
INDENTURE OF TRUST

between the

CITY OF SUNNYVALE

and

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Dated as of December 1, 2017

Relating to

\$ _____
City of Sunnyvale
Water Revenue Refunding Bonds, Series 2017A

and

\$ _____
City of Sunnyvale
Taxable Water Revenue Refunding Bonds, Series 2017A-T

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INDENTURE OF TRUST

This INDENTURE OF TRUST, dated as of December 1, 2017, is between the CITY OF SUNNYVALE, a municipal corporation and charter city organized and existing under the laws of the State of California (the "City"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, with a corporate trust office in San Francisco, California, and being qualified to accept and administer the trusts hereby created (the "Trustee").

BACKGROUND:

1. The City is authorized pursuant to the provisions of Chapter 3.70 (commencing with Section 3.70.010) of the Sunnyvale Municipal Code, enacted pursuant to the charter of the City and Ordinance No. 2917-10, adopted April 6, 2010 (collectively, the "Bond Law"), to issue its revenue bonds for the purposes of financing and refinancing improvements to a utility enterprise of the City.

2. The City owns and operates a public utility enterprise for obtaining, conserving, treating, distributing, storing and supplying water for domestic use, irrigation, sanitation, industrial use, fire protection, recreation, or any other public or private uses within the service area of the City (the "Water System").

3. In order to finance and refinance improvements to the Water System, on June 29, 2010, the City issued its bonds captioned "City of Sunnyvale Water Revenue Bonds, Series 2010" in the original principal amount of \$24,085,000 (the "2010 Bonds") which are secured by a pledge of and lien on the net revenues of the Water System.

4. The 2010 Bonds are subject to redemption on any date on or after April 1, 2020, at a redemption price equal to the principal amount of the 2010 Bonds to be redeemed, plus accrued interest thereon to the date of redemption, without premium.

5. The City, after due investigation and deliberation, has determined that it is in the interests of the City at this time to provide for the issuance of its bonds captioned "City of Sunnyvale Water Revenue Refunding Bonds, Series 2017A," in the aggregate principal amount of \$_____ (the "Series A Bonds"), and its bonds captioned "City of Sunnyvale Taxable Water Revenue Refunding Bonds, Series 2017A-T," in the aggregate principal amount of \$_____ (the "Taxable Series A-T Bonds" and, together with the Series A Bonds, the "Bonds") in order to provide funds to pay, defease and redeem the 2010 Bonds and thereby realize debt service savings.

6. The Bonds will be issued under the Bond Law, this Indenture, and a resolution of the City Council of the City adopted on December _____, 2017, and will be secured by a pledge of and lien on the net revenues of the Water System.

7. In order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured, and to secure the payment of the principal thereof and of the interest and premium, if any, thereon, the City Council has authorized the execution and delivery of this Indenture.

8. All acts and proceedings required by law necessary to make the Bonds, when executed by the City, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the City, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth, in accordance with its terms, have been done and taken; and the execution and delivery of this Indenture have been in all respects duly authorized

A G R E E M E N T :

In order to secure the payment of the principal of and the interest and redemption premium (if any) on all the Bonds under this Indenture according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable considerations, the receipt of which is hereby acknowledged, the City and the Trustee hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.01. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms defined in Appendix A attached to this Indenture have the respective meanings specified in Appendix A when used in this Indenture.

SECTION 1.02. *Authorization.* Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Indenture, and has taken all actions necessary to authorize the execution hereof by the officers and persons signing it.

SECTION 1.03. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

ISSUANCE OF BONDS

SECTION 2.01. *Authorization and Purpose of Bonds.* The City has reviewed all proceedings heretofore taken and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the City is now duly empowered, under each and every requirement of law, to issue the Bonds in the manner and form provided in this Indenture.

The City hereby authorizes the issuance of the Series A Bonds, designated the "City of Sunnyvale Water Revenue Refunding Bonds, Series 2017A," in the aggregate principal amount of \$_____, and the Taxable Series A-T Bonds, designated the "City of Sunnyvale Taxable Water Revenue Refunding Bonds, Series 2017A-T," in the aggregate principal amount of \$_____.

The Bonds are being issued for the purposes of providing funds to pay, defease and redeem the 2010 Bonds in full. The Bonds are authorized and issued under, and are subject to the terms of, this Indenture and the Bond Law.

SECTION 2.02. *Terms of the Bonds.*

(a) General. The Bonds will be issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple thereof, so long as no Bond has more than one maturity date.

The Series A Bonds will be dated as of the Closing Date and will mature on April 1 in the years and in the respective principal amounts and bear interest (calculated on the basis of a 360-day year comprised of twelve 30-day months) at the respective rates per annum as set forth in the following table:

Series A Bonds

<u>Maturity Date</u> <u>(April 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
2018		
2019		
2020		
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		
2031		
2032		
2033		
2034		
2035		
2036		
2037		
2038		
2039		
2040		

The Taxable Series A-T Bonds will be dated as of the Closing Date and will mature on April 1 in the years and in the respective principal amounts and bear interest (calculated on the basis of a 360-day year comprised of twelve 30-day months) at the respective rates per annum as set forth in the following table:

Taxable Series A-T Bonds

<u>Maturity Date</u> <u>(April 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
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(b) Calculation of Interest. Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- (i) a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,
- (ii) a Bond is authenticated on or before the first Record Date, in which event interest thereon will be payable from the Closing Date, or
- (iii) interest on any Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

(c) Payments. Interest is payable on each Interest Payment Date to the persons in whose names the ownership of the Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on any Bond which is not punctually paid or duly provided for on any Interest Payment Date is payable to the person in whose name the ownership of such Bond is registered on the Registration Books at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice of which is given to such Owner by first-class mail not less than 10 days prior to such special record date.

The Trustee will pay interest on the Bonds by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date. At the written request of the Owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of any Record Date, the Trustee will pay interest on such Bonds on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as specified in such written request, which written request will remain in effect until rescinded in writing by the Owner. The Trustee will pay principal of the Bonds in lawful money of the United States of America by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee.

SECTION 2.03. *Redemption of Bonds.*

(a) Optional Redemption of Series A Bonds. The Series A Bonds maturing on or before April 1, 20__, are not subject to redemption prior to their respective stated maturities. The Series A Bonds maturing on or after April 1, 20__, are subject to redemption in whole, or in part among maturities on such basis and in such respective principal amounts as set forth in a Certificate of the City filed with the Trustee, and in any event by lot within a maturity as provided in subsection (c) below, at the option of the City, from any available source of funds, on any Business Day on or after April 1, 20__, at a redemption price equal to 100% of the principal amount thereof to be redeemed together with accrued interest to the redemption date, without premium.

The City shall give the Trustee written notice of its intention to redeem Series A Bonds under this subsection (a), and the manner of selecting such Series A Bonds for redemption from among the maturities thereof and the redemption price thereof, in sufficient time to enable the Trustee to give notice of such redemption in accordance with this Section.

(b) Optional Redemption of Taxable Series A-T Bonds.

[The Series 2017A-T Bonds maturing on or before April 1, 20____, are not subject to optional redemption prior to maturity. The Series 2017A-T Bonds maturing on or after April 1, 20____, are subject to redemption prior to their respective maturity dates, at the option of the City, as a whole or in part, as to maturities as determined by the City (and if partial maturities, then by lot), on any date on or after April 1, 20____, from any source of available funds, at the principal amount of the Series 2017A-T Bonds to be redeemed, plus accrued interest thereon to the date of redemption, without premium.]

[OR]

[The Taxable Series A-T Bonds may be redeemed, in whole or in part, at the option of the City, at any time at a redemption price equal to the greater of

(i) 100% of the principal amount of the Taxable Series A-T Bonds to be redeemed, or

(ii) the sum of the present values of the applicable remaining scheduled payments of principal and interest on the Taxable Series A-T Bonds to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which such Taxable Series A-T Bonds are to be redeemed, discounted to the date of redemption on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus ____ basis points,

plus in each case, accrued and unpaid interest on the Taxable Series A-T Bonds being redeemed to the date fixed for redemption.

For purposes of the foregoing, the following definitions shall apply:

“Treasury Rate” means, with respect to any redemption date, with respect to the Taxable Series A-T Bonds of a particular maturity, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue with respect thereto, computed as of the second business day immediately preceding that redemption date, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price with respect thereto for that redemption date.

“Comparable Treasury Issue” means, with respect to the Taxable Series A-T Bonds of a particular maturity, the United States Treasury security selected by the Independent Investment Banker which has an actual maturity comparable to the remaining average life of the Taxable Series A-T Bonds of such maturity to be redeemed, and that would be utilized in accordance with customary financial practice in pricing new issues of debt securities of comparable maturity to the

remaining average life of the Taxable Series A-T Bonds of such maturity to be redeemed.

“Comparable Treasury Price” means, with respect to any redemption date, with respect to the Taxable Series A-T Bonds of a particular maturity, (A) the average of the applicable Reference Treasury Dealer Quotations for that redemption date, after excluding the highest and lowest of such Reference Treasury Dealer Quotations, or (B) if the Independent Investment Banker for the Taxable Series A-T Bonds obtains fewer than four such Reference Treasury Dealer Quotations, the average of all such Quotations.

“Independent Investment Banker” means one of the Reference Treasury Dealers as designated by the City.

“Reference Treasury Dealer” means each of four firms, as designated by the City, and their respective successors; provided, however, that if any of them ceases to be a primary U.S. Government securities dealer in the City of New York (a “Primary Treasury Dealer”), the City will substitute another Primary Treasury Dealer.

“Reference Treasury Dealer Quotation” means, with respect to each Reference Treasury Dealer and any redemption date for the Taxable Series A-T Bonds of a particular maturity, the average, as determined by the Independent Investment Banker and communicated to the City, of the bid and asked prices for the applicable Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker and communicated to the Trustee by such Reference Treasury Dealer at 3:30 p.m., New York City time, on the third Business Day preceding that redemption date.

"Business Day" means any day, other than a Saturday or Sunday, and other than a day on which the Trustee is required, or authorized or not prohibited, by law (including without limitation, executive orders) to close and is closed.

(c) Mandatory Sinking Redemption of Series A Bonds. The Series A Term Bonds are subject to mandatory redemption in whole, or in part by lot, from sinking payments, at a redemption price equal to the principal amount thereof to be redeemed, without premium, plus accrued interest to the date of redemption, in the aggregate respective principal amounts and on April 1 in the years as set forth in the following tables:

Series A Term Bonds Maturing April 1, 20__

Sinking Payment Redemption Date (April 1)	Principal Amount
---	---------------------

(Maturity)

Series A Term Bonds Maturing April 1, 20__

Sinking Fund Redemption	
Date	Principal
<u>(April 1)</u>	<u>Amount</u>

(Maturity)

If some but not all of the Series A Term Bonds have been redeemed under the optional redemption provisions set forth above, the total amount of all future sinking payments will be reduced by the aggregate principal amount of such Series A Term Bonds so redeemed, to be allocated among such sinking fund payments on a pro-rata basis as determined by the City.

(d) Notice of Redemption. The Trustee on behalf and at the expense of the City shall mail (by first class mail) notice of any redemption to the respective Owners of any Bonds designated for redemption at their respective addresses appearing on the Registration Books, and to the Securities Depositories, and shall file such notice electronically with the Municipal Securities Rulemaking Board, at least 30 but not more than 60 days prior to the date fixed for redemption; *provided, however*, that neither failure to receive any such notice so mailed nor any defect therein will affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. Such notice shall state the date of the notice, the redemption date, the redemption place and the redemption price and shall designate the CUSIP numbers, the Bond numbers and the maturity or maturities (in the event of redemption of all of the Bonds of such maturity or maturities in whole) of the Bonds to be redeemed, and shall require that such Bonds be then surrendered at the Office of the Trustee identified in such notice for redemption at the redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

(e) Selection of Series A Bonds of the Same Maturity for Redemption. Whenever provision is made in this Section for the redemption of less than all of the Series A Bonds of a single maturity, the Trustee shall select the Series A Bonds of such maturity to be redeemed by lot in any manner which the Trustee in its sole discretion deems appropriate. For purposes of such selection, all Series A Bonds will be deemed to be comprised of separate \$5,000 denominations and such separate denominations will be treated as separate Series A Bonds which may be separately redeemed.

(f) Selection of Taxable Series A-T Bonds for Redemption. If less than all of the Taxable Series A-T Bonds are to be redeemed, the particular maturities of Taxable Series A-T Bonds to be redeemed at the option of the City will be determined by the City in its sole discretion.

If the Taxable Series A-T Bonds are registered in book-entry only form and so long as DTC or a successor securities depository is the sole registered owner of such Taxable Series A-T Bonds, if less than all of the Taxable Series A-T Bonds of a maturity are called for prior redemption, the particular Taxable Series A-T Bonds or portions thereof to be redeemed shall be allocated on a pro rata pass-through distribution of principal basis in accordance with DTC procedures, provided that, so long as the Taxable Series A-T Bonds

are held in book-entry form, the selection for redemption of such Taxable Series A-T Bonds shall be made in accordance with the operational arrangements of DTC then in effect, and, if the DTC operational arrangements do not allow for redemption on a pro rata pass-through distribution of principal basis, the Taxable Series A-T Bonds will be selected for redemption, in accordance with DTC procedures, by lot.

The City intends that redemption allocations made by DTC be made on a pro rata pass-through distribution of principal basis as described above. However, neither the City nor the Underwriter can provide any assurance that DTC, DTC's direct and indirect participants or any other intermediary will allocate the redemption of Taxable Series A-T Bonds on such basis.

If the Taxable Series A-T Bonds are no longer registered in book-entry-only form, each owner will receive an amount of Taxable Series A-T Bonds equal to the original face amount then beneficially held by that owner, registered in such investor's name. Thereafter, any redemption of less than all of the Taxable Series A-T Bonds of any maturity will continue to be paid to the registered owners of such Taxable Series A-T Bonds on a pro-rata basis, based on the portion of the original face amount of any such Taxable Series A-T Bonds to be redeemed.

(g) Partial Redemption of a Particular Bond. If only a portion of any Bond is called for redemption, then upon surrender of such Bond the City will execute and the Trustee will authenticate and deliver to the Owner thereof, at the expense of the City, a new Bond or Bonds of the same series and maturity date, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond to be redeemed.

(h) Effect of Redemption. From and after the date fixed for redemption, if notice of redemption has been duly mailed and funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption have been duly provided, such Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price, and no interest shall accrue thereon from and after the redemption date specified in such notice. The Trustee will cancel and destroy all Bonds redeemed under this Section.

(h) Right to Rescind Notice of Optional Redemption. The City has the right to rescind any notice of the optional redemption of Bonds under subsection (a) of this Section by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of optional redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default. The City and the Trustee have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Trustee shall cause notice of such rescission to be mailed, first class mail, postage prepaid, to the respective Owners of any Bonds designated for redemption, at their addresses appearing on the Registration Books, and to the Municipal Securities Rulemaking Board and the Securities Depositories.

SECTION 2.04. *Book Entry System.*

(a) Original Delivery. The Bonds will be initially delivered in the form of a separate single fully registered bond (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the Trustee shall register the ownership of each Bond on the

Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which are registered in the name of the Nominee, the City and the Trustee has no responsibility or obligation to any Depository System Participant or to any person on behalf of which the Nominee holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, the City and the Trustee has no responsibility or obligation with respect to

(i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds,

(ii) the delivery to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption,

(iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed if the City elects to redeem the Bonds in part,

(iv) the payment to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest on the Bonds or

(v) any consent given or other action taken by the Depository as Owner of the Bonds.

The City and the Trustee may treat and consider the person in whose name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal of and premium, if any, and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever.

The Trustee shall pay the principal of and the interest and premium, if any, on the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest and premium, if any, on the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner shall receive a Bond evidencing the obligation of the City to make payments of principal, interest and premium, if any, under this Indenture.

Upon delivery by the Depository to the City of written notice to the effect that the Depository has determined to substitute a new Nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the City shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the City has previously executed and delivered to such Depository a letter representing such matters as shall be necessary to so qualify the Bonds. The execution and delivery of such letter shall not in any way limit the provisions of subsection

(a) above or in any other way impose upon the City or the Trustee any obligation whatsoever with respect to persons having interests in the Bonds other than the Bond Owners. Upon the written acceptance by the Trustee, the Trustee shall agree to take all action reasonably necessary for all representations of the Trustee in such letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of such letter, the City may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. If either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the City determines to terminate the Depository as such, then the City shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the City and the Trustee in the issuance of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the City fails to identify another Securities Depository to replace the Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the provisions hereof.

If the City determines that it is in the best interests of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the City may notify the Depository System Participants of the availability of such certificated Bonds through the Depository. In such event, the Trustee will issue, transfer and exchange Bonds as required by the Depository and others in appropriate amounts; and whenever the Depository requests, the Trustee and the City shall cooperate with the Depository in taking appropriate action (i) to make available one or more separate certificates evidencing the Bonds to any Depository System Participant having Bonds credited to its account with the Depository, or (ii) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Bonds, all at the City's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of and interest and premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

SECTION 2.05. *Form and Execution of Bonds*. The Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, are set forth in Appendix B attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

The City Manager shall execute, and the City Clerk shall attest, each Bond. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Bond ceases to be such officer before the Closing Date, such signature will nevertheless be as effective as if the officer had

remained in office until the Closing Date. Any Bond may be signed and attested on behalf of the City by such persons as at the actual date of the execution of such Bond are the proper officers of the City, duly authorized to execute debt instruments on behalf of the City, although on the date of such Bond any such person was not an officer of the City.

Only those Bonds bearing a certificate of authentication in the form set forth in Appendix B, manually executed and dated by the Trustee, are valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee is conclusive evidence that such Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.06. *Transfer and Exchange of Bonds.*

(a) Transfer. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. The Trustee shall collect any tax or other governmental charge on the transfer of any Bonds under this Section. Whenever any Bond or Bonds shall be surrendered for transfer, the City shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of like series, interest rate, maturity and aggregate principal amount. The City shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer of Bonds.

(b) Exchange. The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations and of the same series, interest rate and maturity. The Trustee shall collect any tax or other governmental charge on the exchange of any Bonds under this subsection (b). The City shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange of Bonds.

(c) Limitations. The Trustee may refuse to transfer or exchange, under the provisions of this Section, any Bonds selected by the Trustee for redemption under Section 2.03, or any Bonds during the period established by the Trustee for the selection of Bonds for redemption.

SECTION 2.07. *Registration Books.* The Trustee will keep or cause to be kept, at its Office, sufficient records for the registration and registration of transfer of the Bonds, which shall at all times during normal business hours, and upon reasonable notice, be open to inspection by the City; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Bonds as hereinbefore provided.

SECTION 2.08. *Bonds Mutilated, Lost, Destroyed or Stolen.* If any Bond becomes mutilated, the City, at the expense of the Owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. The Trustee shall cancel every mutilated Bond surrendered to it and deliver such mutilated Bond to, or upon the order of, the City. If any Bond is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and,

if such evidence is satisfactory and if indemnity satisfactory to the Trustee is given, the City, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the Trustee in connection therewith. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen will constitute an original additional contractual obligation on the part of the City whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued under this Indenture.

Notwithstanding any other provision of this Section, in lieu of delivering a new Bond for which principal has become due for a Bond which has been mutilated, lost, destroyed or stolen, the Trustee may make payment of such Bond in accordance with its terms upon receipt of indemnity satisfactory to the Trustee.

ARTICLE III

ISSUE OF BONDS

SECTION 3.01. *Issuance of Bonds.* Upon the execution and delivery of this Indenture, (a) the City shall execute and deliver the Series A Bonds in the aggregate principal amount of \$_____ to the Trustee and the Trustee shall authenticate and deliver the Series A Bonds to the Underwriter upon receipt of a Request of the City therefor; and (b) the City shall execute and deliver the Taxable Series A-T Bonds in the aggregate principal amount of \$_____ to the Trustee and the Trustee shall authenticate and deliver the Taxable Series A-T Bonds to the Underwriter upon receipt of a Request of the City therefor.

SECTION 3.02. *Deposit and Application of Proceeds.* On the Closing Date, the Trustee shall apply the proceeds of the Bonds as follows:

(a) Series A Bonds. The Trustee shall apply the net proceeds of the Series A Bonds equal to \$_____ (calculated as the original principal amount of \$_____, plus net original issue premium of \$_____, less the Underwriter's discount of \$_____) as follows:

- (i) The Trustee shall deposit \$_____ in the Costs of Issuance Fund.
- (ii) The Trustee shall transfer \$_____, constituting the remainder of the Bond proceeds, to the Escrow Agent for deposit and application in accordance with the Escrow Agreement.

(b) Taxable Series A-T Bonds. The Trustee shall apply the net proceeds of the Taxable Series A-T Bonds equal to \$_____ (calculated as the

original principal amount of \$_____, plus net original issue premium of \$_____, less the Underwriter's discount of \$_____) as follows:

- (i) The Trustee shall deposit \$_____ in the Costs of Issuance Fund.
- (ii) The Trustee shall transfer \$_____, constituting the remainder of the Bond proceeds, to the Escrow Agent for deposit and application in accordance with the Escrow Agreement.

(c) Temporary Accounts. The Trustee may establish one or more temporary accounts to facilitate such deposit and transfer.

SECTION 3.03. *Costs of Issuance Fund*. There is hereby established a separate fund to be known as the "Costs of Issuance Fund", to be held by the Trustee in trust. The Trustee shall disburse moneys in the Costs of Issuance Fund from time to time to pay Costs of Issuance upon submission of a Request of the City stating (a) the person to whom payment is to be made, (b) the amounts to be paid, (c) the purpose for which the obligation was incurred, (d) that such payment is a proper charge against the Costs of Issuance Fund, and (e) that such amounts have not been the subject of a prior Request of the City; in each case together with a statement or invoice for each amount requested thereunder.

On June 1, 2018, the Trustee shall transfer any amounts remaining in the Costs of Issuance Fund to the Bond Service Fund to be applied toward the payment of the interest next coming due and payable on the Series A Bonds, and the Trustee shall thereupon close the Costs of Issuance Fund.

SECTION 3.04. *Validity of Bonds*. The recital contained in the Bonds that they are issued pursuant to the laws of the State of California is conclusive evidence of their validity and of the regularity of their issuance.

ARTICLE IV

REVENUES; FLOW OF FUNDS

SECTION 4.01. *Pledge of Net Revenues*. The Bonds shall be secured by a first pledge of all of the Net Revenues, on a parity with the pledge which secures all outstanding Parity Debt. In addition, the Bonds shall be secured by a pledge of all of the moneys in the Bond Service Fund, including all amounts derived from the investment of such moneys. So long as any of the Bonds are Outstanding, the Net Revenues and such moneys may not be used for any other purpose; except that out of the Net Revenues there may be apportioned such sums, for such purposes, as are expressly permitted by Section 4.02.

SECTION 4.02. *Receipt, Deposit and Application of Net Revenues*. The City has previously established the Water Fund, which it will continue to hold and maintain for the purposes and uses set forth herein. The City shall deposit all Gross Revenues in the Water Fund promptly upon the receipt thereof, and shall apply amounts in the Water Fund

solely for the uses and purposes set forth herein and purposes set forth in the Parity Debt Documents. The City shall withdraw amounts on deposit in the Water Fund and apply such amounts at the times and for the purposes, and in the priority, as follows:

- (a) Bond Service Fund. Not later than the 3rd Business Day preceding each Interest Payment Date, so long as any Bonds remain Outstanding hereunder, the City shall withdraw from the Water Fund and pay to the Trustee for deposit into the Bond Service Fund (which the Trustee shall establish and hold in trust hereunder) an amount which, together with other available amounts then on deposit in the Bond Service Fund, is at least equal to the aggregate amount of principal of (including sinking payments) and interest coming due and payable on the Bonds on such Interest Payment Date.

The Trustee shall apply amounts in the Bond Service Fund solely for the purposes of (i) paying the interest on the Bonds when due and payable (including accrued interest on any Bonds purchased or redeemed hereunder), and (ii) paying the principal (including sinking payments) of the Bonds at the maturity thereof. Upon the payment or discharge in full of all Bonds then Outstanding, the Trustee shall transfer any moneys remaining in the Bond Service Fund to the City for deposit into the Water Fund.

- (b) Redemption Fund. If the City elects to redeem Outstanding Bonds under Section 2.03(a), the City shall transfer to the Trustee for deposit into the Redemption Fund (which the Trustee shall thereupon establish and hold in trust hereunder) an amount at least equal to the redemption price of the Bonds, excluding accrued interest, which is payable from the Bond Service Fund. Amounts in the Redemption Fund shall be applied by the Trustee solely for the purpose of paying the redemption price of Bonds to be redeemed under Section 2.03(a). Following any such redemption of the Bonds, any moneys remaining in the Redemption Fund shall be transferred by the Trustee to the City for deposit into the Water Fund.

The City shall manage, conserve and apply moneys in the Water Fund in such a manner that all deposits required to be made under this Section and under the Parity Debt Documents will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default has occurred and is continuing, the City may at any time use and apply moneys in the Water Fund for any one or more of the following purposes:

- (i) the acquisition and construction of improvements to the Water System;
- (ii) the redemption of any of the Bonds, Parity Debt or other obligations of the Water System, as the City in its discretion may determine; or
- (iii) any other lawful purpose of the City relating to the Water System.

Nothing herein is intended or shall be construed to impair the ability of the City to apply amounts on deposit in the Water Fund to pay Operation and Maintenance Costs when and as the same become due and payable.

SECTION 4.03. *Investments.*

(a) Investment of Funds Held by City. All moneys in the Water Fund may be invested by the City from time to time in any securities in which the City is legally authorized to invest funds subject to its control.

(b) Investment of Funds Held by Trustee. The Trustee shall invest moneys in the funds and accounts held by it hereunder in Permitted Investments specified in the Request of the City delivered to the Trustee at least two Business Days in advance of the making of such investments. In the absence of any such direction from the City, the Trustee shall invest any such moneys solely in Permitted Investments described in clause (f) of the definition thereof.

(c) General Investment Provisions. Obligations purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account. Whenever in this Indenture the City is required to transfer any moneys to the Trustee, such transfer may be accomplished by transferring a like amount of Permitted Investments. All interest or gain derived from the investment of amounts in any of the funds or accounts held by the Trustee hereunder shall be retained in the respective fund or account from which such investment was made. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder upon receipt by the Trustee of the Request of the City. The Trustee may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made under this Section.

The Trustee shall furnish the City periodic cash transaction statements which include detail for all investment transactions effected by the Trustee or brokers selected by the City. Upon the City's election, such statements will be delivered via the Trustee's online service and upon electing such service, paper statements will be provided only upon request. The City waives the right to receive brokerage confirmations of security transactions effected by the Trustee as they occur, to the extent permitted by law. The City further understands that trade confirmations for securities transactions effected by the Trustee will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker. The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder.

SECTION 4.04. *Valuation and Disposition of Investments.*

(a) Except as otherwise provided in subsection (b) of this Section, the City covenants that all investments of amounts deposited in any fund or account created by or under this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of Section 148 of the Tax Code) shall be acquired, disposed of and valued (as of the date that valuation is required by this Indenture or the Tax Code) at Fair Market Value as such term is defined in subsection (d) below. The Trustee has no duty in

connection with the determination of Fair Market Value other than to follow the investment directions of the City in any Certificate or Request of the City.

(b) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code shall be valued at cost thereof (consisting of present value thereof within the meaning of Section 148 of the Tax Code); provided that the City shall inform the Trustee which funds are subject to a yield restriction, and shall provide the Trustee with any necessary valuation criteria or formulae.

(c) Except as provided in the proceeding subsection (b), for the purpose of determining the amount in any fund, the Trustee shall value Permitted Investments credited to such fund at least annually at the Fair Market Value thereof. The Trustee may utilize computerized securities pricing services that may be available to it, including those available through its regular accounting system. If and as directed by the City in writing, the Trustee shall sell or present for redemption any Permitted Investment so purchased by the Trustee whenever it is necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee has no liability or responsibility for any loss resulting therefrom.

(d) For purposes of this Section, the term "Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if

(i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code,

(ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, or

(iii) the investment is a United States Treasury Security – State and Local Government Series which is acquired in accordance with applicable regulations of the United States Bureau of Public Debt.

ARTICLE V

COVENANTS OF THE CITY

SECTION 5.01. *Punctual Payment; Compliance With Documents.* The City will punctually pay or cause to be paid the interest and principal to become due with respect to all of the Bonds in strict conformity with the terms of the Bonds and of this Indenture, and will faithfully observe and perform all of the conditions, covenants and requirements of this Indenture and all Supplemental Indentures.

SECTION 5.02. *Discharge of Claims.* The City covenants that in order to fully preserve and protect the priority and security of the Bonds the City shall pay from the Net Revenues and discharge all lawful claims for labor, materials and supplies furnished for or in connection with the Water System which, if unpaid, may become a lien or charge upon the Net Revenues prior or superior to the lien of the Bonds and impair the security of the Bonds. The City shall also pay from the Net Revenues all taxes and assessments or other governmental charges lawfully levied or assessed upon or in respect of the Water System or upon any part thereof or upon any of the Net Revenues therefrom.

SECTION 5.03. *Operation of Water System in Efficient and Economical Manner.* The City covenants and agrees to operate the Water System in an efficient and economical manner and to operate, maintain and preserve the Water System in good repair and working order.

SECTION 5.04. *Sale or Eminent Domain of Water System.* Except as provided herein, the City covenants that the Water System will not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole if such encumbrance, sale, lease, pledge, charge or other disposition would materially impair the ability of the City to pay the principal of or interest on the Bonds and the Parity Debt, or would materially adversely affect its ability to comply with the terms of this Indenture or the Parity Debt Documents. The City may not enter into any agreement which impairs the operation of the Water System or any part of it necessary to secure adequate Net Revenues to pay the Bonds and the Parity Debt, or which otherwise would impair the rights of the Bond Owners with respect to the Net Revenues.

If any substantial part of the Water System is sold, the payment therefor shall either (a) be used for the acquisition or construction of improvements and extensions or replacement facilities or (b) be applied to redeem the Bonds or any Parity Debt in accordance with this Indenture and the related Parity Debt Documents, respectively.

Any amounts received as awards as a result of the taking of all or any part of the Water System by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the City, shall either (a) be used for the acquisition or construction of improvements to the Water System, or (b) be applied to redeem the Bonds or any Parity Debt in accordance with this Indenture and the related Parity Debt Documents, respectively.

SECTION 5.05. *Insurance.* The City will at all times maintain with responsible insurers all such insurance on the Water System as is customarily maintained with respect

to works and properties of like character against accident to, loss of or damage to the Water System.

If any useful part of the Water System is damaged or destroyed, such part shall be restored to usable condition. All amounts collected from insurance against accident to or destruction of any portion of the Water System shall be used to repair or rebuild such damaged or destroyed portion of the Water System, and to the extent not so applied, shall be applied to redeem the Bonds or any Parity Debt in accordance with this Indenture and the related Parity Debt Documents, respectively.

The City shall also maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the City, the Trustee and the Owners of the Bonds.

Any such insurance shall be in the form of policies or contracts for insurance with insurers of good standing and shall be payable to the City, or may be in the form of self-insurance by the City. The City shall establish such fund or funds or reserves as are necessary to provide for its share of any such self-insurance.

The Trustee has no liability to determine whether the City is in compliance with the provisions of this Section.

SECTION 5.06. *Records and Accounts.* The City will keep proper books of record and accounts of the Water System, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the Water System. Said books shall, upon reasonable request, be subject to the inspection of the Trustee (who shall have no duty to inspect) and the Owners of not less than 10% of the Outstanding Bonds or their representatives authorized in writing.

The City will cause the books and accounts of the Water System to be audited annually by an Independent Accountant and will make available for inspection by the Bond Owners at the Office of the Trustee, upon reasonable request, a copy of the report of such Independent Accountant. The City will furnish a copy of such statements, upon reasonable request, to the Trustee (who shall have no duty to inspect) and any Bond Owner.

SECTION 5.07. *Rates and Charges.*

(a) Covenant Regarding Gross Revenues. The City will fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Water System during each Fiscal Year which (together with other funds transferred from the Revenue Stabilization Fund or other funds which are lawfully available to the City for payment of any of the following amounts during such Fiscal Year) are at least sufficient, after making allowances for contingencies and error in the estimates, to pay the following amounts in the following order:

- (i) all Operation and Maintenance Costs estimated by the City to become due and payable in such Fiscal Year;

- (ii) the principal of and interest on all outstanding Bonds and Parity Debt as they become due and payable during such Fiscal Year, without preference or priority;
- (iii) all amounts, if any, required to restore the balances in any reserve funds established for outstanding Parity Debt to their respective required levels;
- (iv) all payments coming due and payable during the Fiscal Year and required for compliance with the Parity Debt Documents; and
- (v) all payments required to meet any other obligations of the City which are charges, liens, encumbrances upon or payable from the Gross Revenues or Net Revenues during the Fiscal Year.

(b) Covenant Regarding Net Revenues. In addition to the covenant set forth in the preceding clause (a) of this Section, the City will fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Water System during each Fiscal Year which, taking into account allowances for contingencies, are sufficient to yield estimated Net Revenues which are at least equal to 120% of the aggregate amount of principal of and interest on all outstanding Bonds and Parity Debt coming due and payable during such Fiscal Year. The provisions of this subsection (b) are subject to the adjustments made for any transfers made from a Revenue Stabilization Fund under Section 5.08. Notwithstanding the foregoing provisions, if the actual collection of Net Revenues based on such rates, fees and charges is insufficient to yield Net Revenues which meet the requirements of this subsection (b), such event shall not constitute an Event of Default unless it has continued uncured for a period of at least 12 months.

SECTION 5.08. *Establishment of Revenue Stabilization Fund.* The City has the right at any time to establish a Revenue Stabilization Fund to be held by it and administered in accordance with this Section, for the purpose of stabilizing the rates and charges imposed by the City with respect to the Water System. From time to time the City may deposit amounts in the Revenue Stabilization Fund, from any source of legally available funds, including but not limited to Net Revenues which are released from the pledge and lien which secures the Bonds, as the City may determine.

The City may, but is not required to, withdraw amounts on deposit in the Revenue Stabilization Fund and deposit such amounts in the Water Fund in any Fiscal Year for the purpose of paying the principal of and interest on the Bonds and any outstanding Parity Debt coming due and payable in such Fiscal Year.

Amounts so transferred from the Revenue Stabilization Fund to the Water Fund shall constitute Gross Revenues for such Fiscal Year (except as otherwise provided herein), and shall be applied for the purposes of the Water Fund. Amounts on deposit in the Revenue Stabilization Fund shall not be pledged to or otherwise secure the Bonds or any Parity Debt.

To the extent that the City appropriates funds from Gross Revenues into the Revenue Stabilization Fund for the Water System, a deduction shall be made from Gross Revenues of the Water System in the Fiscal Year during which said transfer occurred for purposes of calculations to be made under Section 5.07 and Section 5.09. To the extent

that the City appropriates funds from the Revenue Stabilization Fund into the Water Fund, the City may count the funds so transferred as Gross Revenues in the Fiscal Year in which said transfer occurs, for purposes of Section 5.07 and Section 5.09.

All interest or other earnings on deposits in the Revenue Stabilization Fund shall be retained therein or, at the option of the City, be applied for any other lawful purposes. The City has the right at any time to withdraw any or all amounts on deposit in the Revenue Stabilization Fund and apply such amounts for any other lawful purposes of the City.

SECTION 5.09. *Issuance of Parity Debt.* The City may issue additional Parity Debt from time to time in such principal amount as it determines, subject to the following conditions precedent:

- (a) No Event of Default (or no event with respect to which notice has been given and which, once all notice of grace periods have passed, would constitute an Event of Default) has occurred and is continuing.
- (b) The amount of such Net Revenues, calculated in accordance with generally accepted accounting principles, as shown by the books of the City for the latest Fiscal Year or as shown by the books of the City for any more recent 12-month period selected by the City, in either case verified by a certificate or opinion of an Independent Accountant, plus (at the option of the City) the Additional Revenues, are at least equal to 120% of the amount of Maximum Annual Debt Service on all outstanding Bonds and Parity Debt, including the proposed issuance of Parity Debt.
- (c) The issuance of such Parity Debt shall comply with all conditions to the issuance thereof as set forth in the applicable provisions of the Parity Debt Documents.
- (d) The City shall deliver to the Trustee a Certificate of the City certifying, and an opinion of Bond Counsel stating, that the conditions precedent to the issuance of such Parity Debt set forth in this Section have been satisfied.

SECTION 5.10. *Superior and Subordinate Obligations.* The City shall not issue or incur any additional bonds or other obligations having any priority in payment of principal or interest out of the Gross Revenues or the Net Revenues over the Bonds.

Nothing herein limits or affects the ability of the City to issue or incur (a) Parity Debt under Section 5.09, or (b) obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established hereunder.

SECTION 5.11. *Tax Covenants Relating to Series A Bonds.*

(a) Generally. The City shall not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, interest on the Series A Bonds to become includable in gross income for federal income tax purposes.

(b) Private Activity Bond Limitation. The City shall assure that the proceeds of the Series A Bonds are not used in a manner which would cause the Series A Bonds to become “private activity bonds” within the meaning of Section 141(a) of the Tax Code or to meet the private loan financing test of Section 141(c) of the Tax Code.

(c) Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series A Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The City shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the Series A Bond proceeds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Series A Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Tax Code.

(e) Rebate of Excess Investment Earnings. The City shall calculate or cause to be calculated all amounts of excess investment earnings with respect to the Series A Bonds which are required to be rebated to the United States of America under Section 148(f) of the Tax Code, at the times and in the manner required under the Tax Code. The City shall pay when due an amount equal to excess investment earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code, such payments to be made from any source of legally available funds of the City. The City shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Series A Bonds, records of the determinations made under this subsection (e).

The Trustee has no duty to monitor the compliance by the City with any of the covenants contained in this Section.

SECTION 5.12. *Refunding of 2010 Bonds.* The City shall cause the proceeds of the Bonds to be applied to the payment, defeasance and redemption of the 2010 Bonds in accordance with the provisions of the indenture under which the 2010 Bonds were issued and the Escrow Agreement. From and after the Closing Date, the 2010 Bonds shall be fully discharged and shall no longer be secured by a pledge of or lien on the Gross Revenues or the Net Revenues, or any portion thereof.

SECTION 5.13. *Compliance With Parity Debt Documents.* The City will observe and perform all of the covenants, agreements and conditions on its part required to be observed and performed under the Parity Debt Documents. The City will not take or omit to take any action within its control which would, or which if not corrected with the passage of time would, constitute an event of default under and within the meaning of the Parity Debt Documents.

SECTION 5.14. *Continuing Disclosure.* The City will comply with and carry out all of the provisions of the Continuing Disclosure Certificate which has been executed and delivered by the City on the Closing Date. Notwithstanding any other provision hereof, failure of the City to comply with the Continuing Disclosure Certificate does not constitute an Event of Default hereunder; *provided, however,* that any Participating Underwriter (as such term is defined in the Continuing Disclosure Certificate) or any Owner or beneficial owner of the Bonds may take such actions as may be necessary and appropriate,

including seeking specific performance by court order, to cause the City to comply with its obligations under this Section.

SECTION 5.15. *Further Assurances.* The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Owners of the Bonds, the Trustee the rights and benefits provided in this Indenture.

ARTICLE VI

THE TRUSTEE

SECTION 6.01. *Duties, Immunities and Liabilities of Trustee.*

(a) Performance of Duties. The Trustee shall, prior to the occurrence of an Event of Default, and after the curing or waiving of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or duties will be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a reasonable corporate trustee would exercise or use.

(b) Removal of Trustee. The City may remove the Trustee at any time, and shall remove the Trustee (i) if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or (ii) if at any time the Trustee ceases to be eligible in accordance with subsection (e) of this Section, or becomes incapable of acting, or is adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property is appointed, or any public officer takes control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation. The City may accomplish such removal by giving 30 days written notice to the Trustee, whereupon the City will appoint a successor Trustee by an instrument in writing.

(c) Resignation by Trustee. The Trustee may at any time resign by giving written notice of such resignation to the City, and by giving notice of such resignation by first class mail, postage prepaid, to the Bond Owners at their respective addresses shown on the Registration Books. Upon receiving such notice of resignation, the City will promptly appoint a successor Trustee by an instrument in writing.

(d) Appointment of Successor Trustee. Any removal or resignation of the Trustee and appointment of a successor Trustee becomes effective upon acceptance of appointment by the successor Trustee. If no successor Trustee has been appointed and accepted appointment within 45 days following giving notice of removal or notice of resignation as aforesaid, the resigning Trustee, any Owner (on behalf of such Owner and all other Owners) may petition any federal or state court for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper,

appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the City and to its predecessor Trustee a written acceptance thereof, and to the predecessor Trustee an instrument indemnifying the predecessor Trustee for any costs or claims arising during the time the successor Trustee serves as Trustee hereunder, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless, upon the receipt by the predecessor Trustee of the Request of the City or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the City will execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the City shall mail or cause the successor Trustee to mail, by first class mail postage prepaid, a notice of the succession of such Trustee to the trusts hereunder to each Rating Agency, and to the Owners at the addresses shown on the Registration Books. If the City fails to mail such notice within 15 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the City.

(e) Qualifications of Trustee. Any Trustee appointed under the provisions of this Section in succession to the Trustee shall:

- (i) be a company or bank having trust powers,
- (ii) have a corporate trust office in the State of California,
- (iii) have (or be part of a bank holding company system whose bank holding company has) a combined capital and surplus of at least \$75,000,000, and
- (iv) be subject to supervision or examination by federal or state authority.

If such bank or company publishes a report of condition at least annually, under law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such bank or company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in subsection (c) of this Section.

The City will maintain a Trustee which is qualified under the provisions of the foregoing provisions of this subsection (e), so long as any Bonds are Outstanding.

SECTION 6.02. *Merger or Consolidation.* Any bank or company into which the Trustee may be merged or converted or with which either of them may be consolidated or any bank or company resulting from any merger, conversion or consolidation to which it shall be a party or any bank or company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank or company shall be eligible under subsection (e) of Section 6.01, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

SECTION 6.03. *Rights and Liabilities of Trustee.*

(a) The recitals of facts herein and in the Bonds contained are taken as statements of the City, and the Trustee has no responsibility for the correctness of the same, nor does it have any liability whatsoever therefor, nor make any representations as to the validity or sufficiency of this Indenture or of the Bonds nor shall it incur any responsibility in respect thereof, other than as expressly stated herein. The Trustee is, however, responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee is not liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Trustee is not liable for the acts of any agents of the Trustee selected by it with due care. The Trustee may become the Owner of any Bonds with the same rights it would have if it were not Trustee and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding. The Trustee, either as principal or agent, may engage in or be entrusted in any financial or other transaction with the City.

(b) The Trustee has no liability with respect to any action taken or omitted to be taken by it in accordance with the direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(c) The Trustee has no liability for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture, except for actions arising from the negligence or willful misconduct of the Trustee. The permissive right of the Trustee to do things enumerated hereunder is not construed as a mandatory duty.

(d) The Trustee will not be deemed to have knowledge of any Event of Default hereunder unless and until a responsible officer of the Trustee has actual knowledge thereof, or unless and until a responsible officer of the Trustee has received written notice thereof at its Office. Except as otherwise expressly provided herein, the Trustee is not bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of an Event of Default hereunder or thereunder. The Trustee is not responsible for the City's payment of principal and interest on the Bonds, the City's observance or performance of any other covenants, conditions or terms contained herein, or the validity or effectiveness of any collateral given to or held by it. Without limiting the generality of the foregoing, and notwithstanding anything herein

to the contrary, the Trustee is not responsible for reviewing the contents of any financial statements furnished to the Trustee under Section 5.06 and may rely conclusively on the Certificate of the City accompanying such financial statements to establish the City's compliance with its financial covenants hereunder, including, without limitation, its covenants regarding the deposit of Gross Revenues into the Water Fund and the investment and application of moneys on deposit in the Water Fund (other than its covenants to transfer such moneys to the Trustee when due hereunder).

(e) No provision in this Indenture requires the Trustee to risk or expend its own funds or otherwise incur any financial liability hereunder. The Trustee is entitled to receive interest on any moneys advanced by it hereunder, at the maximum rate permitted by law.

(f) The Trustee may establish additional accounts or subaccounts of the funds established hereunder as the Trustee deems necessary or prudent in furtherance of its duties under this Indenture.

(g) The Trustee has no responsibility or liability whatsoever with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds, nor shall the Trustee have any obligation to review any such material, and any such review by the Trustee will not be deemed to create any obligation, duty or liability on the part of the Trustee.

(h) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, have the right (but not the duty) fully to inspect the Water System, including all books, papers and records of the City pertaining to the Water System and the Bonds, and to take such memoranda from and with regard thereto as may be desired but which is not privileged by statute or by law.

(i) Before taking any action under Article VIII the Trustee may require indemnity satisfactory to the Trustee be furnished to it to hold the Trustee harmless from any expenses whatsoever and to protect it against any liability it may incur hereunder.

(j) The immunities extended to the Trustee also extend to its directors, officers, employees and agents.

(k) The permissive right of the Trustee to do things enumerated in this Indenture is not construed as a duty.

(l) The Trustee may execute any of the trusts or powers hereof and perform any of its duties through attorneys, agents and receivers and is not answerable for the conduct of the same if appointed by it with reasonable care.

SECTION 6.04. *Right to Rely on Documents.* The Trustee shall be protected in acting upon any notice, resolution, requisition, request, consent, order, certificate, report, opinion or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, including, without limitation, Bond Counsel or other counsel of or to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustee hereunder in accordance therewith.

The Trustee is not bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and such person's title thereto is established to the satisfaction of the Trustee.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee deems it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate of the City, which shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Certificate, but in its discretion the Trustee may (but has no duty to), in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable. The Trustee may conclusively rely on any certificate or report of any Independent Accountant appointed by the City.

SECTION 6.05. *Preservation and Inspection of Documents.* All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject during normal business hours, and upon reasonable prior written notice, to the inspection of the City and any Owner, and their agents and representatives duly authorized in writing.

SECTION 6.06. *Compensation and Indemnification.* Absent any agreement to the contrary, the City shall pay to the Trustee from time to time compensation for all services rendered under this Indenture and also all expenses, charges, legal and consulting fees and other disbursements and those of its attorneys (including any allocated costs of internal counsel), agents and employees, incurred in and about the performance of its powers and duties under this Indenture. The Trustee has a first lien on the Net Revenues and all funds and accounts held by the Trustee hereunder to secure the payment to the Trustee of all fees, costs and expenses, including compensation to its experts, attorneys and counsel incurred in declaring such Event of Default and in exercising the rights and remedies set forth in Article VIII. Any such expenses incurred by the Trustee shall be deemed to constitute a substantial contribution to the trust estate which secures the Bonds.

The City further covenants and agrees to indemnify and save the Trustee and its officers, directors, agents and employees, harmless against any loss, expense and liabilities, whether or not litigated, which it may incur arising out of or in the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability and of enforcing any remedies hereunder and under any related documents, but excluding any and all losses, expenses and liabilities which are due to the negligence or willful misconduct of the Trustee, its officers, directors, agents or employees. The obligations of the City under this Section shall survive resignation or removal of the Trustee under this Indenture and payment of the Bonds and discharge of this Indenture.

SECTION 6.07. *Accounting Records and Financial Statements.* The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with industry standards, in which accurate entries shall be made of all transactions made by it relating to the proceeds of the Bonds and all funds and accounts established and held by the Trustee under this Indenture. Such books of record and

account shall be available for inspection by the City at reasonable hours, during regular business hours, with reasonable prior notice and under reasonable circumstances. The Trustee shall furnish to the City, at least semiannually, an accounting (which may be in the form of its customary statements) of all transactions relating to the proceeds of the Bonds and all funds and accounts held by the Trustee under this Indenture.

ARTICLE VII

MODIFICATION AND AMENDMENT OF THIS INDENTURE

SECTION 7.01. *Amendments Permitted.*

(a) Amendment With Bond Owner Consent. This Indenture and the rights and obligations of the City and of the Owners of the Bonds may be modified or amended by the City and the Trustee upon Request of the City at any time by the execution of a Supplemental Indenture, but only with the written consent of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding with respect to all Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 9.05. Any such Supplemental Indenture becomes effective upon the execution and delivery thereof by the parties thereto and upon consent of the requisite Bond Owners. No such modification or amendment shall:

- (i) extend the maturity of any Bond or reduce the interest rate thereon, or otherwise alter or impair the obligation of the City to pay the principal thereof, or interest thereon, or any premium payable on the redemption thereof, at the time and place and at the rate and in the currency provided therein, without the written consent of the Owner of such Bond, or
- (ii) permit the creation by the City of any mortgage, pledge or lien upon the Gross Revenues or the Net Revenues superior to or on a parity with the pledge and lien created for the benefit of the Bonds (except as expressly permitted by this Indenture), or reduce the percentage of Bonds required for the affirmative vote or written consent to an amendment or modification, or
- (iii) modify any of the rights or obligations of the Trustee without its written consent.

(b) Amendment Without Bond Owner Consent. This Indenture and the rights and obligations of the City and of the Owners of the Bonds may also be modified or amended at any time by a Supplemental Indenture, without the consent of any Owners of the Bonds, but only for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City contained in this Indenture, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;

- (ii) to cure any ambiguity, or to cure, correct or supplement any defective provision contained in this Indenture, or in any other respect whatsoever as the City deems necessary or desirable, provided under any circumstances that such modifications or amendments do not materially adversely affect the interests of the Owners in the opinion of Bond Counsel filed with the City and the Trustee;
 - (iii) to provide for the issuance of Parity Debt under Section 5.09, and to provide the terms and conditions under which such Parity Debt may be issued, including but not limited to the establishment of special funds and accounts relating thereto and any other provisions relating solely thereto, subject to and in accordance with the provisions of Section 5.09; or
 - (iv) to amend any provision hereof to assure the exclusion from gross income of interest on the Bonds for federal income tax purposes under the Tax Code, in the opinion of Bond Counsel filed with the City and the Trustee.
- (c) Notice of Amendments. The City shall deliver or cause to be delivered a draft of any Supplemental Indenture to each Rating Agency, at least 10 days prior to the effective date of such Supplemental Indenture under this Section.

SECTION 7.02. *Effect of Supplemental Indenture*. From and after the time any Supplemental Indenture becomes effective under this Article VII, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 7.03. *Endorsement or Replacement of Bonds After Amendment*. After the effective date of any amendment or modification hereof under this Article, the City may determine that any or all of the Bonds shall bear a notation, by endorsement in form approved by the City, as to such amendment or modification and in that case upon demand of the City the Owners of such Bonds shall present such Bonds for that purpose at the Office of the Trustee, and thereupon a suitable notation as to such action shall be made on such Bonds. In lieu of such notation, the City may determine that new Bonds shall be prepared and executed in exchange for any or all of the Bonds and in that case upon demand of the City the Owners of the Bonds shall present such Bonds for exchange at the Office of the Trustee without cost to such Owners.

SECTION 7.04. *Amendment by Mutual Consent*. The provisions of this Article VII shall not prevent any Owner from accepting any amendment as to the particular Bond held by such Owner.

SECTION 7.05. *Trustee's Reliance*. The Trustee may conclusively rely, and is protected in relying, upon a Certificate of the City and an opinion of counsel stating that all requirements of this Indenture relating to the amendment or modification hereof have

been satisfied and that such amendments or modifications do not materially adversely affect the interests of the Owners.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF BOND OWNERS

SECTION 8.01. *Events of Default and Acceleration of Maturities.* Each of the following events constitutes an Event of Default hereunder:

- (a) Failure to pay any installment of the principal of any Bonds when due, whether at maturity as therein expressed, by proceedings for redemption, by acceleration, or otherwise.
- (b) Failure to pay any installment of interest on the Bonds when due.
- (c) Failure by the City to observe and perform any of the other covenants, agreements or conditions on its part contained in this Indenture or in the Bonds, if such failure has continued for a period of 30 days after written notice thereof, specifying such failure and requiring the same to be remedied, has been given to the City by the Trustee; *provided, however,* if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30-day period, such failure shall not constitute an Event of Default if the City institutes corrective action within such 30-day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.
- (d) The City commences a voluntary case under Title 11 of the United States Code or any substitute or successor statute.
- (e) The occurrence and continuation of an event of default under and as defined in any Parity Debt Documents.

If an Event of Default occurs and is continuing, the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding the Trustee shall, (a) declare the principal of the Bonds, together with the accrued interest thereon, to be due and payable immediately, and upon any such declaration the same will become immediately due and payable, anything in this Indenture or in the Bonds to the contrary notwithstanding, and (b) subject to the provisions of Section 8.06, exercise any other remedies available to the Trustee and the Bond Owners in law or at equity to enforce the rights of the Bond Owners under this Indenture.

Immediately upon obtaining actual knowledge of the occurrence of an Event of Default, but in no event later than five Business Days following obtaining actual knowledge of such occurrence, the Trustee shall give notice of such Event of Default to the City by telephone confirmed in writing. Such notice shall also state whether the principal of the Bonds has been declared to be or have immediately become due and payable. With respect to any Event of Default described in clauses (a) or (b) above the Trustee shall,

and with respect to any Event of Default described in clause (c) above the Trustee in its sole discretion may, also give such notice to the Owners in the same manner as provided herein for notices of redemption of the Bonds, which shall include the statement that interest on the Bonds shall cease to accrue from and after the date, if any, on which the Trustee declares the Bonds to become due and payable under the preceding paragraph (but only to the extent that principal and any accrued, but unpaid, interest on the Bonds is actually paid on such date).

This provision, however, is subject to the condition that if, at any time after the principal of the Bonds has been so declared due and payable, and before any judgment or decree for the payment of the moneys due has been obtained or entered, the City shall deposit with the Trustee a sum sufficient to pay all principal on the Bonds matured prior to such declaration and all matured installments of interest (if any) upon all the Bonds, with interest on such overdue installments of principal and interest at an interest rate of 10% per annum, and the reasonable fees and expenses of the Trustee, including fees and expenses of its attorneys, and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) has been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate has been made therefor, then, and in every such case, the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding, by written notice to the City and to the Trustee, may, on behalf of the Owners of all of the Bonds, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

SECTION 8.02. *Application of Funds Upon Acceleration.* All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of this Indenture shall be applied by the Trustee as follows and in the following order

- (a) *First*, to the payment of any fees, costs and expenses incurred by the Trustee to protect the interests of the Owners of the Bonds; payment of the fees, costs and expenses of the Trustee (including fees and expenses of its counsel, including any allocated costs of internal counsel) incurred in and about the performance of its powers and duties under this Indenture and the payment of all fees, costs and expenses owing to the Trustee under Section 6.06, together with interest on all such amounts advanced by the Trustee at the maximum rate permitted by law.
- (b) *Second*, to the payment of the whole amount then owing and unpaid upon the Bonds for interest and principal, with interest on such overdue amounts at the respective rates of interest borne by those Bonds, and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such interest, principal and interest on overdue amounts without preference or priority among such interest, principal and interest on overdue amounts ratably to the aggregate of such interest, principal and interest on overdue amounts.

SECTION 8.03. *Power of Trustee to Control Proceedings.* If the Trustee, upon the happening of an Event of Default, takes any action, by judicial proceedings or otherwise,

in the performance of its duties hereunder, whether upon its own discretion, upon the request of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, it has full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action. The Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

SECTION 8.04. *Limitation on Owners' Right to Sue.* No Owner of any Bond has the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless:

- (a) said Owner has previously given to the Trustee written notice of the occurrence of an Event of Default;
- (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding have requested the Trustee in writing to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name;
- (c) said Owners have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; and
- (d) the Trustee has failed to comply with such request for a period of 60 days after such written request has been received by, and said tender of indemnity has been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of any remedy hereunder; it being understood and intended that no one or more Owners has any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of and premium, if any, and interest on such Bond as herein provided, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

SECTION 8.05. *Non-waiver.* Nothing in this Article VIII or in any other provision of this Indenture or in the Bonds, affects or impairs the obligation of the City, which is absolute and unconditional, to pay from the Net Revenues and other amounts pledged hereunder, the principal of and interest and redemption premium (if any) on the Bonds to the Bond Owners when due and payable as herein provided, or affects or impairs the right

of action, which is also absolute and unconditional, of the Bond Owners to institute suit to enforce such payment by virtue of the contract embodied in the Bonds.

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

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

SECTION 8.06. *Actions by Trustee as Attorney-in-Fact.* Any suit, action or proceeding which any Owner has the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners similarly situated and the Trustee is hereby appointed (and the successive respective Owners by taking and holding the Bonds shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact, subject to the provisions of Article VI. Notwithstanding the foregoing provisions of this Section, the Trustee has no duty to enforce any such right or remedy unless it has been indemnified to its satisfaction for any additional fees, charges and expenses of the Trustee related thereto, including without limitation, fees and charges of its attorneys and advisors.

SECTION 8.07. *Remedies Not Exclusive.* No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by the Bond Law or any other law.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. *Limited Liability of City.* Notwithstanding anything contained in this Indenture, the City is not required to advance any moneys derived from any source of income other than the Net Revenues for the payment of the principal of or interest on the Bonds, or any premiums upon the redemption thereof, or for the performance of any covenants herein contained (except to the extent any such covenants are expressly payable hereunder from the Gross Revenues). The City may, however, advance funds for any such purpose, provided that such funds are derived from a source legally available for such purpose and may be used by the City for such purpose without incurring indebtedness.

The Bonds are revenue bonds, payable exclusively from the Net Revenues and other funds as provided herein. The general fund of the City is not liable, and the credit of the City is not pledged, for the payment of the interest on or principal of the Bonds. The Owners of the Bonds have no right to compel the forfeiture of any property of the City. The principal of and interest on the Bonds, and any premiums upon the redemption of any thereof, are not a debt of the City, or a legal or equitable pledge, charge, lien or encumbrance upon any property of the City or upon any of its income, receipts or revenues except the Net Revenues and other funds pledged to the payment thereof as provided in this Indenture.

SECTION 9.02. *Benefits of Indenture Limited to Parties.* Nothing in this Indenture, expressed or implied, gives to any person other than the City and the Owners of the Bonds, any right, remedy or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the City shall be for the sole and exclusive benefit of the Trustee and the Owners of the Bonds.

SECTION 9.03. *Defeasance of Bonds.* If the City pays and discharges the entire indebtedness on any Bonds in any one or more of the following ways:

- (a) by paying or causing to be paid the principal of and interest on such Bonds, as and when the same become due and payable;
- (b) by irrevocably depositing with the Trustee or an escrow agent, in trust, at or before maturity, an amount of cash which, together with the available amounts then on deposit in the funds and accounts established under this Indenture, is fully sufficient to pay such Bonds, including all principal, interest and redemption premium, if any;
- (c) by irrevocably depositing with the Trustee or an escrow agent, in trust, Federal Securities in such amount as an Independent Accountant determines will, together with the interest to accrue thereon and available moneys then on deposit in any of the funds and accounts established under this Indenture, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premium, if any) at or before maturity; or

- (d) by purchasing such Bonds prior to maturity and tendering such Bonds to the Trustee for cancellation;

and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption has been duly given or provision satisfactory to the Trustee has been made for the giving of such notice, then, at the election of the City, and notwithstanding that any such Bonds have not been surrendered for payment, the pledge of the Net Revenues and other funds provided for in this Indenture and all other obligations of the Trustee and the City under this Indenture with respect to such Bonds shall cease and terminate, except only:

- (a) the obligations of the City under Section 5.11,
- (b) the obligation of the Trustee to transfer and exchange Bonds hereunder,
- (c) the obligation of the City to pay or cause to be paid to the Owners of such Bonds, from the amounts so deposited with the Trustee, all sums due thereon, and
- (d) the obligations of the City to compensate and indemnify the Trustee under Section 6.06.

The City shall file notice of such election with the Trustee. The Trustee shall pay any funds thereafter held by it, which are not required for said purpose, to the City.

In the case of a defeasance or payment of all of the Bonds Outstanding in accordance with this Section, the Trustee shall pay all amounts held by it in any funds or accounts hereunder, which are not required for said purpose or for payment of amounts due the Trustee under Section 6.06, to the City.

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

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

The ownership of Bonds and the amount, maturity, number and date of ownership thereof are conclusively proved by the Registration Books.

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

SECTION 9.05. *Disqualified Bonds.* In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the City (but excluding Bonds held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. The Trustee will not be deemed to have knowledge that any Bond is owned or held by the City unless the City is the Registered Owner or the Trustee has received written notice to that effect.

SECTION 9.06. *Waiver of Personal Liability.* No member, officer, agent or employee of the City shall be individually or personally liable for the payment of the principal of or interest or any premium on the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

SECTION 9.07. *Destruction of Canceled Bonds.* Whenever in this Indenture provision is made for the surrender to the City of any Bonds which have been paid or canceled under the provisions of this Indenture, a certificate of destruction duly executed by the Trustee shall be deemed to be the equivalent of the surrender of such canceled Bonds and the City shall be entitled to rely upon any statement of fact contained in any certificate with respect to the destruction of any such Bonds therein referred to. The City shall pay all costs of any microfilming of Bonds to be destroyed.

SECTION 9.08. *Funds and Accounts.* Any fund or account required by this Indenture to be established and maintained by the City or the Trustee may be established and maintained in the accounting records of the City or the Trustee, as the case may be, either as a fund or an account, and may, for the purpose of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account. All such records with respect to all such funds and accounts held by the City shall at all times be maintained in accordance with generally accepted accounting principles and all such records with respect to all such funds and accounts held by the Trustee shall be at all times maintained in accordance with industry practices; in each case with due regard for the protection of the security of the Bonds and the rights of every Owner thereof.

SECTION 9.09. *Notices.* All written notices to be given under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the City: City of Sunnyvale
650 W. Olive Avenue
Sunnyvale, CA 94086
Attention: Finance Director

If to the Trustee: U.S. Bank National Association
One California Street, Suite 1000
San Francisco, California 94111
Attention: Global Corporate Trust Services

SECTION 9.10. *Unclaimed Moneys.* Anything contained herein to the contrary notwithstanding, any money held by the Trustee in trust for the payment and discharge of the interest or premium (if any) on or principal of the Bonds which remains unclaimed for two years after the date when the payments of such interest, premium and principal have become payable, if such money was held by the Trustee at such date, or for two years after the date of deposit of such money if deposited with the Trustee after the date when the interest and premium (if any) on and principal of such Bonds have become payable, shall be repaid by the Trustee to the City as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Owners shall look only to the City for the payment of the principal of and interest and redemption premium (if any) on such Bonds.

SECTION 9.11. *Execution in Several Counterparts.* This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the City and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

SECTION 9.12. *Governing Law.* This Indenture shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the CITY OF SUNNYVALE has caused this Indenture to be signed in its name by its City Manager and to be attested by its City Clerk, and U.S. BANK NATIONAL ASSOCIATION, in token of its acceptance of the trust created hereunder, has caused this Indenture to be signed in its corporate name by its officer identified below, all as of the day and year first above written.

CITY OF SUNNYVALE

By _____
City Manager

Attest

City Clerk

**U.S. BANK NATIONAL ASSOCIATION, as
Trustee**

By _____
Vice President

APPENDIX A

DEFINITIONS

“Additional Revenues” means, with respect to any issuance of Parity Debt:

(i) an allowance for Net Revenues from any additions to or improvements or extensions of the Water System to be made with the proceeds of such Parity Debt, and also for Net Revenues from any such additions, improvements or extensions which have been made from moneys from any source, but in any case which, during all or any part of such Fiscal Year or such 12-month period, were not in service, all in an amount equal to 90% of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first 36-month period in which each addition, improvement or extension is respectively to be in operation, all as shown in the written report of an Independent Accountant or Financial Consultant engaged by the City; and

(ii) an allowance for earnings arising from any increase in the rates and charges made for service from the Water System which has become effective prior to the incurring of such additional indebtedness but which, during all or any part of such Fiscal Year or such 12-month period, was not in effect, in an amount equal to the amount by which the Net Revenues would have been increased if such increase in such rates and charges had been in effect during the whole of such Fiscal Year or such 12-month period.

“Bond Counsel” means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the City of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Tax Code.

“Bond Law” means Chapter 3.70 (commencing with Section 3.70.010) of the Sunnyvale Municipal Code, enacted pursuant to the charter of the City and Ordinance No. 2917-10, adopted April 6, 2010, as in effect on the Closing Date or as thereafter amended in accordance with its terms.

“Bond Service Fund” means the fund by that name established and held by the Trustee under Section 4.02(a).

“Bond Year” means any twelve-month period commencing on April 2 in a year and ending on the next succeeding April 1, both dates inclusive; except that the first Bond Year commences on the Closing Date and ends on April 1, 2018.

“Bonds” means, collectively, the Series A Bonds and the Taxable Series A-T bonds.

“Business Day” means a day (other than a Saturday or a Sunday) on which banks are not required or authorized to remain closed in the city in which the Office of the Trustee is located, and on which the Federal Reserve Bank system is not closed.

“Certificate of the City” means a certificate in writing signed by the Mayor, City Manager or Director of Finance of the City, or any other officer of the City duly authorized by the City Council for that purpose.

“City” means the City of Sunnyvale, a municipal corporation and charter city organized and existing under the laws of the State of California, and any successor thereto.

“Closing Date” means December ____, 2017, being the date of delivery of the Bonds to the Underwriter.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City relating to the authorization, issuance, sale and delivery of the Bonds and the refunding of the 2010 Bonds, including but not limited to: printing expenses; rating agency fees; filing and recording fees; initial fees, expenses and charges of the Trustee and its counsel, including the Trustee’s first annual administrative fee; fees, charges and disbursements of attorneys, municipal advisors, accounting firms, consultants and other professionals; fees and charges for preparation, execution and safekeeping of the Bonds; and any other cost, charge or fee in connection with the original issuance of the Bonds and the refunding of the 2010 Bonds.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee under Section 3.03.

“Depository” means (a) initially, DTC, and (b) any other Securities Depository acting as Depository under Section 2.04.

“Depository System Participant” means any participant in the Depository's book-entry system.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Escrow Agent” means U.S. Bank National Association, as escrow bank under the Escrow Agreement.

“Escrow Agreement” means the Escrow Deposit and Trust Agreement dated as of the Closing Date, between the City and the Escrow Agent, relating to the payment, redemption and defeasance of the 2010 Bonds.

“Event of Default” means any of the events described in Section 8.01.

“Federal Securities” means:

(a) any direct general non-callable obligations of the United States of America, including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America; and

(b) any obligations the timely payment of principal of and interest on which are fully guaranteed by the United States of America or which are secured by obligations described in the preceding clause (a).

“Financial Consultant” means any consultant or firm of such consultants appointed by the City and who, or each of whom: (a) is judged by the City to have experience in matters relating to the financing of water systems; (b) is in fact independent and not under domination of the City; (c) does not have any substantial interest, direct or indirect, with the City; and (d) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

“Fiscal Year” means the period commencing on July 1 of each year and terminating on the next succeeding June 30, or such other period as may be established by the City as its official fiscal year period (written notice of which shall be given by the City to the Trustee).

“Gross Revenues” means all gross charges received for, and all other gross income and receipts derived by the City from, the ownership and operation of the Water System or otherwise arising from the Water System, determined in accordance with generally accepted accounting principles, including but not limited to investment earnings thereon, insurance proceeds, transfers from (but exclusive of any transfers to) the Revenue Stabilization Fund, and all moneys received by the City from other public entities whose inhabitants are served by the Water System pursuant to contracts with the City.

However, “Gross Revenues” exclude (a) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the City levied for the purpose of paying special assessment bonds or special tax obligations of the City relating to the Water System, (b) any taxes levied for the sole purpose of providing for payment of principal and interest on any voter-approved indebtedness incurred by the City, which would not otherwise be subject to levy but for the issuance of such indebtedness, (c) the proceeds of any state or federal grants with respect to the Water System, and (d) customers’ deposits or any other deposits subject to refund until such deposits have become the property of the City.

“Indenture” means this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture pursuant to the provisions hereof.

“Independent Accountant” means any accountant or firm of such accountants appointed and paid by the City, and who, or each of whom (a) is in fact independent and not under domination of the City; (b) does not have any substantial interest, direct or indirect, with the City; and (c) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or other audits of the books of or reports to the City.

“Interest Payment Date” means April 1 and October 1 in each year, beginning April 1, 2018, and continuing so long as any Bonds remain Outstanding.

“Maximum Annual Debt Service” means, as of the date of any calculation, the maximum sum obtained for the current or any future Fiscal Year so long as any of the Bonds remain Outstanding by totaling the following amounts for such Fiscal Year:

- (a) the aggregate amount of principal of (including sinking payments) and interest on the Outstanding Bonds coming due and payable in such Fiscal Year;
- (b) the principal amount of all outstanding Parity Debt, if any, coming due and payable by their terms in such Fiscal Year, including the principal of any Parity Debt coming due and payable by operation of mandatory sinking fund redemption; and
- (c) the amount of interest which would be due during such Fiscal Year on the aggregate principal amount of the Bonds and Parity Debt which would be outstanding in such Fiscal Year if such Bonds and Parity Debt are retired as scheduled.

“Net Revenues” means, for any period, an amount equal to all of the Gross Revenues received during such period minus the amount required to pay all Operation and Maintenance Costs becoming payable during such period.

“Nominee” means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated pursuant to Section 2.04(a).

“Office” means, with respect to the Trustee, the corporate trust office of the Trustee at the address set forth in Section 9.09, or at such other or additional offices as may be specified by the Trustee in writing to the City; except that with respect to presentation of Bonds for payment or for registration of transfer and exchange, such term means the office or agency of the Trustee at which, at any particular time, its corporate trust agency business is conducted.

“Operation and Maintenance Costs” means the reasonable and necessary costs paid or incurred by the City for maintaining and operating the Water System, determined in accordance with generally accepted accounting principles, including but not limited to (a) all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Water System in good repair and working order, (b) the cost of water purchased by the City for delivery to the City’s water customers, and (c) all administrative costs of the City that are charged directly or apportioned to the operation of the Water System, such as salaries and wages of employees, and the necessary contribution to retirement of such employees, overhead, taxes (if any) and insurance.

However, “Operation and Maintenance Costs” do not include (i) administrative costs which the City is required to pay hereunder, (ii) payments of debt service on bonds, notes, installment sale agreements, or other obligations issued by the City with respect to the Water System, (iii) depreciation, replacement and obsolescence charges or reserves therefor, and (iv) amortization of intangibles or other bookkeeping entries of a similar nature, and (v) costs and expenses which under generally accepted accounting principles are chargeable to a capital account.

“Outstanding”, when used as of any particular time with reference to Bonds, means all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the City has

been discharged in accordance with Section 9.03; (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to this Indenture; and (d) Bonds which are required to be disregarded and not deemed Outstanding under Section 9.05.

“Owner”, when used with respect to any Bond, means the person in whose name the ownership of such Bond shall be registered on the Registration Books.

“Parity Debt” means all bonds, notes, loan agreements, installment sale agreements, leases or other obligations of the City payable from and secured by a pledge of and lien upon any of the Net Revenues issued or incurred on a parity with the Bonds under Section 5.09.

“Parity Debt Documents” means all leases, installment sale agreements, trust agreements, indentures of trust and other documents prescribing the terms and provisions applicable to any issue of Parity Debt.

“Permitted Investments” means any of the following which at the time of investment are legal investments under the laws of the State of California for the moneys proposed to be invested therein:

- (a) Federal Securities;
- (b) Any direct or indirect obligations of an agency or department of the United States of America whose obligations represent the full faith and credit of the United States of America, or which are rated A or better by S&P.
- (c) Interest-bearing deposit accounts (including certificates of deposit) in federal or State chartered savings and loan associations or in federal or State of California banks (including the Trustee), provided that: (i) the unsecured obligations of such commercial bank or savings and loan association are rated A or better by S&P; or (ii) such deposits are fully insured by the Federal Deposit Insurance Corporation.
- (d) Commercial paper rated in the highest short-term rating category by S&P.
- (e) Federal funds or bankers acceptances with a maximum term of one year of any bank which an unsecured, uninsured and unguaranteed obligation rating in the highest rating category of S&P.
- (f) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating in the highest rating category of S&P (such funds may include funds for which the Trustee, its affiliates, parent or subsidiaries provide investment advisory or other management services).
- (g) Obligations the interest on which is excludable from gross income pursuant to Section 103 of the Tax Code and which are either (a)

rated A or better by S&P, or (b) fully secured as to the payment of principal and interest by Federal Securities.

- (h) Bonds or notes issued by any state or municipality which are rated by S&P in one of the two highest rating categories assigned by S&P.
- (i) Any investment agreement with, or guaranteed by, a financial institution the long-term unsecured obligations or the claims paying ability of which are rated A or better by S&P at the time of initial investment.
- (j) The Local Agency Investment Fund of the State of California, created under Section 16429.1 of the California Government Code, to the extent the Trustee is authorized to register such investment in its name.
- (k) The California Asset Management Program (CAMP).

“Record Date” means, with respect to any Interest Payment Date, the 15th calendar day of the month preceding such Interest Payment Date.

“Redemption Fund” means the fund by that name established and held by the Trustee under Section 4.02(c).

“Registration Books” means the books maintained by the Trustee under Section 2.07 for the registration and transfer of ownership of the Bonds.

“Request of the City” means a request in writing signed by the Mayor, City Manager or Director of Finance of the City, or any other officer of the City duly authorized by the City Council for that purpose.

“S&P” means Standard & Poor's Corporation, of New York, New York, and its successors.

“Securities Depositories” means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the City may designate in a Request of the City delivered by the City to the Trustee.

“Series A Bonds” means the City of Sunnyvale Water Revenue Refunding Bonds, Series 2017A, issued in the aggregate principal amount of \$_____ and at any time Outstanding hereunder.

“Series A Term Bonds” means the Series A Bonds maturing on April 1, 20__ and April 1, 20__.

“Supplemental Indenture” means any indenture, agreement, resolution or other instrument hereafter duly adopted or executed in accordance with the provisions of Section 7.01.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under said Code.

“Taxable Series A-T Bonds” means the City of Sunnyvale Taxable Water Revenue Refunding Bonds, Series 2017A-T, issued in the aggregate principal amount of \$_____ and at any time Outstanding hereunder.

“Trustee” means U.S. Bank National Association, as Trustee hereunder, or any successor thereto appointed as Trustee hereunder in accordance with the provisions of Article VI.

“2010 Bonds” means the bonds of the City captioned “City of Sunnyvale Water Revenue Bonds, Series 2010” issued in the original principal amount of \$24,085,000.

“Underwriter” means J.P. Morgan Securities LLC, as original purchaser of the Bonds on the Closing Date.

“Water Fund” means the fund or funds which the City has previously established for the receipt and deposit of Gross Revenues derived from the Water System.

“Water System” means the existing water system of the City, comprising all facilities for the obtaining, conserving, treating, distributing, storing and supplying of water for domestic use, irrigation, sanitation, industrial use, fire protection, recreation, or any other public or private uses, together with any necessary lands, rights, entitlements and other property useful in connection therewith, and all extensions thereof and improvements thereto hereafter acquired, constructed or installed by the City.

APPENDIX B

FORM OF SERIES A BOND

No. R-1

***\$_____**

**CITY OF SUNNYVALE
WATER REVENUE REFUNDING BOND, SERIES 2017A**

INTEREST RATE: **MATURITY DATE:** **ISSUE DATE:** **CUSIP:**
 April 1, _____ December __, 2017

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: \$ _____

The City of Sunnyvale, a municipal corporation and charter city organized and existing under the laws of the State of California (the "City") for value received, hereby promises to pay (but only out of the Net Revenues and other assets pledged therefor as hereinafter mentioned) to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above (subject to any right of prior redemption hereinafter mentioned), the Principal Amount stated above, in lawful money of the United States of America; and to pay interest thereon in like lawful money from the Interest Payment Date next preceding the date of authentication of this Bond (unless this Bond is authenticated as of a day during the period commencing after the 15th day of the month preceding an Interest Payment Date and ending on or before such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or before March 15, 2018, in which event it shall bear interest from the Issue Date stated above) until payment of such principal sum shall be discharged as provided in the Indenture hereinafter mentioned, at the Interest Rate per annum stated above, payable semiannually on each April 1 and October 1, commencing April 1, 2018 (each, an "Interest Payment Date").

The principal (or redemption price) hereof is payable by check at the Office (as defined in the Indenture referred to below) of U.S. Bank National Association (together with any successor trustee under the Indenture, the "Trustee"). Interest hereon is payable by check of the Trustee mailed on each Interest Payment Date to the Registered Owner as of the 15th day of the month preceding each Interest Payment Date (except with respect to payment of defaulted interest as provided in the Indenture hereinafter referred to) at the address shown on the registration books maintained by the Trustee. Payment of interest will be made by wire transfer in immediately available funds to an account in the United States of America to any Owner of Bonds in the aggregate principal amount of \$1,000,000

or more who shall furnish written wire instructions to the Trustee before the 15th day of the month preceding the applicable Interest Payment Date.

This Bond is one of a duly authorized issue of bonds of the City designated as its "City of Sunnyvale Water Revenue Refunding Bonds, Series 2017A" (the "Bonds"), in the aggregate principal amount of \$_____, authorized under the provisions of Chapter 3.70 (commencing with Section 3.70.010) of the Sunnyvale Municipal Code, enacted pursuant to the charter of the City and Ordinance No. 2917-10, adopted April 6, 2010 (the "Bond Law"), and issued under an Indenture of Trust dated as of December 1, 2017 (the "Indenture"), between the City and the Trustee. The Bonds have been issued for the purpose of refunding outstanding obligations of the City issued to finance improvements to the City's system for obtaining, conserving, treating, distributing, storing and supplying water (the "Water System").

Reference is hereby made to the Indenture (a copy of which is on file at said Office of the Trustee) and all indentures supplemental thereto and to the Bond Law for a description of the rights thereunder of the owners of the Bonds, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the City thereunder. The Registered Owner of this Bond, by acceptance hereof, assents and agrees to all the provisions of the Indenture.

The Bonds and the interest thereon are payable from Net Revenues of the Water System (as such terms are defined in the Indenture) and are secured by a pledge and assignment of said Net Revenues and of amounts held in the Bond Fund established under the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture. The City has the right under the Indenture to issue additional obligations on a parity with the Bonds, subject to the specific conditions set forth in the Indenture. The Bonds are special obligations of the City and are not a lien or charge upon the funds or property of the City, except to the extent of the aforesaid pledge and assignment.

The Bonds maturing on or before April 1, 20___, are not subject to redemption prior to their respective stated maturities. The Bonds maturing on or after April 1, 20___, are subject to redemption in whole, or in part among maturities on such basis as set forth in a Certificate of the City filed with the Trustee, and in any event by lot within a maturity, at the option of the City, from any available source of funds, on any Business Day on or after April 1, 20___, at a redemption price equal to 100% of the principal amount thereof to be redeemed together with accrued interest to the redemption date, without premium.

The Bonds maturing on April 1, 20___, and April 1, 20___ (the "Series A Term Bonds") are subject to mandatory redemption in whole, or in part by lot, from sinking payments, at a redemption price equal to the principal amount thereof to be redeemed, without premium, plus accrued interest to the date of redemption, in the aggregate respective principal amounts and on April 1 in the years as set forth in the following tables:

Series A Term Bonds Maturing April 1, 20__

Sinking Payment Redemption Date <u>(April 1)</u>	Principal <u>Amount</u>
--	----------------------------

(Maturity)

Series A Term Bonds Maturing April 1, 20__

Sinking Fund Redemption Date <u>(April 1)</u>	Principal <u>Amount</u>
---	----------------------------

(Maturity)

If some but not all of the Series A Term Bonds have been redeemed under the optional redemption provisions set forth above, the total amount of all future sinking payments will be reduced by the aggregate principal amount of such Series A Term Bonds so redeemed, to be allocated among such sinking fund payments on a pro-rata basis as determined by the City.

The City has the right to rescind any notice of the optional redemption of Bonds by written notice to the Trustee on or prior to the dated fixed for redemption. Any notice of optional redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default.

The Trustee on behalf and at the expense of the City shall mail (by first class mail) notice of any redemption to the respective Owners of any Bonds designated for redemption, at least 30 but not more than 60 days prior to the redemption date, at their respective addresses appearing on the Registration Books. Neither the failure to receive any such notice so mailed nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. Interest on the Bonds called for redemption will not accrue from and after the redemption date.

The Bonds are issuable as fully registered Bonds in denominations of \$5,000 and any integral multiple thereof. Subject to the limitations provided in the Indenture, Bonds may be exchanged, at said Office of the Trustee, for a like aggregate principal amount of Bonds of other authorized denominations of the same maturity.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at said office of the Trustee, but only in the manner, subject to the limitations provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer, a new Bond or Bonds, of authorized denomination or denominations, of the same maturity and for the same aggregate principal amount, will be

issued to the transferee in exchange herefor. The City and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the City and the Trustee shall not be affected by any notice to the contrary.

The Indenture and the rights and obligations of the City and of the owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time in the manner, to the extent, and upon the terms provided in the Indenture; provided that no such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the City to pay the principal, interest or redemption premiums at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee, all as more fully set forth in the Indenture.

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

It is hereby certified and recited that any and all things, conditions and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Bond Law, and by the laws of the State of California, and that the amount of this Bond, together with all other indebtedness of the City, does not exceed any limit prescribed by the Bond Law and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond is not entitled to any benefit under the Indenture, or is not valid or obligatory for any purpose, until the certificate of authentication hereon endorsed has been signed by the Trustee.

IN WITNESS WHEREOF, City of Sunnyvale has caused this Bond to be executed in its name and on its behalf by the facsimile signature of its City Manager and attested to by the facsimile signature of its City Clerk, all as of the Issue Date stated above.

CITY OF SUNNYVALE

By _____
City Manager

Attest

City Clerk

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

Dated:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By _____
Authorized Signatory

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto _____ whose address and social security or other tax identifying number is _____, the within-mentioned Bond and hereby irrevocably constitute(s) and appoint(s) _____ attorney,

to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed

Note: Signature(s) shall be guaranteed by an eligible guarantor institution.

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

FORM OF TAXABLE SERIES A-T BOND

No. R-1

***\$_____**

**CITY OF SUNNYVALE
TAXABLE WATER REVENUE REFUNDING BOND,
SERIES 2017A-T**

INTEREST RATE: **MATURITY DATE:** **ISSUE DATE:** **CUSIP:**
 April 1, _____ December __, 2017

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: \$ _____

The City of Sunnyvale, a municipal corporation and charter city organized and existing under the laws of the State of California (the "City") for value received, hereby promises to pay (but only out of the Net Revenues and other assets pledged therefor as hereinafter mentioned) to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above (subject to any right of prior redemption hereinafter mentioned), the Principal Amount stated above, in lawful money of the United States of America; and to pay interest thereon in like lawful money from the Interest Payment Date next preceding the date of authentication of this Bond (unless this Bond is authenticated as of a day during the period commencing after the 15th day of the month preceding an Interest Payment Date and ending on or before such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or before March 15, 2018, in which event it shall bear interest from the Issue Date stated above) until payment of such principal sum shall be discharged as provided in the Indenture hereinafter mentioned, at the Interest Rate per annum stated above, payable semiannually on each April 1 and October 1, commencing April 1, 2018 (each, an "Interest Payment Date").

The principal (or redemption price) hereof is payable by check at the Office (as defined in the Indenture referred to below) of U.S. Bank National Association (together with any successor trustee under the Indenture, the "Trustee"). Interest hereon is payable by check of the Trustee mailed on each Interest Payment Date to the Registered Owner as of the 15th day of the month preceding each Interest Payment Date (except with respect to payment of defaulted interest as provided in the Indenture hereinafter referred to) at the address shown on the registration books maintained by the Trustee. Payment of interest will be made by wire transfer in immediately available funds to an account in the United States of America to any Owner of Bonds in the aggregate principal amount of \$1,000,000

or more who shall furnish written wire instructions to the Trustee before the 15th day of the month preceding the applicable Interest Payment Date.

This Bond is one of a duly authorized issue of bonds of the City designated as its "City of Sunnyvale Taxable Water Revenue Refunding Bonds, Series 2017A-T" (the "Bonds"), in the aggregate principal amount of \$_____, authorized under the provisions of Chapter 3.70 (commencing with Section 3.70.010) of the Sunnyvale Municipal Code, enacted pursuant to the charter of the City and Ordinance No. 2917-10, adopted April 6, 2010 (the "Bond Law"), and issued under an Indenture of Trust dated as of December 1, 2017 (the "Indenture"), between the City and the Trustee. The Bonds have been issued for the purpose of refunding outstanding obligations of the City issued to finance improvements to the City's system for obtaining, conserving, treating, distributing, storing and supplying water (the "Water System").

Reference is hereby made to the Indenture (a copy of which is on file at said Office of the Trustee) and all indentures supplemental thereto and to the Bond Law for a description of the rights thereunder of the owners of the Bonds, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the City thereunder. The Registered Owner of this Bond, by acceptance hereof, assents and agrees to all the provisions of the Indenture.

The Bonds and the interest thereon are payable from Net Revenues of the Water System (as such terms are defined in the Indenture) and are secured by a pledge and assignment of said Net Revenues and of amounts held in the Bond Fund established under the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture. The City has the right under the Indenture to issue additional obligations on a parity with the Bonds, subject to the specific conditions set forth in the Indenture. The Bonds are special obligations of the City and are not a lien or charge upon the funds or property of the City, except to the extent of the aforesaid pledge and assignment.

The Bonds may be redeemed, in whole or in part, at the option of the City, at any time at a redemption price equal to the greater of

(i) 100% of the principal amount of the Taxable Series A-T Bonds to be redeemed, and

(ii) the sum of the present values of the applicable remaining scheduled payments of principal and interest on the Taxable Series A-T Bonds to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which such Taxable Series A-T Bonds are to be redeemed, discounted to the date of redemption on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus ____ basis points,

plus in each case, accrued and unpaid interest on the Taxable Series A-T Bonds being redeemed to the date fixed for redemption (as such terms used above are defined in the Indenture).

The City has the right to rescind any notice of the optional redemption of Bonds by written notice to the Trustee on or prior to the dated fixed for redemption. Any notice of

optional redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default.

The Trustee on behalf and at the expense of the City shall mail (by first class mail) notice of any redemption to the respective Owners of any Bonds designated for redemption, at least 30 but not more than 60 days prior to the redemption date, at their respective addresses appearing on the Registration Books. Neither the failure to receive any such notice so mailed nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. Interest on the Bonds called for redemption will not accrue from and after the redemption date.

The Bonds are issuable as fully registered Bonds in denominations of \$5,000 and any integral multiple thereof. Subject to the limitations provided in the Indenture, Bonds may be exchanged, at said Office of the Trustee, for a like aggregate principal amount of Bonds of other authorized denominations of the same maturity.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at said office of the Trustee, but only in the manner, subject to the limitations provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer, a new Bond or Bonds, of authorized denomination or denominations, of the same maturity and for the same aggregate principal amount, will be issued to the transferee in exchange herefor. The City and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the City and the Trustee shall not be affected by any notice to the contrary.

The Indenture and the rights and obligations of the City and of the owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time in the manner, to the extent, and upon the terms provided in the Indenture; provided that no such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the City to pay the principal, interest or redemption premiums at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee, all as more fully set forth in the Indenture.

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

It is hereby certified and recited that any and all things, conditions and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Bond Law, and by the laws of the State of California, and that

the amount of this Bond, together with all other indebtedness of the City, does not exceed any limit prescribed by the Bond Law and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond is not entitled to any benefit under the Indenture, or is not valid or obligatory for any purpose, until the certificate of authentication hereon endorsed has been signed by the Trustee.

IN WITNESS WHEREOF, City of Sunnyvale has caused this Bond to be executed in its name and on its behalf by the facsimile signature of its City Manager and attested to by the facsimile signature of its City Clerk, all as of the Issue Date stated above.

CITY OF SUNNYVALE

By _____
City Manager

Attest

City Clerk

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

Dated:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By _____
Authorized Signatory

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto _____ whose address and social security or other tax identifying number is _____, the within-mentioned Bond and hereby irrevocably constitute(s) and appoint(s) _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed

Note: Signature(s) shall be guaranteed by an eligible guarantor institution.

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