

J.P.Morgan

August 14, 2019

Private and Confidential

City of Sunnyvale
650 W. Olive Ave.
Sunnyvale, CA, 94086
Attn: Timothy J. Kirby, Director of Finance

Dear Mr. Kirby:

This letter agreement confirms the terms on which the City of Sunnyvale (“the City”) has engaged J.P. Morgan Securities LLC (“J.P. Morgan”) in connection with the proposed issuance, offering and sale by the City in a public or private offering of Bond Anticipation Notes (the “Offering” or the “WIFIA BAN”) associated with the City’s proposed loan from the United States Environmental Protection Agency under the Water Infrastructure Finance and Innovation Act (“WIFIA”, the “WIFIA Loan”, or the “Loan”).

1. Engagement of J.P. Morgan. The City has engaged J.P. Morgan to act as sole underwriter for the Offering. The City acknowledges and agrees that J.P. Morgan's engagement hereunder is not an agreement by J.P. Morgan or any of its affiliates to underwrite, place or purchase any securities or otherwise provide any financing. Any such agreement would be set forth in an underwriting agreement, purchase agreement or placement agency agreement, as applicable, to be entered into by the City and J.P. Morgan which will be in J.P. Morgan's customary form and contain mutually acceptable terms and conditions. In advance of the sale of the WIFIA BAN, J.P. Morgan will work with the City on the application and execution of the WIFIA Loan. Annex B defines the intended scope of services for this engagement.

2. Exclusive Engagement. During the period of J.P. Morgan's engagement hereunder, the City will not, and will cause its affiliates not to, discuss the Loan or the Offering with any third parties (except through J.P. Morgan) and it will promptly notify J.P. Morgan if it receives any inquiry concerning the Loan or the Offering. The City agrees that it will not appoint any third party as an additional underwriter, placement agent or initial purchaser for the Offering without obtaining J.P. Morgan's prior written consent to such appointment and to the terms of such third party's participation in the Offering.

3. Indemnification and Contribution. In consideration of the engagement hereunder, the City agrees to the indemnification and contribution provisions set forth in Annex A hereto, which provisions are incorporated by reference herein and constitute a part hereof.

4. Fees and Expenses. The City agrees to pay the below fee structure:

In connection with the submission of the formal application for WIFIA on the Project, the City agrees to pay J.P. Morgan a fixed, retainer fee of \$50,000 plus expenses. Such fee shall be payable upon the successful submittal of the application by WIFIA. Expenses will be limited to actual expenses and shall be capped at \$10,000.

In connection with the negotiation of the loan documentation, the City agrees to pay J.P. Morgan a fixed, retainer fee of \$75,000 plus expenses. Such fee shall be payable upon the successful closing of the loan. Expenses will be limited to actual expenses and shall be capped at \$15,000.

In connection with the issuance of WIFIA BAN, if any, fees shall be negotiated in good faith between the City, its Independent Registered Municipal Advisor and J.P. Morgan. Any such fees and expenses shall be contingent upon the successful implementation of such a financing and shall be at the sole discretion of the City.

The fees herein assume that the Scope of Services is completed within 6 months of the date of this Agreement. To the extent that additional services are required past 12 months, J.P. Morgan reserves the right to negotiate additional compensation and/or expenses, at the sole discretion of the City.

5. Disclosure. The City agrees that it will notify J.P. Morgan promptly (i) of any material adverse change, or development that may lead to any material adverse change, in the business, properties, operations, financial condition or prospects of the City and (ii) if any information furnished by the City to J.P. Morgan during the period of J.P. Morgan's engagement hereunder is or becomes inaccurate, incomplete or misleading in any material respect.

J.P. Morgan agrees to use all non-public information provided to it by or on behalf of the City hereunder solely for the purpose of providing the services which are the subject of this letter agreement and to treat all such information confidentially, except in each case for information that was or becomes publicly available other than by reason of disclosure by J.P. Morgan in violation of this letter agreement or was or becomes available to J.P. Morgan or its affiliates from a source which is not known by J.P. Morgan to be subject to a confidentiality obligation to the City, provided that nothing herein shall prevent J.P. Morgan from disclosing any such information (i) to purchasers or prospective purchasers of the Securities in connection with the Offering, (ii) to any rating agency, (iii) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, (iv) upon the request or demand of any regulatory authority having jurisdiction over J.P. Morgan or any of its affiliates, or (v) to J.P. Morgan's affiliates and its and their respective employees, legal counsel, independent auditors and other experts or agents who need to know such information in connection with the Loan or any other services provided by J.P. Morgan or its affiliates to the City and its affiliates. J.P. Morgan accepts responsibility for compliance by the persons referred to in clause (v) above with the provisions of this paragraph. This undertaking by J.P. Morgan shall automatically terminate on the earlier of (x) one (1) year following the earlier of completion of the Offering or termination of J.P. Morgan's engagement hereunder or (y) eighteen (18) months from the date hereof. Nothing in this letter agreement precludes J.P. Morgan or its affiliates from using or disclosing any confidential information in connection with any suit, action or proceeding for the purpose of defending itself, reducing its liability or protecting or exercising any of its rights, remedies or interests.

Any final arrangements, proposals or advice rendered by J.P. Morgan pursuant to this letter agreement may not be disclosed in any manner without J.P. Morgan's prior written approval and shall be treated as confidential. Notwithstanding the foregoing, nothing herein shall prevent the City from disclosing such information (x) in a manner consistent with the exceptions set forth in clauses (ii) through (v) in the paragraph immediately above or as required by the California Public Records Act or (y) as permitted by the last sentence of the

paragraph immediately above, substituting the City for J.P. Morgan therein, in either case, as applicable.

6. Engagement Period, Termination and Survival. J.P. Morgan's engagement hereunder may be terminated by J.P. Morgan or the City at any time upon 10 days' prior written notice to the other party. This paragraph and the provisions of this letter agreement relating to the payment of fees and expenses, indemnification and contribution, confidentiality, references to J.P. Morgan and governing law and submission to jurisdiction will survive any termination or expiration of this letter agreement.

7. Matters Relating to Engagement. The City acknowledges and agrees that J.P. Morgan has been engaged solely as an independent contractor to provide the services set forth herein. In rendering such services J.P. Morgan will be acting solely pursuant to a contractual relationship on an arm's length basis with respect to the Offering (including in connection with determining the terms of the Offering) and not as a financial advisor or a fiduciary to the City or any other person. Additionally, the City acknowledges that J.P. Morgan is not advising the City or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The City shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and J.P. Morgan shall have no responsibility or liability to the City with respect thereto. The City further acknowledges and agrees that any review by J.P. Morgan of the City, the Offering, the terms of the Securities and other matters relating thereto will be performed solely for the benefit of J.P. Morgan and shall not be on behalf of the City or any other person. Finally, the City agrees that J.P. Morgan may perform the services contemplated hereby in conjunction with its affiliates, and that any J.P. Morgan affiliates performing services hereunder shall be entitled to the benefits and be subject to the terms of this letter agreement.

Following completion of this engagement, J.P. Morgan shall have the right to place advertisements in financial and other newspapers and journals at its own expense describing its services to the City hereunder. J.P. Morgan may not, without its prior written consent, be quoted or referred to in any document, release or communication prepared, issued or transmitted by the City (including any entity controlled by, or under common control with, the City or any director, officer, employee or agent thereof).

The City acknowledges that J.P. Morgan is a securities firm engaged in securities trading and brokerage activities and providing investment banking and financial advisory services. In the ordinary course of business, J.P. Morgan and its affiliates may at any time hold long or short positions, and may trade or otherwise effect transactions, for their own account or the accounts of customers, in debt or equity securities of the City, its affiliates or other entities that may be involved in the transactions contemplated hereby.

In addition, J.P. Morgan and its affiliates may from time to time perform various investment banking, commercial banking and financial advisory services for other clients and customers who may have conflicting interests with respect to the City or the Offering. J.P. Morgan and its affiliates will not use confidential information obtained from the City pursuant to this engagement or their other relationships with the City in connection with the performance by J.P. Morgan and its affiliates of services for other companies, and J.P. Morgan and its affiliates will not furnish any such information to other companies. The City also acknowledges that J.P. Morgan and its affiliates have no obligation to use in connection with this engagement, or to furnish to the City, confidential information obtained from other companies.

Furthermore, the City acknowledges that J.P. Morgan and its affiliates may have fiduciary or other relationships whereby J.P. Morgan and its affiliates may exercise voting power over securities of various persons, which securities may from time to time include securities of the City, potential purchasers of the Securities or others with interests in respect of the Offering. The City acknowledges that J.P. Morgan and its affiliates may exercise such powers and otherwise perform their functions in connection with such fiduciary or other relationships without regard to J.P. Morgan's relationship to the City hereunder.

8. Governing Law and Submission to Jurisdiction. This letter agreement, including Annex A hereto, and any claim, controversy or dispute arising under or related to this letter agreement, shall be governed by and construed in accordance with the laws of the State of California, without giving effect to the conflicts of laws principles thereof. The City and J.P. Morgan irrevocably agree to waive trial by jury in any action, proceeding, claim or counterclaim brought by or on behalf of either party related to or arising out of this letter agreement or the performance of services hereunder.

The City irrevocably and unconditionally submits to the exclusive jurisdiction of any state or federal court sitting in the County of Santa Clara over any suit, action or proceeding arising out of or relating to this letter agreement. Service of any process, summons, notice or document by registered mail addressed to the City at the address above shall be effective service of process against the City for any suit, action or proceeding brought in any such court. The City irrevocably and unconditionally waives any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. A final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon the City and may be enforced in any other courts to whose jurisdiction the City is or may be subject, by suit upon judgment. The City further agrees that nothing herein shall affect J.P. Morgan's right to effect service of process in any other manner permitted by law or bring a suit action or proceeding (including a proceeding for enforcement of a judgment) in any other court or jurisdiction in accordance with applicable law.

9. Miscellaneous. This letter agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes all oral statements and prior writings with respect thereto. This letter agreement may not be amended or modified except by a writing executed by each of the parties hereto. Section headings herein are for convenience only and are not a part of this letter agreement. This letter agreement is solely for the benefit of the City and J.P. Morgan, and no other person (except for indemnified persons to the extent set forth in Annex A hereto) shall acquire or have any rights under or by virtue of this letter agreement. This letter agreement may not be assigned by either party hereto without the other party's prior written consent. Neither party hereto shall be responsible or have any liability to any other party for any indirect, special or consequential damages arising out of or in connection with this letter agreement or the transactions contemplated hereby, even if advised of the possibility thereof.

This letter agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

10. Municipal Advisor Rules. The City acknowledges that J.P. Morgan may not be able to perform some of the services the City may request of J.P. Morgan from time to time in connection with J.P. Morgan's engagement as lead underwriter, placement agent or initial purchaser to the extent that such services would cause J.P. Morgan to be considered a "municipal advisor" under SEC Rel. No. 34-70462 (Sept. 20, 2013)) (such final rules and to the extent referenced therein, Section 975, the "Municipal Advisor Rules") implementing

Section 975 (“Section 975”) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

If the foregoing correctly sets forth our understanding, please so indicate by executing this letter, together with the enclosed duplicate originals, in the place indicated and returning two of these originals for our files.

IN WITNESS WHEREOF, the parties have executed this letter.

ATTEST:

CITY OF SUNNYVALE ("City")

By: _____
City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

J.P. MORGAN SECURITIES LLC

By: _____
City Attorney

By:  _____
John Houlberg
Executive Director

ANNEX A

The City agrees to indemnify and hold harmless J.P. Morgan, its affiliates and their respective officers, directors, employees, agents and controlling persons (each an "Indemnified Person") from and against any and all losses, claims, damages, liabilities and expenses, joint or several, to which any such Indemnified Person may become subject arising out of or in connection with the transactions contemplated by the letter agreement to which this Annex A is attached (the "Agreement"), or any claim, litigation, investigation or proceedings relating to the foregoing ("Proceedings") regardless of whether any of such Indemnified Persons is a party thereto, and to reimburse such Indemnified Persons for any legal or other reasonable expenses as they are incurred in connection with investigating, responding to or defending any of the foregoing, provided that the foregoing indemnification will not, as to any Indemnified Person, apply to losses, claims, damages, liabilities or expenses to the extent that they are finally judicially determined to have resulted from the gross negligence, bad faith or material breach of the engagement letter by J.P. Morgan or willful misconduct of such Indemnified Person. The City also agrees that no Indemnified Person shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the City for or in connection with the Agreement, any transactions contemplated thereby or J.P. Morgan's role or services in connection therewith, except to the extent that any liability for losses, claims, demands, damages, liabilities or expenses incurred by the City are finally judicially determined to have resulted from the gross negligence, bad faith or material breach of the engagement letter or willful misconduct of such Indemnified Person.

If for any reason the foregoing indemnification is unavailable to any Indemnified Person or insufficient to hold it harmless, then the City shall contribute to the amount paid or payable by such Indemnified Person as a result of such loss, claim, damage, liability or expense in such proportion as is appropriate to reflect not only the relative benefits received by the City on the one hand and such Indemnified Person on the other hand but also the relative fault of the City and such Indemnified Person, as well as any relevant equitable considerations. It is hereby agreed that the relative benefits to the City on the one hand and all Indemnified Persons on the other hand shall be deemed to be in the same proportion as (i) the total value received or proposed to be received by the City pursuant to any sale of the Securities (whether or not consummated) bears to (ii) the fee paid or proposed to be paid to J.P. Morgan in connection with such sale. The indemnity, reimbursement and contribution obligations of the City under these paragraphs shall be in addition to any liability which the City may otherwise have to an Indemnified Person and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the City and any Indemnified Person.

Promptly after receipt by an Indemnified Person of notice of the commencement of any Proceedings, such Indemnified Person will, if a claim is to be made hereunder against the City in respect thereof, notify the City in writing of the commencement thereof; provided that (i) the omission so to notify the City will not relieve it from any liability which it may have hereunder except to the extent it has been materially prejudiced by such failure and (ii) the omission so to notify the City will not relieve it from any liability which it may have to an Indemnified Person otherwise than on account of this indemnity agreement. In case any such Proceedings are brought against any Indemnified Person and it notifies the City of the commencement thereof, the City will be entitled to participate therein and, to the extent that it may elect by written notice delivered to the Indemnified Person, to assume the defense thereof with counsel reasonably satisfactory to such Indemnified Person; provided that if the defendants in any such Proceedings include both the Indemnified Person and the City and

the Indemnified Person shall have concluded that there may be legal defenses available to it which are different from or additional to those available to the City, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such Proceedings on behalf of such Indemnified Person. Upon receipt of notice from the City to such Indemnified Person of its election so to assume the defense of such Proceedings and approval by the Indemnified Person of counsel, the City will not be liable to such Indemnified Person for expenses incurred by the Indemnified Person in connection with the defense thereof (other than reasonable costs of investigation) unless (i) the Indemnified Person shall have employed separate counsel in connection with the assertion of legal defenses in accordance with the proviso to the immediately preceding sentence (it being understood, however, that the City shall not be liable for the expenses of more than one separate counsel (in addition to any local counsel), approved by J.P. Morgan, representing the Indemnified Persons who are parties to such Proceedings), (ii) the City shall not have employed counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person within a reasonable time after notice of commencement of the Proceedings or (iii) the City has authorized in writing the employment of counsel for the Indemnified Person.

The City shall not be liable for any settlement of any Proceedings effected without its written consent (which consent shall not be unreasonably withheld), but if settled with its written consent or if there be a final judgment for the plaintiff in any such Proceedings, the City agrees to indemnify and hold harmless each Indemnified Person from and against any and all losses, claims, damages, liabilities and expenses by reason of such settlement or judgment in accordance with the provisions of this Annex A. Notwithstanding the immediately preceding sentence, if at any time an Indemnified Person shall have requested the City to reimburse such Indemnified Person for legal or other expenses in connection with investigating, responding to or defending any Proceedings as contemplated by this Annex A, the City shall be liable for any settlement of any Proceedings effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by the City of such request for reimbursement and (ii) the City shall not have reimbursed such Indemnified Person in accordance with such request prior to the date of such settlement. The City shall not, without the prior written consent of an Indemnified Person (which consent shall not be unreasonably withheld), effect any settlement of any pending or threatened Proceedings in respect of which indemnity could have been sought hereunder by such Indemnified Person unless (x) such settlement includes an unconditional release of such Indemnified Person in form and substance satisfactory to such Indemnified Person from all liability on claims that are the subject matter of such Proceedings and (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

Capitalized terms used but not defined in this Annex A have the meanings assigned to such terms in the Agreement.

SCOPE OF SERVICES

Over the course of the engagement, J.P. Morgan shall provide services that may include, but are not limited to, the following:

- Assist in the analysis of the WIFIA Loan terms, including evaluating loan terms and provisions while taking into account EPA requirements and constraints.
- Analyze alternative WIFIA Loan options. Identify the advantages and disadvantages of any approach.
- Assist in the development of strategies for subordinating the WIFIA Loan in light of the City's existing and projected debt portfolio and structure.
- Working with the City's Independent Registered Municipal Advisor to conduct, or assist the City in conducting, quantitative analyses that show the impact of the WIFIA Loan and the WIFIA BAN on the City's financial and debt structures, particularly focusing on the impact of the loan as it relates to the City's Wastewater Capital Plan, and the Plan's corresponding debt metrics, including Debt Service Coverage.
- Assist in the formulation of presentations of alternative financial strategies, taking into consideration appropriate debt structures, timing, impact on rates and ratepayers, budgeting, credit ratings, tax laws, and the assessment of capital market conditions. In the performance of all aspects of financial planning, the Underwriter must be cognizant of constraints imposed upon the City by virtue of the Sunnyvale City Charter and budget, and fiscally conservative posture.
- Provide information, judgments, and forecasts regarding general economic and capital market conditions.
- Create presentation materials and arrange calls/meetings with one or more rating agencies as it relates to the requirements of procuring the WIFIA Loan or the WIFIA BAN. Note that presentation materials must meet or exceed the City's current aesthetic and informational standards.
- Work with the City's bond counsel and Independent Registered Municipal Advisor in advance of finalizing the WIFIA Loan and WIFIA BAN to ensure acceptance of the terms and conditions, and the ability of bond counsel to deliver an unqualified opinion for entering into the respective loans.
- Assist in the preparation and review of legal and financing documents in coordination with the City Attorney's Office, bond counsel, Financial Advisor, City staff, and other relevant parties.
- Prepare a financing timetable and interested parties list for the WIFIA Loan and WIFIA BAN procurement process.
- Make available qualified personnel for consultations and conferences with City officials, bond counsel, Financial Advisor, and staff members, as well as for other meetings on an as needed basis.
- Provide continuing updates and advice on the impact of current or proposed federal legislation and market conditions that could affect the procurement of the loan.
- Support loan application phase activities, including but not limited to, completion of application materials, term sheet development and drafting and delivery of presentation to EPA.