSE, a municipal corporation and chartered city duly organized and existing by virtue of the Constitution and laws of the State of California (the "City") and UNION BANK, N.A., a national banking association (the "Bank").

## WITNESSETH

WHEREAS, the Authority, a joint exercise of powers authority duly organized and existing under and pursuant to that certain Joint Exercise of Powers Agreement, dated December 8, 1992, by and between the City and the Redevelopment Agency of the City of San José is authorized pursuant to the Bond Law (as defined herein) to borrow money for the purpose, among other things, of financing and refinancing public capital improvements for the City; and

WHEREAS, the Authority has heretofore issued its Tax-Exempt Lease Revenue Commercial Paper Notes (the "CP Notes") and applied a portion of the proceeds thereof to assist the City in connection with the City's acquisition and construction of a parking garage located across from the City's Civic Center at 50 North Fourth Street (the "Facilities" and, together with the hereinafter mentioned Site, the "Project") and certain improvements to the City's Civic Center; and

WHEREAS, the Authority previously issued a series of its lease revenue bonds, designated "City of San José Financing Authority Lease Revenue Bonds, Series 2008B (Civic Center Garage Refunding Project) (the "Original Bonds") under an Indenture of Trust, dated as of July 1, 2008 (the "Original Indenture"), by and between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee") to refinance the portion of the CP Notes issued for the Project and certain improvements to the City's Civic Center; and

WHEREAS, the payment of the principal of and interest on the Original Bonds, and the purchase price of the Original Bonds upon the optional or mandatory tender thereof, was initially supported by a direct pay letter of credit issued by the Bank of America, N.A. and the California State Teachers' Retirement System; and

WHEREAS, the Authority has determined to divide the Outstanding Original Bonds into two separate series, pursuant to a First Supplemental Indenture of Trust, dated as of October 1, 2010 (the "First Supplemental Indenture" and, together with the Original Indenture, the "Indenture") by and between Authority and the Trustee, and the designation of such respective series shall be Series 2008B-1 (the "Series B-1 Bonds") and Series 2008B-2 (the "Bonds"); and



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WHEREAS, the Authority has determined to replace California State Teachers' Retirement System with the Bank; and

WHEREAS, to induce the Bank to issue a direct pay Letter of Credit (as defined herein) in connection with the Bonds, all in accordance with the terms and conditions hereof, the City has agreed to reimburse the Bank for all amounts advanced under the Letter of Credit and to pay interest on such amounts and certain other costs, fees and expenses, all as provided herein and the Fee Letter Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

**DEFINITIONS**

SECTION 1.01. Certain Defined Terms. For purposes of this Agreement, capitalized terms used herein which are not defined herein shall have the meanings set forth in the Indenture or the Project Lease. In addition, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Accountant" means Macias, Gini & Connell LLP or any other firm of independent public accountants of recognized national or regional standing.

"Additional Payments" has the meaning assigned to that term in the Indenture.

"Agreement" shall mean this Letter of Credit Reimbursement Agreement, dated as of October 1, 2010, by and among the Authority, the City and the Bank, as the same may be supplemented and amended from time to time in accordance with its terms.

"Alternate Base Rate" shall mean, for any day, a rate per annum equal to the highest of (a) the Base Rate in effect on such day plus one percent (1.0%), (b) the Federal Funds Rate in effect on such day plus two percent (2.0%), (c) SIFMA Rate plus one percent (1.0%); or (d) eight percent (8.0%).

"Alternate Credit Facility" has the meaning assigned to that term in the Indenture.

"Authority" means the City of San José Financing Authority, a joint exercise of powers authority organized and existing under the Bond Law.

"Authorized Officers" shall have the meaning set forth in Section 3.01(b) hereof.

"Authorized Representative" has the meaning assigned to that term in the Indenture.

"Bank" shall mean Union Bank, N.A.



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"Bank Bonds" shall mean any and all Bonds which are purchased with the proceeds of a Tender Drawing under the Letter of Credit upon an optional or mandatory tender of the Bonds which the Remarketing Agent has been unable to remarket in accordance with the terms of the Remarketing Agreement and the Indenture and registered in the name of the Bank or such other designee at the direction of the Bank.

"Bankruptcy Code" means the Bankruptcy Code of the United States, Title 11 of the United States Code, as amended.

"Base Rate" means the rate of interest publicly announced by the Bank from time to time as its base rate; provided, that, without prejudice to the terms hereof, the Bank may from time to time make loans to certain customers at rates less than the Base Rate. It is a rate set by the Bank based upon various factors including the Bank's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the Base Rate announced by the Bank shall take effect at the opening of business on the day specified in the public announcement of such change.

"Bond Counsel" means any attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the validity of, and exclusion from gross income for federal tax purposes of interest on, bonds issued by states and political subdivisions and duly admitted to practice law before the highest court of any state of the United States and acceptable to the City.

"Bond Law" means the Marks-Roos Local Bond Pooling Act of 1985, commencing with Section 6584 of the California Government Code.

"Bonds" means the Series B-2 Bonds.

"Business Day" means a day that is not a (a) Saturday, a Sunday, a day on which banking institutions are authorized or required by law or executive order to be closed in the State or the State of New York for commercial banking purposes, a day on which trading on the New York Stock Exchange is suspended for more than four hours or a day on which the New York Stock Exchange is closed or (b) a day on which the Trustee, the Tender Agent, any Remarketing Agent, the Credit Provider or the Liquidity Provider are authorized or required by law to be closed.

"City" shall mean the City of San José, a chartered city and municipal corporation organized and existing under and by virtue of its City Charter, the Constitution and laws of the State, and any successor thereto.

"Code" means the Internal Revenue Code of 1986 and the regulations of the United States Department of Treasury issued thereunder, and in this regard reference to any particular section of the Code shall include reference to all successors to such section of the Code, when appropriate.

"Commitment" means $_____, of which $17,640,000 shall support the payment of principal with respect to the Bonds and $_____ shall support the payment of up to _____ (___) days' accrued interest with respect to the Bonds computed at a rate of interest equal to twelve percent (12%) per annum on the basis of a year of 365 days.

"Custody Agreement" shall mean the Custody Agreement dated as of October 1, 2010 by and between the Bank and the Tender Agent in the form of Exhibit B attached hereto as the same may be amended from time to time in accordance with its terms.

"Debt" of any Person shall mean, at any date, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (iv) all obligations of such Person as lessee which are capitalized in accordance with generally accepted accounting principles (or, in the case of the Authority, generally accepted accounting principles), (v) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities or property, (vi) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit or similar instrument, (vii) all debt of others secured by a Lien on any asset of such Person, whether or not such debt is assumed by such Person, (viii) all debt of others Guaranteed by such Person, and (ix) all net obligations under any Swap Contract and termination payments; provided, however, that with respect to the City, Debt shall exclude general obligation bonds of the City, conduit obligations issued by the City for the benefit of any special district or assessment district, obligations payable from special taxes, obligations issued by the City for the benefit of multi-family housing projects, enterprise obligations (that are not supported by general fund revenues of the City) and commercial paper notes of the Authority issued on behalf of the City, subject to Section 8.05 hereof.

"Default" means any condition or event which, with the giving of notice or lapse of time or both would unless cured or waived, become an Event of Default.

"Default Rate" shall mean, for any day, a fluctuating rate per annum equal to the Alternate Base Rate plus three percent (3.00%).

"Draw Date" has the meaning assigned to that term in Section 2.04 hereof.

"Drawing" shall mean a drawing under the Letter of Credit in accordance with its terms to pay the principal or purchase price of or accrued interest with respect to Bonds.

"Draw Rate" means the Alternate Base Rate plus one percent (1.0%) from and including a Draw Date to and including the thirtieth ($30^{th}$) day thereafter, the Alternate Base Rate plus two percent (2.0%) from and including the thirty-first ($31^{st}$) day thereafter to and including the one-hundred and eightieth ($180^{th}$) day thereafter, and, from and after the one-hundred and eighty first ($181^{st}$) day thereafter, an amount equal to the Term Loan Rate provided that at no time shall the Draw Rate be less than the rate of interest on any outstanding Bonds; provided,

further, that upon the occurrence and during the continuance of an Event of Default, the Draw Rate shall equal the Default Rate.

"Environmental Laws" means any and all Federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, licenses or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

"Event of Default" has the meaning assigned to that term in Section 9.01 hereof.

"Expiration Date" shall mean the date the Letter of Credit terminates in accordance with its terms.

"Federal Funds Rate" shall mean for any period a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not published for any day which is a Business Day, the average received by the Bank from three Federal Funds brokers of recognized standing selected by it.

"Fee Letter Agreement" means the Fee Letter Agreement, dated October __, 2010, by and between the Bank and the City.

"Final Drawing" has the meaning assigned to that term in the Letter of Credit.

"Financial Statements" means the audited financial statements of the City for each fiscal year ended on June 30.

"First Supplemental Indenture" means the First Supplemental Indenture of Trust, dated as of October 1, 2010, by and between the Authority and the Trustee.

"Fiscal Year" has the meaning assigned to that term in the Indenture.

"Fitch" has the meaning assigned to that term in the Indenture.

"Funds and Accounts" means the funds, accounts, and subaccounts pledged to the Bonds under the Indenture.

"Guarantee" by any Person shall mean any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or

payment of) such Debt (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), (ii) entered into for the purpose of assuring in any other manner the obligee of such Debt of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (iii) with respect to any letter of credit issued for the account of such other Person or as to which such other Person is otherwise liable for reimbursement of drawings, provided that the term Guarantee shall not include (i) endorsements for collection or deposit in the ordinary course of business, or (ii) performance or completion guarantees. The term "Guarantee" used as a verb has a corresponding meaning.

"Indenture" means the Indenture of Trust, dated as of July 1, 2008, by and between the Authority and the Trustee, as supplemented and amended by the First Supplemental Indenture.

"Independent Insurance Consultant" shall mean an independent insurance consultant selected and employed by the City (and which may include the City's insurance broker) and approved by the Bank which approval shall not be unreasonably withheld, experienced in the field of risk management.

"Interest Drawing" has the meaning assigned to that term in the Letter of Credit.

"Issuance Date" shall have the meaning set forth in Section 2.02 hereof.

"Lease Payments" shall mean all Lease payments payable by the City to the Authority as rental (but shall not include Additional Payments) under and pursuant to Section 4.04 of the Project Lease.

"Letter of Credit" shall mean the Irrevocable Direct-Pay Letter of Credit No. _____ issued by the Bank pursuant to this Agreement, and shall include the Letter of Credit, as amended, or any substitute Letter of Credit issued by the Bank in replacement of the existing Letter of Credit but shall not include any Alternate Letter of Credit. The Letter of Credit shall be in substantially the form of Exhibit A hereto.

"Lien" shall mean any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property.

"Maximum Bank Interest Rate" shall mean the maximum lawful rate of interest, if any, for obligations owed to the Bank under this Agreement.

"Moody's" has the meaning assigned to that term in the Indenture.

"Original Bonds" shall have the meaning assigned to that term in the recitals to this Agreement.

"Original Indenture" shall have the meaning assigned to that term in the recitals to this Agreement.

"Outstanding Bonds" or "Bonds Outstanding" has the meaning assigned to that term in the Indenture.

"Owner" or "Bond Owner" has the meaning assigned to that term in the Indenture.

"Partial Prepayment Drawing" has the meaning assigned to that term in the Letter of Credit.

"Participant" shall mean each bank or other financial institution purchasing a participation from the Bank pursuant to a Participation Agreement.

"Participation Agreement" shall mean any participation agreement, between the Bank and a Participant purchasing a participation and named therein, relating to purchasing a participating interest in the Bank's rights and obligations under this Agreement, the Letter of Credit and the other Related Documents.

"Payment Drawing" has the meaning assigned to that term in the Letter of Credit.

"Permitted Encumbrances" has the meaning assigned to that term in the Indenture.

"Person" means any natural person, corporation, firm, association, partnership, government, governmental agency, including the City, or any other entity, whether acting in an individual, fiduciary or other capacity.

"Plan" means, with respect to the City at any time, an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code.

"Project" has the meaning assigned to that term in the Indenture.

"Project Lease" means the Project Lease, dated as of July 1, 2008, by and between the Authority, as lessor, and the City, as lessee, as the same may be amended or supplemented in accordance with the terms hereof and thereof.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

"Purchase Period" shall mean the period commencing on the Issuance Date to and including 5:00 p.m. (New York City time) on the Expiration Date.

"Purchase Price" has the meaning assigned to that term in the Indenture.

"Quarterly Payment Date" shall mean the first Business Day of February, May, August and November in each year.

"Rating Agency" means S&P, Moody's, Fitch and any other rating agency who, at the time in question, shall be rating the Bonds, and its successors and assigns.

"Related Documents" mean the Bonds, the Indenture, the Project Lease, the Site Lease, this Agreement, the Remarketing Agreement, the Fee Letter Agreement and any other agreement entered into by and between the City and the Bank relating to the Bonds.

"Remarketing Agent" has the meaning assigned to that term in the Indenture.

"Remarketing Agreement" has the meaning assigned to that term in the Indenture.

"Series B-1 Bonds" means $17,640,000 principal amount of City of San José Financing Authority Lease Revenue Bonds, Series 2008B-1 (Civic Center Garage Refunding Project).

"Series B-2 Bonds" means $17,640,000 principal amount of City of San José Financing Authority Lease Revenue Bonds, Series 2008B-2 (Civic Center Garage Refunding Project).

"SIFMA" means the Securities Industry and Financial Markets Association.

"SIFMA Rate" means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by SIFMA or any Person acting in cooperation with or under the sponsorship of SIFMA and acceptable to the Bank and effective from such date. In the event Municipal Market Data no longer produces an index satisfying the requirements of the preceding sentence, the SIFMA Rate (a/k/a, the *"SIFMA Municipal Swap Index"*) shall be deemed to be the S&P Weekly High Grade Index, or if either such index is not available, such other similar national index as reasonably designated by the Bank.

"Site Lease" has the meaning assigned to that term in the Indenture.

"S&P" has the meaning assigned to that term in the Indenture.

"State" means the State of California.

"Stated Amount" has the meaning provided in the Letter of Credit.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and

(b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement; provided, however, that with respect to the City, Swap Contracts shall exclude Swap Contracts entered into with respect to the any of the following: general obligation bonds of the City, conduit obligations issued by the City for the benefit of any special district or assessment district, obligations payable from special taxes, obligations issued by the City for the benefit of multi-family housing projects, enterprise obligations (that are not supported by general fund revenues of the City) and commercial paper notes of the Authority issued on behalf of the City.

"Tender Advance" has the meaning assigned to that term in Section 2.05.

"Tender Agent" means Wells Fargo Bank, National Association, under the Indenture and any other successor Tender Agent under the Indenture.

"Tender Drawing" has the meaning assigned to that term in the Letter of Credit.

"Term Loan" has the meaning assigned to that term in Section 2.08(c).

"Term Loan Rate" means the Alternate Base Rate plus two percent (2.00%) per annum.

"Trustee" means Wells Fargo Bank, National Association, under the Indenture and any successor Trustee under the Indenture.

"Unreimbursed Amount" shall mean the aggregate amount of all drawings on the Letter of Credit for which the Bank has not been reimbursed by or on behalf of the City, including, without limitation, Tender Drawings to pay the Purchase Price of Bonds which become Bank Bonds.

"Weekly Rate" has the meaning assigned to that term in the Indenture.

SECTION 1.02. Computation of Time Periods. In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding."

SECTION 1.03. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles and practices consistent with those principles and practices promulgated or adopted by the Governmental Accounting Standards Board, an operating arm of the Financial Accounting Foundation, and its successors.

SECTION 1.04. References to Other Documents. All terms defined herein by reference to another document shall have the meanings ascribed to such terms in such other documents

existing as of the date hereof without regard to subsequent modification or amendment unless the Bank shall have consented otherwise in writing.

SECTION 1.05. Interpretation. The following rules shall apply to the construction of this Agreement unless the context requires otherwise: (i) the singular includes the plural, and the plural includes the singular; (ii) words imparting any gender include the other gender; (iii) references to statutes are to be construed as including all statutory provisions consolidating and amending, and all regulations promulgated pursuant to, such statutes; (iv) references to "writing" include printing, photocopy, typing, lithography and other means of reproducing words in a tangible visible form; (v) the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; (vi) references to the introductory paragraph, recitals, articles, sections (or clauses or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Agreement unless otherwise indicated; (vii) references to agreements and other contractual modifications shall be deemed to include all subsequent amendments or other modifications to said instruments, but only to the extent such amendments or other modifications are permitted or not prohibited by the terms of this Agreement; (viii) section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose; (ix) references to Persons include their respective permitted successors and assigns and, in the case of governmental Persons, Persons succeeding to their respective functions and capacities; and (x) in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding."

ARTICLE II

## AMOUNT AND TERMS OF THE LETTER OF CREDIT

SECTION 2.01. The Letter of Credit. The Bank agrees on the terms and subject to the conditions hereinafter set forth, to issue the Letter of Credit (substantially in the form of Exhibit A hereto) to the Trustee in the aggregate amount of the Commitment and expiring on the Expiration Date unless sooner terminated pursuant to the terms thereof. The Letter of Credit will secure the Bonds only when the Bonds bear interest at a Weekly Rate.

SECTION 2.02. Issuing the Letter of Credit. The Letter of Credit shall be issued by the Bank on October __, 2010, subject to the satisfaction or waiver of the conditions precedent set forth in Section 3.01 hereof (the "Issuance Date"). Payments made under the Letter of Credit by the Bank will be made from its own funds.

SECTION 2.03. Fee Letter Agreement. The City agrees to pay fees to the Bank in accordance with the terms of the Fee Letter Agreement. The fees and expense provisions set forth in the Fee Letter Agreement are incorporated herein by reference thereto as if fully set forth herein.

SECTION 2.04. Reimbursement On Demand. Subject to the provisions of Sections 2.05 and 2.06 hereof, the City shall pay to the Bank, in immediately available funds on each date on which the Bank shall honor a Payment Drawing under the Letter of Credit (the "Draw Date"), a

sum equal to the amount so paid, plus interest on the unreimbursed amount from the Draw Date until reimbursement is received by the Bank, as applicable, in full at the Default Rate; provided, however, that with respect to any Tender Drawing honored by the Bank under the Letter of Credit if the conditions precedent set forth in Section 3.03 have been satisfied on the related Draw Date, the repayment terms with respect thereto shall be governed by the provisions of Sections 2.05 and 2.06 hereof. No interest shall accrue and be payable with respect to any Payment Drawing (including a Tender Drawing which has converted to a Tender Advance pursuant to the terms of Section 2.05 hereof) if the City reimburses the Bank, as applicable, for such Drawing by 3:00 p.m., New York City time, on the Draw Date for such Drawing.

SECTION 2.05. Tender Advances. (a) If the Bank makes any payment under the Letter of Credit pursuant to a Tender Drawing and the conditions precedent set forth in Section 3.03 have been satisfied on the related Draw Date, such payment shall constitute an advance made by the Bank to the City on the related Draw Date and in the amount of such payment, each such Advance being a "Tender Advance" and collectively the "Tender Advances." If the Bank makes any payment under the Letter of Credit pursuant to a Tender Drawing and the conditions precedent set forth in Section 3.03 are not satisfied on the related Draw Date, such payment shall be due and payable on the related Draw Date.

(b) Except as described in the second sentence of Section 2.05(a) hereof, the unpaid principal amount of any Tender Advance and all accrued and unpaid interest thereon shall be repaid in accordance with the terms of Sections 2.06 and 2.08 hereof.

(c) Upon the Bank honoring a Tender Drawing under the Letter of Credit , the Bonds so purchased shall be registered in the name of the Bank (or such other designee as directed by the Bank) as Bank Bonds and held by the Tender Agent pursuant to the terms of the Custody Agreement. The Bank shall be entitled to all rights and remedies of an Owner so long as any Bank Bonds remain outstanding.

SECTION 2.06. Interest on Tender Advances; Interest Rate Recapture. (a) Subject to the last sentence of Section 2.04 hereof, the City shall pay interest on the unpaid principal amount of each Tender Advance from the date of such Tender Advance until the principal amount of such Tender Advance has been paid in full or is converted to a Term Loan, payable monthly in arrears on the last Business Day of each calendar month based on actual days elapsed divided by 360 with respect to the month then ended, at a fluctuating rate of interest per annum equal to the Draw Rate in effect from time to time; provided, however, that in the event such interest is not paid on any outstanding Tender Advance when due and payable pursuant to this Section 2.06 or Section 2.08 hereof, the City shall pay interest on the principal amount of such Tender Advance and the amount of the unpaid interest, if any, on demand, at the Default Rate in effect from time to time, beginning from the date the unpaid interest first started to accrue.

(b) Notwithstanding anything herein or in the Indenture to the contrary, to the extent permitted by law, if at any time any rate of interest payable to the Bank hereunder exceeds the Maximum Bank Interest Rate and, as a result, the Bank shall not receive payment at the interest rate as calculated hereunder without regard to the Maximum Bank Interest Rate, then the interest rate applicable to amounts owed to the Bank hereunder shall remain at the Maximum

Bank Interest Rate, despite any subsequent reduction in the interest rate applicable to amounts payable to the Bank hereunder, until the Bank shall have been paid that amount of interest that it would have been paid had there been no such interest rate limitation (the "Excess Interest"). The amount of Excess Interest accrued and unpaid with respect to any Bank Bonds at the time such Bank Bonds are remarketed or cease to be Outstanding shall be payable to the Bank as a fee on the date of remarketing or the date on which such Bank Bond ceases to be Outstanding. Subject to Section 2.08(d) hereof, in the event that the amount of Excess Interest due and owing the Bank hereunder has not been paid in full on the date of termination of this Agreement and the Letter of Credit, such unpaid Excess Interest shall be payable to the Bank as a fee on the date of termination; *provided* that the unpaid Excess Interest shall be payable as and to the extent that the then fair rental value with respect to the Project for the term of the Project Lease exceeds the sum of all other reimbursement obligations remaining unpaid hereunder and the amount of interest accruing on the Bonds during such term of the Project Lease.

SECTION 2.07. Reserved.

SECTION 2.08. Prepayments; Reinstatement of Letter of Credit Amounts; Term Loan.

(a) The City may on any Business Day, upon at least two Business Days' notice to the Bank, prepay to the Bank the outstanding amount of any Tender Advance, in whole or in part, together with interest accrued thereon at the Draw Rate. Such payments to the Bank, when accompanied by a certificate completed and signed by the Trustee (with a copy to the City) in substantially the form of Annex D to the Letter of Credit, shall be applied by the Bank as reimbursement for the related Tender Drawings (and as prepayment of Tender Advances resulting from such Tender Drawings in the manner described above). Upon receipt of reimbursement for the related Tender Drawing and a certificate in substantially the form of Annex D to the Letter of Credit, the Letter of Credit will reinstate in accordance with its terms.

(b) Prior to or simultaneously with the remarketing of Bank Bonds held by the Tender Agent (or such other designee of the Bank) for the benefit of the Bank and purchased with the proceeds of one or more Tender Drawings, the City shall cause the Trustee on behalf of the City to repay such Tender Advances (in the order in which they were made) to the Bank in an amount equal to the sum of (i) the aggregate principal amount of Bank Bonds being resold or to be resold plus (ii) the aggregate amount of accrued and unpaid interest on such principal amount which was paid with the proceeds of such Tender Drawing and (iii) the accrued and unpaid interest on the unreimbursed Tender Drawing at the Draw Rate. Such payments when accompanied by a certificate completed and signed by the Trustee in substantially the form of Annex D to the Letter of Credit shall be applied by the Bank in reimbursement of such Drawings (and as prepayment of Tender Advances resulting from such Drawings in the manner described above). Upon receipt of reimbursement for the related Tender Drawing and a certificate in substantially the form of Annex D to the Letter of Credit, the Letter of Credit will reinstate in accordance with its terms.

(c) Unless otherwise converted to a Term Loan as provided in this Section 2.08 hereof, a Tender Advance shall be due to the Bank upon the earliest of (i) a successful remarketing of the Bonds, (ii) 180 days after the date of such Tender Advance, and

(iii) the Expiration Date. On the 181st day after a Tender Advance, such Tender Advance shall automatically convert to a loan (a "Term Loan") payable at the Term Loan Rate without notice or further action by the City for the account of the Bank. Such Term Loan shall be due and payable in full not later than the third anniversary of the date of the related Tender Drawing. In addition, provided that no Event of Default has occurred or is continuing under this Agreement, Tender Advances that remain outstanding on the Expiration Date shall automatically convert to a Term Loan. The principal portion of any Term Loan under this Agreement shall be payable in equal, quarterly installments on each Quarterly Payment Date, commencing on the Quarterly Payment Date following such conversion. Interest on a Term Loan shall accrue at the Term Loan Rate, payable monthly in arrears on the last Business Day of each calendar month based on actual days elapsed divided by 360. The City may prepay the outstanding amount of any Term Loan at any time upon two (2) Business Days' notice to the Bank. Any Term Loan that remains due and owing to the Bank after three years from the Expiration Date shall accrue interest at a rate of 25% per annum (and not at the Term Loan Rate). Subject to the provisions of subsection (d) below, the Executive Director of the Authority and the City Manager shall use their best efforts to bring forward, at the earliest possible date, a plan of finance for consideration of the Authority Board and the City Council, respectively, for the redemption by the Authority of any Bank Bonds that remain Outstanding bearing interest at the rate of 25%.

(d) The Bank, the City and the Authority acknowledge that, if during a Term Loan, Bank Bonds are due and payable or if such Bonds are accelerated pursuant to Section 7.02 of the Indenture, or subject to mandatory redemption pursuant to Section 4.01(d) of the Indenture, then, pursuant to the terms of the Project Lease, the City will increase the Lease Payments under the Project Lease, if and to the extent that the fair market rental value of the Project is greater than the Lease Payments which would otherwise be due thereunder. If on the Expiration Date, the Bank, or its custodial agent, hold any Bank Bonds or any Term Loan or other unreimbursed drawing remains outstanding, the City and the Authority agree to cause the Lease Payments to be increased so that the annual aggregate Lease Payments equal the maximum fair market rental value of the Project. The City and the Authority shall, solely at the Bank's request, redetermine or cause to be redetermined the fair market rental value for the Project as of the Expiration Date or any such later date on which the Bank, or its custodial agent, holds any Bank Bonds or any Term Loan or other unreimbursed drawing remains outstanding. Such redetermination shall be by any method which the Bank may reasonably request, including an appraisal conducted by a certified MAI appraiser and shall be at the expense of the City. To the extent of any increase in the annual aggregate Lease payments in accordance with this Section 2.08(d), the Authority agrees to apply such amounts pursuant to Section 7.03 of the Indenture if the Bonds have been accelerated pursuant to Section 7.02 thereof, and otherwise to apply such amounts to the redemption of Bonds *pro rata* pursuant to Section 4.01(a) of the Indenture. In addition, the City and the Authority agree to extend the term of the Project Lease in accordance with Section 2.02 thereof if, on the stated expiration date thereof, any amounts remain due and owing to the Bank hereunder or under any of the other Related Documents.

SECTION 2.09. Increased Costs.

(a) If any change in any law or regulation or in the interpretation thereof by any court or administrative or governmental authority charged with the administration thereof

shall either (i) impose, modify or deem applicable any reserve, special deposit or similar requirement against letters of credit issued by, or assets held by, or deposits in or for the account of, the Bank or (ii) impose on the Bank any other condition regarding this Agreement, the Letter of Credit, or the Tender Advances or any other unreimbursed drawing hereunder, and the result of any event referred to in clause (i) or (ii) above shall be to (A) increase the cost to the Bank of issuing or maintaining its Letter of Credit or making or maintaining any Tender Advance or any other unreimbursed drawing hereunder or holding any Bank Bonds or (B) reduce the amount receivable or to be received with respect to its Letter of Credit or any Tender Advance or any other unreimbursed drawing hereunder (which increase in cost or reduction in amount shall be determined by the Bank's reasonable allocation of the aggregate of such cost increases or such reduced amounts resulting from such event), then, within 60 days after a written demand by the Bank, the City shall pay to the Bank, from time to time as specified by the Bank, additional amounts which shall be sufficient to compensate the Bank for such increased cost or such reduced amount. A certificate setting forth such increased cost incurred by the Bank as a result of any event mentioned in clause (i) or (ii) above and giving a reasonable explanation thereof, submitted by the Bank to the City, shall constitute such demand and shall, in the absence of manifest error, be conclusive and binding for all purposes as to the amount thereof.

(b) If the Bank shall have determined that the adoption after the date hereof of any law, rule or regulation regarding capital adequacy, or any change therein or in the interpretation or application thereof or compliance with any request or directive regarding capital adequacy (whether or not having the force of law) from any central bank or governmental authority, does or shall have the effect of reducing the rate of return on the Bank's capital as a consequence of the issuance of the Letter of Credit or any obligation hereunder to a level below that which the Bank could have achieved but for such adoption, change or compliance (taking into consideration the Bank's policies with respect to capital adequacy) by any amount deemed by the Bank to be material, then from time to time, within 60 days after demand by the Bank, the City shall pay to the Bank such additional amount or amounts as will compensate any Bank for such reduction. With such demand, the Bank shall provide the City with a statement in reasonable detail setting forth the calculation of the amount of such compensation. Such statement shall constitute demand for payment of the amount or amounts set forth therein and shall, in the absence of manifest error, be conclusive and binding for all purposes as to the amount or amounts thereof.

SECTION 2.10. Requests for Extension of Expiration Date. Upon the written request of the City by facsimile (with an original to follow by overnight courier) or by original sent by overnight courier in the form of Exhibit C hereto, made no earlier than the one year anniversary of the Issuance Date and no later than 120 days prior to the Letter of Credit Expiration Date, the Bank shall, within 60 days of such request, notify the City, the Trustee and the Tender Agent in writing whether or not the Bank will extend the Expiration Date for an additional period of one or more years, and if so, will deliver to the City a Notice of Extension in the form of Exhibit D hereto and a Notice of Extension of Letter of Credit Expiration Date in the form of Annex F to the Letter of Credit. If the Bank fails to notify the City of the Bank's decision within such 60-day period, the Bank shall be deemed to have rejected such request. The City and the Bank agree, and the City understands, that the granting of each such request is completely at the discretion of the Bank, and that the granting of any one or more of such requests does not

obligate the Bank to grant any subsequent such request. If the Bank determines to grant any such request, the Expiration Date shall be extended for the period agreed upon by the Bank and the City. The covenants and obligations of the City contained in this Agreement shall continue in full force and effect upon any extension, renewal or substitution of the Letter of Credit as provided herein, except insofar as the Bank may request or agree to any modification thereof.

SECTION 2.11. Payments and Computations. The City shall make each payment hereunder not later than 3:00 p.m., New York City time, on the day when due without deduction or offset in lawful money of the United States of America to the Bank at its address referred to in Section 11.03 hereof in same-day funds or in accordance with the wire instructions in Section 11.03 hereof. Amounts not paid by 3:00 p.m., New York City time, on the day when due will accrue interest at the Default Rate until paid. Computations of the Draw Rate, Default Rate, upfront fee, facility fee, early termination fee and all other commissions and fees established herein (as applicable) shall be made on the basis of a year of 360 days for the actual number of days elapsed, except as otherwise provided herein.

SECTION 2.12. Non-Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or commission, as the case may be.

SECTION 2.13. Evidence of Advances. The Bank shall maintain in accordance with its usual practice an account or accounts evidencing the obligation of the City resulting from each Drawing under its Letter of Credit and from each Tender Advance or Term Loan made from time to time hereunder and the amounts of principal and interest payable and paid from time to time hereunder. In any legal action or proceeding in respect of this Agreement, the entries made in such account or accounts shall be presumptive evidence of the existence and amounts of the obligations of the City therein recorded; provided, however, that any failure to make entries or any error in doing so shall not limit or otherwise affect the obligations of the City under this Agreement.

SECTION 2.14. Security for Draws; Authority Obligations Limited Obligations.

(a) The Bonds are limited obligations of the Authority and are payable, as to principal and interest, exclusively from the funds pledged therefor under the Indenture. All of the Bonds are equally secured by a pledge of, and charge and lien upon, all of the Revenues, and the Revenues constitute a trust fund for the security and payment of the interest on and the principal of the Bonds. The obligations of the City under this Agreement are payable in accordance with the provisions of this Agreement and the Project Lease solely as Lease Payments or Additional Payments and the amounts on deposit with the Trustee in the various Funds and Accounts (including the investments thereof) held by the Trustee under the Indenture, and the Lease Payments and the Additional Payments payable to the Bank and the amounts on deposit in the various Funds and Accounts (including the investments thereof) held by the Trustee under the Indenture are hereby granted, pledged and assigned as collateral by the Authority to secure such payment; such grant of a security interest is to be a valid and binding pledge and assignment. To the extent that the Bank honors a Payment Drawing (other than a

Tender Drawing) under the Letter of Credit, the Bank shall be subrogated to the rights of the holders of the Bonds which received payments of principal or interest on such Bonds with the proceeds of such Payment Drawing. The Lease Payments and the Additional Payments payable to the Bank and the amounts on deposit in the various Funds and Accounts (including the investments thereof) held by the Trustee under the Indenture shall be immediately subject to the lien of the pledge made hereby without any further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City or the Authority, irrespective of whether such parties have notice thereof.

(b) To secure the performance of the City hereunder and the payment of all amounts due or to become due to the Bank, the Authority shall grant to the Trustee and the Bank, pursuant to the terms of the Indenture, a lien on and security interest in all Funds and Accounts and all separate trust accounts created under the Indenture and held by the Trustee, other than remarketing proceeds, as set forth in the Indenture.

ARTICLE III

## CONDITIONS PRECEDENT; POST-CLOSING CONDITIONS

SECTION 3.01. Conditions Precedent to Issuance of Letter of Credit. The obligation of the Bank to issue the Letter of Credit as set forth in Section 2.01 hereof is subject to the conditions precedent that, on or prior to the Issuance Date of the Letter of Credit, the Bank shall receive the following documents, all in form and substance satisfactory to the Bank. Drafts of such documents shall be delivered to the Bank for review no later than five (5) Business Days prior to the Issuance Date:

(a) the closing transcript relating to the issuance of the Bonds (the "Closing Transcript") and executed copies of any amendments to any of the Related Documents contained in the Closing Transcript certified by the City Clerk or Deputy City Clerk of the City as being true and correct, have not been amended unless such amendment has been provided to the Bank and, as of the Issuance Date, each such Related Document is in full force and effect;

(b) resolutions of the City and the Authority authorizing the execution, delivery and performance of this Agreement and the Fee Letter Agreement and the issuance of the Letter of Credit by the Bank, and other matters contemplated hereby and designating the officers and employees of the City and the Authority empowered to act as authorized officers hereunder ("Authorized Officers") and a certificate of the City Clerk or Deputy City Clerk of the City and the Authority Secretary, or deputy Secretary, certifying the names and signatures of each Authorized Officer;

(c) a certificate of an Authorized Officer of the City and the Authority certifying that on and as of the Issuance Date (i) the City's and the Authority's representations and warranties, respectively, contained herein are true and correct, (ii) no Event of Default has occurred and is continuing and (iii) no event has occurred and is continuing which, with the passage of time or giving of notice or both, would constitute an Event of Default;

(d) a certificate of the Tender Agent certifying the names and true signatures of the officials of the Tender Agent authorized to sign the Related Documents to which it is a party, including but not limited to the Custody Agreement, and the other documents to be delivered by the Tender Agent hereunder.

(e) opinions of counsel to the City and the Authority, addressed to the Bank, in form and substance acceptable to the Bank and its counsel;

(f) (i) a no adverse tax opinion of bond counsel and a (i) reliance letter of bond counsel in favor of the Bank authorizing the Bank to rely on the orginal bond counsel opinions as of the date such bond counsel opinions were rendered;

(g) a certificate of the City stating that all insurance policies required by the Project Lease, including rental interruption insurance, remain in full force and effect and that all such policies shall have been issued by insurers rated in the "A" category by Best's or otherwise approved by the Bank;

(h) a certificate of the City stating the fair rental value of the Project in form and substance acceptable to the Bank;

(i) an opinion of counsel to the Bank addressed to the City in form and substance satisfactory to the City;

(j) an executed copy of the Custody Agreement;

(k) an executed copy of this Agreement;

(l) executed copies of all other Related Documents;

(m) reserved.

(n) evidence in form and substance satisfactory to the Bank that each of Moody's, Fitch and S&P has assigned an underlying rating to the Bonds of no lower than "Aa3," "AA" and "AA," respectively, and that such ratings have not have been downgraded, suspended or withdrawn;

(o) evidence that (i) a CUSIP Number has been obtained and reserved from at least one Rating Agency CUSIP Services for the Bank Bonds and (ii) the Bank Bonds (and their related CUSIP Number) shall have been assigned a long-term rating of at least "Baa3" by Moody's, "BBB-" by S&P or "BBB-" by Fitch; and

(p) such further documentation, certifications or opinions as the Bank may reasonably request in connection with matters arising under this Agreement.

All certificates to be provided by the City to the Bank pursuant to this Section 3.01, and the opinions of counsel to be rendered hereunder, shall be dated as of the Issuance Date.

SECTION 3.02. Additional Conditions Precedent to Issuance of the Letter of Credit. The obligation of the Bank to issue the Letter of Credit shall be subject to the further conditions precedent that on the date of the issuance of the Letter of Credit:

(a) the following statements shall be true and the Bank shall have received a certificate signed by a duly authorized official of the City, dated the date of such issuance, stating that:

(i) the representations and warranties contained in Article VI of this Agreement are true and correct on and as of the Issuance Date of the Letter of Credit as though made on and as of such date; and

(ii) no event has occurred and is continuing, or would result from the issuance of the Letter of Credit, which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse or both;

(b) the Bank shall have received such other approvals, opinions or documents as the Bank may reasonably request; and

(c) the City shall have paid or reimbursed the Bank (or provided for such payment or reimbursement) for its costs and expenses as provided in Section 11.08 hereof and the fees and expenses of counsel to the Bank.

SECTION 3.03. Conditions Precedent to Each Advance. Each payment made by the Bank under the Letter of Credit pursuant to a Tender Drawing shall constitute a Tender Advance hereunder (i.e., a drawing not payable on demand) only if on the date of such payment no event has occurred and is continuing, or would result from such payment, which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse or both. Unless the City shall have previously advised the Bank in writing that the above statement is no longer true, the City shall be deemed to have represented and warranted, on the date of each payment by the Bank under the Letter of Credit pursuant to a Tender Drawing that on the date of such payment the above statement is true. Upon expiration or sooner termination of the Letter of Credit, any Tender Advances outstanding will cease to be Tender Advances and, thereafter, shall constitute a Term Loan. All payments due to the Bank that are not Tender Advances are due immediately without demand.

ARTICLE IV

**RESERVED**

ARTICLE V

## OBLIGATIONS ABSOLUTE

SECTION 5.01. Obligations Absolute. To the fullest extent permitted by applicable law, the obligations of the City to pay or to reimburse the Bank pursuant to this Agreement in the amount of any Drawings on the Letter of Credit plus interest accrued on such amount pursuant to Sections 2.04 and 2.06 hereof shall be unconditional and irrevocable, and shall survive the termination of this Agreement and shall be paid or performed strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation, the following circumstances:

(a) any lack of validity or enforceability of the Letter of Credit, this Agreement or any of the Related Documents;

(b) any amendment or waiver of or any consent to departure from the terms of this Agreement or any of the Related Documents;

(c) the existence of any claim, set-off, defense or other right which the City or any other person may have at any time against the Trustee, any beneficiary or any transferee of the Letter of Credit (or any persons or entities for whom the Trustee, any such beneficiary or any such transferee may be acting), the Bank or any Participant or any other person or entity, whether in connection with this Agreement, the Related Documents or the transactions contemplated hereby or thereby or any unrelated transaction;

(d) any demand, statement or any other document presented under the Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(e) any non-application or misapplication by the Trustee or otherwise of the proceeds of any Drawing;

(f) payment by the Bank under the Letter of Credit to the persons entitled thereto against presentation of a draw or certificate which does not comply with the terms of the Letter of Credit, provided that such payment shall not have been the result of the gross negligence or willful misconduct of the Bank;

(g) the surrender or impairment of security for the performance or observance of any of the terms of this Agreement or any of the Related Documents;

(h) the transfer of the Letter of Credit, provided that such transfer shall not have been the result of the gross negligence or willful misconduct of the Bank;

(i) any breach of contract or other dispute involving the Trustee, any beneficiary or any transferee of the Letter of Credit (or any persons or entities for whom the Trustee, any such beneficiary or any such transferee may be acting), the City, the holders of the Bonds or any other person or entity; or

(j) any other circumstances or happening whatsoever, whether or not similar to any of the foregoing which is not the result of the gross negligence or willful misconduct of the Bank.

Notwithstanding the foregoing, the obligations of the City under this Agreement are payable in accordance with the provisions of this Agreement and the Project Lease solely as Lease Payments or Additional Payments and the amounts on deposit with the Trustee in the various Funds and Accounts (including the investments thereof) held by the Trustee under the Indenture.

ARTICLE VI

## REPRESENTATIONS AND WARRANTIES

SECTION 6.01. Representations and Warranties of the City. The City hereby represents and warrants as follows:

(a) Organization, Powers, Etc. The City (i) is a chartered city and a municipal corporation duly organized and existing under and by virtue of its charter and the Constitution and the laws of the State of California, (ii) has full power and authority to own its properties and carry on its business as now conducted and (iii) has full power and authority to execute (or adopt, if applicable), deliver and perform its obligations under this Agreement and the Related Documents.

(b) Authorization, Absence of Conflicts, Etc. The execution (or adoption, if applicable), delivery and performance of this Agreement and the Related Documents to which it is a party (i) have been duly authorized by the City, (ii) do not and will not conflict with, or result in violation of any provision of law or any order, rule or regulation of any court or other agency of government and (iii) do not and will not conflict with, result in a violation of or constitute a default under, the Related Documents to which the City is a party or any other material resolution, agreement or instrument to which the City is a party or by which the City or any of its property is bound.

(c) Governmental Consent or Approval. The execution (or adoption, if applicable), delivery and performance of this Agreement and the Related Documents to which the City is a party and the sale do not and will not require registration with, or the consent or approval of, or any other action by, any Federal, state or other governmental authority or regulatory body other than those which have been made or given, including approval by the Authority, and are in full force and effect (except for any federal securities laws or Blue Sky regulations, as to which no representation is given).

(d) Binding Obligations. The Related Documents to which the City is a party and this Agreement are legal, valid and binding obligations of the City, enforceable against the City in accordance with their terms subject to any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws, judicial decisions, public policy and principles of equity and public policy relating to or affecting creditors' rights or contractual obligations generally.

(e) Litigation. Except as described in the Remarketing Memorandum, there is no action or investigation pending with service of process accomplished or, to the best knowledge of the City, threatened against the City before any court or administrative agency which questions the validity of any act or the validity of any proceeding taken by the City in connection with the execution and delivery of this Agreement, the Related Documents to which the City is a party or the Bonds or wherein an unfavorable decision, ruling or finding would in any way adversely affect the validity or enforceability of this Agreement, such Related Documents or the Bonds.

(f) Financial Condition. The City's audited financial statements which have been furnished to the Bank have been prepared in conformity with generally accepted accounting principles (except as noted therein) and accurately present, in all material respects, the financial condition of the City as of the dates thereof; and, except as disclosed in the Remarketing Memorandum, there have been no material adverse changes in the business or affairs of the City since the date the last such report was so furnished to the Bank.

(g) Amendments. None of the Related Documents has been amended except by such amendments or supplements as have been delivered to the Bank prior to execution by it of this Agreement.

(h) No Default. The City is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in the Related Documents to which it is a party or, to the best of the City's knowledge, any other resolution, agreement or instrument to which it is a party which would have a material adverse effect on the ability of the City to perform its obligations hereunder or under the Related Documents to which the City is a party or which would affect the enforceability hereof or thereof.

(i) Fees Are Additional Payments. The amounts payable by the City to the Bank pursuant to the Fee Letter Agreement constitute Additional Payments under Section 4.08 of the Project Lease.

(j) Unreimbursed Amount and Interest Are Lease Payments or Additional Payments. The Unreimbursed Amount and all interest which may accrue thereon pursuant to the terms of this Agreement constitute either Lease Payments or Additional Payments under the Project Lease.

(k) Incorporation of Representations and Warranties by Reference. As of the Issuance Date, the City hereby makes to the Bank the same representations and warranties made by the City as are set forth in the Related Documents (other than this Agreement) to which it is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. No amendment to such representations and warranties or defined terms made pursuant to the Related Documents (other than this Agreement) to which it is a party shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the consent of the Bank.

(l) No Proposed Legal Changes. Except as otherwise disclosed in the Remarketing Memorandum or otherwise in writing to the Bank, to the knowledge of the City Manager and City Attorney, there is no amendment, or no proposed amendment certified for placement on a statewide ballot, to the Constitution of the State of California or any published administrative interpretation of the Constitution of the State of California or any State of California law, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect (i) the execution and delivery of this Agreement or the other Related Documents to which the City is a party, or (ii) the performance by the City of its obligations under this Agreement or the other Related Documents to which the City is a party.

(m) Remarketing Memorandum. The information contained in the Remarketing Memorandum under the captions "INTRODUCTION – The City" and "APPENDIX A - The City of San José: Demographic, Economic and Financial Information " as of the Issuance Date, does not contain any untrue statement of any material fact.

(n) Title to Property; Project Lease. The City has good and marketable fee simple title to all of the Site (as defined in the Project Lease). The Project Lease is in full force and effect. The City, as lessee under the Project Lease, has beneficial use and occupancy of the Project. No waiver, indulgence or postponement of any of the City's obligations under the Project Lease has been granted by the Trustee. There exists no event of default or event, occurrence, condition or act that, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a default under the Project Lease.

(o) Disclosure. Except as disclosed in the Remarketing Memorandum or otherwise in writing to the Bank prior to the Issuance Date, there is no fact known to the City Manager and City Attorney, as of the date this representation is made, that would have a material adverse effect on (i) the ability of the City to perform its obligations hereunder or under the other Related Documents to which it is a party or (ii) the enforceability or validity of any of the Related Documents.

(p) Legal Matters. The City is in material compliance with all applicable laws, rules, regulations and orders of any governmental authority having jurisdiction over the City, non-compliance with which would materially and adversely affect the ability of the City to perform its obligations hereunder or under any other Related Documents to which it is a party.

(q) Environmental Laws. Except as otherwise disclosed to the Bank prior to the Issuance Date and to the best knowledge of the City Manager, the City Attorney and the Director of Environmental Services after due inquiry, with respect to each of the Site and the Project, the City is in material compliance with all applicable Environmental Laws (except to the extent non-compliance would have no material adverse effect on the annual fair market rental value of the Project) of which compliance includes, but is not limited to, the possession by the City of all material permits and other governmental authorization required under applicable Environmental Laws, and compliance with the terms and conditions thereof. To the knowledge of the City Manager, the City Attorney and the Director of Environmental Services after due

inquiry, the City has not received any written communication that alleges that the City is not in such compliance.

(r) ERISA. The City does not maintain or contribute to, and has not maintained or contributed to, any Plan that is subject to Title IV of ERISA.

(s) Regulations U and X. The City is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U or X issued by the Board of Governors of the Federal Reserve System); and no proceeds of the Bonds or the Drawings under the Letter of Credit will be used to extend credit to others for the purpose of purchasing or carrying any margin stock, or for any other purpose that would violate Regulation U or X issued by the Board of Governors of the Federal Reserve System.

(t) Reserved.

(u) Usury. The terms of this Agreement and the Related Documents regarding calculation and payment of interest and fees do not violate any applicable usury laws.

SECTION 6.02. Representations and Warranties of the Authority. The Authority hereby represents and warrants as follows:

(a) Organization, Powers, Etc. The Authority (i) is a joint exercise of powers authority duly organized under the laws of the State of California, (ii) has full power and authority to own its properties and carry on its business as now conducted, (iii) has full power and authority to execute (or adopt, if applicable), deliver and perform its obligations under this Agreement and the Related Documents to which it is a party, and (iv) to pledge the Revenues under the Indenture to secure obligations owed to the Bank hereunder.

(b) Authorization, Absence of Conflicts, Etc. The execution (or adoption, if applicable), delivery and performance of this Agreement and the Related Documents to which it is a party (i) have been duly authorized by the Authority, (ii) do not and will not conflict with, or result in violation of any provision of law or any order, rule or regulation of any court or other agency of government and (iii) do not and will not conflict with, result in a violation of or constitute a default under, the Related Documents to which the Authority is a party or any other material resolution, agreement or instrument to which the Authority is a party or by which the Authority or any of its property is bound.

(c) Governmental Consent or Approval. The execution (or adoption, if applicable), delivery and performance of this Agreement and the Related Documents to which the Authority is a party and the sale of the Bonds do not and will not require registration with, or the consent or approval of, or any other action by, any Federal, state or other governmental authority or regulatory body other than those which have been made or given, including approval by the City, and are in full force and effect (except for any federal securities laws or Blue Sky regulations, as to which no representation is given).

(d) Binding Obligations. The Related Documents to which the Authority is a party and this Agreement are legal, valid and binding obligations of the Authority, enforceable against the Authority in accordance with their terms subject to any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws, judicial decisions, public policy and principles of equity and public policy relating to or affecting creditors' rights or contractual obligations generally.

(e) Litigation. Except as described in the Remarketing Memorandum, there is no action or investigation pending with service of process accomplished or, to the best knowledge of the Authority, threatened against the Authority before any court or administrative agency which questions the validity of any act or the validity of any proceeding taken by the Authority in connection with the execution and delivery of this Agreement, the Related Documents to which the Authority is a party or the Bonds or wherein an unfavorable decision, ruling or finding would in any way materially adversely affect the validity or enforceability of this Agreement, such Related Documents or the Bonds.

(f) Amendments. None of the Related Documents has been amended except by such amendments or supplements as have been delivered to the Bank prior to execution by it of this Agreement.

(g) No Default. The Authority is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in the Related Documents or, to the best of the Authority's knowledge, any other resolution, agreement or instrument to which it is a party which would have a material adverse effect on the ability of the Authority to perform its obligations hereunder or under the Related Documents to which the Authority is a party or which would affect the enforceability hereof or thereof.

(h) Unreimbursed Amount and Interest Are Lease Payments or Additional Payments. The Unreimbursed Amount and all interest which may accrue thereon pursuant to the terms of this Agreement constitute either Lease Payments or Additional Payments under the Project Lease.

(i) No Sovereign Immunity. The Authority does not enjoy any rights of immunity on the grounds of sovereign immunity in respect of its obligations hereunder or under any other Related Document to which it is a party or by which it is bound.

(j) Incorporation of Representations and Warranties by Reference. As of the Issuance Date, the Authority hereby makes to the Bank the same representations and warranties made by the Authority as are set forth in the Related Documents (other than this Agreement) to which it is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. No amendment to such representations and warranties or defined terms made pursuant to the Related Documents (other than this Agreement) to which it is a party shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the consent of the Bank.

(k) No Proposed Legal Changes. Except as disclosed in the Remarketing Memorandum or as otherwise disclosed in writing by the Authority to the Bank, to the knowledge of the Executive Director of the Authority and the City Attorney, acting as counsel to the Authority, there is no amendment, or no proposed amendment certified for placement on a statewide ballot, to the Constitution of the State of California or any published administrative interpretation of the Constitution of the State of California or any State of California law, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect (i) the execution and delivery of this Agreement or the other Related Documents to which the Authority is a party, or (ii) the performance by the Authority of its obligations under this Agreement or the other Related Documents to which the Authority is a party.

(l) Remarketing Memorandum. The information contained in the Remarketing Memorandum under the captions "INTRODUCTION – The Authority" and "THE AUTHORITY," as of the Issuance Date, does not contain any untrue statement of any material fact.

(m) Title to Property. The Authority has good and marketable leasehold title to all of the Project pursuant to the Site Lease. The Site Lease is in full force and effect. No waiver, indulgence or postponement of any of the Authority's obligations under the Site Lease has been granted by the City. There exists no event of default or event, occurrence, condition or act that, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a default under the Site Lease.

(n) Disclosure. Except as disclosed in the Remarketing Memorandum or in writing to the Bank prior to the Issuance Date, there is no fact known to the Executive Director of the Authority that would have a material adverse effect on (i) the ability of the Authority to perform its obligations hereunder or under the other Related Documents to which it is a party or (ii) the enforceability or validity of the Indenture or any of the other Related Documents.

(o) Usury. The terms of this Agreement and the Related Documents regarding calculation and payment of interest and fees do not violate any applicable usury laws.

(p) Legal Matters. The Authority is in material compliance with all applicable laws, rules, regulations and orders of any governmental authority having jurisdiction over the Authority, non-compliance with which would materially and adversely affect the ability of the Authority to perform its obligations hereunder or under any other Related Documents to which it is a party.

(q) Security. The Indenture creates a valid security interest in favor of the Trustee, for the benefit of the Owners from time to time of the Bonds and the Bank, all of the Authority's right title and interest in the Revenues, the Project Lease and the Additional Payments, as security for the punctual payment and performance of the obligations of the Authority under this Agreement and under the Letter of Credit.

(r) Regulations U and X. The Authority is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of

Regulation U or X issued by the Board of Governors of the Federal Reserve System); and no proceeds of the Bonds or the Drawings under the Letter of Credit will be used to extend credit to others for the purpose of purchasing or carrying any margin stock, or for any other purpose that would violate Regulation U or X issued by the Board of Governors of the Federal Reserve System.

(s) Reserved.

(t) ERISA. The Authority does not maintain or contribute to, and has not maintained or contributed to, any Plan that is subject to Title IV of ERISA.

ARTICLE VII

**AFFIRMATIVE COVENANTS**

Until the termination of this Agreement and the payment in full to the Bank of all amounts payable to the Bank hereunder, the Authority and the City, as applicable, hereby covenants and agrees as follows.

SECTION 7.01. Reports and Other Information.

(a) Reporting Requirements.

(i) The City agrees to furnish to the Bank as soon as available, and in any event not more than 210 days after the end of the City's Fiscal Year, the City's audited financial statements, certified and dated by an authorized financial officer of the City. These financial statements must be audited (with an unqualified opinion, using the accounting standards then applicable to the City) by an Accountant. Simultaneously with the delivery of the financial statements, the City shall furnish to the Bank a certificate providing that no default has occurred during the period covered by such financial statements.

(ii) Within 60 days of the commencement of each Fiscal Year, the City agrees to furnish to the Bank a summary of the proposed budget, the resolution of the City approving the proposed budget for adoption and direction to the City's website containing the entire proposed budget;

(iii) The City or the Authority shall provide notice to the Bank, as soon as possible, and in any event within six (6) days after the City or the Authority has actual knowledge of the occurrence of each Event of Default or each event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default, continuing on the date of such statement, a statement of an officer of the City or the Authority, as applicable, setting forth details of such Event of Default or event and the action which the City or the Authority, as applicable, proposes to take with respect thereto;

(iv) The City shall furnish to the Bank at the time information regarding the budgets are furnished to the Bank pursuant to clause (ii) above, but in no event later than October 1 of each year, (a) a copy of the current investment policy of the City (if any

such policy has been adopted by the City) for monies held in all funds and accounts of the City, and (b) a detailed description of the City's investment portfolio;

(v) Within fifteen (15) days of incurring or issuing any obligations (including but not limited to loans, bonds and agreements with regard to certificates of participation) for which an official statement, private placement or offering memorandum was prepared, payable in whole or in part from the City's General Fund, the City shall provide the Bank with a copy of any such official statement, private placement or offering memorandum prepared in connection with such obligations (which copy may be transmitted in electronic form);

(vi) The City or the Authority shall provide notice to the Bank, promptly after the commencement thereof, of (a) all actions, suits and proceedings for which service of process upon the City or the Authority, as applicable, has occurred before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, if prosecuted to an adverse conclusion, could reasonably be expected to have a material adverse impact on the ability of the City or the Authority to fulfill its obligations hereunder or under any Related Document to which they are respectively a party or (b) the occurrence of any other event or change which could have a material adverse effect on (x) the ability of the Authority or the City to perform their respective payment obligations hereunder or under the other Related Documents or (y) the enforceability or validity of the Indenture or any of the other Related Documents.; and

(vii) The City and the Authority shall provide such other information respecting the business, properties or the condition or operations, financial or otherwise, of the City and the Authority relating to this Agreement, the Bonds, the Indenture or any other Related Documents as the Bank may from time to time reasonably request.

All dates referred to above assume that the City will maintain its Fiscal Year end on June 30. If the Fiscal Year is changed, the dates referred to above will be changed accordingly.

(b) Other Information. The City and the Authority shall provide to the Bank such other information respecting the business affairs, financial condition and/or operations of the City and the Authority as the Bank may from time to time reasonably request.

SECTION 7.02. Sources of Payments. The City and the Authority shall make, or cause to be made, such payments from the sources and in the manner provided in this Agreement, the Indenture and the Project Lease, subject to the limitations contained therein, as are necessary to provide for the payment of the principal of and interest on the Unreimbursed Amount and all other amounts due and owing hereunder and the principal amount of and accrued interest with respect to the Bonds when due.

SECTION 7.03. Preservation of Pledge. The City and the Authority shall take any and all actions necessary or reasonably requested by the Bank to maintain the pledge described in Section 2.14 hereof.

SECTION 7.04. Taxes and Liabilities. The City and the Authority shall pay and discharge or cause to be paid and discharged promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income and profits, or upon any of its property, real, personal or mixed, or upon any part thereof, before the same shall become in default; provided that the City shall have the right to defer payment of taxes, assessments and governmental charges or levies so long as (i) it is contesting the validity of such obligations by appropriate legal action which serves to stay enforcement of such obligations or of any lien securing such obligations, and (ii) unless the amount is less than $5,000, it has obtained a bond, insurance or other security, if any, required in order to contest such taxes, assessments, governmental charges or levies.

SECTION 7.05. Operation and Maintenance of Project. To the extent legally available funds are available, maintain and preserve the Project and all buildings, facilities and equipment constituting any part of the Project with respect to facilities of like size and character. The City shall not abandon or vacate the Project, except as permitted by the Project Lease. The City shall from time to time make all necessary and proper repairs, renewals and replacements to the Project, consistent with the protection of the Bank and the Owners of the Bonds. If any event shall occur such that abatement is authorized under the Project Lease, the Executive Director of the Authority and the City Manager shall use their best efforts to bring forward at the earliest possible date a plan to mitigate any such abatement for consideration of the Authority Board and the City Council, respectively.

SECTION 7.06. Maintenance of Insurance.

(a) The City at all times shall insure the Project against such risks as are customarily insured against with respect to similar facilities and against loss or damage from such hazards, against loss of use of the Project, and risks to the person and property of others as are usually insured or reserved against by those with rights and interests in projects similar to the Project. The foregoing shall be satisfied if the City maintains the insurance described in Sections 5.03, 5.04, 5.05, 5.06 and 5.09 of the Project Lease.

(b) The City, at all times, shall maintain, or cause to be maintained, rental interruption insurance in an amount not less than the aggregate Lease Payments for a period of twenty-four (24) months, to insure against loss of rental income from the Project caused by perils covered by the insurance required in Section 5.04 of the Project Lease. Such insurance shall be in place as of the Issuance Date and may be maintained as part of or in conjunction with any other rental interruption insurance carried by the City. The rental interruption insurance required by this Section 7.06(b) shall not be maintained in the form of self-insurance.

(c) The City, at all times, shall maintain, or cause to be maintained, earthquake insurance with respect to the Project unless, based upon the written recommendation of the Independent Insurance Consultant, it is not obtainable in reasonable amounts at reasonable cost on the open market from reputable insurance companies. The City shall annually file such written recommendation with the Bank.

(d) All insurance policies referred to herein and in the Project Lease shall be maintained with insurers rated in the "A" category by Best's or otherwise approved by the Bank.

SECTION 7.07. Optional Redemption of Bonds. If the Authority elects to redeem Bonds in accordance with the provisions of the Indenture, the Authority agrees to direct the Trustee to select Bank Bonds for redemption prior to selecting any other Bonds for redemption.

SECTION 7.08. Keeping of Books. The City and the Authority shall keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the City and the Authority in accordance with generally accepted accounting principles consistently applied. The Authority and the City will permit, during normal business hours and from time to time, upon reasonable prior notice, the Bank or any of its agents or representatives to examine and make copies of and abstracts from the records and books of account of the Authority and the City, respectively (except records and books of accounts the examination of which by the Bank is prohibited by law), and to discuss the affairs, finances and accounts of the Authority and the City with any representative or any other appropriate officer of the Authority and the City or the Authority's or the City's independent public accountants. Without limiting the foregoing, upon reasonable prior notice the Authority and the City shall permit the Bank to visit and inspect the Project during regular business hours as often as the Bank may reasonably request.

SECTION 7.09. Performance and Compliance with Other Covenants. The City and the Authority shall perform and comply with each of the covenants and obligations set forth in the Indenture, the Project Lease and any other Related Documents to which it is a party and with all laws, statutes and regulations binding upon it, noncompliance with which would materially adversely affect the Authority's or the City's ability to perform its respective obligations under the Bonds, this Agreement or any of the other Related Documents.

SECTION 7.10. Disaster Relief. If the Project is damaged by an earthquake, or other disaster or emergency is declared by a local government, the Governor of the State of California, or the President of the United States, apply to the Office of Emergency Services ("OES"), the Federal Emergency Management Agency ("FEMA"), or other similar agency, the City shall apply for federal, state and local disaster relief funds in the maximum amount permitted under federal, state and local law, respectively, and apply all such designated funds received towards the repair or reconstruction of the Project.

SECTION 7.11. Covenants Contained in Project Lease. The covenants set forth in the Project Lease are incorporated by reference herein as covenants by the City to the Bank; provided, that to the extent that the terms of any covenant contained in the Project Lease conflicts with the terms of this Agreement, the terms of this Agreement shall control.

SECTION 7.12. Other Bank Facilities. No revolving credit agreement, letter of credit, surety bond, reimbursement agreement or other agreement or instrument under which any Person undertakes to make or provide funds to make payment of the Bonds, upon the maturity thereof or otherwise, or to purchase such Bonds shall be effective without the prior written consent of the Bank to arrangements satisfactory to the Bank regarding the relative rights and obligations of the

Bank and such Person and procedures with respect to the payment to be made to the Bank and such Person.

SECTION 7.13. Remarketing Agent. The Authority will covenant at all times to cause the Remarketing Agent to use its best efforts to remarket Bonds (including, without limitation, Bank Bonds) up to the Maximum Rate. If the Remarketing Agent fails to remarket any Bank Bonds for 30 consecutive calendar days, or otherwise fails to perform its duties under the Remarketing Agreement, then the Authority agrees, at the written request of the Bank, to cause the Remarketing Agent to be replaced with a Remarketing Agent satisfactory to the Bank. Any remarketing agreement with a successor remarketing agent shall provide that (a) such remarketing agent may resign upon at least 60 days prior written notice to the Authority, the Trustee and the Bank and (b) such remarketing agent shall use its best efforts to remarket the Bonds up to the Maximum Rate.

SECTION 7.14. Bank Bond Ratings. A Bank Bond rating must be maintained at all times while the Letter of Credit is in effect.

SECTION 7.15. Incorporation of Covenants by Reference. The Authority and the City each agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Related Documents to which it is a party, which provisions, as well as related defined terms contained herein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety. To the extent that any such incorporated provision permits any Person to waive compliance with or consent to such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such provision shall be complied with only if it is waived or consented to by the Bank and such document, opinion or other instrument shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Bank.

SECTION 7.16. City and the Authority to Maintain Existence. The Authority agrees that it will maintain its existence as a California joint exercise of powers authority. The City agrees that it will maintain its existence as a municipal corporation under its charter and the laws of the State.

SECTION 7.17. Further Assurances. The City and the Authority will execute, acknowledge where appropriate, and deliver within a reasonable period of time at the request of the Bank all such instruments and documents as in the opinion of the Bank are reasonably necessary or desirable to carry out the intent and purposes of this Agreement.

SECTION 7.18. Covenants and Legal Duties. The City agrees to include all minimum required Lease Payments and Additional Payments due under the Project Lease in each Fiscal Year in an amount necessary to pay all debt service on the Bonds in such Fiscal Year in its annual budget and to make the necessary annual appropriations for all such minimum required Lease Payments and Additional Payments. The covenants on the part of the City herein contained and in the Project Lease shall be deemed to be and shall be construed to be duties imposed by law, and it shall be the duty of each and every public official of the City to take such

action and do such things as are required by law in the performance, of the official duty of such officials to enable the City to carry out and perform such covenants and agreements.

SECTION 7.19. Ratings. (i) The City shall give written notice to the Bank as soon as practicable of the increase, decrease, withdrawal or suspension of any rating maintained by the City at Moody's, Fitch or S&P in respect of its unenhanced general fund indebtedness of the City; and (ii) the City shall cause to be maintained at least two ratings on its unenhanced general fund indebtedness by Moody's, Fitch or S&P.

SECTION 7.20. ERISA. The Authority and the City will comply in all material respects with Title IV of ERISA, if, when and to the extent applicable.

SECTION 7.21. Alternate Letter of Credit. The Authority and the City agree to use its best efforts to obtain an Alternate Credit Facility for the Letter of Credit in the event that (i) the Bank decides not to extend the Letter of Credit Expiration Date (such replacement to occur on the then current Letter of Credit Expiration Date) or (ii) the Letter of Credit shall otherwise terminate in accordance with its terms.

SECTION 7.22. Swap Agreements. The Authority and the City will each use its best efforts to enter into all future Swap Contracts with counterparties rated "AA-" (or its equivalent) or better by at least one rating agency. In no event shall any swap counterparty with respect to any such Swap Contract be rated lower than "A" (or its equivalent) by at least one rating agency, without the prior written consent of the Bank, at the time of entering into such Swap Contract.

ARTICLE VIII

## NEGATIVE COVENANTS

Until the termination of this Agreement and the payment in full to the Bank of all amounts payable to the Bank hereunder, the City and the Authority, as applicable, covenant and agree that they will not, unless the Bank shall otherwise consent in writing, undertake the following.

SECTION 8.01. Compliance with Laws, Etc. The City and the Authority will not violate any laws, rules, regulations, or governmental orders to which it is subject, which violation involves a reasonable likelihood of materially and adversely affecting its financial condition, business or results of operations with respect to the Project.

SECTION 8.02. Amendments. Without the prior written consent of the Bank, neither the City nor the Authority shall consent or agree to or permit any rescission of, termination of or amendment to or otherwise take any related actions under or in connection with the Project Lease, the Indenture or any other Related Document to which the City or the Authority, as applicable, are a party in any manner which could in any way adversely affect the rights or obligations of the Bank hereunder or its rights thereunder.

SECTION 8.03. Appointment of Agents. Without the prior written consent of the Bank, which consent shall not be unreasonably withheld or delayed, appoint, neither the City nor the

Authority shall remove or consent to the appointment or removal of the Trustee, the Tender Agent or the Remarketing Agent.

SECTION 8.04. Debt. Without the prior written consent of the Bank, which consent shall not be unreasonably withheld or delayed, the City shall not issue or incur any Debt or enter into any other obligations unless:

(i) such Debt will not exceed at any time any limitation set forth in the constitution or other laws of the State;

(ii) such Debt will not violate any provision of any Related Document to which the City is a party; and

(iii) the City shall not be in default under this Agreement or any other Related Document to which the City is a party.

SECTION 8.05. Commercial Paper Notes. Without the prior written consent of the Bank, upon an Event of Default hereunder the Authority on behalf of the City shall not issue any additional principal amount of commercial paper notes that are payable from the same source of funds as the Bonds, other than an amount necessary to pay interest on then outstanding notes and to refund maturing principal.

SECTION 8.06. Limitation on Voluntary Liens. The Authority and the City shall not create a pledge, lien or charge on any part of the Site, the Project, the Revenues, the Lease Payments or any Additional Payments, other than the lien in favor of holders of the Bonds and the Bank, Permitted Encumbrances or otherwise consented to in writing by the Bank; *provided, further,* that in no event shall any pledge, lien or charge on the Site, the Project, the Revenues, the Lease Payments or any Additional Payments securing any swap termination or payments provided for pursuant to any Swap Contract be first in priority to the pledge, lien or charge on any part of the Site, the Project, the Revenues, the Lease Payments or any Additional Payments or any other obligation owed the Bank hereunder. The City and the Authority covenant (i) to keep the Site and the Project and all parts thereof free from judgments, and materialmen's and mechanics' liens, claims, demands, encumbrances, liabilities and other liens of whatever nature or character, which, in each case, might hamper the City in utilizing the Site and the Project; and (ii) promptly, upon request of the Bank, to take such action from time to time as may be reasonably necessary or proper to remedy or cure any cloud upon or defect in the title to the Site or the Project or any part thereof, whether now existing or hereafter developing, to prosecute all actions, suits, or other proceedings as may be reasonably appropriate for such purpose.

SECTION 8.07. No Impairment. The City and the Authority will not take any action, or cause or permit the Trustee to take any action, under the Indenture, the Project Lease or any other Related Document inconsistent with the rights and remedies of the Bank under this Agreement.

SECTION 8.08. Lease Payments. The City and the Authority will not issue or authorize the issuance of any obligation payable from the Lease Payments due under the Project Lease other than the Bonds and unreimbursed drawings, Tender Advances and Term Loans.

SECTION 8.09. References to the Bank. The City and the Authority will not refer to the Bank in any official statement, offering memorandum, or private placement memorandum or make any changes in reference to the Bank in any revision of the Remarketing Memorandum without the Bank's prior written consent thereto, which consent shall not be unreasonably withheld or delayed.

SECTION 8.10. Voluntary Rent Abatement. Except as allowed by law and the terms of the Project Lease, the City shall not seek or assert a claim for abatement of rental payments under the Project Lease.

SECTION 8.11. Immunity. To the fullest extent permitted by law, each of the Authority and the City agrees not to assert the defense of immunity (on the grounds of sovereignty or otherwise) in any proceeding by the Bank to enforce any of the obligations of the Authority or the City under this Agreement or any other Related Document.

ARTICLE IX

## DEFAULT AND REMEDIES

SECTION 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" under this Agreement:

(a) default shall be made in the payment of any Unreimbursed Amount or any interest accrued thereon when due;

(b) default shall be made in the payment of any amount payable under the Fee Letter Agreement when due;

(c) default shall be made by the City or the Authority in the performance or observance of any other of the covenants, agreements or conditions on its part contained in Sections 7.03, 7.06(a), (b) and (c), 7.07, 7.12, 7.16, 7.18, 7.19,7.22 or Article VIII hereof;

(d) default shall be made by the City or the Authority in the performance or observance of any other of the covenants, agreements or conditions on its part contained herein which are not specifically provided for by another subsection of this Section 9.01 within thirty (30) days after written notice by the Bank to the City or the Authority or an Authorized Representative of the City or the Authority has actual knowledge thereof;

(e) default shall be made by the City in the delivery of an unqualified opinion of an Accountant pursuant to Section 7.01(a) herein within ninety (90) days after receipt of notice from the Bank;

(f) any Event of Default (as defined in the Indenture) shall occur and be continuing under the Indenture, and such default shall continue unremedied for any period of grace specified therein;

(g) any Lease Default Event (as defined in the Project Lease) shall occur and be continuing under the Project Lease, and such default shall continue unremedied for any period of grace specified therein;

(h) there shall occur the dissolution or liquidation of the City, or the filing by the City of a voluntary petition in bankruptcy, or the commission by the City of any act of bankruptcy, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceeding for its reorganization instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar act in any jurisdiction which may be now in effect or hereafter enacted;

(i) an order or decree shall be entered, with the consent or acquiescence of the City appointing a receiver or receivers of the City's interest in the Project, or any part thereof, or of the rents, fees, charges or other revenues therefrom, or if such order or decree, having been entered without the consent or acquiescence of the City;

(j) any representation or warranty made by the City or the Authority under or in connection with this Agreement or any Related Document shall prove to have been incorrect in any material respect when made;

(k) default shall be made in the payment of any amount which may be payable by the City to the Bank within five (5) Business Days after receipt of notice from the Bank (other than the payment obligations referred to in Section 9.01(a) or (b) hereof);

(l) this Agreement or any of the Related Documents shall cease to be valid and binding on the City or shall be declared to be null and void or the validity or enforceability thereof shall be contested by the City or a proceeding shall be commenced by any governmental agency or authority having jurisdiction over the City seeking to establish the invalidity or unenforceability thereof, or the City shall deny that it has any or further liability or obligation under this Agreement or any Related Document to which City is a party;

(m) any pledge or security interest created hereunder or under the Indenture to secure any amounts due under this Agreement shall fail to be valid or fully enforceable;

(n) the long-term unenhanced rating by Moody's, Fitch or S&P on any general fund indebtedness of the City shall be withdrawn, suspended or otherwise unavailable for credit related reasons or reduced below *"Baa3"* (or its equivalent), *"BBB-"* (or its equivalent) or *"BBB-"* (or its equivalent), respectively;

(o) one or more final, nonappealable judgments or orders for the payment of money in the aggregate amount of $10,000,000 or more shall be rendered against the City and such judgment or order shall continue unsatisfied and unstayed for a period of ninety (90) days; or

(p) the City shall (A) fail to make any payment, when due, on any Debt payable from the general fund of the City *pari passu* with the Lease Payments, unreimbursed Drawings, Tender Advances and Term Loans or any interest or premium thereon when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt and such default has not been waived; or (B) fail to perform or observe any material term, covenant or condition on its part to be performed or observed under any agreement or instrument relating to any such Debt when required to be performed or observed, and such failure has not been waived and shall continue after the later of (1) five Business Days after notice of such failure or (2) the applicable grace period, if any, specified in such agreement or instrument, and the effect of such failure to perform or observe is to accelerate the maturity of such Debt; or (C) be required to prepay any Debt (or such Debt shall be declared to be due and payable) other than by a regularly scheduled required prepayment or an optional prepayment, prior to the stated maturity thereof; provided, however, that in the case of clause (A), (B) or (C) any such failure shall not be considered an Event of Default hereunder if the same is being contested in good faith and by appropriate proceedings and such contest shall operate to stay the acceleration of the maturity of such Debt.

SECTION 9.02. Remedies. Upon the occurrence and continuance of an Event of Default, the Bank may, in their sole discretion, but shall not be obligated to:

(a) declare that all Unreimbursed Amounts, whether or not accelerated, shall thereafter bear interest at the Default Rate until paid in full;

(b) direct the Trustee to cause a mandatory redemption of the Bonds in accordance with Section 4.01(d) of the Indenture;

(c) direct the Trustee to cause a mandatory tender of the Bonds in accordance with Section 4.06(d)(iii)(c) of the Indenture; and/or

(d) exercise any other remedies available to the Bank at law or in equity.

## ARTICLE X

## CONTINUING OBLIGATION

This Agreement is a continuing obligation of the City and shall, until the later of the Expiration Date and the date on which all amounts due and owing to the Bank hereunder shall have been paid in full, (i) be binding upon the City, its successors and assigns, and (ii) inure to the benefit of and be enforceable by the Bank and its successors, transferees and assigns; provided, that the City may not assign all or any part of this Agreement without the prior written consent of the Bank.

ARTICLE XI

## MISCELLANEOUS

SECTION 11.01. Amendments and Non-Waiver. This Agreement may be amended only upon the written agreement of the City, the Authority and the Bank, and the City may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the City shall first obtain the prior written consent of the Bank. An Event of Default may be waived in writing by the Bank and any such Event of Default which has been waived in writing by the Bank shall not be deemed to be continuing during the period (including any retroactive period) for which the waiver is effective, but such waiver shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure to perform or observe any obligation hereunder. No failure or delay on the part of the Bank in exercising any right, remedy, power or privilege under this Agreement or under any of the Related Documents and no course of dealing among the City or any other person and the Bank shall operate as a waiver hereof or thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any of the Related Documents preclude any other or further exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the Related Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law or in equity or otherwise. No notice to or demand on the City in any case shall entitle the City to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the Bank to any other or further action in any circumstances without notice or demand. The Bank may remedy any default by the City hereunder or with respect to any other person, firm or corporation in a reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the City.

SECTION 11.02. Survival of Representations and Warranties. All agreements, representations and warranties of the City contained in this Agreement and in any certificates delivered pursuant hereto shall survive the execution and delivery of this Agreement and the issuance of the Letter of Credit hereunder, and shall survive payment of the reimbursement to the Bank of any payments or disbursements under the Letter of Credit and the termination of this Agreement.

SECTION 11.03. Notices. All notices, requests and other communications hereunder shall be in electronic or written form (including bank wire, telegram, telecopier, telex or similar writing) and shall be given to the party to whom addressed, at its address or telecopier or telex number set forth below, or such other address or telecopier or telex number as such party may hereafter specify for the purpose by notice to the other parties listed below. Each such notice, request or communication shall be effective (i) if given by telex, telecopy or other electronic means, when such communication is transmitted to the address specified below and the appropriate answerback is received, (ii) if given by mail, three (3) days after such communication is deposited in the United States mail with first class postage prepaid, addressed as aforesaid or (iii) if given by any other means, when delivered at the address specified below:

(a) If to the Authority, to:

City of San José Financing Authority
200 East Santa Clara Street
San José, California 95113-1905
Attention: Debt Management – Finance
Telephone: (408) 535-7010
Facsimile: (408) 292-6482

(b) If to the City, to:

City of San José
200 East Santa Clara Street
San José, California 95113-1905
Attention: Debt Management – Finance
Telephone: (408) 535-7010
Facsimile: (408) 292-6482

(c) If to Union Bank:

Union Bank, N.A.
Public Finance Unit
445 South Figueroa Street, G08-268
Los Angeles, California 90071
Re: City of San José
Attn: John Castanon
Telephone No.: (213) 236-5153
Telecopy No.: (213) 236-6917

(d) If to the Tender Agent, to:

Wells Fargo Bank, N.A.
707 Wilshire Blvd., 17th Floor
Los Angeles, California 90017
Attention: Corporate Trust Department
Telephone No.: (213) 614-3328
Telecopy No.: (213) 614-3355

Address for Payment of Fees:

Union Bank, N.A.
ABA No. 1220-00496
Ref: Letter of Credit No. _____
Credit to Account No. [ ]
Attention: SC-TSO STANDBY LOC

Address for Draw Requests and Notices:

Union Bank, N.A.
Public Finance Unit
445 South Figueroa Street, G08-268
Los Angeles, California 90071
Re: City of San José
Telephone No.: (213) 236-6434
Telecopy No.: (213) 236-6450

or (iv) in any of the foregoing cases, at such other address or telex, bank wire or telephone number as the addressee may hereafter specify for the purpose in a notice to the other party specifically captioned "Notice of Change of Address pursuant to Section 11.03 of the Reimbursement Agreement."

All notices given by telephone, telex, telecopier or other electronic means shall be confirmed in writing as promptly as practicable.

SECTION 11.04. Rights Cumulative. All rights and remedies existing under this Agreement and the Related Documents are cumulative to, and not exclusive of, any other rights or remedies available under contract or applicable law.

SECTION 11.05. USA PATRIOT Act. The Bank is subject to the USA PATRIOT Act and hereby notifies the City that pursuant to the requirements of that Act, the Bank is required to obtain, verify and record information that identifies the City, which information includes the name and address of the City and other information that will allow the Bank to identify the City in accordance with the Act.

SECTION 11.06. Indemnification. To the extent permitted by law, the City agrees to indemnify and hold harmless the Bank, its officers, directors, employees and agents (each an "Indemnified Party") from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever which an Indemnified Party may incur (or which may be claimed against an Indemnified Party by any Person) by reason of or in connection with the execution and delivery of and consummation of the transactions contemplated under this Agreement and the Related Documents, including, without limitation, (i) the offering, sale, remarketing or resale of Bonds (including, without limitation, by reason of any untrue statement or alleged untrue statement contained or incorporated by reference in any official statement, or in any supplement or amendment thereof, prepared with respect to the Bonds, or the omission or alleged omission to state therein a material fact necessary to make such statements, in the light of the circumstances under which they are or were made, not misleading or the failure to deliver an official statement to any offeree or purchaser of Bonds) and (ii) the execution and delivery this Agreement by the City; provided, however, that the City shall not be required to indemnify any Person for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by (a) the willful misconduct or gross negligence of the Bank (including without limitation, with respect to the Bank, failure of the Bank to honor its obligation to honor a properly presented and conforming draw request under the Letter of Credit) or (b) the material

inaccuracy of any information included or incorporated by reference in any official statement, and in any supplement or amendment thereto, concerning the Bank which was furnished in writing by the Bank expressly for inclusion or incorporated by reference therein. Nothing in this Section 11.06 is intended to limit the City's obligations contained in Article II. Without prejudice to the survival of any other obligation of the City hereunder, the indemnities and obligations of the City contained in this Section 11.06 shall survive the payment in full of amounts payable to the Bank and termination of the Letter of Credit. Notwithstanding anything set forth in this Section 11.06, the City shall have a claim against the Bank and the Bank shall be liable to the City, to the extent, but only to the extent, of any direct, as opposed to consequential, damages (any right by the City to receive consequential, special, indirect or punitive damages being thereby waived to the fullest extent permitted under applicable law) suffered by the City that the City proves were caused by the Bank's willful or grossly negligent payment or nonpayment under this Agreement or the Letter of Credit as determined by a court of competent jurisdiction.

SECTION 11.07. Liability of the Bank. The City assumes all risks of the acts or omissions of the Trustee and any other beneficiary or transferee of the Letter of Credit with respect to its use of the Letter of Credit. Neither the Bank nor any of its respective officers or directors shall be liable or responsible for: (a) the use which may be made of the Letter of Credit or any acts or omissions of the Trustee and any other beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to such Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit, except that the City shall have a claim against the Bank, and the Bank shall be liable to the City to the extent of any direct, as opposed to consequential, damages suffered by the City which such City proves were caused by the Bank's willful failure to make lawful payment under the Letter of Credit after the presentation to it by the Trustee or a transferee to whom the Letter of Credit has been transferred in accordance with its terms of a draw and certificate strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, unless the City or Tender Agent has notified the Bank that such documents do not comply with the Letter of Credit.

SECTION 11.08. Costs, Expenses and Taxes. In addition to any other amounts payable by the City under this Agreement, the City agrees to pay in immediately available funds on the Issuance Date all costs and expenses of the Bank including, without limitation, the reasonable fees and expenses of counsel for the Bank in connection with the preparation, issuance, or delivery, as the case may be, of the Letter of Credit, this Agreement, the Related Documents and any other documents that may be delivered in connection with any of the foregoing. In addition, the City agrees to pay promptly all costs and expenses of the Bank (including reasonable counsel fees and expenses) in connection with (i) the filing, recording, administration, transfer, amendment, maintenance, renewal or cancellation of the Letter of Credit, this Agreement, the Related Documents or any other document that the Bank or its counsel reasonably determines

that it must review or issue in connection with this Agreement, (ii) any payment by the Bank under the Letter of Credit (without duplication of any of the City's obligations under the Fee Letter Agreement) or (iii) any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of the Letter of Credit, this Agreement or the Related Documents, and any other documents which may be delivered in connection with this Agreement. In addition, the City agrees to pay promptly all costs and expenses, including without limitation reasonable attorneys' fees and disbursements (and fees and disbursements of the Bank's in-house counsel) expended or incurred by the Bank in any arbitration, mediation, judicial reference, legal action or otherwise in connection with (a) the negotiation, preparation, amendment, interpretation and enforcement of this Agreement and any Related Documents, including without limitation during any workout, attempted workout, and/or in connection with the rendering of legal advice as to the Bank's rights, remedies and obligations under the Related Documents, (b) collecting any sum which becomes due the Bank under this Agreement or any Related Documents, (c) any proceeding for declaratory relief, any counterclaim to any proceeding, or appeal, or (d) the protection, preservation or enforcement of any rights of the Bank. For the purposes of this section, attorneys' fees shall include, without limitation, fees incurred in connection with the following: (1) contempt proceedings; (2) discovery; (3) any motion, proceeding or other activity of any kind in connection with a bankruptcy proceeding or case arising out of or relating to any petition under Title 11 of the United States Code, as the same shall be in effect from time to time, or any similar law; (4) garnishment, levy, and debtor and third party examinations; and (5) postjudgment motions and proceedings of any kind, including without limitation any activity taken to collect or enforce any judgment. The Bank shall give written notice to the City of any amounts as to which the Bank is entitled to reimbursement or indemnification under this Section 11.08, and the City shall pay such amounts to the Bank.

SECTION 11.09. Subrogation. From and after payment by the Bank of a draw under the Letter of Credit relating to a payment on the Bonds and until the Bank is paid in full, the City agrees that the Bank shall succeed to all of the right, title and interest of the Trustee and the Owners with respect to the Bonds on which payment was made, despite any discharge and satisfaction of the lien of the Indenture pursuant to the terms thereof. Such subrogation of the Bank shall constitute additional security and shall not be deemed a substitution for the performance by the City of its obligations hereunder.

SECTION 11.10. Survival of Representations and Warranties. All statements contained in any Related Document or in any certificate, financial statement or other instrument delivered by or on behalf of the City pursuant to or in connection with this Agreement (including but not limited to any such statement made in or in connection with any amendment hereto or thereto) shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement (i) shall be made and shall be true at and as of the date of this Agreement, the date the Letter of Credit is issued and the date of each drawing under the Letter of Credit and (ii) shall survive the execution and delivery of this Agreement, regardless of any investigation made by the Bank or on its behalf.

SECTION 11.11. Participations. The Bank may participate to other banking or financial institutions of its choosing all or any portion of its obligations under the Letter of Credit and this

Agreement (to be evidenced by one or more Participation Agreements or similar document). The Bank has no obligation to disclose the participation of such other institution. In calculating any amounts owing to the Bank hereunder and under the Fee Letter Agreement, the Participants shall be entitled, subject to the terms thereof, to the payments set forth in Sections 2.08 and 2.09 as if they were the Bank, to the extent such Participants are affected by the provisions of those Sections. The foregoing notwithstanding, no such participation by the Bank shall in any way affect any of the obligations of the Bank under the Letter of Credit, and the City shall have no obligation to deal in any manner with any such Participant.

SECTION 11.12. Jury Trial Waiver. (a) With respect to any suit, actions or proceedings relating to this Agreement, to the fullest extent permitted by applicable law, each party to this Agreement waives any right it may have to trial by jury. The City further warrants and represents that such waiver has been intentionally, knowingly and voluntarily made, following consultation with its legal counsel. If and to the extent that the foregoing waiver of the right to a jury trial is unenforceable for any reason in such forum, the City and the Bank hereby consent to the adjudication of any and all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be empowered to hear and determine any and all issues in such reference whether fact or law. The City and the Bank represent that each has reviewed this waiver and consent and each knowingly and voluntarily waives its jury trial rights and consents to judicial reference following the opportunity to consult with legal counsel of its choice on such matters. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.

(b) The Bank hereby recognizes and agrees that the procedural requirements applicable to commencement of legal actions against either the City or the Authority differ from requirements applicable to non-governmental entities.

SECTION 11.13. Marketing Authorization. The City agrees and hereby authorizes the Bank to from time to time disclose the nature of this financial transaction in connection with its marketing to other prospective public entities. The Bank shall at all times preserve the confidentiality of all financial information provided to the Bank by the City in connection with this financing. The Bank's disclosure of this financial relationship shall be limited to the City's identity, the nature of the credit transaction and general size of the credit facility. The Bank may use the credit facility in such marketing materials. Any such case study would include the name of the City, nature of the credit facility, approximate size of the credit facility, and a brief description of the structure of the credit facility. The Bank will not disclose any confidential financial information of the City provided to the Bank in connection with this credit facility.

SECTION 11.14. Telecopied Documents. At the request of the City and the Authority, the Letter of Credit provides that demands for payment thereunder may be presented to the Bank by, among other methods, telecopy. The City and the Authority acknowledge and assume all risks relating to the use of such telecopied demands for payment and agree that their obligations under this Reimbursement Agreement and the Related Documents shall remain absolute, unconditional and irrevocable as provided herein if the Bank honors such telecopied demands for payment.

SECTION 11.15. Binding Effect. This Agreement shall become effective when it shall have been executed by the City and the Bank and thereafter shall be binding upon and inure to the benefit of the City and the Bank and their respective successors and assigns, except that the City shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Bank.

SECTION 11.16. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

SECTION 11.17. Governing Law. This Agreement and the obligations of the Bank, the City and the Authority shall be governed by, and construed in accordance with, the laws of the State of California.

SECTION 11.18. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

SECTION 11.19. Execution in Counterparts. It shall not be necessary that all parties execute and deliver the same counterpart of this Agreement. This Agreement shall therefore become effective when each party has executed any counterpart hereof and delivered the same to the other parties. All such counterparts, collectively, shall be deemed a single agreement.

SECTION 11.20. Satisfaction Requirement. If any agreement, certificate or other writing, or any action taken or to be taken, is by the terms of this Agreement required to be satisfactory to the Bank, the determination of such satisfaction shall be made by the Bank in its reasonable judgment exercised in good faith.

SECTION 11.21. Integration. This Agreement is intended to be the final agreement between the parties hereto relating to the subject matter hereof and this Agreement and any agreement, document or instrument attached hereto or referred to herein shall supersede all oral negotiations and prior writings with respect to the subject matter hereof. To the extent that any of the terms contained in the Project Lease or the Indenture conflict with the terms of the same or a similar provision contained herein, the provisions contained herein shall govern.

SECTION 11.22. No Reduction in Payments. All payments made by or on behalf of the City to the Bank hereunder or under any Related Document shall be made free and clear of, and without reduction for or on account of, any present or future stamp or other taxes, levies, imposts, duties, charges, fees, deductions, withholdings, restrictions or conditions of any nature whatsoever now or hereafter imposed, levied, collected, withheld or assessed by any governmental or taxing authority of the United States, the State of California or any political subdivision of the State of California, excluding income taxes now or hereafter imposed on the Bank (such nonexcluded taxes being called "Taxes"). If any Taxes are required to be withheld from any amounts payable to the Bank hereunder, the amounts so payable to the Bank shall be increased to the extent necessary to yield to the Bank (after payment of all Taxes) interest or any

such other amounts payable hereunder at the rates or in the amounts specified in the Project Lease. Upon request by the City, the Bank will provide the City with any documents required to be delivered by the Bank to enable the City to obtain a reduction of, or exemption from withholding of, any Tax. Whenever any Tax is payable by the City, as promptly as possible thereafter, the City or the Authority shall send the Bank an original official receipt showing payment thereof.

SECTION 11.23. Usury. The Bank shall not be entitled to receive payment of interest hereunder in excess of the maximum rate permitted by applicable law. If the Bank receives less interest during any period than it would be entitled to receive hereunder but for the applicability of a maximum legal rate of interest, the provisions of Section 2.06 shall apply.

SECTION 11.24. Benefit of Agreement. This Agreement shall be binding upon each party hereto, its successors and permitted assigns, except that the City may not transfer or assign any or all of its rights or obligations hereunder without the prior written consent of the Bank. This Agreement is made and entered into solely for the protection and benefit of the Bank, on its behalf and on behalf of the Participants, and the City and their successors and assigns and no other person shall have any right of action under this Agreement. Any and all claims asserted hereunder may be asserted and only asserted by the City or the Bank, on its behalf or on behalf of the Participants, and their successors and permitted assigns. Any Participation Agreements are not intended to be for the benefit of the City and the City shall not be a third party beneficiary thereof.

SECTION 11.25. Actions. In the event the Bank shall commence, appear in or defend any action or proceeding relating to its rights, duties or liabilities under this Agreement, the Project Lease or any other Related Document, to the extent permitted by law, the City will pay the Bank, upon demand, all of the Bank's reasonable out-of-pocket costs, expenses and legal fees and disbursements incurred by the Bank in those actions and proceedings.

SECTION 11.26. Trustee Not Affected. Nothing appearing herein, and no exercise of any rights, remedies or recourse hereunder, shall be construed as limiting any rights, remedies or recourse of the Trustee whatsoever as against any Person, including, without limitation, under the Indenture, applicable law or otherwise.

SECTION 11.27. The Bank to Cooperate with the City's Requests for Disclosure. The Bank agrees that it will comply with all reasonable written requests of the City to provide material public information pertaining to the Bank in connection with the City's provision of disclosure with respect to the Bonds. The City and the Authority shall have no responsibility for the content of such information.


**DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CITY OF SAN JOSE

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

_____
DANIELLE KENEALEY
Chief Deputy City Attorney

CITY OF SAN JOSE FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

UNION BANK, N.A.

By: _____
Name: _____
Title: _____

**EXHIBIT A**

FORM OF IRREVOCABLE LETTER OF CREDIT

UNION BANK, N.A.
(Letter of Credit No. _____)

$17,640,000
City of San José Financing Authority
Lease Revenue Bonds Series 2008B-2
(Civic Center Garage Refunding Project)

October __, 2010

Wells Fargo Bank, National Association
707 Wilshire Boulevard, 17th Floor
Los Angeles, California 90017
Attention: Corporate Trust Department

Ladies and Gentlemen:

At the request of and for the account of the City of San José Financing Authority (the "Authority") for the benefit of the Owners, Union Bank (the "Bank"), hereby establishes this irrevocable Letter of Credit, No. _____] (the "Letter of Credit") (subject to the limitations as hereinafter set forth) in favor of Wells Fargo Bank, National Association, as Trustee (the "Trustee") under the Indenture of Trust, dated as of July 1, 2008, as supplemented and amended by the First Supplemental Indenture, dated as of October 1, 2010 (together, the "Indenture"), each by and between the Authority and the Trustee, pursuant to which $17,640,000 City of San José Financing Authority Lease Revenue Bonds, Series 2008B-2 (Civic Center Garage Refunding Project) (the "Bonds"), are outstanding in the amount of $_____ (the "Stated Amount," representing $17,640,000 in principal and $_____ in interest), effective immediately and expiring at the close of banking business at our Los Angeles office referred to below on October __, 2013 or on such later date to which such expiration date may be extended from time to time by amendment of this Letter of Credit in substantially the form of Annex F attached hereto (the "Expiration Date"), unless terminated earlier pursuant to the terms hereof.

The Letter of Credit is issued pursuant to a Letter of Credit Reimbursement Agreement, dated as of October 1, 2010 (the "Reimbursement Agreement"), by and among the Bank, the Authority and the City of San José (the "City").

The Bank hereby irrevocably authorizes you to draw on the Bank, in an aggregate amount not to exceed the Stated Amount of this Letter of Credit as set forth above and in accordance with the terms and conditions and subject to the reductions in amount as hereinafter set forth,

(1) in one or more drawings by one or more of your draws, each drawn on the Bank payable at sight on a Business Day, consisting of your written and completed certificate signed by you in substantially the form of Annex A attached hereto (any such certificate being your "Payment Drawing"); and

(2) in one or more drawings by one or more of your draws, each drawn on the Bank payable at sight on a Business Day, consisting of your written and completed certificate signed by you in substantially the form of Annex B attached hereto (any such certificate being your "Tender Drawing").

The Payment Drawing substantially in the form of Annex A attached hereto with the first box in paragraph (2), entitled "Interest Drawing," checked shall be hereinafter referred to as Interest Drawing; the Payment Drawing substantially in the form of Annex A attached hereto with the second box in paragraph (2), entitled "Partial Prepayment Drawing," checked shall be hereinafter referred to as Partial Prepayment Drawing; and the Payment Drawing substantially in the form of Annex A attached hereto with the third box in paragraph (2), entitled "Final Drawing," checked shall be hereinafter referred to as Final Drawing.

REDUCTIONS AND REINSTATEMENTS

If you shall draw on the Bank by your Interest Drawing, your Interest Drawing shall be automatically reinstated on the fifth calendar day following the date an Interest Drawing is honored if you shall not have received notice from us in the form of Annex G attached hereto prior to such time that we have not been reimbursed for such Interest Drawing and, as a result thereof, the amount of such Interest Drawing shall not be reinstated and we shall direct the Trustee to cause a mandatory tender of the Bonds.

The amount of this Letter of Credit shall be decreased, upon our receipt of your written and completed certificate signed by you in substantially the form of Annex C attached hereto (relating to a redemption or defeasance of less than all the Bonds outstanding), by an amount equal to the amount stated in said certificate, and the amounts available to be drawn by you by any subsequent Payment Drawing or Tender Drawing shall be decreased, upon our receipt of such certificate, to the amounts stated in such certificate.

Upon our honoring any Tender Drawing or Partial Prepayment Drawing presented by you hereunder, the amount of this Letter of Credit and the amounts available to be drawn hereunder by you by any subsequent Tender Drawing, Partial Prepayment Drawing or Final Drawing shall be automatically decreased by an amount equal to the amount of such Tender Drawing or Partial Prepayment Drawing plus ____ (__) days' interest thereon calculated at the rate of 12% per annum on the basis of a year of 365 days. The amount of this Letter of Credit and the amounts from time to time available to be drawn by you hereunder by any subsequent Tender Drawing shall be increased by an amount equal to the amount reimbursed plus ____ (__) days' interest thereon calculated at the rate of 12% per annum on the basis of a year of 365 days when and to the extent, but only when and to the extent, that the Bank is reimbursed by the City or by you on behalf of the City for any amount drawn hereunder by any Tender Drawing. Any amount received by the Bank from or on behalf of the City in reimbursement of amounts



Council/SJFA Agenda 10-5-10
Item Number: 2(a)(b)
**DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**

drawn hereunder shall, if the Bank also receive your certificate completed and signed by you in substantially the form of Annex D attached hereto, be applied to the extent of the amount indicated therein to reimburse the Bank for amounts drawn hereunder by your Tender Drawing.

PRESENTMENT

Funds under this Letter of Credit are available to you against (1) your Interest Drawing referring thereon to the number of this Letter of Credit and accompanied by your written and completed certificate signed by you in substantially the form of Annex A attached hereto with the first box in paragraph (2), entitled "Interest Drawing," checked, (2) your Tender Drawing referring thereon to the number of this Letter of Credit and accompanied by your written and completed certificate signed by you in substantially the form of Annex B attached hereto, (3) your Partial Prepayment Drawing referring thereon to the number of this Letter of Credit and accompanied by your written and completed certificate signed by you in substantially in the form of Annex A attached hereto with the second box in Paragraph (2), entitled "Partial Prepayment Drawing," checked, and (4) your Final Drawing referring thereon to the number of this Letter of Credit and accompanied by your written and completed certificate signed by you in substantially in the form of Annex A attached hereto with the third box in paragraph (2), entitled "Final Drawing," checked.

All drawings shall be made by presentation of each certificate at the Bank's offices at:

Union Bank, N.A.
1980 Saturn Street, V02-906
Monterey Park, California 91755-7411
Attn: Standby Letter of Credit Section
Telephone No.: (323) 720-7957
Telecopy No.: (323) 720-2773

with all reimbursements of Draws on the Letter of Credit wired to:

Union Bank, N.A.
ABA No. 1220-00496
Ref: Letter of Credit No. _____
Credit to Account No. [ ]
Attention: SC-TSO STANDBY LOC

or as may otherwise be designated by the Bank in a written notice (which shall include telecopy, tested telex or other electronic telecommunication) to you. It being understood that each drawing certificate so submitted is to be the sole operative instrument of drawing. You shall use your best efforts to give telephonic notice of a drawing to the Bank on the Business Day preceding the day of such drawing (but such notice shall not be a condition to drawing hereunder and you shall have no liability for not doing so). You shall send all drawing certificates by facsimile to the Bank as provided herein for any draws to be paid on the day such drawing certificate is submitted to the Bank.

If the Bank receives your Interest Drawing, Partial Prepayment Drawing or Final Drawing at such office, in strict conformity with the terms and conditions of this Letter of Credit, not later than 12:00 p.m. (Pacific time) on a Business Day up to and including the Termination Date hereof, the Bank will honor the same not later than 10:00 a.m. (Pacific time) on the next following Business Day in accordance with your payment instructions. If the Bank receives your Interest Drawing, Partial Prepayment Drawing or Final Drawing at such office, in strict conformity with the terms and conditions of this Letter of Credit, after 12:00 p.m. (Pacific time) on a Business Day up to and including the Termination Date hereof, the Bank will honor the same not later than 10:00 a.m. (Pacific time) on the second following Business Day in accordance with your payment instructions. If the Bank receives your Tender Drawing at such office, in strict conformity with the terms and conditions of this Letter of Credit, not later than 8:45 a.m. (Pacific time) on a Business Day, up to and including the Termination Date hereof, the Bank will honor the same on the same Business Day not later than 11:30 a.m. (Pacific time) in accordance with your payment instructions. If the Bank receives your Tender Drawing at such office, in strict conformity with the terms and conditions of this Letter of Credit, after 8:45 a.m. (Pacific time) on a Business Day, up to and including the Termination Date hereof, the Bank will honor the same on the next succeeding Business Day not later than 11:30 a.m. (Pacific time) in accordance with your payment instructions. Your draw may indicate a later date on which your draw is to be honored, in which case, if your draw is in strict conformity with the terms and conditions of this Letter of Credit, the Bank will honor the same not later than 10:00 a.m. (Pacific time) on the date you requested in accordance with your payment instructions; provided that such date is a Business Day and occurs on or prior to the Termination Date.

All payments made by the Bank under this Letter of Credit will be made in immediately available funds and will be disbursed from the Bank's funds. If requested by you, payment under this Letter of Credit may be made by wire transfer of Federal Reserve Bank of New York funds to your account in a bank on the Federal Reserve wire system.

For all purposes of this Letter of Credit, the term "Business Day" means a day that is not a (a) Saturday, a Sunday, a day on which banking institutions are authorized or required by law or executive order to be closed in the State of California or the State of New York for commercial banking purposes, a day on which trading on the New York Stock Exchange is suspended for more than four hours or a day on which the New York Stock Exchange is closed or (b) a day on which the Trustee, the tender agent for the Bonds, any remarketing agent for the Bonds, or the Bank are authorized or required by law to be closed.

TERMINATION

This Letter of Credit shall terminate on the earliest of the following (the "Termination Date"): (i) the date on which the Bank receives written notice from you substantially in the form of Annex H hereto; (ii) the date on which the Bank honors a Final Drawing, (iii) the date which is the next succeeding Business Day after the redemption of all Bonds following receipt by you of a written notice from us in the form of Annex I hereto specifying the occurrence of an Event of Default under the Reimbursement Agreement and directing you to cause a mandatory redemption of such Bonds, (iv) the date which is the third calendar day following receipt by you of a written notice from us in the form of Annex I hereto

specifying the occurrence of an Event of Default under the Reimbursement Agreement, and directing you to cause a mandatory tender of the Bonds; or (v) the Expiration Date.

TRANSFER

This Letter of Credit is transferable in its entirety only to any transferee who you certify to the Bank has succeeded or replaced you as Trustee under the Indenture and, notwithstanding Article 38 of the UCP, defined below, may be successively transferred. Transfer of the available balance under this Letter of Credit to such transferee shall be effected by the presentation to the Bank of this Letter of Credit and any amendments thereto, accompanied by a completed certificate in substantially the form of Annex E attached hereto. Upon such presentation, the Bank shall issue a Letter of Credit to your transferee with provisions therein consistent with this Letter of Credit, excepting only necessary changes as to:

1. Identity and address of your transferee, as beneficiary;

2. The date thereof; and

3. The amount.

This Letter of Credit may not be transferred to any person with whom U.S. persons are prohibited from doing business under U.S. Foreign Assets Control Regulations or other applicable U.S. Laws and Regulations.

GOVERNING LAW

To the extent not inconsistent with the express terms hereof, this Letter of Credit shall be governed by, and construed in accordance with, the terms of the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce, Publication No. 600 (the "Uniform Customs"), excluding Article 38 thereof (regarding transferable credits). Notwithstanding the provisions of Article 36 of the Uniform Customs, if this Letter of Credit expires during an interruption of business (as described in Article 36 of the Uniform Customs), the Bank agrees to effect payment under this Letter of Credit if a drawing which strictly conforms to the terms and conditions of this Letter of Credit is made within 15 Business Days after the resumption of business. As to matters not governed by the Uniform Customs, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of California, including without limitation the Uniform Commercial Code as in effect in the State of California.

MISCELLANEOUS

This Letter of Credit sets forth in full our undertaking and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Bonds), except only the certificates and the draws referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificates and such draws. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED IN THIS LETTER OF CREDIT SHALL AFFECT OUR RIGHTS UNDER THE UNIFORM CUSTOMS AND THE LAWS OF THE STATE OF CALIFORNIA, AS SET FORTH IN THE "GOVERNING LAW" SECTION OF THIS LETTER OF CREDIT.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to the Bank at the addresses set forth above, specifically referring to the number of this Letter of Credit.

Very truly yours,

UNION BANK, N.A.

By: _____
Name: _____
Title: _____

PAYMENT DRAWING

To:

Union Bank, N.A.
1980 Saturn Street, V02-906
Monterey Park, California 91755-7411
Attn: Standby Letter of Credit Section
Telephone No.: (323) 720-7957
Telecopy No.: (323) 720-2773

Re: Irrevocable Union Bank, N.A. Letter of Credit No. ;

The undersigned, a duly authorized officer of the undersigned Trustee (the "Trustee"), hereby certifies to Union Bank, N.A. (the "Bank"), with reference to the Letter of Credit No. (the "Letter of Credit"), issued by the Bank in favor of the Trustee, as follows:

(1) The Trustee is the Trustee under the Indenture.

(2)* ☐ Interest Drawing.

(i) The Trustee is making a drawing under the Letter of Credit with respect to a payment of interest on the Bonds and the Interest Drawing being presented to the Bank, if presented before 12:00 p.m. (Pacific time) on a Business Day up to and including the Termination Date, shall be due not later than 10:00 a.m. (Pacific time) on the next following Business Day. If presented after 12:00 p.m. (Pacific time) on a Business Day up to and including the Termination Date hereof, the Bank will honor the same not later than 10:00 a.m. (Pacific time) on the second following Business Day, unless a later date is specified as follows for payment: _____. None of such Bonds is held of record by the Authority or by the undersigned for the account of the Authority.

(ii) [The Interest Drawing accompanying this Certificate is the first Interest Drawing presented by the Trustee under the Letter of Credit.]†**[ The Interest Drawing last presented by the Trustee under the Letter of Credit was honored and paid by the Bank.]‡

(iii) The amount of the Interest Drawing accompanying this certificate is $_____. It was computed in compliance with the terms and conditions of the Bonds and the Indenture and does not include any amount of interest which is included in any Tender Drawing, Partial Prepayment Drawing or Final Drawing presented on or prior to the date of this certificate.

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* Please check box as appropriate.
† To be used in the draw certificate relating to the first Interest Drawing only
‡ To be used in each draw certificate relating to each Interest Drawing other than the First Interest Drawing

☐ Partial Prepayment Drawing.

(i) The Trustee is making a drawing under the Letter of Credit with respect to the payment, upon redemption or prepayment of less than all of the Bonds, of the unpaid principal amount of, and up to _____ days' accrued and unpaid interest on, Bonds which are Outstanding within the meaning of the Indenture (other than Bonds presently held of record by the Authority or by the Trustee for the account of the Authority), and the Partial Prepayment Drawing being presented to the Bank, if presented before 12:00 p.m. (Pacific time) on a Business Day, shall be due not later than 10:00 a.m. (Pacific time) on the next following Business Day. If presented after 12:00 p.m. (Pacific time) on a Business Day up to and including the Termination Date hereof, the Bank will honor the same not later than 10:00 a.m. (Pacific time) on the second following Business Day, unless a later date is specified as follows for payment: _____.

(ii) The amount of the Partial Prepayment Drawing accompanying this certificate is equal to the sum of (i) $_____ being drawn in respect of the payment of unpaid principal of Bonds (other than Bonds presently held of record by the Authority or by the Trustee for the account of the Authority) to be redeemed or prepaid and (ii) $_____ being drawn in respect of the payment of accrued and unpaid interest on such Bonds and does not include any amount of interest on the Bonds which is included in any Interest Drawing or Tender Drawing or Partial Prepayment Drawing presented on or prior to the date of this certificate.

(iii) The amount of the Partial Prepayment Drawing accompanying this certificate was computed in accordance with the terms and conditions of the Bonds and the Indenture and does not exceed the amount available to be drawn under the Letter of Credit.

(iv) The Trustee acknowledges that pursuant to the terms of the Letter of Credit, upon the Bank's honoring the Partial Prepayment Drawing accompanying this certificate, the amount of the Letter of Credit and the amounts available to be drawn by the Trustee thereunder by any subsequent Partial Prepayment Drawing or Tender Drawing or Final Drawing are automatically decreased by an amount equal to the amount of such Partial Prepayment Drawing.

☐ Final Drawing.

(i) The Trustee is making a drawing under the Letter of Credit with respect to the payment, either at stated maturity, upon acceleration or as a result of a prepayment, redemption or mandatory tender, of the unpaid principal, and up to [___] days' accrued and unpaid interest on, all of the Bonds which are Outstanding within the meaning of the Indenture (other than Bonds presently held of record by the Authority or by the Trustee for the account of the Authority) but which are not to be remarketed again with the support of the Letter of Credit, which payment is due on the day on which this certificate and the Final Drawing it accompanies are being presented to the Bank and if presented before 12:00 p.m. (Pacific time) on a Business Day, shall be due not later than 10:00 a.m. (Pacific time) on the next following Business Day. If presented after 12:00 p.m. (Pacific time) on a Business Day up to and including the Termination Date hereof, the Bank will honor the same not later than 10:00 a.m. (Pacific time) on the second

following Business Day, unless a later date is specified as follows for payment: _____.

(ii) The amount of the Final Drawing accompanying this certificate is equal to the sum of (i) $_____ being drawn in respect of the payment of unpaid principal of Bonds (other than Bonds presently held of record by the Authority or by the Trustee for the account of the Authority) and (ii) $_____ being drawn in respect of the payment of accrued and unpaid interest on such Bonds, and does not include any amount of interest on the Bonds which is included in any Interest Drawing or Tender Drawing or Partial Prepayment Drawing presented on or prior to the date of this certificate.

(iii) The amount of the Final Drawing accompanying this certificate was computed in compliance with the terms and conditions of the Bonds and the Indenture and does not exceed the amount available to be drawn by the Trustee under the Letter of Credit.

The terms used herein which are not specifically defined herein are defined in the Letter of Credit.

IN WITNESS WHEREOF, the Trustee has executed and delivered this certificate as of the _____ day of _____ ____.

_____
as Trustee

By _____
[Name and Title]

TENDER DRAWING

To:

Union Bank, N.A.
1980 Saturn Street, V02-906
Monterey Park, California 91755-7411
Attn: Standby Letter of Credit Section
Telephone No.: (323) 720-7957
Telecopy No.: (323) 720-2773

Re: Irrevocable Letter of Credit No.

The undersigned, a duly authorized officer of the Trustee (the "Trustee"), hereby certifies to Union Bank, N.A. (the "Bank"), with reference to irrevocable Letter of Credit No. _____ (the "Letter of Credit"), issued by the Bank in favor of the Trustee, as follows:

(1) The undersigned is the Trustee under the Indenture for the Owners of the Bonds.

(2) The undersigned is making a drawing under the Letter of Credit with respect to the payment, upon a tender, of the unpaid principal amount of, and accrued and unpaid interest on, all or less than all of the Bonds which are Outstanding within the meaning of the Indenture to be purchased as a result of such tender (other than Bonds presently held of record by the Authority or by the Trustee for the account of the Authority), which payment is due on the day on which this certificate and the Tender Drawing it accompanies are being presented to the Bank, if presented before 8:45 a.m. (Pacific time), or on the next Business Day after such day unless a later date is specified as follows for payment: _____.

(3) The amount of the Tender Drawing accompanying this certificate is equal to the sum of (i) $_____ being drawn in respect of the payment of unpaid principal of Bonds (other than Bonds presently held of record by the Authority or by the Trustee for the account of the Authority) to be purchased as a result of a tender and (ii) $_____ being drawn in respect of the payment of accrued and unpaid interest on such Bonds and does not include any amount of interest which is included in any Interest Drawing or Partial Prepayment Drawing presented on or prior to the date of this certificate.

(4) The amount of the Tender Drawing accompanying this certificate was computed in compliance with the terms and conditions of the Bonds and the Indenture and does not exceed the amount available to be drawn under the Letter of Credit.

The undersigned acknowledges that pursuant to the terms of the Letter of Credit, upon the Bank honoring of the Tender Drawing accompanying this certificate, the amount of the Letter of Credit and the amounts available to be drawn thereunder by any subsequent Tender

Drawing or Partial Prepayment Drawing or Final Drawing are automatically decreased by an amount equal to the amount of such Tender Drawing.

The terms used herein which are not specifically defined herein are defined in the Letter of Credit.

IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate as of the _____ day of _____ ____.

_____
as Trustee

By _____
[Name and Title]

cc: Union Bank, N.A.

Annex C

CERTIFICATE FOR REDUCTION

To:

Union Bank, N.A.
1980 Saturn Street, V02-906
Monterey Park, California 91755-7411
Attn: Standby Letter of Credit Section
Telephone No.: (323) 720-7957
Telecopy No.: (323) 720-2773

Re: Irrevocable Letter of Credit No.

The undersigned, a duly authorized officer of the undersigned Trustee (the "Trustee"), hereby certifies to Union Bank, N.A. (the "Bank"), with reference to Letter of Credit No. _____; (the "Letter of Credit"), issued by the Bank in favor of the Trustee, as follows:

(1) The Trustee is the Trustee under the Indenture.

(2) The Trustee hereby notifies you that on or prior to the date hereof $_____ principal amount of the Bonds has been redeemed and paid or has been defeased pursuant to the Indenture.

(3) Following the redemption, payment or defeasance referred to in paragraph (2) above, the aggregate principal amount of all of the Bonds which are "Outstanding" within the meaning of the Indenture is $_____.

(4) The maximum amount of interest, computed in accordance with the terms and conditions of the Bonds and the Indenture, which could accrue on the Bonds referred to in paragraph (3) above is $_____

(5) The amount available to be drawn by the Trustee under the Letter of Credit by any Interest Drawing is reduced to $_____ (such amount being equal to the amount specified in paragraph (4) above) upon receipt by the Bank of this Certificate.

(6) The amount available to be drawn by the Trustee under the Letter of Credit by any Tender Drawing or Partial Prepayment Drawing or Final Drawing is reduced to $_____ (such amount being equal to the sum of the amounts specified in paragraphs (3) and (4) above) upon receipt by the Bank of this Certificate.

(7) The amount of the Letter of Credit is reduced to $_____ (such amount equal to the sum of the amounts specified in paragraph (6) above) upon receipt by the Bank of this certificate.

The terms used herein which are not specifically defined herein are defined in the Letter of Credit.

_____
as Trustee

By _____
[Name and Title]

cc: Union Bank, N.A.


**DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**

Annex D

CERTIFICATE FOR REINSTATEMENT

To:

Union Bank, N.A.
1980 Saturn Street, V02-906
Monterey Park, California 91755-7411
Attn: Standby Letter of Credit Section
Telephone No.: (323) 720-7957
Telecopy No.: (323) 720-2773

Re: Irrevocable Letter of Credit No.

The undersigned, a duly authorized officer of the undersigned Trustee (the "Trustee"), hereby certifies to Union Bank, N.A. (the "Bank"), with reference to Letter of Credit No. _____the "Letter of Credit"), issued by the Bank in favor of the Trustee, as follows:

(1) The Trustee is the Trustee under the Indenture.

(2) The amount of $_____ paid to you today by the Authority or by the Trustee on behalf of the Authority is a payment made to reimburse you for amounts drawn under the Letter of Credit by Tender Drawings and upon receipt of such payment, the Letter of Credit shall be reinstated as provided in paragraph (5) below.

(3) Of the amount referred to in paragraph (2), $_____ represents the aggregate principal amount of Bonds resold or to be resold on behalf of the Authority.

(4) Of the amount referred to in paragraph (2), $_____ represents accrued and unpaid interest on Bonds calculated, in accordance with the Indenture.

(5) Upon receipt of payment as provided in paragraph (2) above, the Stated Amount of the Letter of Credit shall be reinstated in an amount equal to the principal amount reimbursed plus _____ (__) days' accrued interest thereon calculated at the rate of 12% per annum on the basis of a year of 365 days.


**DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**

The terms used herein which are not specifically defined herein are defined in the Letter of Credit.

_____
as Trustee

By _____
[Name and Title]

cc: City of San José


**DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**

INSTRUCTION TO TRANSFER

To:

Union Bank, N.A.
1980 Saturn Street, V02-906
Monterey Park, California 91755-7411
Attn: Standby Letter of Credit Section
Telephone No.: (323) 720-7957
Telecopy No.: (323) 720-2773

Re: Irrevocable Letter of Credit No.

Ladies and Gentlemen:

For value received, the undersigned beneficiary hereby irrevocably transfers to:

_____

[Name of Transferee]

_____

[Address]

all rights of the undersigned beneficiary to draw under the above-captioned Letter of Credit (the "Letter of Credit"). The transferee has succeeded the undersigned as Trustee under the Indenture (as defined in the Letter of Credit).

By this transfer, all rights of the undersigned beneficiary in the Letter of Credit are transferred to the transferee and the transferee shall hereafter have the sole rights as beneficiary thereof; provided, however, that no rights shall be deemed to have been transferred to the transferee until the transfer fee pursuant to that certain Fee Letter Agreement, dated October __, 2010, by and between City of San José and Union Bank, N.A..

_____

_____
as predecessor Trustee

By _____
[Name and Title]


**DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**

Annex F

FORM OF NOTICE OF EXTENSION OF
LETTER OF CREDIT EXPIRATION DATE

[Date]

To: _____, as Trustee

Re: Irrevocable Letter of Credit No._____

The Bank has approved an extension of Irrevocable Letter of Credit No. ____(the "Letter of Credit"), dated October __, 2010. The new Expiration Date is _____, 20__. The Trustee shall attach a copy of this Notice of Extension to the Letter of Credit and treat this Notice of Extension as extending the Expiration Date of the Letter of Credit.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Notice of Extension as of the date of _____, 20__.

Very truly yours,

UNION BANK, N.A.

By: _____
Name: _____
Title: _____

Acknowledged as of _____, _____

By: _____, as Trustee

Name: _____
Title: _____

Annex G

FORM OF NOTICE OF MANDATORY TENDER

[Date]

To: _____, as Trustee

Ladies and Gentlemen:

The undersigned, a duly authorized officer of Union Bank, hereby advises you, with reference to irrevocable Letter of Credit No. _____ dated October __, 2010, (the "Letter of Credit;" any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit), issued by the Bank in your favor, that the Bank has not been reimbursed for an Interest Drawing under the Letter of Credit and, as a result thereof, the amount of such Interest Drawing will not be reinstated and the Bank has elected to direct the Bond Trustee to cause a mandatory tender of the Bonds, pursuant to the Indenture.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Notice of Mandatory Tender as of the __ day of _____, 20__.

Union Bank

By ___
Its ___


**DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**

NOTICE OF TERMINATION

To:

Union Bank, N.A.
1980 Saturn Street, V02-906
Monterey Park, California 91755-7411
Attn: Standby Letter of Credit Section
Telephone No.: (323) 720-7957
Telecopy No.: (323) 720-2773

Ladies and Gentlemen:

Reference is hereby made to that certain irrevocable Letter of Credit No. _____, dated October __, 2010 (the "Letter of Credit"), which has been established by the Bank for the account of the City of San José Financing Authority, in favor of the Trustee for the benefit of the Owners.

The undersigned hereby certifies and confirms that:

☐ no Bonds remain Outstanding within the meaning of the Indenture,

☐ all drawings required to be made under the Indenture and available under the Letter of Credit have been made and honored and the Stated Amount under the Letter of Credit has been reduced to zero and may not be reinstated,

☐ an alternate credit facility has been issued to replace the Letter of Credit pursuant to the Indenture and accordingly, the Letter of Credit shall be terminated in accordance with its terms, or

☐ one Business Day has elapsed after the date on which the interest rate on all of the Bonds has been converted to bear interest at a rate other than the Weekly Rate (as defined in the Indenture).

All defined terms used herein which are not otherwise defined herein shall have the same meaning as in the Letter of Credit.

The terms used herein which are not specifically defined herein are defined in the Letter of Credit.

_____
as Trustee

By _____
[Name and Title]

Annex I

NOTICE OF MANDATORY REDEMPTION OR MANDATORY TENDER

[Date]

[Trustee]

_____

_____

Attention:

Ladies and Gentlemen:

The undersigned, a duly authorized officer of Union Bank, N.A, hereby advises you, with reference to irrevocable Letter of Credit No. _____, dated October __, 2010 (the *"Letter of Credit"*; any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit) issued by the Bank in your favor, that:

[Insert one of the following paragraphs as appropriate]

[an *"Event of Default"* has occurred under Section 9.01(_) of the Reimbursement Agreement dated as of October 1, 2010, by and among the City of San José, the City of San José Financing Authority and the Bank, and the Bank has elected to direct the Trustee to cause a mandatory redemption of the Bonds pursuant to Section 4.01(d) of the Indenture, whereby the Letter of Credit will terminate on the Termination Date.]

[an *"Event of Default"* has occurred under Section 9.01(_) of the Reimbursement Agreement dated as of October 1, 2010, by and among the City of San José, the City of San José Financing Authority and the Bank, and the Bank has elected to direct the Trustee to cause a mandatory tender of the Bonds pursuant to Section 4.06(d)(iii)(c) of the Indenture, whereby the Letter of Credit will terminate three (3) calendar days following the receipt by the Trustee of this Notice of Mandatory Tender.]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Notice of Mandatory Redemption or Mandatory Tender as of the __ day of _____, 20__.

Union Bank, N.A.
By
Name: _____
Title: _____

**EXHIBIT B**

FORM OF CUSTODY AGREEMENT

This CUSTODY AGREEMENT is made as of October 1, 2010 by and between UNION BANK, N.A. (the "Bank") and WELLS FARGO BANK, NATIONAL ASSOCIATION, as the custody agent (the "Custody Agent").

RECITALS

WHEREAS, pursuant to the terms and conditions set forth in that certain Letter of Credit Reimbursement Agreement, dated as of October __, 2010 (the "Reimbursement Agreement"), by and among the City of San José Financing Authority, a joint exercise of powers authority (the "Authority"), the City of San José, a municipal corporation duly organized and existing under its charter and the Constitution and laws of the State of California (the "City"), and the Bank, the Bank has agreed to issue its irrevocable Letter of Credit No. _____, for the account of the City in connection with the City of San José Financing Authority Lease Revenue Bonds Series 2008B-2 (Civic Center Garage Refunding Project) (the "Bonds") issued under that certain Indenture of Trust, dated as of July 1, 2008, by and between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"), as supplemented and amended by the First Supplemental Indenture, dated October 1, 2010 (together, the "Indenture") (all other terms used herein which are defined in the Reimbursement Agreement and not defined herein shall have the same meanings assigned to them in the Reimbursement Agreement, unless the context otherwise requires); and

WHEREAS, pursuant to the terms and conditions set forth in the Reimbursement Agreement, if the Letter of Credit is drawn upon to pay the purchase price of Bonds tendered in accordance with the Indenture, such Bonds will be delivered to, owned by and registered in the name of the Bank (the "Bank Bonds"), until such time as Bank Bonds are remarketed or cancelled and the Bank is reimbursed for all amounts due under the Reimbursement Agreement; and

WHEREAS, the Bank hereby appoints the Custody Agent as its agent to take possession of and hold the Bank Bonds on behalf of and for the benefit of the Bank, on the terms and under the conditions set forth in this Custody Agreement, and the Custody Agent is willing to do so.

NOW, THEREFORE, in consideration of the mutual covenants recited herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. The Bank hereby appoints the Custody Agent as its agent and bailee for the purpose of receiving Bank Bonds and holding such Bank Bonds for and on behalf of the Bank. The Custody Agent hereby agrees to hold the Bank Bonds for such purpose, as the Bank's agent and bailee.

2. Except at the written direction of the Bank, the Custody Agent shall not pledge, hypothecate, transfer or release possession of any Bank Bonds held by the Custody Agent on behalf of the Bank to any person or in any manner not in accordance with this Custody Agreement, and the Custody Agent shall not enter into any other agreement regarding the possession of the Bank Bonds without the prior written consent of the Bank. The Custody Agent shall be entitled to release remarketed Bank Bonds in its custody in accordance with and as contemplated by the Indenture; provided that it (a) holds for the account of the Bank (i) the aggregate principal amount of the Bonds resold plus (ii) the aggregate amount of interest on such principal amount which was paid by the applicable Tender Advance; and (b) the Trustee delivers to the Bank a completed and signed certificate substantially in the form of Annex D to the Letter of Credit.

3. This Custody Agreement cannot be amended or modified except in a writing signed by the Custody Agent and the Bank.

4. This Custody Agreement shall inure to the benefit of and shall be binding upon the Custody Agent and the Bank, and their respective successors and assigns.

5. Upon written notice to the Bank, and the release to the Bank or its designee of any Bank Bonds then held by the Custody Agent pursuant to this Custody Agreement, the Custody Agent shall have the right to terminate its obligations under this Custody Agreement.

6. Beyond its duties as to the custody of the Bank Bonds expressly provided herein, the Custody Agent shall not have any duty to the Bank as to any Bank Bonds in the Custody Agent's possession or control, or in the possession or control of any of the Custody Agent's agents or nominees, or as to any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. In performing its duties under this Custody Agreement, the Custody Agent shall not be liable to the Bank except for gross negligence or willful misconduct in the performance of its obligations hereunder.

7. The Bank shall indemnify and hold harmless the Custody Agent against any and all liability arising out of the Custody Agent's performance of its obligations hereunder, except due to gross negligence or willful misconduct of the Custody Agent.

8. The Custody Agent agrees to maintain the Custody Agreement without charge to the Bank, so long as it acts as Tender Agent with respect to the Bonds.

9. This Custody Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

10. It shall not be necessary that all parties execute and deliver the same counterpart of this Agreement. This Agreement shall therefore become effective when each party has executed a counterpart hereof and delivered the same to the other parties. All such counterparts, collectively, shall be deemed a single agreement.

11. The Bank acknowledges that the Custody Agent is acting as Trustee under the Indenture. The Bank agrees that nothing contained in this Custody Agreement shall be construed to require the Custody Agent to do any act or omit to do any act contrary to the duties of the Trustee under the Indenture.

IN WITNESS WHEREOF, the parties to this Custody Agreement have hereunto set their hands by their authorized representatives, all as of the date above first written.

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Custody Agent

By: _____
Authorized Officer

UNION BANK, N.A.

By: _____
Name: _____
Title: _____

**EXHIBIT C**

FORM OF REQUEST FOR EXTENSION

[Date]

Union Bank, N.A.
Public Finance Unit
445 South Figueroa Street, G08-268
Los Angeles, California 90071
Re: City of San José
Telephone No.: (213) 236-6434
Telecopy No.: (213) 236-6450

Re: City of San José Financing Authority Lease Revenue Bonds
Series 2008B-2

Ladies and Gentlemen:

Reference is made to the irrevocable Letter of Credit No. _____ (the "Letter of Credit"), issued the Bank in favor of Wells Fargo Bank, National Association, the City of San José Financing Authority (the "Authority") hereby requests that the Expiration Date with respect to the Letter of Credit as of the date hereof be extended to_____ __, 20__.

We have enclosed with this request the following information:

1. The outstanding principal amount of the Bonds;

2. A reasonably detailed description of any and all Events of Default that have occurred and are continuing;

3. Confirmation that all representations and warranties of the Authority as set forth in the Reimbursement Agreement, dated as of October 1, 2010, by and among you, the City and the Authority are true and correct as though made on the date hereof and that no Event of Default has occurred and is continuing on the date hereof except for the defaults referenced in paragraph 2 above; and

4. Any other pertinent information previously requested by you.

We acknowledge that if you do not notify the Authority of your decision within such 60-day period, the Bank shall be deemed to have rejected such request.

Very truly yours,

CITY OF SAN JOSE FINANCING AUTHORITY

By:_____
Name:_____
Title_____

**EXHIBIT D**

FORM OF NOTICE OF EXTENSION

[Date]

City of San José Financing Authority
200 East Santa Clara Street
San José, California 95113-1905
Attention: Debt Management – Finance

Ladies and Gentlemen:

Reference is made to the irrevocable Letter of Credit No. _____ (the "Letter of Credit"), issued by the Bank in favor of Wells Fargo Bank, National Association. We hereby notify you that, pursuant to Section 2.10 of the Reimbursement Agreement, as of _____, 20 __ (the "Closing Date"), the Expiration Date with respect to the Commitment shall be extended to _____, 20 __.

Very truly yours,

UNION BANK, N.A.

By:_____
Name:_____
Title:_____


**DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**

**EXHIBIT E**

FORM OF FEE LETTER AGREEMENT

This Fee Letter Agreement, dated October __, 2010 (this "*Fee Letter*"), by and between the CITY OF SAN JOSE, a municipal corporation duly organized and existing under its charter and the Constitution and laws of the State of California (the "*City*") and UNION BANK, N.A. (the "*Bank*") sets forth the agreement between the City and the Bank. with respect to certain fees payable pursuant to the Reimbursement Agreement, dated as of October __, 2010 (the "*Agreement*"), by and among the City, the CITY OF SAN JOSE FINANCING AUTHORITY, a joint exercise of powers authority and the Bank. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

Section 1. Fees.

(a) *Upfront Fee.* The City agrees to pay to the Bank on the Issuance Date an upfront fee equal to ____ (equal to the product of 0.075% and the Stated Amount).

(b) *Closing Fee.* A one-time fee of $5,000 at closing.

(c) *Commitment Fee.* The City hereby agrees to pay, or cause the Trustee to pay, to the Bank, quarterly in arrears, on each Quarterly Payment Date, for the period from and including the immediately preceding Quarterly Payment Date (or, in the case of the first quarterly payment, from the Issuance Date) to but not including such Quarterly Payment Date, a non-refundable letter of credit fee in an amount equal to the cumulative total, calculated daily for each day during such period, equal to the product of (A) the rate per annum associated with the Rating, as specified below (the "*Commitment Fee Rate*"), multiplied by (B) the Stated Amount (without regard to any temporary reductions of the Stated Amount of the Letter of Credit) on such day, in each case calculated on the basis of a 360 day year for the actual number of days elapsed (the "*Commitment Fee*") during each related period:



Council/SJFA Agenda 10-5-10
Item Number: 2(a)(b)
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| LEVEL | MOODY'S RATING | S&P RATING | FITCH RATING | COMMITMENT FEE RATE |
|---|---|---|---|---|
| Level 1: | Aa2 (or higher) | AA (or higher) | AA (or higher) | 0.95% |
| Level 2: | Aa3 | AA- | AA- | 1.10% |
| Level 3: | A1 | A+ | A+ | 1.30% |
| Level 4: | A2 | A | A | 1.55% |
| Level 5: | A3 | A- | A- | 1.80% |
| Level 6: | Baa1 | BBB+ | BBB+ | 2.10% |
| Level 7: | Baa2 | BBB | BBB | 2.50% |
| Level 8 | Baa3 | BBB- | BBB- | 3.05% |
| Level 9 | (lower than Baa3) | (lower than BBB-) | (lower than BBB-) | Default Rate |

The term "*Rating*" as used above shall mean the long-term rating on any general fund/general obligation indebtedness of the City assigned by each Rating Agency. In the event of a split rating (*i.e.*, one of the foregoing Rating Agency's Rating is at a different level than the Rating of either of the other Rating Agencies), the Commitment Fee Rate shall be based upon the level in which the lowest Rating appears. Any change in the Commitment Fee Rate resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system or the adoption of a "global" rating scale by any such Rating Agency, the Ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system or, in the event of adoption of a "global" rating scale by any Rating Agency, the recalibrated or realigned rating category under such "global" rating scale, which most closely approximates the applicable rating category as currently in effect. The City acknowledges that as of the Issuance Date, the Commitment Fee Rate is that specified above for Level 1. If the Rating assigned by one or more Rating Agencies is withdrawn, suspended or otherwise unavailable for credit related reasons or upon the occurrence and during the continuance of an Event of Default, the Commitment Fee Rate shall be the Default Rate. The Commitment Fee shall be payable quarterly in arrears, and if not timely paid, the Commitment Fee shall be paid together with the interest on the Commitment Fee from the date payment is due until payment is made in full at the Default Rate.

(d) *Draw Fee*. The City agrees to pay to the Bank a draw fee of $250.00 for each Drawing honored by the Bank under the Letter of Credit, plus a $45.00 federal wire fee payable quarterly in arrears.

(e) *Amendment Fee*. The City agrees to pay to the Bank, on the date any amendment to this Fee Letter, the Agreement or the Letter of Credit is entered into among the parties thereto or on any date on which the Bank is required to consent or waive a provision

under any of the Related Documents an amendment, waiver or consent fee of $25,000.00, plus reasonable expenses of the Bank, including the reasonable fees and expenses of any legal counsel retained by the Bank in connection therewith.

(f) *Transfer Fee.* The City agrees to pay to the Bank, on the date of any transfer of the Letter of Credit a transfer fee of $2,000.00, plus reasonable expenses of the Bank, including the reasonable fees and expenses of any legal counsel retained by the Bank in connection therewith.

(g) *Early Termination Fee.* If the Letter of Credit is terminated at the request of the City or the Authority prior to the second anniversary of the Issuance Date for any reason other than a downgrade of short-term ratings of the Bank below "A-1" by S&P, "P-1" by Moody's or "F-1" by Fitch, the City shall pay the Bank an Early Termination Fee equal to the difference between the amount of annual Commitment Fees which have been paid by the City to the termination date and two full years of annual Commitment Fees.

(h) *Cancellation Fee.* If the Bank (i) agrees in writing to provide a commitment to provide a direct pay letter of credit to secure the Bonds; (ii) such commitment is accepted by the Authority; and (iii) the Authority causes the termination of the Bank letter of credit or fails to complete or accept the Bank Alternate Credit Facility within ninety (90) days of the receipt of the written commitment (unless extended at the sole discretion of the Bank), the City shall pay the Bank $50,000.

(i) *Extension Fee.* If the Letter of Credit is extended beyond the then current Expiration Date, the City shall pay the Bank $10,000 on the date of such extension.

(j) *Legal Fees.* The City agrees to pay on the Issuance Date the reasonable fees and expenses of counsel for the Bank.

Section 2. Reserved.

Section 3. Reserved.

Section 4. Amendments. No amendment to this Fee Letter shall become effective without the prior written consent of the City and the Bank.

Section 5. Governing Law; Jury Trial Waiver. This Fee Letter and the obligations of the Bank, the Authority and the City hereunder shall be governed by, and construed in accordance with, the laws of the State of California.

With respect to any suit, actions or proceedings relating to this Fee Letter, to the fullest extent permitted by applicable law, each party to this Fee Letter waives any right it may have to trial by jury. The City further warrants and represents that such waiver has been intentionally, knowingly and voluntarily made, following consultation with its legal counsel. If and to the extent that the foregoing waiver or the right to a jury trial is unenforceable for any reason in such forum, the City and the Bank hereby consent to the adjudication of any and all claims pursuant to

judicial reference as provided in the California Code of Civil Procedure Section 638, and the judicial referee shall be empowered to hear and determine any and all issues in such reference whether fact or law. The City and the Bank represent that each has reviewed this waiver and consent and each knowingly and voluntarily waives its jury trial rights and consents to judicial reference following the opportunity to consult with legal counsel of its choice on such matters. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.

The Bank hereby recognizes and agrees that the procedural requirements applicable to commencement of legal actions against either the City or the Authority differ from requirements applicable to non-governmental entities.

Section 6. Payment of Fees. All Fees payable under this Fee Letter shall require the submission of an invoice by the Bank to the City not less than 14 days prior to the payment date; provided, however, that failure to submit an invoice shall not relieve the City of its obligation to pay the related fee.

Section 7. Counterparts. This Fee Letter 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.

Section 8. Severability. Any provision of this Fee Letter that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Fee Letter to be duly executed and delivered by their respective duly authorized representatives as of the day and year first above written.

CITY OF SAN JOSE

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

_____
DANIELLE KENEALEY
Chief Deputy City Attorney

CITY OF SAN JOSE FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

UNION BANK, N.A.

By: _____
Name: _____
Title: _____


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