SPECIAL AGENDA

City of Modesto

SPECIAL MODESTO PUBLIC
FINANCING AUTHORITY MEETING
Tenth Street Place
Chambers, Basement Level
1010 10th Street
Modesto, California

Tuesday, May 7, 2019, 5:30 p.m.

Roll Call: Commissioners Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki,
Mayor Brandvold

PUBLIC COMMENT PERIOD
Three minute time limit per speaker

Only interested persons in the audience may present these matters. Under State law, Commissioners may respond to matters being presented under this item only as follows:

a. Briefly respond to statements made or questions raised.
b. Ask a question for clarification.
c. Provide a reference to staff or other resources for factual information.
d. Request staff to report back at a subsequent meeting.
e. Finally, a Commissioner or the Public Financing Authority itself may take action to direct staff to place a matter of business on a future agenda.

CONSENT ITEMS – ROLL CALL VOTE REQUIRED: Items A and B

Information concerning the consent items listed above has been forwarded to each Commissioner prior to this meeting for study. Unless some member of the audience or Commissioner has a question concerning an item and asks that it be withdrawn from the consent list, the Public Financing Authority approves the items at one time. The action taken by the Public Financing Authority in approving consent items is set forth in the explanation of this individual item.

Any and all of the following agenda items are subject to action by the Public
Financing Authority.

This Agenda is on file at the Modesto-Stanislaus Library Reference Room, 1500 I Street, Modesto, in the City Clerk’s Office, Sixth Floor, 10th Street Place, and is available on the City’s Web site at www.modestogov.com.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk (209) 577-5396. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

CONSENT ITEMS

An item may be removed from consent and discussed at the request of an audience member or Commissioner.

CONSENT

A. Consider approval of the minutes of the June 6, 2017 Public Financing Authority meeting.
   • Motion approving the minutes of the June 6, 2017 Public Finance Authority meeting.
     Clerk; Stephanie Lopez, 577-5397, slopez@modestogov.com

NEW BUSINESS

B. Consider approving a Reimbursement Agreement among Bank of the West, the City of Modesto, and Modesto Public Financing Authority, and a related fee letter; a Supplement to an Official Statement; a Remarketing and Interest Services Agreement by and between Modesto Public Financing Authority and Raymond James & Associates, Inc. (Funding Source: General Fund, Redevelopment Successor Agency and Various Funds)
   • Resolution of the Modesto Public Financing Authority relating to Modesto Public Financing Authority Lease Revenue Refunding Bonds Series 2008 approving a new credit facility and approving the form of and authorizing the execution and delivery of a reimbursement agreement, a fee letter agreement and a supplement to official statement; approving a new remarketing agent and the form of a new remarketing agent and interest services agreement and authorizing certain other related actions.
     Finance; DeAnna Espinoza, 577-5387, daespinoza@modestogov.com

MATTERS TOO LATE FOR THE AGENDA

These may be presented by members of the Public Financing Authority and staff upon determination by a majority vote that an emergency exists, as defined by State law, or by a 2/3 vote that (1) there is a need to take immediate action, and (2) that the need for action came to the City’s attention after the agenda was posted.

ADJOURNMENT

Posted pursuant to Government Code Section 54956 on _________________, 2019, at _____________ by ___________________ on the bulletin board at Tenth Street Place.
MODESTO PUBLIC FINANCING AUTHORITY

www.modestogov.com

MINUTES

City of Modesto

SPECIAL MODESTO PUBLIC FINANCING AUTHORITY MEETING

Tenth Street Place

Chambers, Basement Level

1010 10th Street

Modesto, California

Tuesday, June 6, 2017, 5:30 p.m.

Roll Call - Present: Commissioners Grewal, Kenoyer, Madrigal, *Ridenour, *Zoslocki, Chairperson Brandvold

Absent: Commissioner Ah You

PUBLIC COMMENT PERIOD

Three minute time limit per speaker

None.

CONSENT ITEMS – ROLL CALL VOTE REQUIRED: Items A and B

CONSENT ITEMS

An item may be removed from consent and discussed at the request of an audience member or Commissioner.

CONSENT

A. Consider approval of the minutes of the June 7, 2016 Public Financing Authority meeting.

- Motion approving the minutes of the June 7, 2016 Public Finance Authority meeting.

Clerk; Stephanie Lopez, 577-5397, slopez@modestogov.com

ACTION: Motion (Kenoyer/Grewal; 6/0; Ah You absent) approval of the minutes of the June 3, 2014 Public Financing Authority meeting.
B. Consider approving a three-year extension of the irrevocable direct pay Letter of Credit supporting the 2008 Water Refunding Revenue Certificates of Participation, amending the fee agreement with JP Morgan, authorizing the distribution of a Supplemental Official Statement, and authorizing certain other related actions to complete the three-year extension to the Water Bond Letter of Credit. (Funding Source: Water Fund)

- Resolution of the Modesto Public Financing Authority relating to Water Refunding Revenue Certificates of Participation, 2008 Series A; approving the form of and authorizing the distribution of a supplement to an official statement in connection therewith; and authorizing certain other related actions to complete the three-year extension to the Water Bond Letter of Credit.

Finance; DeAnna Espinoza, 577-5387, daespinoza@modestogov.com

ACTION: Resolution 01-2017 (Kenoyer/Grewal; 6/0; Ah You absent) approving a three-year extension of the irrevocable direct pay Letter of Credit supporting the 2008 Water Refunding Revenue Certificates of Participation, amending the fee agreement with JP Morgan, authorizing the distribution of a Supplemental Official Statement, and authorizing certain other related actions to complete the three-year extension to the Water Bond Letter of Credit.

MATTERS TOO LATE FOR THE AGENDA

None.

ADJOURNMENT

This meeting adjourned at 7:01 p.m.

Attest: ____________________________

Stephanie Lopez, Agency Secretary
TO: Modesto Public Financing Authority Commissioners

THROUGH: Joseph P. Lopez, City of Modesto City Manager and Authority Executive Director

FROM: DeAnna Christensen, City of Modesto Director of Finance and Authority Treasurer

SUBJECT: Letter of Credit (LOC) with Bank of the West for the 2008 Lease Revenue Refunding Bonds

CONTACT: DeAnna Christensen, Director of Finance, dachristensen@modestogov.com, 209-577-5387

DESCRIPTION:

Consider approving a Reimbursement Agreement among Bank of the West, the City of Modesto, and Modesto Public Financing Authority, and a related fee letter; a Supplement to an Official Statement; a Remarketing and Interest Services Agreement by and between Modesto Public Financing Authority and Raymond James & Associates, Inc. (Funding Source: General Fund, Redevelopment Successor Agency and Various Funds)

STRATEGIC PLAN ELEMENT:

This item supports the Strategic Commitment, “Effective Responsive and Transparent Government – Make informed decisions embracing best practices and continuous improvement”.

BACKGROUND:

The 2008 Bonds were issued to refund the Series 1998 and Series 2007 Lease Revenue Bonds (together the “Prior Bonds”) in the amount of $65,170,000. The Prior Bonds were issued to assist in the financing of certain public capital improvements in the City which consist of the following: (i) the former Redevelopment Agency’s parking garage, (ii) the City’s one-half interest in the City-County Joint Power Agency’s administration building, (iii) the City’s police headquarters building and police operations building, (iv) certain miscellaneous City properties and (v) the City’s one-half undivided interest in the Communications Dispatch Center.

On June 7, 2016, the Authority approved a 3-year extension of the Letter of Credit (LOC) for these Bonds at 60 basis points (0.60%) with Bank of America. Bank of America also removed the requirement for the City to maintain a $7 million reserve for the General Fund unassigned fund balance. The termination date of the Letter of Credit is scheduled for June 22, 2019.
RESOLUTION OF THE MODESTO PUBLIC FINANCING AUTHORITY RELATING TO MODESTO PUBLIC FINANCING AUTHORITY LEASE REVENUE REFUNDING BONDS SERIES 2008 APPROVING A NEW CREDIT FACILITY AND APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A REIMBURSEMENT AGREEMENT, A FEE LETTER AGREEMENT AND A SUPPLEMENT TO OFFICIAL STATEMENT; APPROVING A NEW REMARKETING AND INTEREST SERVICES AGREEMENT AND AUTHORIZING CERTAIN OTHER RELATED ACTIONS

WHEREAS, the Modesto Public Financing Authority (the "Authority") is a joint exercise of powers authority duly organized and existing pursuant to the Modesto Public Financing Joint Exercise of Powers Agreement, dated as of December 5, 1989, by and between the City of Modesto (the "City"), a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California, and the Industrial Development Authority of the City; and

WHEREAS, the Authority previously issued its $65,170,000 original aggregate principal amount of Modesto Public Financing Authority Lease Revenue Refunding Bonds Series 2008 (the "2008 Bonds") of which approximately $50,915,000 remain outstanding;

WHEREAS, Bank of America, N.A., as the initial Credit Facility Provider ("BofA") issued its Irrevocable Transferable Letter of Credit dated August 28, 2008 (the "Initial Credit Facility") to provide credit support for the 2008 Bonds; and

WHEREAS, subsequently, on various occasions, the Authority requested BofA to extend the Stated Expiration Date of the Initial Credit Facility, and BofA agreed, most recently extending the Stated Expiration Date to June 22, 2019; and

WHEREAS, following a competitive solicitation and upon the advice of its municipal financial advisor, Public Financial Management, the Authority has determined that it is its
best interest to replace the Initial Credit Facility with a new letter of credit (the “Replacement Credit Facility”) provided by Bank of the West (“BotW”); and

WHEREAS, in connection with the issuance of the Replacement Credit Facility, the City, the Authority and BotW will enter into a Reimbursement Agreement (the “Reimbursement Agreement”) and related Fee Letter Agreement (the “Fee Letter”); and

WHEREAS, the City and the Authority will prepare a Supplement to the Official Statement for the 2008 Bonds describing certain material information regarding BotW and the substitution of the Replacement of Credit Facility (the “Supplement to Official Statement”); and

WHEREAS, in connection with the delivery of the Replacement Credit Facility, the Authority has also determined, to facilitate the remarketing of the Bonds in the most cost-effective manner and upon the advice of its municipal financial advisor, to replace Merrill Lynch/BofA as dealer and remarketing agent for the Bonds and to appoint Raymond James & Associates, Inc. as the new remarketing agent and to enter into a new Remarketing and Interest Services Agreement (substantially identical to the agreement with BofA) with Raymond James & Associates, Inc.; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Authority is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.
NOW, THEREFORE, BE IT RESOLVED by the Commission of the Authority, as follows:

1. **Findings.** The Commission of the Authority hereby specifically finds and determines that the statements, findings and determinations of the Authority set forth above and in the preambles of the documents approved herein are true and correct.

2. **Approval of the Reimbursement Agreement and Fee Letter.** The Reimbursement Agreement and Fee Letter, proposed to be executed and entered into by and among the Authority, the City and BotW, in the forms presented at this meeting and on file with the Secretary of the Authority, are hereby approved, and each of the Chairperson, Vice Chairperson, Executive Director, and Auditor and Treasurer of the Authority (each, a "Authorized Officer"), acting singly, is hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Reimbursement Agreement and the Fee Letter in substantially said forms, with such changes therein as such officer executing the Reimbursement Agreement and the Fee Letter may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

3. **Approval of the Supplement to Official Statement.** The Supplement to Official Statement, proposed to be executed and delivered by the City and the Authority, in the form presented at this meeting and on file with the Secretary of the Authority, is hereby approved, and each Authorized Officer, acting singly, is hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Supplement to Official Statement in substantially said form, with such changes therein as such officer executing the Supplement to Official Statement may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.
4. **Approval of the Remarketing and Interest Services Agreement.** The Remarketing and Interest Services Agreement, proposed to be executed and entered into by and between the Authority and Raymond James & Associates, Inc., in the form presented at this meeting and on file with the Secretary of the Authority, is hereby approved, and any Authorized Officer, acting singly, is hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Remarketing and Interest Services Agreement in substantially said form, with such changes therein as such officer executing the Remarketing and Interest Services Agreement may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

5. **Attestations.** The Secretary of the Authority is hereby authorized and directed to attest the signatures of each Authorized Officer in connection with the documents approved by this Resolution.

6. **Other Actions.** Each Authorized Officer is hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or desirable in order to consummate the transactions authorized hereby and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Reimbursement Agreement, the Fee Letter, the Supplement to Official Statement, and the Remarketing and Interest Services Agreement and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

7. **Effective Date.** This Resolution shall take effect immediately upon its passage.
The foregoing resolution was introduced at a regular meeting of the Modesto Public Financing Authority of the City of Modesto held on the 7th day of May, 2019, by Agency Commissioner __________, who moved its adoption, which motion being duly seconded by Agency Commissioner __________, was upon roll call carried and the resolution adopted by the following vote:

AYES: Agency Commissioners:

NOES: Agency Commissioners:

ABSENT: Agency Commissioners:

ATTEST: STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM

BY: ADAM U. LINNDGREN, City Attorney
REIMBURSEMENT AGREEMENT

among

BANK OF THE WEST

and

CITY OF MODESTO

and

MODESTO PUBLIC FINANCING AUTHORITY

Dated as of June 1, 2019

Relating to the

$65,170,000 original aggregate principal amount of MODESTO PUBLIC FINANCING AUTHORITY LEASE REVENUE REFUNDING BONDS SERIES 2008
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REIMBURSEMENT AGREEMENT

This REIMBURSEMENT AGREEMENT (this “Agreement”) is made as of June 1, 2019 by and among BANK OF THE WEST (the “Bank”), the MODESTO PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the “Authority”) and the CITY OF MODESTO, a charter city duly organized and existing under laws of the State of California (the “City”).

RECITALS

A. The Authority previously issued its Lease Revenue Refunding and Capital Improvement Bonds, Series 2007 and its Lease Revenue Bonds, Series 1998 (collectively, the “Prior Bonds”) to assist the financing of certain public capital improvements in the City.

B. Pursuant to an Indenture dated as of August 1, 2008 (as amended or supplemented from time to time, the “Indenture”) between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), the Authority issued its Lease Revenue Refunding Bonds, Series 2008 (the “Bonds”) in the original aggregate principal amount of $65,170,000 and currently outstanding in the aggregate principal amount of $63,255,000, for the purposes, among other things, of refunding all of the Prior Bonds. The Bonds are secured by a pledge of Revenues (as such term is defined in the Indenture), which Revenues include base rental payments to be made by the City pursuant to the terms of a Lease Agreement dated as of August 1, 2008, as amended by an Amendment No. 1 to Lease Agreement, dated as of August 1, 2011 (as so amended and as it may be further amended or supplemented from time to time, the “Lease Agreement”) each between the City and the Authority.

C. In order to support payment of principal and interest with respect to the Bonds, Bank of America, N.A. (the “Prior Bank”) issued its irrevocable transferable letter of credit dated August 28, 2008 (the “Prior Letter of Credit”) to the Trustee for the account of the City.

D. In order to support payment of principal and interest with respect to the Bonds, the City has requested the Bank to provide, and the Bank is willing to provide, a letter of credit (the “Letter of Credit”) to the Trustee for the account of the City as an Alternate Credit Facility under the Indenture upon the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants contained herein, and in order to induce the Bank to issue the Letter of Credit on the Closing Date, the Authority, the City and the Bank hereby agree as follows (capitalized terms used herein and not otherwise defined have the meaning set forth in Section 1 hereof):
ARTICLE ONE

DEFINITIONS

Section 1.1. Definitions. Capitalized terms not defined in this Agreement shall have the meanings assigned to them in the Indenture. In addition to terms defined elsewhere in this Agreement, as used herein the following terms shall have the following meanings unless the context otherwise requires, and such meanings shall be equally applicable to both singular and plural forms of the terms herein defined:

“Additional Payments” shall mean the payments so designated and required to be made by the City pursuant to Section 3.02 of the Lease Agreement.

“Affiliate” means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

“Agreement” shall mean this Reimbursement Agreement, as the same may from time to time be amended, supplemented or otherwise modified in accordance with its terms.

“Amortization Period” means, with respect to any Tender Draw, the period commencing on the Term Loan Conversion Date and ending on the earliest of (a) the third anniversary of the Term Loan Conversion Date, and (b) the third anniversary of the Stated Expiration Date as in effect on the Term Loan Conversion Date.

“Authority” shall mean the Modesto Public Financing Authority, a joint exercise of powers authority duly organized and existing under the laws of the State of California, and its successors and assigns.

“Authorized Representative” shall mean such Person at the time and from time to time authorized by resolution to act on behalf of the City or the Authority by written certificate furnished to the Bank.

“Bank” shall mean Bank of the West and its successors and assigns.

“Bank Bonds” shall mean the Bonds held by the Tender Agent for the benefit of the Bank as provided in Section 4.13 of the Indenture.

“Bank Rate” means on any day, (a) if such day occurs prior to the Term Loan Conversion Date, a rate per annum equal to the Base Rate plus 1.00%; and (b) if such day occurs after the ninetieth day following the date on which the Bank honored a Tender Draw, a rate per annum equal to the Base Rate plus 3.00%; provided, that in no event shall the Bank Rate be less than the rate on the Bonds that are not Bank Bonds; and provided, further that in the event the Maximum Annual Base Rental Payment for any Rental Payment Period is not sufficient to pay
the principal of and interest on the Bonds and any Related Obligations coming due in any Rental Payment Period, the Bank Rate shall equal the Default Rate so long as any resulting deficiency remains unpaid.

"Bankruptcy Law" shall mean Title 11, U.S. Code, as amended or supplemented, any successor statute thereto, or any similar Federal, state, or foreign law for the relief of debtors.

"Base Rate" means, for any day, the higher of (a) the Prime Rate or (b) the Federal Funds Rate plus 1.00% per annum.

"Base Rental Payment" shall mean all amounts payable to the Authority from the City as Base Rental Payments pursuant to Section 3.01 of the Lease Agreement.

"Bond Purchase Fund" shall have the meaning set forth in the Indenture.

"Bonds" shall mean the Modesto Public Financing Authority Lease Revenue Refunding Bonds, Series 2008 issued in the original aggregate principal amount of $65,170,000 and currently outstanding in the aggregate principal amount of $[ ].

"Business Day" shall mean a day on which banks located in New York, New York, San Francisco, California, the city in which the principal office of the Trustee is located and the state where the Bank’s lending office is located are not required or authorized to be closed and on which the New York Stock Exchange is open.

"Change of Law" shall mean occurrence of any of the following: (a) the adoption or taking effect of any law, rule, regulation, statute, treaty, regulation, policy, guideline or directive, (b) any change in any law, rule, regulation, statute, treaty, regulation, policy, guideline or directive or in the interpretation, promulgation, implementation, administration or enforcement thereof by any governmental authority, court, central bank or comparable agency charged with the interpretation or administration thereof, (c) the making or issuance of any request, rule, ruling, guideline or directive (whether or not having the force of law) of any such authority, court, central bank or comparable agency, or (d) compliance by the Bank with any request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such authority, court, central bank or comparable agency; provided that notwithstanding anything in this Agreement to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or the United States financial regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change of Law,” regardless of the date adopted, issued, promulgated, enacted or implemented.

"City" shall mean the City of Modesto, a charter city and municipal corporation duly organized and existing under and by virtue of the laws of the State of California, and its successors and assigns.
“City Communications Facilities Lease” shall mean the Facilities Lease (Communications Dispatch Center) dated as of August 1, 2008 between the City and the Authority, as the same may be amended or supplemented from time to time.

“City-County Administration Facilities Lease” shall mean the Facilities Lease (City-County Administration Building) dated as of August 1, 2008 between the Financing Agency and the Authority, as the same may be amended or supplemented from time to time.

“Closing Date” shall mean the date on which the Bank delivers the Letter of Credit pursuant to this Agreement.

“Collateral” shall have the meaning set forth in Section 2.5(a) hereof.

“Credit Facility Provider” shall have the meaning set forth in the Indenture.

“Default Rate” shall mean a rate per annum equal to the Base Rate plus 5.0%.

“Deferred Rental” shall have the meaning set forth in the Lease Agreement.

“Drawing” shall mean a drawing under the Letter of Credit resulting from the presentation to the Bank by the Trustee of a certificate in the form of Annex A, B, C, D or E to the Letter of Credit.

“Drawing Date” shall mean the date on which the Bank pays a Drawing on the Letter of Credit.

“DTC” shall have the meaning set forth in the Indenture.

“Environmental Claims” means any and all administrative, regulatory or judicial actions, suits, demand letters, claims, Liens, notices of noncompliance or violation, investigations, or proceedings relating in any way to any Environmental Law (“claims”) or any permit issued under any such Environmental Law, including (a) any and all claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (b) any and all claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

“Environmental Law” means any federal, state or local statute, law, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to health, safety or the environment or to Hazardous Materials.

“Event of Default” shall mean any event specified in Section 6.1 of this Agreement, provided that any requirement for notice, lapse of time, or both, or any other condition has been satisfied.
"Expiration Date" shall mean the date the Letter of Credit shall automatically terminate as described in paragraph 2 of the Letter of Credit.

"Facilities Leases" shall have the meaning set forth in the Lease Agreement (which includes the Parking Garage Facilities Lease, the Police Facilities and Miscellaneous Facilities Lease, the City-County Administration Facilities Lease and the City Communications Facilities Lease, as such terms are defined in the Lease Agreement).

"Fee Letter Agreement" shall mean the Fee Letter Agreement dated June [__], 2019 among the City, the Authority and the Bank, as the same may be amended or supplemented from time to time.

"Financing Agency" shall mean the City-County Capital Improvements and Financing Agency, duly organized and existing under a Joint Exercise of Powers Agreement, dated December 17, 1996, by and between the County of Stanislaus and the City.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Bank on such day on such transactions as determined by the Bank. Notwithstanding anything herein to the contrary, if the Federal Funds Rate as determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%).

"Hazardous Materials" means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contains dielectric fluid containing polychlorinated biphenyls and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted wastes," "toxic substances," "toxic pollutants," "contaminants," "special wastes" or "pollutants," or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority.

"Indenture" has the meaning assigned to such term in Recital B.

"Lease Agreement" has the meaning assigned to such term in Recital B.

"Leased Property" shall mean the real and personal property subject to the Lease Agreement.

"Letter of Credit" shall mean the irrevocable direct pay letter of credit to be issued by the Bank pursuant hereto for the account of the City in favor of the Trustee to support
payment of the Bonds, in substantially the form of Exhibit A to this Agreement with appropriate
insertions, as it may be amended or supplemented from time to time.

"Letter of Credit Fee Rate" shall have the meaning set forth in Section 1.1 of the
Fee Letter Agreement.

"Mandatory Tender Draft" shall have the meaning set forth in the Letter of Credit.

"Maximum Annual Base Rental Payment" means $6,500,000 being the maximum
annual amount (exclusive of Deferred Rental) payable to the Authority from the City as a Base
Rental Payment for any Rental Payment Period, as such amount may be amended upon
redetermination as described in Section 2.2(i) hereof.

"Obligations" shall mean the fees relating to the Letter of Credit, any and all
obligations of the Authority and the City to reimburse the Bank for a Drawing under the Letter of
Credit, and all other obligations of the Authority and the City to the Bank arising under or in
relation to this Agreement.

"Official Statement" shall mean the Official Statement of the Authority with
respect to the Bonds, and any similar statement prepared in connection with the Bonds.

"Optional Tender Draft" shall have the meaning set forth in the Letter of Credit.

"Parking Garage Facilities Lease" shall mean the Facilities Lease (Parking
Garage) dated as of August 1, 2008 between the Redevelopment Agency and the Authority, as
the same may be amended or supplemented from time to time.

"Payment Office" shall mean with respect to the Bank, the office of the Bank
located at the address set forth in Section 7.2 hereof or such other office as the Bank may from
time to time designate.

"Permitted Encumbrances" shall have the meaning set forth in the Indenture.

"Person" means a natural person, a firm, a corporation, a partnership, an
association, a trust or any other entity or organization, including a government or political
subdivision or any agency or instrumentality thereof.

"Police Facilities and Miscellaneous Facilities Lease" shall mean the Facilities
Lease (Police Facilities and Miscellaneous Facilities) dated as of August 1, 2008 between the
City and the Authority, as the same may be amended or supplemented from time to time.

"Prime Rate" shall mean the rate of interest publicly announced from time to time
by the Bank as its Prime Rate. The Prime Rate is set by the Bank based on various factors,
including the Bank's costs and desired return, general economic conditions and other factors, and
is used as a reference point for pricing some loans. The Bank may price loans to its customers
at, above, or below the Prime Rate. Any change in the Prime Rate shall take effect at the
opening of business on the day specified in the public announcement of a change in the Bank's
Prime Rate; provided, that if the Prime Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Prior Bank” shall have the meaning set forth in the recitals hereof.

“Prior Letter of Credit” shall have the meaning set forth in the recitals hereof.

“Provider” shall have the meaning set forth in the Indenture.

“Rebate Fund” shall have the meaning set forth in the Indenture.

“Redevelopment Agency” shall mean the Redevelopment Agency of the City of Modesto, as the original party to the Parking Garage Facilities Lease, prior to its dissolution pursuant to Section 34170 et seq. of the California Health & Safety Code.

“Reimbursement Account” shall have the meaning set forth in the Fee Letter Agreement.

“Related Documents” shall mean this Agreement, the Fee Letter Agreement, the Letter of Credit, the Bonds, the Indenture, the Lease Agreement, the Facilities Leases, the Remarketing Agreement, the Official Statement and the other documents, certificates and opinions executed and delivered in connection with issuance of the Bonds.

“Related Obligation” shall have the meaning set forth in the Indenture.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Release” shall mean disposing, discharging, injecting, spilling, leaking, dumping, emitting, escaping, emptying, seeping, placing, and the like, into or upon any land or water or air, or otherwise entering into the environment.

“Remarketing Agent” shall mean Raymond James & Associates, Inc., as successor Remarketing Agent, or any other firm which may at any time be substituted in its place as Remarketing Agent under the Indenture.

“Remarketing Agreement” shall mean the Remarketing Agreement, dated as of June 1, 2019, by and between the Authority and the Remarketing Agent, with respect to the Bonds, as the same may be amended or supplemented from time to time, or any similar agreement between the Authority and any successor Remarketing Agent.

“Rental Payment Period” shall have the meaning set forth in the Lease Agreement.

“Revenue Fund” shall have the meaning set forth in the Indenture.

“Revenues” shall have the meaning set forth in the Indenture.
“Series 2008 Interest Rate Swap Agreement” shall have the meaning set forth in the Indenture.

“Stated Amount” shall have the meaning set forth in the Letter of Credit.

“Stated Expiration Date” shall have the meaning set forth in the Letter of Credit.

“Successor Agency” means the successor agency for the Redevelopment Agency of the City of Modesto as designated under Section 34173 of the California Health & Safety Code.

“Swap” shall have the meaning set forth in the Indenture.

“Swap Revenues” shall have the meaning set forth in the Indenture.

“Tender Agent” shall mean The Bank of New York Mellon Trust Company, N.A., or any successor thereto acting as Tender Agent pursuant to the Indenture.

“Tender Draw” shall mean a Drawing on the Letter of Credit resulting from the presentation to the Bank by the Trustee of an Optional Tender Draft or a Mandatory Tender Draft.

“Term Loan Conversion Date” shall have the meaning set forth in Section 2.2(d) hereof.

“Termination Fee” shall have the meaning set forth in Section 1.6 of the Fee Letter Agreement.

“Trustee” shall mean The Bank of New York Mellon Trust Company, N.A., or any successor thereto acting as Trustee pursuant to the Indenture.

ARTICLE TWO

LETTER OF CREDIT

Section 2.1. Issuance of Letter of Credit; Extension of Letter of Credit.

(a) Extension of Credit. The Bank hereby agrees, on the terms and subject to the conditions hereinafter set forth, to issue the Letter of Credit to the Trustee, in accordance with the terms of this Section 2.1. The Letter of Credit shall be issued by the Bank upon satisfaction by the City of all conditions precedent set forth in Section 3.1 hereof, and for a stated term from the date of the Letter of Credit to the initial Stated Expiration Date.

(b) Term of Stated Expiration Date. The initial Stated Expiration Date for the Letter of Credit is June [__], 2023; provided that the Stated Expiration Date may be extended for an additional period upon the request by the Authority and the City and approval by the Bank in its sole discretion. Any request for an extension of the Letter of Credit must be in writing and accompanied by such information as the Bank may reasonably request and such request must be
received by the Bank no earlier than 120 days and no less than sixty (60) days prior to the Stated Expiration Date then in effect. The Bank, in its sole and absolute discretion, may elect not to extend the term of the Letter of Credit. If the Bank has not agreed to the request for extension in writing within thirty (30) days after the Bank received the Authority’s and the City’s written request and the other information requested by the Bank, the Authority’s and the City’s request shall be deemed to be denied. Each such extension shall be made on such terms and conditions as the Bank, the Authority and the City may mutually agree upon after analysis and due diligence as the Bank may require.

(c) Drawing on the Letter of Credit. Drawings to be made under the Letter of Credit shall be made by presentation by facsimile, in the form of a sight draft, accompanied by the appropriate annex submitted by the Trustee and no further presentation of documentation, including the original Letter of Credit, need be made; it being understood that the facsimile shall in all events be considered to be the sole operative instrument of drawing. The Bank may rely upon any such facsimile Drawing that the Bank, in good faith, believes to have been dispatched by the Trustee.

(d) Reduction and Reinstatement. The Stated Amount of the Letter of Credit shall be reduced by the amount of each Drawing, and shall be reinstated following certain Drawings, all as provided in the Letter of Credit.

Section 2.2. Reimbursement of Drawings. Subject to Section 2.5, the Authority and the City (by payment of Base Rental Payments in accordance with the terms of the Lease Agreement) hereby agree to reimburse to the Bank for any Drawing under the Letter of Credit as follows:

(a) on the same day the Bank honors a Drawing under the Letter of Credit, the full amount drawn except as provided in clause (d) below;

(b) upon demand, upon the occurrence of an Event of Default, interest on all Obligations, including all outstanding Drawings, at the Default Rate;

(c) subject to clause (d) below, on the Term Loan Conversion Date, the amount of such Tender Draw;

(d) If on the earlier of (i) the ninety-first day following the Drawing Date of any Tender Draw and (ii) the Expiration Date (the “Term Loan Conversion Date”), no Event of Default or event, act or omission which with notice, lapse of time or both, would constitute such an Event of Default, shall have occurred and be continuing and the representations and warranties of the City and the Authority hereunder are true and correct on and as of such Term Loan Conversion Date, the Authority and the City shall not be required to reimburse the Bank for such Tender Draw on the Term Loan Conversion Date but rather shall be required to pay such amount to the Bank in equal quarterly installments of principal due on the first Business Day of each calendar quarter occurring during the Amortization Period for such Tender Draw, together with interest thereon at the Bank Rate payable on the first day of each month following the Drawing Date of such Tender Draw, with the entire balance of such Tender Draw due on the last day of the Amortization Period; provided, however, that upon the remarketing of all or any
portion of the applicable Bank Bonds purchased with amounts drawn under the Letter of Credit pursuant to such Tender Draw, the amount such Tender Draw shall be immediately due and owing to the Bank, together with interest thereon at the Bank Rate; and provided further, that all amounts owed to the Bank pursuant to this Section 2.2 shall be immediately due and payable in full (i) on the date of delivery to the Trustee of any Alternate Credit Facility (as provided in the Indenture) as a substitution for the Letter of Credit, (ii) on the date of remarketing of such Bank Bonds, (iii) at such time as the Bonds are no longer Outstanding, (iv) on the date the interest rate on the Bonds to maturity has been converted to a rate that does not require credit enhancement or (v) on the date that the amount of the Letter of Credit is reduced to zero or the Letter of Credit is otherwise terminated prior to the Stated Expiration Date, including upon the occurrence of an Event of Default.

(e) The Authority and the City (by prepayment of Base Rental Payments in accordance with the terms of the Lease Agreement) may, on not less than one day’s notice, prepay in whole or part the amount of any Tender Draw, together with the interest accrued with respect to such amount, to the date of prepayment, by prepaying or arranging for the purchase of the related Bank Bonds. Any prepayment of less than all outstanding Tender Draws will be applied to the outstanding Tender Draws in inverse order of maturity, and prepayment of less than all of the outstanding amount of a Tender Draw will be applied to the Bank Bonds purchased with such Tender Draw in inverse order of maturity.

(f) The Bonds purchased with the proceeds of any Optional Tender Draft or Mandatory Tender Draft shall thereupon become Bank Bonds and shall be registered as directed by the Bank pursuant to the Indenture and shall be held by the Trustee on behalf of the Bank or as otherwise directed by the Bank. The Authority and the City shall cause the Remarketing Agent to have a CUSIP number assigned to any such Bank Bonds within one (1) Business Day of any such purchase (such CUSIP number to be distinct from the CUSIP number assigned to the Bonds). If requested by the Bank, the Authority and the City shall apply for within ten (10) Business Days of such request, and utilize its best efforts to obtain as soon as practicable, at its sole cost and expense, a long-term unenhanced rating on the Bank Bonds from at least one nationally recognized securities rating agency of at least investment grade (i.e. “Baa3” or “BBB-” or its equivalent) and as otherwise required for the Bank to assign and pledge such Bank Bonds to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank. Bank Bonds shall be entitled to all rights and privileges of Bonds set forth in the Indenture except that the principal component represented by such Bank Bonds shall mature, and the interest with respect to such Bank Bonds shall accrue at the Bank Rate and shall be payable, as set forth in this Section 2.2.

(g) Interest shall accrue on each advance made pursuant to the principal component of a Tender Draw and the corresponding Bank Bonds, from the Drawing Date of the applicable Tender Draw until the date due hereunder at the Bank Rate and shall be payable monthly in arrears on the first Business Day of each calendar month following the Drawing Date of such Tender Draw, and on the last day of the Amortization Period and on the date any Tender Draw shall otherwise become due and payable in full pursuant to Section 2.2(c) or 2.2(d) hereof. Interest shall accrue on all amounts due hereunder and on the corresponding Bank Bonds, if any, if not paid when due, at the Default Rate.
(h) If Bank Bonds are not assigned a separate CUSIP but remain in book-entry form held by DTC, the Authority and the City (by payment of the interest component of Base Rental Payments under the Lease Agreement) shall pay the difference between the Bank Rate and the interest rate then borne by the Bonds to the Bank as provided in this Section 2.2 and shall pay interest on the principal amount of all outstanding Bonds, including Bank Bonds, at the interest rate then borne by the Bonds other than Bank Bonds, to the Trustee for payment to the holders and the Bank through the normal DTC payment procedures.

(i) In the event that the amount needed to pay the principal of and interest on the Bonds and any Related Obligations coming due in any Rental Payment Period is more than the estimated Base Rental Payment for such Rental Payment Period, the City will be obligated to pay up to the Maximum Annual Base Rental Payment for such Rental Payment Period. To the extent the Maximum Annual Base Rental Payment for such Rental Payment Period is not sufficient to pay the principal of and interest on the Bonds and any Related Obligations coming due in any Rental Payment Period, (1) such deficiency shall continue to be an obligation of the City pursuant to the Lease Agreement and the City will be obligated to pay the Base Rental Payment up to the Maximum Annual Base Rental Payment in each Rental Payment Period until such deficiency is paid in full, (2) the City shall, subject to compliance with applicable debt limitations, use its best efforts to utilize additional sources of funds and properties legally available to it in order to pay such deficiency; (3) any unpaid Tender Draw shall thereafter bear interest at the Default Rate; (4) the City shall increase the Base Rental Payment for any Rental Payment Period if and to the extent that the Maximum Annual Base Rental Payment exceeds the amount needed to pay the amount needed by the Authority to pay the principal of and interest on the Bonds and any Related Obligations coming due on or before September 1 following the end of such Rental Payment Period; (5) the Authority and the City shall, solely at the Bank’s request, redetermine or cause to be redetermined the fair rental value of the Leased Property and the Maximum Annual Base Rental Payment as of the date of any such event and will otherwise, not challenge or redetermine the fair rental value of the Leased Property or the Maximum Annual Base Rental Payment and shall increase the Maximum Annual Base Rental Payment only to the extent any such increase is supported by the newly determined fair rental value of the Leased Property, taking into consideration the then current appraised value of the Leased Property; and (6) the Authority and the City shall, subject to the terms of the Lease Agreement, extend the term of the Lease Agreement if, on September 1, 2033, any amounts remain owing to the Bank. If any Tender Draw is not paid by the last day of the Amortization Period or on the date any Tender Draw shall otherwise become due and payable in full pursuant to Section 2.2(c) or 2.2(d) hereof, the Authority and the City shall use its best efforts to convert the interest rate on the Bonds to maturity at a rate that does not require credit enhancement.

The Authority and the City shall increase the Base Rental Payment for any Rental Payment Period following an abatement of Base Rental Payments pursuant to Section 3.06 of the Lease Agreement as set forth in Section 5.1(aa) hereof.

Further, the Authority and the City agree that if in any year the Maximum Annual Base Rental Payment exceeds the amount needed to pay the amount needed by the Authority to pay the principal of and interest on the Bonds and any Related Obligations coming due on or before September 1 following the end of such Rental Payment Period, the Authority and the City shall defer the Deferred Rental pursuant to Section 3.04 of the Lease Agreement and thereupon
the Deferred Rental need not be paid by the City to the Authority at that time, but instead shall be deferred until such subsequent time as the Authority shall have need for such payment; provided, however, that notwithstanding anything herein or in the Lease Agreement to the contrary, that the Deferred Rental shall not cause the Base Rental Payment in any Rental Payment Period to exceed the lesser of (x) 150% of the estimated Base Rental Payment for such Rental Payment Period as shown in Exhibit A to the Lease Agreement or (ii) the Maximum Annual Base Rental Payment, as adjusted for Deferred Rental for such Rental Payment Period.

Section 2.3. Letter of Credit Fees and Other Payments.

(a) Letter of Credit Fee. The Authority and the City (by payment of Additional Payments under the Lease Agreement) shall pay to Bank a nonrefundable Letter of Credit Fee as set forth in Section 1.1 of the Fee Letter Agreement, the terms of which are incorporated herein by this reference as if fully set forth herein.

(b) Payment Dates. The Letter of Credit Fee shall be due and payable as set forth in Section 1.2 of the Fee Letter Agreement, the terms of which are incorporated herein by this reference as if fully set forth herein.

(c) Other Fees. In addition, the Authority and the City (by payment of Additional Payments under the Lease Agreement) shall pay to Bank upon the amendment or transfer of the Letter of Credit and upon the negotiation of each draft drawn under the Letter of Credit, fees and charges as set forth in Section 1.3 of the Fee Letter Agreement, the terms of which are incorporated herein by this reference as if fully set forth herein.

(d) Calculation of Fees and Interest. All fees and interest payable under this Agreement shall be calculated as set forth in Section 1.4 of the Fee Letter Agreement, the terms of which are incorporated herein by this reference as if fully set forth herein.

(e) Initial Costs and Expenses. The Authority and the City (by payment of Additional Payments under the Lease Agreement) shall pay to the Bank any and all fees, charges and expenses as set forth in Section 1.5 of the Fee Letter Agreement, the terms of which are incorporated herein by this reference as if fully set forth herein. The obligations and liabilities under this Section 2.3(e) shall survive the termination of this Agreement, the Fee Letter Agreement and the Lease Agreement and the Authority's and the City's Obligations hereunder and thereunder and the payment in full of all Base Rental Payments and Additional Payments.
(f) Increased Costs; Capital Adequacy or Liquidity.

(i) If the Bank shall have determined that any Change of Law regarding capital adequacy or liquidity shall impose, modify or deem applicable any capital adequacy or liquidity or similar requirement (including, without limitation, a request or requirement that affects the manner in which the Bank allocates capital resources to its commitments), affects or would affect the amount of capital to be maintained by the Bank or has or would have the effect of reducing the rate of return on the capital of the Bank (or its parent) as a consequence of the Bank's obligations hereunder, including issuing, participating in or maintaining the Letter of Credit, purchasing, owning, holding or remarketing Bank Bonds or any participation therein or any collateral therefor, to a level below that which the Bank would have achieved but for such adoption, change or compliance (taking into consideration the Bank's policies with respect to capital adequacy or liquidity), then from time to time, within fifteen (15) days after written demand by the Bank made through the Bank, the Authority and the City (by payment of Additional Payments under the Lease Agreement) shall pay to the Bank such additional amount or amounts as will compensate the Bank for such event.

(ii) If the Bank shall have determined that any Change of Law:

(A) shall subject the Bank to any tax, duty or other charge with respect to its obligations under the Letter of Credit or this Agreement, or shall change the basis of taxation of payments to the Bank of the Bank Bonds or in respect of any amounts due under this Agreement (except for changes in the rate of tax on the overall net income of the Bank imposed by any taxing jurisdiction in which the Bank's principal executive office is located and other than by reason of any amount hereunder not being tax-exempt income to the recipient); or

(B) shall impose, modify or deem applicable any reserve, special deposit or similar requirement (including, without limitation, any imposed by the Board of Governors of the Federal Reserve System), against assets of, deposits with or for the account of, or credit extended by, the Bank;

and the result of any of the foregoing is to increase the cost to the Bank of issuing the Letter of Credit, honoring any Drawing or holding any Bank Bonds, or to reduce the amount of any sum received or receivable by the Bank under this Agreement, by an amount deemed by the Bank to be material, then, within fifteen (15) days after written demand by the Bank made through the Bank, the Authority and the City (by payment of Additional Payments under the Lease Agreement) agrees to pay or cause to be paid to the Bank such additional amount or amounts as will compensate the Bank for such increased cost or reduction.

(iii) A certificate of the Bank claiming compensation under this Section 2.3(f) and setting forth the additional amount or amounts to be paid to it hereunder (accompanied by a statement specifying the reasons therefor) shall be
conclusive in the absence of manifest error. In determining such amount, the Bank may use any reasonable averaging and attribution methods.

(iv) The obligations and liabilities under this Section 2.3(f) shall survive the termination of this Agreement and the Lease Agreement and the Authority’s and the City’s Obligations hereunder and thereunder and the payment in full of all Base Rental Payments and Additional Payments.

(g) Taxes. If any taxes are imposed on any payments made by the Authority or the City (including payments under this paragraph) other than ordinary income taxes payable by the Bank, the Authority or the City (by payment of Additional Payments under the Lease Agreement), as applicable, shall pay the taxes and shall also pay to the Bank, at the time interest is paid, any additional amount which the Bank specifies as necessary to preserve the after-tax yield the Bank would have received if such taxes had not been imposed. The Authority or the City shall confirm that it has paid the taxes by giving the Bank official tax receipts (or notarized copies) within thirty (30) days after the due date.

(h) Payment Office. All payments to be made by the Authority or the City to the Bank hereunder or in connection herewith, shall be made to the Reimbursement Account not later than 1:00 p.m., New York time, on the date due and shall be made in lawful money of the United States of America and in immediately available funds. Any amount not received by the Bank by such time shall be deemed to have been received on the next succeeding Business Day. All such payments not received on the date due shall bear interest until payment in full at the Default Rate and shall be payable on demand, or if no demand is made, on the first day of each calendar month thereafter. Notwithstanding anything herein to the contrary, following the occurrence and during the continuance of an Event of Default, interest shall accrue on all amounts owing hereunder and on the corresponding Bank Bonds at the Default Rate and shall be payable on demand, or if no demand is made, on the first day of each calendar month following the occurrence of such Event of Default.

(i) Obligations Absolute. Subject to Section 2.5, the Obligations of the Authority and the City under this Agreement shall be absolute, unconditional and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Agreement under all circumstances whatsoever, including, without limitation, the following circumstances:

(i) the existence of any claim, set-off, defense or other rights which the Authority or the City may have at any time against the Trustee, the Tender Agent, any beneficiary or any transferee of the Letter of Credit (or any Person for whom the Trustee, the Tender Agent, any such beneficiary or any such transferee may be acting) or the Bank, whether in connection with the transactions contemplated by this Agreement or any related or unrelated transactions;

(ii) any breach of contract or other dispute between the City, the Authority, the Trustee, the Tender Agent, any beneficiary or any transferee of the Letter of Credit (or any Person for whom the Trustee, any such beneficiary or any such transferee may be acting), the Bank or any other Person;
(iii) any delay, extension of time, renewal, compromise or other indulgence or modification granted or agreed to by the Bank, with or without notice to or approval by the Authority or the City, in respect of any of the Obligations of the Authority or the City (as the case may be) to the Bank under this Agreement;

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

(v) any non-application or misapplication by the Trustee of the proceeds of any Drawing under the Letter of Credit;

(vi) payment by the Bank under the Letter of Credit against presentation of a certificate which does not comply with the terms of the Letter of Credit, provided that such payment by the Bank shall not have constituted gross negligence or willful misconduct of the Bank; and

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Nothing contained in this Section 2.3(i) shall operate to prevent the Authority or the City from bringing a cause of action against the Bank for any liability it may incur as a result of its gross negligence or willful misconduct.

(j) Non-Business Days. If any sum becomes payable pursuant to this Agreement on a day which is not a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended time shall be included in the computation of interest and fees.

(k) Taxes. All payments made by the Authority hereunder or by the City (as Additional Payments under the Lease Agreement) shall be made free and clear of and without deduction for any present or future income, stamp or other taxes, levies, impost, deductions, charges, fees, withholdings, restrictions or conditions of any nature now or hereafter imposed, levied, collected, withheld or assessed by any jurisdiction or by any political subdivision or taxing authority thereof or therein (whether pursuant to United States Federal, state or local law or foreign law) and all interest, penalties or similar liabilities, excluding taxes on the overall net income of the Bank (such non-excluded taxes are hereinafter collectively referred to as the “Taxes”). If the Authority or the City shall be required by law to deduct or to withhold any Taxes from or in respect of any amount payable hereunder, (i) the amount so payable shall be increased to the extent necessary so that after making all required deductions and withholdings (including Taxes on amounts payable to the Bank pursuant to this sentence) and decreased to give effect to any refunds or credits received by the Bank so that the Bank receives an amount equal to the sum it would have received had no such deductions or withholdings been made (ii) the Authority or the City, as applicable, shall make such deductions or withholdings and (iii) the Authority or the City, as applicable, shall pay the full amount deducted or withheld to the relevant taxation authority in accordance with applicable law. Whenever any Taxes are payable
by the Authority or the City, as promptly as possible thereafter the Authority or the City, as applicable, shall send the Bank an official receipt or other documentation satisfactory to the Bank evidencing payment to such taxation authority.

(1) Maximum Rate. To the extent permitted by law, in the event that a rate of interest required to be paid by the Authority under this Agreement or by the City (by payment of the interest component of Base Rental Payments under the Lease Agreement) shall exceed a maximum rate established by law for any Rental Payment Period, then interest accrued at such maximum rate shall be paid by Authority and the City (by payment of the interest component of Base Rental Payments under the Lease Agreement) with respect to such Rental Payment Period and the differential between the amount of interest which would have accrued if the rate of interest required hereunder (without giving effect to this paragraph) had at all times been in effect and the amount of interest accrued at such maximum rate (the “Excess Interest”) shall be deferred until such date as the rate of interest required to be paid by the Authority or the City hereunder ceases to exceed the maximum rate established by law and any subsequent reduction in the rate of interest required to be paid by the Authority or the City hereunder will not reduce the rate of interest below the maximum rate established by law until the total amount of interest accrued equals the amount of interest which would have accrued if the rate of interest required hereunder (without giving effect to this paragraph) had at all times been in effect. Upon the termination of this Agreement, in consideration for any limitation of the rate of interest which may otherwise be payable hereunder, the Authority and the City (by payment of Additional Payments under the Lease Agreement) shall pay or cause to be paid to the Bank a fee equal to the amount of all such unpaid deferred Excess Interest, but only as and to the extent that the Maximum Annual Base Rental Payment for such Rental Payment Period exceeds the amount needed to pay the amount needed by the Authority to pay the principal of and interest on the Bonds and any Related Obligations coming due in such Rental Payment Period.

Section 2.4. Liability of Bank. Neither the Bank nor any of its officers or directors shall be liable or responsible for (a) the use which may be made of the Letter of Credit or for any acts or omissions of the Trustee and any transfer in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit, except to the extent of any damages suffered by the Authority or the City by (i) the Bank’s willful misconduct or gross negligence in determining whether documents presented under the Letter of Credit comply with the terms of the Letter of Credit or (ii) the Bank’s willful failure or gross negligence in failing to pay under the Letter of Credit after the presentation to it by the Trustee of a sight draft and certificate strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary; provided, that if the Bank shall receive written notification from the Trustee and either the Authority or the City that sufficiently identified (in the opinion of the Bank) documents to be presented to the Bank are not to be honored, the Bank agrees that it will not honor such documents.
The Authority and the City assume all risks of the acts or omissions of the Trustee, the Tender Agent and the Remarketing Agent with respect to the Bonds. Neither the Bank, nor any of its officers, directors, employees or agents, shall be liable or responsible for (i) the use which may be made of the proceeds of the Bonds or of any acts or omissions of the Trustee or any transferee of the Letter of Credit in connection therewith, (ii) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon (other than the validity as against the Bank of any agreement to which the Bank is a party (including the Letter of Credit)), even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged, (iii) the lack of validity or enforceability of this Agreement, the Bonds, the other Related Documents or any other agreement or instrument relating thereto (other than the validity or enforceability as against the Bank of any agreement to which the Bank is a party (including the Letter of Credit)), or (iv) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit, other than any direct, as opposed to consequential, special, punitive, exemplary or indirect damages suffered by the Authority or the City which the Authority and the City proves were caused by (i) the Bank’s willful misconduct or gross negligence in determining whether a draw presented under the Letter of Credit complied with the terms thereof, or (ii) the Bank’s willful failure or gross negligence in failing to make a payment under the Letter of Credit required to be made by it thereunder after the presentation to it by the Trustee of a certificate strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information (other than actual knowledge to the contrary) to the contrary.

Section 2.5. Security; Nature of Obligations of the Authority and the City.

(a) Notwithstanding any provisions herein to the contrary, unless otherwise permitted by law, the Bank acknowledges and agrees that all Obligations of the Authority and the City hereunder are secured by and payable solely from the following (together, the "Collateral"): (a) the proceeds from the sale of bonds or other obligations authorized to be issued by the Authority or the City specifically for the purpose of paying amounts due hereunder, (b) the Revenues (including without limitation (i) all Base Rental Payments and other payments paid by the City and received by the Authority pursuant to the Lease Agreement (but not Additional Payments), (ii) any other amounts held in any fund or account (including the Revenue Fund) established pursuant to the Indenture (other than the Bond Purchase Fund and the Rebate Fund) or the Lease Agreement and all interest or other income from any investment of any money in such fund or account, and (iii) the Swap Revenues, if any), and (c) any Additional Payments payable to the Bank under the Lease Agreement. The Authority hereby pledges, places a Lien upon and assigns the Collateral to secure the Obligations to the Bank under this Agreement. The Authority has transferred in trust, granted a security interest in and assigned to the Trustee, for the benefit of the Holders from time to time of the Bonds and any Providers (including the Bank), all of the Revenues and other assets pledged in Section 5.01(A) of the Indenture and all of the rights of the Authority under the Lease Agreement to receive and collect Base Rental Payments and other amounts (except for (i) the right to receive any Additional Payments to the extent payable to the Authority and (ii) any rights of the Authority to indemnification), and the right to enforce, whether by action at law or in equity or by other means, all provisions, covenants and agreements of the Lease Agreement with respect to the payment of Base Rental Payments.
(b) Subject to the provisions of Section 2.5(a), the Obligations of the Authority and the City under this Agreement to reimburse the Bank for Drawings shall be paid and performed strictly in accordance with the terms of this Agreement under all circumstances whatsoever, including, without limitation, the following circumstances:

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

(ii) any amendment or waiver of, or any consent to or departure from this Agreement or any Related Documents;

(iii) the existence of any claim, set-off, defense or other rights which the Authority or the City may have at any time against the Trustee, the Tender Agent, any beneficiary or any transferee of the Letter of Credit (or any Person for whom the Trustee, the Tender Agent, any such beneficiary or any such transferee may be acting), the Bank or any other Person, whether in connection with this Agreement, the Letter of Credit, the Related Documents or any unrelated transaction;

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

(v) payment by the Bank under the Letter of Credit against presentation of a draft or certificate which does not comply with the terms of the Letter of Credit;

unless any of the foregoing results from the gross negligence or willful misconduct of the Bank.

Section 2.6. Termination. The Letter of Credit may be terminated or permanently reduced at any time by the Authority or the City upon thirty (30) days written notice to the Bank and payment of any amounts owed to the Bank hereunder, including without limitation following the imposition of any costs and expenses pursuant to Sections 2.3(f) or (g).

ARTICLE THREE

CONDITIONS PRECEDENT

Section 3.1. Conditions Precedent to Issuance of Letter of Credit. The obligation of the Bank to issue the Letter of Credit shall be subject to the fulfillment of the following conditions precedent on or before the Closing Date thereof, in a manner satisfactory to the Bank and its counsel:

(a) The Bank shall have received an opinion of Norton Rose Fulbright LLP, as special counsel, as to the validity of the Facilities Leases and the Lease Agreement, in form and substance satisfactory to the Bank and its counsel, dated the Closing Date.
(b) The Bank shall have received an opinion of Bank counsel, in form and substance satisfactory to the Bank dated the Closing Date.

(c) The Bank shall have received an opinion of the City Attorney, in form and substance satisfactory to the Bank and its counsel dated the Closing Date;

(d) The Bank shall have received an opinion of the counsel to the Authority, in form and substance satisfactory to the Bank and its counsel dated the Closing Date;

(e) The Bank shall have received on the Closing Date executed originals of this Agreement and the Fee Letter Agreement and certified copies of the Indenture, the Lease Agreement, the Facilities Leases, the Remarketing Agreement and the other Related Documents, the title insurance policy in effect on the Leased Property with respect to the Bonds (the “Title Insurance Policy”) and the other documents, certificates and opinions executed and delivered in connection with issuance of the Bonds and any other documents which the Bank may reasonably request evidencing that all necessary action (including, without limitation, adoption of resolutions) required to be taken by the Authority and the City in connection with the authorization, execution, issuance, delivery and performance of such documents and any other document required to be delivered by the City pursuant to or in connection with this Agreement, the Fee Letter Agreement or the transactions contemplated hereby or thereby, has been taken.

(f) The Bank shall have received a certificate signed by an Authorized Representative of the City dated the Closing Date stating that on such date:

(i) the representations and warranties set forth in this Agreement and in any other certificate, letter, writing or instrument delivered by the City to the Bank pursuant hereto or in connection herewith, shall be true and correct as of the Closing Date;

(ii) no material adverse change shall have occurred in the condition (financial or otherwise) of the City prior to the Closing Date;

(iii) on the Closing Date no Event of Default or no event, act or omission which with notice, lapse of time or both, would constitute such an Event of Default, shall have occurred and be continuing;

(iv) there is no lawsuit, tax claim or other dispute pending or threatened against the City which, if lost, would impair the City’s financial condition or ability to repay the unreimbursed Drawings, except as have been disclosed in writing to the Bank;

(v) the City is in compliance with the terms and conditions of this Agreement and has performed or complied with all of its Obligations, agreements and covenants to be performed or complied with pursuant to this Agreement on or prior to the Closing Date;

(vi) all information, documents, statements and certificates provided to the Bank by or on behalf of the City in connection with the Letter of Credit are
true and correct on and as of the date hereof and were provided in expectation of
the Bank’s reliance thereon in issuing the Letter of Credit; and

(vii) the City has delivered to the Bank true, correct and complete
copies of the Related Documents and such documents were duly issued, adopted
or executed and delivered, have not been modified, amended or rescinded and are
in full force and effect on and as of the Closing Date and the Title Insurance
Policy has not been modified, amended or rescinded and is in full force and effect
on and as of the Closing Date;

(g) The Bank shall have received copies of resolutions of the City Council of
the City, certified as of the Closing Date by the City Clerk, authorizing, among other things, the
issuance of the Bonds and the execution, delivery and performance by the City of this
Agreement, the Fee Letter Agreement, the Remarketing Agreement and the other Related
Documents and any documents to be delivered by it hereunder.

(h) The Bank shall have received a certificate of an Authorized Representative
of the City dated the Closing Date certifying as to the authority, incumbency and specimen
signatures of the Authorized Representative of the City authorized to sign this Agreement, the
Fee Letter Agreement and the Remarketing Agreement and any other documents to be delivered
by it hereunder and who will be authorized to represent the City in connection with the Letter of
Credit, this Agreement and the Fee Letter Agreement, upon which the Bank may rely until it
receives a new such certificate.

(i) The Bank shall have received a certificate signed by an Authorized
Representative of the Authority dated the Closing Date stating that on such date:

(i) the representations and warranties set forth in this Agreement and
in any other certificate, letter, writing or instrument delivered by the Authority to
the Bank pursuant hereto or in connection herewith, shall be true and correct as of
the Closing Date;

(ii) no material adverse change shall have occurred in the condition
(financial or otherwise) of the Authority prior to the Closing Date;

(iii) on the Closing Date no Event of Default or no event, act or
omission which with notice, lapse of time or both, would constitute such an Event
of Default, shall have occurred and be continuing;

(iv) there is no lawsuit, tax claim or other dispute pending or threatened
against the Authority which, if lost, would impair the Authority’s financial
condition or ability to repay the unreimbursed Drawings, except as have been
disclosed in writing to the Bank;

(v) the Authority is in compliance with the terms and conditions of
this Agreement and has performed or complied with all of its Obligations,
agreements and covenants to be performed or complied with pursuant to this
Agreement on or prior to the Closing Date;
(vi) all information, documents, statements and certificates provided to the Bank by or on behalf of the Authority in connection with the Letter of Credit are true and correct on and as of the date hereof and were provided in expectation of the Bank's reliance thereon in issuing the Letter of Credit; and

(vii) the Authority has delivered to the Bank true, correct and complete copies of the Related Documents and such documents were duly issued, adopted or executed and delivered, have not been modified, amended or rescinded and are in full force and effect on and as of the Closing Date.

(j) The Bank shall have received copies of resolutions of the governing board of the Authority, certified as of the Closing Date by the secretary of such governing board, authorizing, among other things, the issuance of the Bonds and the execution, delivery and performance by the Authority of this Agreement, the Fee Letter Agreement, the Remarketing Agreement and the other Related Documents and any documents to be delivered by it hereunder.

(k) The Bank shall have received a certificate of an Authorized Representative of the Authority dated the Closing Date certifying as to the authority, incumbency and specimen signatures of the Authorized Representative of the Authority authorized to sign this Agreement, the Fee Letter Agreement and the Remarketing Agreement and any other documents to be delivered by it hereunder and who will be authorized to represent the Authority in connection with the Letter of Credit, this Agreement and the Fee Letter Agreement, upon which the Bank may rely until it receives a new such certificate.

(l) The Bank shall have received certified copies of the Authority's joint exercise of powers agreement, notice of a joint powers agreement filed with the Secretary of State and roster of public agencies filing and acknowledgement from the California Secretary of State.

(m) Except for state "blue sky" laws, the Bank shall have received true and correct copies of any and all governmental approvals necessary for the City and the Authority to enter into this Agreement, the Fee Letter Agreement and the Remarketing Agreement and such approvals necessary at the Closing Date for the transactions contemplated thereby and hereby, or if no governmental approvals are required, a certificate of an Authorized Representative of the City to the effect that no such approvals are necessary.

(n) The Bank shall have received copies of the audited financial statements of the City for the three most recent years for which such statements are available, unaudited financial statements of the City for any fiscal year for which audited financial statements are unavailable, a copy of the City's 20[20-19] adopted budget, financial projections and any other information reasonably requested by the Bank.

(o) The Bank shall have received a copy of the City investment policy as well as other information with respect to the City Investment Pool, City investment strategies and related information as the Bank may request, in form and substance satisfactory to the Bank.

(p) The Bank shall have received certificates of insurance evidencing casualty insurance and rental interruption insurance coverage for the Leased Property and other insurance
coverage satisfying the requirements of Article V of the Lease Agreement, showing the Bank as additional insured and loss payee, and otherwise in form and substance satisfactory to the Bank.

(q) The Bank shall have received estoppel certificates executed by the Successor Agency and the Financing Agency, as lessors under the Parking Garage Facilities Lease and the City-County Administration Facilities Lease, respectively, in form and substance satisfactory to the Bank, and an opinion of the City Attorney, as special counsel on behalf of the Successor Agency, substantially in the forms previously delivered to the Prior Bank;

(r) The Bank shall have received evidence that the conditions precedent to delivery of the Letter of Credit as an Alternate Credit Facility under Section 4.18 of the Indenture have been satisfied, including without limitation, notice to the Prior Bank of the issuance of the Letter of Credit and written evidence of payment in full of all amounts due to the Prior Bank under its reimbursement agreement.

(s) The Bank shall have received written evidence satisfactory to the Bank that a separate CUSIP number has been obtained and reserved from Standard and Poor’s CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc. for Bank Bonds.

(t) No material adverse change in the financial condition, operations or prospects of the City or laws, rules or regulations (or their interpretation or administration) shall have occurred as of the Closing Date that, in any case, may adversely affect the consummation of the transaction, as determined in the sole discretion of the Bank.

(u) All other legal matters pertaining to the execution and delivery of this Agreement, the issuance of the Letter of Credit and the other Related Documents shall be reasonably satisfactory to the Bank and its counsel.

(v) Payment of (or the Bank shall be reasonably satisfied that payment will be made promptly after demand therefor after the Closing Date of) fees and expenses of the Bank and its counsel.

ARTICLE FOUR

REPRESENTATIONS AND WARRANTIES

Section 4.1. Representations and Warranties of City. In order to induce the Bank to enter into this Agreement and to issue the Letter of Credit provided for in this Agreement, the City represents and as of the Closing Date and as of each Drawing Date, warrants and covenants with respect to itself, this Agreement and certain matters:

(a) Valid Existence. The City is a charter city, duly organized and validly existing under its charter and the Constitution of the State and has the necessary power and authority to execute and deliver this Agreement and the Related Documents to which the City is a party and to perform its obligations hereunder and thereunder.

(b) Authorization and Validity. The execution, delivery and performance by the City of this Agreement and the Related Documents to which the City is a party have been
duly authorized by all proper proceedings of the City, and no further approval, authorization or consents are required by law or otherwise. This Agreement and such Related Documents constitute the legal, valid and binding obligations of the City enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium and other laws affecting creditors’ rights generally and principles of equity and public policy.

(c) **Compliance with Laws and Contracts.** Neither the execution and delivery by the City of this Agreement and the Related Documents to which the City is a party, nor the consummation of the transactions herein and therein contemplated, nor compliance with the provisions hereof or thereof will (i) violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the City or the City’s charter (including but not limited to the Occupational Safety and Health Act of 1970, the Americans with Disabilities Act of 1990 and all Environmental Laws), (ii) result in any material breach of, or default under the provisions of any material indenture, instrument or agreement to which the City is a party or is subject, or by which it or its property is bound, or (iii) conflict with or result in the creation or imposition of any lien pursuant to the terms of any such indenture, instrument or agreement.

(d) **Litigation.** Except as disclosed in the Official Statement, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending with service of process accomplished or, to the knowledge of the City after due inquiry, threatened against or affecting the City or the Leased Property (i) wherein an unfavorable decision, ruling or finding would adversely affect (A) the City's ability to perform its obligations under this Agreement and the Other Related Documents to which the City is a party or (B) the validity of this Agreement, any of the Related Documents to which the City is a party or any other agreement or instrument to which the City is a party; or (ii) which in any way contests the existence, organization or powers of the City or the titles of the officers of the City to their respective offices.

(e) **No Event of Default.** No Event of Default or event, act or omission which with notice, lapse of time or both, would constitute such an Event of Default has occurred and is continuing.

(f) **Financial Statements.** The audited statements of revenues, expenses and changes in fund balances and changes in financial position of the City for the most recently completed fiscal year as heretofore delivered to the Bank pursuant to Section 3.1(m) or 5.1(i)(i)(A) hereof, including balance sheets as of June 30 of such fiscal year, and statements of revenue and expense as of June 30 of such fiscal year, all examined and reported on by independent public accountants, prepared by the City, correctly and fairly present the financial condition of the City as of said date and the results of the operations of the City for such period, respectively, and have been prepared in accordance with generally accepted accounting principles consistently applied except as stated in the notes thereto. Since June 30 of such fiscal year, there has been no material adverse change in the financial condition, operations or prospects of the City or its ability to perform its obligations under this Agreement or any Related Document.

(g) **Lease Agreement and Facilities Leases.** The Lease Agreement and Facilities Leases are in full force and effect. The City has not been granted any waiver,
indulgence or postponement of any of the City’s obligations under the Lease Agreement or the Facilities Leases. There exists no event of default or event, occurrence, condition or act that, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a default under the Lease Agreement or the Facilities Leases. The Maximum Annual Base Rental Payment and Additional Payments for each Rental Payment Period does not exceed the fair rental value of the Leased Property for such Rental Payment Period. The Base Rental Payments for each Rental Payment Period, up to the Maximum Annual Base Rental Payment, as such amount may be adjusted for Deferred Rental, plus Additional Payments for such Rental Payment Period, represents the fair rental value of the Leased Property for such Rental Payment Period. In making such determination, consideration has been given to the appraised value of the Leased Property, costs of acquisition, demolition, site preparation, design, construction and financing of the Leased Property, other obligations of the parties under the Lease Agreement, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the City and the general public. The Leased Property is an essential asset of the City necessary to serve the needs of the residents of the City. The City believes that at all times while any Base Rental Payments or any Obligations of the City or the Authority hereunder remain unpaid, the Leased Property will remain an essential asset of the City. The City has a valid and enforceable fee simple interest in the Leased Property (other than the Leased Property subject to the Parking Garage Facilities Lease or the City-County Administration Facilities Lease), subject only to Permitted Encumbrances. Upon the dissolution of the Redevelopment Agency pursuant to Section 34170 et seq. of the California Health & Safety Code, the City elected to become the successor agency for the Redevelopment Agency as designated under Section 34173 of the California Health & Safety Code and the City as such Successor Agency has assumed the rights and obligations of the Redevelopment Agency under the Parking Garage Facilities Lease. The City as the Successor Agency has a valid and enforceable fee simple interest in the Leased Property subject to the Parking Garage Facilities Lease, subject only to Permitted Encumbrances. The Financing Agency has a valid and enforceable fee simple interest in the Leased Property subject to the City-County Administration Facilities Lease, subject only to Permitted Encumbrances. The City currently has the use and occupancy of the Leased Property and the City has the legal authority to pay the Base Rental Payments and Additional Payments pursuant to the Lease Agreement for the use and occupancy of the Leased Property. The Parking Garage Facilities Lease is binding on the City as the Successor Agency.

(h) **Accurate and Complete Disclosure.** All factual information certified by the City in writing to the Bank (including without limitation all information contained in, or made pursuant to, this Agreement and the Related Documents to which the City is a party) is, and all other such factual information hereafter certified by the City in writing to the Bank will be, to the knowledge of the authorized Person making such certification after reasonable inquiry, accurate and complete in all material respects on the date as of which such information is certified. The Official Statement, true copies of which have heretofore been delivered to the Bank, and each official statement pertaining to the Bonds (including any amendments or supplements) prepared subsequent to the Closing Date (a true copy of which shall be furnished to the Bank prior to the distribution thereof) do not and will not contain any untrue statement of a material fact and do not and will not omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which made, not misleading, except no representation is made as to any information concerning the Trustee, DTC or the Bank.
(i) **Regulatory Approvals.** Each authorization, consent, approval, license or formal exemption from or filing, declaration or registration with, any court governmental agency or regulatory authority (federal, state or local), required in connection with the City’s execution and delivery of, and performance under, this Agreement and each of the Related Documents to which the City is a party has been obtained or made and is in full force and effect; provided, however, that no representation is made as to State blue sky laws.

(j) **Other Documents.** Each of the Related Documents to which the City is a party is in full force and effect, and the City hereby makes to the Bank each of the representations and warranties made by the City therein as if set forth at length herein. None of the Related Documents has been amended or supplemented except by such amendments or supplements as have previously been delivered to the Bank.

(k) **Prospective Change in Law.** To the best knowledge of the City (after due inquiry), except as otherwise disclosed in the Official Statement, there is no amendment, or proposed amendment certified for placement on a statewide ballot, to the Constitution of the State or any published administrative interpretation of the Constitution of the State or any State law, or any legislation which has passed either house of the State legislature or is under consideration by any conference or similar committee, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect the ability of the Authority or the City, as the case may be, to perform their respective obligations under this Agreement or any of the Related Documents to which each is a party.

(l) **Tax-Exempt Status.** Neither the City nor the Authority has taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Bonds from gross income for Federal income tax purposes or the exemption of such interest from the State’s personal income tax.

(m) **No Other Defaults.** The City is not in default on any debt to any Person or entity in excess of $500,000 (measured in the case of any Swap, by the amount of any settlement amount that would be payable by the City if such Swap were terminated as of such date).

(n) **No Immunity.** The City is subject to liability for damages in contract and in tort in the manner and to the extent provided by the laws of the State. The City is subject to claims and to suit for money or damages in connection with or under this Agreement or any Related Document pursuant to and in accordance with the laws of the State applicable to public entities, including, but not limited to Part 3 of Division 3.6 of Title 1 of the Government Code of the State of California. The City is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California. To the extent the City has or hereafter may acquire under any applicable law any right to immunity from set-off or legal proceedings on the grounds of sovereignty or otherwise, the City hereby waives, to the extent permitted by law, such rights to immunity for itself in respect of its obligations arising with or under this Agreement or any Related Document.

(o) **Environmental Matters.** Except as otherwise disclosed in the Official Statement:
(i) Hazardous Materials have not at any time been generated, used, treated or stored on, or transported to or from, the Leased Property or any property adjoining or in the vicinity of the Leased Property.

(ii) Hazardous Materials have not at any time been Released or disposed of on the Leased Property or any property adjoining or in the vicinity of the Leased Property.

(iii) The City is in compliance with all applicable Environmental Laws and directives of governmental agencies thereunder with respect to the Leased Property and the requirements of any permits issued under such Laws with respect to the Leased Property.

(iv) There are no past, pending or threatened Environmental Claims against the City or any of the Leased Property.

(v) There is no condition or occurrence on the Leased Property or any property adjoining or in the vicinity of the Leased Property that could be anticipated (x) to form the basis of an Environmental Claim against the City or the Leased Property or (y) to cause the Leased Property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law.

(vi) There are not now and never have been any underground storage tanks located on the Leased Property or any property adjoining or in the vicinity of the Leased Property.

(p) Incorporation by Reference. Other than as disclosed by the City in writing, the City hereby makes to the Bank the same representations and warranties made by the City in each Related Document to which it is a party, which representations and warranties, together with the related definitions of terms contained therein, are incorporated herein by this reference with the same effect as if each and every such representation and warranty and definition were set forth herein in its entirety. No amendment to or waiver of such representations, warranties or definitions made pursuant to the relevant Related Documents shall be effective to amend such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Bank.

(q) Usury; Maximum Rate. The terms of this Agreement, the Fee Letter Agreement and the Related Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws. The City is authorized by Section 5922 of the California Government Code to enter into this Agreement and the Fee Letter Agreement and the transactions contemplated hereby and thereby. The obligations of the City hereunder and under the Fee Letter Agreement and the Lease Agreement are not subject to any maximum interest rate imposed by law.

(r) Security. The payment of the Bonds and any Related Obligations (including without limitation the Obligations of the Authority and the City hereunder) are secured by a valid pledge of and first lien on and security interest in all of the Revenues and any other amounts held in any fund or account established pursuant to the Indenture (other than the Bond Purchase Fund and the Rebate Fund), as well as all other Collateral pledged by the
Authority hereunder. The Obligations of the Authority and the City hereunder constitute a Related Obligation under the Indenture. The Bank is a Credit Facility Provider and a Provider (and Bank of America, N.A. is no longer a Credit Facility Provider) within the meaning of the Indenture and the Lease Agreement. There are no Providers under the Indenture other than the Bank and Bank of America, N.A., as provider of the Series 2008 Interest Rate Swap Agreement. The Letter of Credit is an Alternate Credit Facility and therefore the Credit Facility within the meaning of the Indenture and the Lease Agreement, this Agreement is the Credit Facility Reimbursement Agreement within the meaning of the Indenture and the Lease Agreement, and Bank Bonds are Credit Facility Bonds within the meaning of the Indenture and the Lease Agreement. There is no Liquidity Facility within the meaning of the Indenture and the Lease Agreement and therefore, there is no Liquidity Facility Provider or Liquidity Agreement within the meaning of the Indenture and the Lease Agreement.

(s) Insurance. The City currently maintains insurance of such type and in such amounts or in excess of such amounts as are customarily carried by, and insures against such risks as are customarily insured against by, businesses of like type, size and character to the City and of such type and in such amounts required by the Lease Agreement.

(t) Government Sanctions. Neither the City nor, to the knowledge of the City, any of its Related Parties, is an individual or entity or Person currently the subject of any sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of Treasury’s Office of Foreign Assets Control (“OFAC”), the United Nations Security Council (“UNSC”), the European Union, Her Majesty’s Treasury (“HMT”), or other relevant sanctions authority (collectively, “Sanctions”), nor is the City located, organized or resident in a country or territory that is the subject of Sanctions.

Section 4.2. Representations and Warranties of Authority. In order to induce the Bank to enter into this Agreement and to issue the Letter of Credit provided for in this Agreement, the Authority represents and as of the Closing Date and as of each Drawing Date, warrants and covenants with respect to itself, this Agreement and certain matters:

(a) Valid Existence. The Authority is a joint exercise of powers authority, duly organized and validly existing under its charter and the Constitution of the State and has the necessary power and authority to execute and deliver this Agreement and the Related Documents to which the Authority is a party and to perform its obligations hereunder and thereunder.

(b) Authorization and Validity. The execution, delivery and performance by the Authority of this Agreement and the Related Documents to which the Authority is a party have been duly authorized by all proper proceedings of the Authority, and no further approval, authorization or consents are required by law or otherwise. This Agreement and such Related Documents constitute the legal, valid and binding obligations of the Authority enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium and other laws affecting creditors’ rights generally and principles of equity and public policy.

(c) Compliance with Laws and Contracts. Neither the execution and delivery by the Authority of this Agreement and the Related Documents to which the Authority is a party, nor the consummation of the transactions herein and therein contemplated, nor compliance with
the provisions hereof or thereof will (i) violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Authority or the Authority’s organizational documents (including but not limited to the Occupational Safety and Health Act of 1970, the Americans with Disabilities Act of 1990 and all Environmental Laws), (ii) result in any material breach of, or default under the provisions of any material indenture, instrument or agreement to which the Authority is a party or is subject, or by which it or its property is bound, or (iii) conflict with or result in the creation or imposition of any lien pursuant to the terms of any such indenture, instrument or agreement.

(d) Litigation. Except as disclosed in the Official Statement, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending with service of process accomplished or, to the knowledge of the Authority after due inquiry, threatened against or affecting the Authority or the Leased Property (i) wherein an unfavorable decision, ruling or finding would adversely affect (A) the Authority’s ability to perform its obligations under this Agreement and the other Related Documents to which the Authority is a party or (B) the validity of this Agreement, any of the Related Documents to which the Authority is a party or any other agreement or instrument to which the Authority is a party; or (ii) which in any way contests the existence, organization or powers of the Authority or the titles of the officers of the Authority to their respective offices.

(e) No Event of Default. No Event of Default or event, act or omission which with notice, lapse of time or both, would constitute such an Event of Default has occurred and is continuing.

(f) Lease Agreement and Facilities Leases. The Lease Agreement and Facilities Leases are in full force and effect. The Authority has not been granted any waiver, indulgence or postponement of any of the Authority’s obligations under the Lease Agreement or the Facilities Leases. There exists no event of default or event, occurrence, condition or act that, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a default under the Lease Agreement or the Facilities Leases.

(g) Accurate and Complete Disclosure. All factual information certified by the Authority in writing to the Bank (including without limitation all information contained in, or made pursuant to, this Agreement and the Related Documents to which the Authority is a party) is, and all other such factual information hereafter certified by the Authority in writing to the Bank will be, to the knowledge of the authorized Person making such certification after reasonable inquiry, accurate and complete in all material respects on the date as of which such information is certified. The Official Statement, true copies of which have heretofore been delivered to the Bank, and each official statement pertaining to the Bonds (including any amendments or supplements) prepared subsequent to the Closing Date (a true copy of which shall be furnished to the Bank prior to the distribution thereof) do not and will not contain any untrue statement of a material fact and do not and will not omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which made, not misleading, except no representation is made as to any information concerning the Trustee, DTC or the Bank.
(h) Regulatory Approvals. Each authorization, consent, approval, license or formal exemption from or filing, declaration or registration with, any court governmental agency or regulatory authority (federal, state or local), required in connection with the Authority’s execution and delivery of, and performance under, this Agreement and each of the Related Documents to which the Authority is a party has been obtained or made and is in full force and effect; provided, however, that no representation is made as to State blue sky laws.

(i) Other Documents. Each of the Related Documents to which the Authority is a party is in full force and effect, and the Authority hereby makes to the Bank each of the representations and warranties made by the Authority therein as if set forth at length herein. None of the Related Documents has been amended or supplemented except by such amendments or supplements as have previously been delivered to the Bank.

(j) Prospective Change in Law. To the best knowledge of the Authority (after due inquiry), except as otherwise disclosed in the Official Statement, there is no amendment, or proposed amendment certified for placement on a statewide ballot, to the Constitution of the State or any published administrative interpretation of the Constitution of the State or any State law, or any legislation which has passed either house of the State legislature or is under consideration by any conference or similar committee, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect the ability of the Authority to perform its obligations under this Agreement or any of the Related Documents to which it is a party.

(k) Tax-Exempt Status. The Authority has not taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Bonds from gross income for Federal income tax purposes or the exemption of such interest from the State’s personal income tax.

(l) No Immunity. The Authority is subject to liability for damages in contract and in tort in the manner and to the extent provided by the laws of the State. The Authority is subject to claims and to suit for money or damages in connection with or under this Agreement pursuant to and in accordance with the laws of the State applicable to public entities, including, but not limited to Part 3 of Division 3.6 of Title 1 of the Government Code of the State of California. The Authority is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California. To the extent the Authority has or hereafter may acquire under any applicable law any right to immunity from set-off or legal proceedings on the grounds of sovereignty or otherwise, the Authority hereby waives, to the extent permitted by law, such rights to immunity for itself in respect of its obligations arising with or under this Agreement or any Related Document.

(m) Incorporation by Reference. The Authority hereby makes to the Bank the same representations and warranties made by the Authority in each Related Document to which it is a party, which representations and warranties, together with the related definitions of terms contained therein, are incorporated herein by this reference with the same effect as if each and every such representation and warranty and definition were set forth herein in its entirety. No amendment to or waiver of such representations, warranties or definitions made pursuant to the
relevant Related Documents shall be effective to amend such representations and warranties and
definitions as incorporated by reference herein without the prior written consent of the Bank.

(n) **Usury; Maximum Rate.** The terms of this Agreement and the Related Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws. The Authority is authorized by Section 5922 of the California Government Code to enter into this Agreement and the transactions contemplated hereby and thereby. The obligations of the Authority hereunder and under the Lease Agreement are not subject to any maximum interest rate imposed by law.

(o) **Security.** The payment of the Bonds and any Related Obligations (including without limitation the Obligations of the Authority and the City hereunder) are secured by a valid pledge of and first lien on and security interest in all of the Revenues and any other amounts held in any fund or account established pursuant to the Indenture (other than the Bond Purchase Fund and the Rebate Fund), as well as all other Collateral pledged by the Authority hereunder. The Obligations of the Authority and the City hereunder constitute a Related Obligation under the Indenture. The Bank is a Credit Facility Provider and a Provider (and Bank of America, N.A. is no longer a Credit Facility Provider) within the meaning of the Indenture and the Lease Agreement. There are no Providers under the Indenture other than the Bank and Bank of America, N.A., as provider of the Series 2008 Interest Rate Swap Agreement. The Letter of Credit is an Alternate Credit Facility and therefore the Credit Facility within the meaning of the Indenture and the Lease Agreement, this Agreement is the Credit Facility Reimbursement Agreement within the meaning of the Indenture and the Lease Agreement, and Bank Bonds are Credit Facility Bonds within the meaning of the Indenture and the Lease Agreement. There is no Liquidity Facility within the meaning of the Indenture and the Lease Agreement and therefore, there is no Liquidity Facility Provider or Liquidity Agreement within the meaning of the Indenture and the Lease Agreement.

(p) **Government Sanctions.** Neither the Authority nor, to the knowledge of the Authority, any of its Related Parties, is an individual or entity or Person currently the subject of any Sanctions, nor is the Authority located, organized or resident in a country or territory that is the subject of Sanctions.

ARTICLE FIVE

COVENANTS

Section 5.1. **Affirmative Covenants.** So long as the Expiration Date has not occurred or any Obligation is owed to the Bank hereunder, the Authority and the City covenant and agree with the Bank as follows, unless the Bank shall otherwise consent in writing:

(a) **Reimbursement.** Subject to Section 2.5(a), the Authority and the City shall reimburse the Bank for any unreimbursed Drawings under the Letter of Credit as required by Section 2.2.

(b) **Notice of Default.** As soon as practicable but in any event not more than five (5) Business Days after an Authorized Representative of the City or the Authority shall have
obtained knowledge of the occurrence of an Event of Default or event, act or omission which with notice, lapse of time or both, would constitute such an Event of Default, provide to the Bank the written statement of an Authorized City Representative setting forth the details of each such Event of Default or event, act or omission which with notice, lapse of time or both, would constitute such an Event of Default and the action, if any, which the City and the Authority propose to take with respect thereto.

(c) Compliance With Laws. The City and the Authority shall comply with all laws, rules and regulations, and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject; provided, however, that the City or the Authority, as applicable, may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect the power and authority of the City or the Authority to execute and deliver this Agreement, to perform their respective Obligations and pay all amounts payable by them hereunder, or to execute and deliver the Related Documents to which each of them is a party and to perform their respective obligations thereunder. The City shall not deviate from its investment policy in effect from time to time.

(d) Related Obligations. The City and the Authority shall duly perform each of their respective obligations under this Agreement and the other Related Documents to which they are a party. The City and the Authority shall use their best efforts to cause the Trustee, the Tender Agent and the Remarketing Agent at all times to comply with the terms of the Related Documents to which they are a party.

(e) Inspection Rights. At any reasonable time and from time to time upon two (2) days prior written notice, the City shall permit the Bank or any agents or representatives thereof to examine and make copies of the records and books of account related to the transactions contemplated by this Agreement and the Related Documents, to visit its properties and to discuss its affairs, finances and accounts with any of its officers and independent accountants.

(f) Amendments. Neither the City nor the Authority shall amend, modify, terminate or grant, or permit the amendment, modification, termination or grant of, any waiver under, or consent to, or permit or suffer to occur any action or omission which results in, or is equivalent to, an amendment, termination, modification, or grant of a waiver under any Related Document (including without limitation any amendment of the definition of Maximum Annual Base Rental Payment contained in the Lease Agreement) without the prior written consent of the Bank; provided that such consent shall not be required if the Bank notifies the City in writing that the Bank, in its sole discretion, has determined that any such amendment, modification or waiver does not affect its rights, duties or obligations. For the avoidance of doubt, neither the City nor the Authority shall amend, modify, terminate or grant, or permit the amendment, modification, termination or grant of, any waiver under, or consent to, or permit or suffer to occur any action or omission which results in, or is equivalent to, an amendment, termination, modification, or grant of a waiver under the Remarketing Agreement without the prior written consent of the Bank, other than an amendment, modification or grant of a waiver under Section 5 thereof.
(g) **Official Statement.** Neither the City nor the Authority shall refer to the Bank in any official statement (including the Official Statement) or make any changes in reference to the Bank in any official statement (including the Official Statement) without the Bank's prior written consent thereto, which the Bank shall not unreasonably withhold or delay based upon customary business practices at the time such consent is requested.

(h) **Voluntary Prepayment.** Without the prior written consent of the Bank, neither the City nor the Authority shall permit the optional redemption, defeasance or other prepayment pursuant to the Indenture of any Bonds (other than Bank Bonds) prior to prepaying the Bank Bonds in full.

(i) **Certain Notices; Financial Statements.** The City shall provide or cause to be provided to the Bank copies of:

   (i) **Financial Statements.** The City shall provide the following financial information and statements in form and content acceptable to the Bank, and such additional information as requested by the Bank from time to time:

   (A) Within 270 days of the City's fiscal year end, the City's annual financial statements as of June 30 of each year, certified and dated by an authorized financial officer of the City. These financial statements must be audited (with an unqualified opinion, using the accounting standards then applicable to the City) by a Certified Public Accountant.

   (B) The City shall, promptly upon its approval and upon publication of the annual budget of the City each year, such budget and promptly after the adoption thereof.

   (C) Promptly, upon sending or receipt, copies of any management letters and correspondence relating to management letters, sent or received by the City to or from the City's auditor, or, if no management letter is prepared, a letter from such auditor stating that no deficiencies were noted that would otherwise be addressed in a management letter.

   (D) Together with the annual financial statements of the City delivered pursuant to Section 5.02(i)(A), a certificate as to whether there existed as of the date of such financial statements and whether there exists as of the date of the certificate, any default under this Agreement and, if any such default exists, specifying the nature thereof and the action the City is taking and proposes to take with respect thereto.

   (E) The annual report of the City, if any, which is delivered in accordance with the City's “continuing disclosure certificate” related to the any lease obligations or general fund obligations at the time it is delivered thereunder.

   (ii) **Promptly, notice of any action, suit or proceeding known to it at law or in equity or by or before any governmental instrumentality, entity or other agency for any uninsured claim which, if adversely determined, could result in a judgment**
against the City of $500,000 or more, or would materially and adversely affect the City’s ability to pay its Obligations under this Agreement.

(iii) Promptly, notice of (A) any material dispute which may exist between the City or the Authority on the one hand and the Remarketing Agent, the Trustee or the Trustee on the other hand or any dispute in connection with any transaction contemplated under this Agreement or any Related Document, (B) any matter or event which may result in a material adverse change in the financial condition, operations or prospects of the City or its ability to perform its obligations under this Agreement or any Related Document, (C) any inquiry by the Internal Revenue Service or the Securities and Exchange Commission, (D) any amendment to any Related Document, and (E) the resignation or removal of the Remarketing Agent, the Trustee or the Tender Agent.

(iv) As soon as practicable after the sale by the City of any securities payable from the City’s general fund with respect to which an offering memorandum or official statement was prepared, such offering memorandum or official statement.

(v) Such additional information concerning the Leased Property, the Related Documents, the City or the Authority, as requested by the Bank from time to time.

(j) Existence. The City shall maintain its existence as a charter, duly organized and validly existing under its charter and the Constitution of the State and its rights, franchises and privileges material to the conduct of its business and shall not, without the prior written consent of the Bank, initiate proceedings to reorganize, merge or consolidate with or into any Person, wind up, liquidate or dissolve its affairs (or suffer any liquidation or dissolution) or convert, sell, assign, transfer, lease or otherwise dispose of (or agree to do any of the foregoing at any future time), whether in one transaction or a series of transactions, all or substantially all of its property or assets. The Authority shall maintain its existence as a joint exercise of powers authority, duly organized and validly existing under its charter and the Constitution of the State and its rights, franchises and privileges material to the conduct of its business and shall not, without the prior written consent of the Bank, initiate proceedings to reorganize, merge or consolidate with or into any Person, wind up, liquidate or dissolve its affairs (or suffer any liquidation or dissolution) or convert, sell, assign, transfer, lease or otherwise dispose of (or agree to do any of the foregoing at any future time), whether in one transaction or a series of transactions, all or substantially all of its property or assets.

(k) Incorporation of Certain Covenants. The covenants of the City and the Authority set forth in the Related Documents are hereby incorporated by reference in this Agreement for the benefit of the Bank, which provisions, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety without giving effect to any expiration, amendment, supplement or termination of the Related Documents to which the Bank has not given its express written consent.
(l) **Liens, etc.** The Authority shall not create or suffer to exist any lien upon or with respect to any of the Leased Property or the security for the Bonds, except for Permitted Encumbrances.

(m) **Insurance.** The City shall maintain the insurance required by the Lease Agreement, including without limitation, (i) fire and extended coverage insurance in an amount not less than the greater of the replacement value of the Leased Property or the Stated Amount of the Letter of Credit, and (ii) rental interruption or use and occupancy insurance to cover the Authority’s loss, total or partial, of the rent under the Lease Agreement resulting from the loss, total or partial, of the use of any part of the Leased Property as a result of any of the hazards required to be covered by the property insurance required under the Lease Agreement in an amount sufficient at all times to pay an amount not less than the maximum amount of Base Rental Payments scheduled to be paid during any twenty-four (24) month period assuming the interest on the Bonds shall be deemed to accrue at a rate per annum of 12%; provided that the City shall not be permitted to self-insure its obligation to maintain rental interruption or use and occupancy insurance. The City shall cause each issuer of each insurance policy (other than for general liability) to name the Bank as additional insured and loss payee and to cause each issuer of each insurance policy for general liability to name the Bank as additional covered party and to agree in writing to give the Bank thirty (30) days’ advance notice of any cancellation or lapse in coverage. The City shall not amend any insurance policy maintained by it with respect to the Leased Property without the Bank’s prior written approval. The City shall cause the proceeds of such insurance to be utilized, pursuant to Section 5.06 of the Indenture and Section 5.01 of the Lease Agreement and with the prior written consent of the Bank, for either (i) the repair, reconstruction or replacement of the damaged or destroyed portion of the Leased Property or (ii) the redemption of Outstanding Bonds pursuant to the applicable provisions of Section 4.01(A) of the Indenture.

(n) **Debt Limitation.** The City shall not have outstanding or incur any direct or contingent liabilities or lease obligations (other than the Related Documents and the Obligations of the City to the Bank under this Agreement) with respect to the Leased Property, or permit any lien or encumbrance on the Leased Property without the Bank’s written consent.

(o) **Transfer, Substitution or Abandonment of Leased Property.** During the term of this Agreement, the City may not assign, lease, transfer, pledge or otherwise dispose of, or grant an interest in, substitute or abandon any of the Leased Property or any part thereof without the prior written consent of the Bank.

(p) **Further Assurances.** The City and the Authority shall execute and deliver to the Bank all such documents, consents and instruments and do all such other acts and things as may be reasonably necessary or required by the Bank to enable the Bank to exercise and enforce its rights under the Related Documents and the Related Documents and to realize thereon, and record and file and re-record and re-file all such documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or required by the Bank to validate, preserve and protect the position of the Bank under the Related Documents.

(q) **Consents; Licenses; Permits.** The City and the Authority shall take all necessary and appropriate action to ensure the continuance in force of all material consents,
licenses, permits, orders, decrees, approvals, authorizations, registrations and filings obtained or made in connection with the Leased Property, this Agreement or the Related Documents or necessary to authorize the execution, delivery and performance by the City and the Authority of this Agreement, the Related Documents and all other agreements to be delivered in connection with any thereof.

(r) Impairment. Neither the City nor the Authority shall take any action, or cause the Trustee, the Tender Agent or the Remarketing Agent to take any action under the Indenture or any Related Document, inconsistent with the rights of the Bank under this Agreement and the Related Documents including, without limitation, its Obligations to the Bank hereunder and the pledge, security interest or lien created hereunder or under the Indenture or any Related Document, or take any action which would result in the City’s or the Authority’s Obligations to the Bank under this Agreement not ranking at least equal in right of payment with all unsecured obligations of the City or the Authority, as applicable, to other creditors, or knowingly take any action or omit to take any action if such action or omission would adversely affect the exclusion of interest on the Bonds from gross income of the holders thereof for Federal income tax purposes or the exemption of such interest from State personal income taxes. The Authority shall take such action, and shall not fail to take any action, as may be necessary or required to preserve the Authority’s leasehold interest in the Leased Properties under the Parking Garage Facilities Lease and the City-County Administration Facilities Lease for the remaining scheduled terms thereof.

(s) Environmental Covenants.

(i) The City will comply with all Environmental Laws applicable to ownership or use of the Leased Property, and will cause all tenants and other Persons occupying the Leased Property to comply with all such Environmental Laws, will immediately pay or cause to be paid all costs and expenses incurred in such compliance, and will keep or cause to be kept all the Leased Property free and clear of any Liens imposed pursuant to such Environmental Laws.

(ii) The City will not generate, use, treat, store, Release, or dispose of, or permit the generation, use, treatment, storage, Release, or disposal of Hazardous Materials on the Leased Property, or transport or permit the transportation of Hazardous Materials to or from the Leased Property.

(iii) On the written request of the Bank, at any time and from time to time, the City will provide, at the City’s sole cost and expense, an environmental site assessment report concerning the Leased Property, prepared by an environmental consulting firm approved by the Bank, indicating the presence or absence of Hazardous Materials and the potential cost of any removal or remedial action in connection with any Hazardous Materials on the Leased Property. If City fails to provide the same within 15 days of such request the Bank may order the same, and the City shall grant and hereby grants to the Bank and its agents access to the Leased Property and specifically grants the Bank an irrevocable non-exclusive license, subject to the rights of subtenants, to undertake such an assessment; and the cost of such assessment shall be deemed to be an Additional
Payment under the Lease Agreement, and shall be immediately due and payable on demand and with interest at the Default Rate.

(iv) The City will immediately advise the Bank in writing of any of the following:

(A) Any pending or threatened Environmental Claim against the City with respect to the Leased Property;

(B) Any condition or occurrence on the Leased Property that (A) results in noncompliance by the City with any applicable Environmental Law, or (B) could reasonably be anticipated to form the basis of an Environmental Claim against the City with respect to the Leased Property;

(C) Any condition or occurrence on the Leased Property or any property adjoining or in the vicinity of the Leased Property that could reasonably be anticipated to cause the Leased Property to be subject to any restrictions on the ownership, occupancy, use, or transferability of the Leased Property under any Environmental Law; and

(D) The taking of any removal or remedial action in response to the actual or alleged presence of any Hazardous Materials on the Leased Property or the issuance of any notice to take any such action by any governmental agency.

All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence, or removal or remedial action and the City’s response thereto. In addition, the City will provide the Bank with copies of all communications with any government or governmental agency relating to Environmental Laws, all communications with any Person relating to Environmental Claims, and such detailed reports of any Environmental Claim as may be requested by the Bank.

(v) The Bank shall have the right but not the obligation to participate in, as a party if it so elects, any legal proceeding or action initiated in connection with any Environmental Claim. Without the Bank’s prior written consent, the City shall not enter into any settlement, consent, or compromise with respect to any Environmental Claim that might impair the value of the Bank’s interests under the Lease Agreement; provided, however, that the Bank’s prior consent shall not be necessary for the City to take any removal or remedial action if ordered by a court of competent jurisdiction or if the presence of Hazardous Materials at the Leased Property poses an immediate significant threat to the health, safety, or welfare of any individual or otherwise requires an immediate removal or remedial response.

The City will conduct any investigation, study, sampling, and testing, and undertake any cleanup, removal, remedial, or other action necessary to remove and clean up all Hazardous Materials from the Leased Property in accordance with the requirements of all applicable Environmental Laws, to the satisfaction of
the Bank, and in accordance with orders and directives of all governmental authorities.

(vi) The City will not change or permit to be changed the present use of the Leased Property unless the City shall have notified the Bank thereof in writing and the Bank shall have determined, in its sole and absolute discretion, that such change will not result in the presence of Hazardous Materials on the Leased Property.

(t) **Swap Fees.** The City agrees that all termination fees, settlement amounts and expenses relating to any Swap or interest rate management agreement shall be and remain subordinate to the Obligations of the City to the Bank under this Agreement.

(u) **Alternate Credit Facility; Nonrenewal.** In the event of any Tender Draw as a result of the Bank's election to cause a mandatory tender of the Bonds because of the occurrence and continuance of an Event of Default hereunder, or upon the occurrence and continuance of an Event of Default specified in Section 6.1(j) hereof, or in the event the Bank declines at any time, in its sole and absolute discretion, to extend the Stated Expiration Date or should the Authority and the City fail to request an extension of the Stated Expiration Date on a timely basis, the Authority and the City shall replace the Letter of Credit with an Alternate Credit Facility as soon thereafter as possible. In the event the Bank declines at any time, in its sole and absolute discretion, to extend the Stated Expiration Date or should the Authority and the City fail to request an extension of the Stated Expiration Date on a timely basis and, in either case the Authority is unable to provide an Alternate Credit Facility by the related mandatory tender date, the Authority and the City shall convert the interest rate on the Bonds to maturity to a rate that does not require credit enhancement or refinance or defease the Bonds by such Stated Expiration Date or as soon thereafter as possible.

(v) **Appropriation.** The City shall include in the budget for each fiscal year of the City as separate line items amounts necessary to pay all Base Rental Payments and Additional Payments. The City shall make annual appropriations at levels required under the Lease Agreement to pay all Base Rental Payments and Additional Payments payable during such fiscal year. If such Base Rental Payments or Additional Payments exceed the budgeted amounts, the City covenants to amend or supplement the budget appropriations for such budget period to provide for such excess amounts. The covenants on the part of the City contained in this Section shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform such covenants.

(w) **Additional Covenants Regarding Remarketing Agent.** The Authority shall at all times cause a Remarketing Agent acceptable to the Bank to be in place and at all times have in place a Remarketing Agreement with respect thereto acceptable to the Bank. Upon any replacement of the Remarketing Agent, whether upon resignation or removal, the Authority shall cause the Remarketing Agreement with respect to such successor Remarketing Agent to at all times provide that (a) the Remarketing Agent shall use its best efforts to remarket the Bonds (including without limitation Bank Bonds) at rates up to and including the maximum rate
permitted under the Indenture without regard to the rate paid to the Bank with respect to Bank Bonds; (b) if at any time the Remarketing Agent shall fail to remarket the Bonds for a period of thirty (30) consecutive calendar days or shall otherwise fail to perform its duties under the Remarketing Agreement, the Authority shall, at the direction of the Bank, appoint a successor remarketing agent acceptable to the Bank; (c) the Remarketing Agent must give at least 60 days’ written notice prior to resigning; and (d) the Bank must be a third-party beneficiary of the Remarketing Agreement.

(x) **Trustee and Other Agents.** The Authority shall immediately notify the Bank of any resignation of the Trustee, the Tender Agent or the Remarketing Agent, and, if requested by the Bank, shall remove any of such agents and appoint a successor Trustee, Tender Agent or Remarketing Agent, as the case may be. Any successor Trustee, Tender Agent or Remarketing Agent shall be acceptable to the Bank.

(y) **Termination.** So long as any of the Authority’s or the City’s Obligations hereunder remain unpaid or any Bank Bonds remain Outstanding, terminate this Agreement, the Indenture, the Lease Agreement or any of the Facilities Leases or replace the Letter of Credit with an Alternate Credit Facility or cause any conversion of the Bonds to a rate mode other than a Daily Mode or Weekly Mode.

(z) **Abatement.** Any determination of the amount of any abatement of Base Rental Payments pursuant to Section 3.06 of the Lease Agreement shall be approved by the Bank, subject to applicable debt limitations. In the event of any such abatement, the Authority and the City shall increase the Base Rental Payment for any Rental Payment Period for the portion of the Leased Property that remains usable if and to the extent that the Maximum Annual Base Rental Payment relating to such usable portion of the Leased Property exceeds the amount needed to pay the amount needed by the Authority to pay the principal of and interest on the Bonds and any Related Obligations coming due on or before September 1 following the end of such Rental Payment Period until such abated Base Rental Payments and Additional Payments have been paid in full. In addition, after the substantial completion of the work of repair or reconstruction, the Authority and the City shall increase the Base Rental Payment for any Rental Payment Period for the whole of the Leased Property if and to the extent that the Maximum Annual Base Rental Payment exceeds the amount needed to pay the amount needed by the Authority to pay the principal of and interest on the Bonds and any Related Obligations coming due on or before September 1 following the end of such Rental Payment Period until such abated Base Rental Payments and Additional Payments have been paid in full. In the event of any such abatement, any Additional Payments for any Rental Payment Period shall be payable as contingent obligations of the Authority and the City and shall not be subject to abatement pursuant to Section 3.06 of the Lease Agreement.

(aa) **Additional Rights.** In the event that the Authority or the City shall enter into or otherwise consent to any credit agreement, reimbursement agreement, bond purchase agreement, liquidity agreement or other agreement or instrument (or any amendment, supplement or modification thereto) pursuant to which a financial institution or financial institutions (other than the Authority or the City) (each, a “Lender”) undertakes to make loans or advances or extend credit or liquidity to the Authority and/or the City as support for any general fund obligation of the City (each, a “Bank Agreement”), which Bank Agreement contains
(i) covenants that are more restrictive on the part of the City or MICLA than those contained in this Agreement and/or (ii) events of default and/or remedies that are more favorable to the Lender than those contained in this Agreement (collectively, the "Additional Rights"), such Additional Rights shall automatically be deemed to be incorporated into this Agreement and the Bank shall have the benefits of such Additional Rights. Upon entering into or consenting to any Bank Agreement, the Authority and the City shall promptly enter into an amendment to this Agreement to include such Additional Rights, provided that the Bank shall maintain the benefit of such Additional Rights even if the Authority and/or the City fails to provide such amendment. If the Authority and the City shall amend the Bank Agreement such that it no longer provides for such Additional Rights, then, without the consent of the Bank, this Agreement shall automatically no longer contain the Additional Rights and the Bank shall no longer have the benefits of any of the Additional Rights.

(bb) Government Sanctions. Neither the City nor the Authority shall, directly or indirectly, use the proceeds of draws under the Letter of Credit or any other credit provided under this Agreement, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or in any manner that will result in a violation by any Person (including any Person participating in the transactions contemplated by this Agreement, whether as underwriter, advisor, investor or otherwise) of Sanctions.

ARTICLE SIX

DEFAULTS

Section 6.1. Events of Defaults and Remedies. If any of the following events shall occur and be continuing, each such event shall be an "Event of Default":

(a) The Authority or the City (by payment of Base Rental Payments or Additional Payments under the Lease Agreement) shall fail to pay when due any amount payable to the Bank under this Agreement or under the Lease Agreement (including any Base Rental Payment or Additional Payment) or under any of the Related Documents; or

(b) Any provision of the Bonds or any other Related Document ceases to be valid and binding against the Authority, the City, the Successor Agency or the Financing Agency (as the case may be) or shall be declared null and void or the Authority, the City, the Successor Agency or the Financing Agency repudiates its obligations under this Agreement or any of the Related Documents or the pledge and assignment pursuant hereto and pursuant to the Indenture shall for any reason cease to be fully enforceable with the priority required hereunder and thereunder; or

(c) The Authority, the City, the Successor Agency or the Financing Agency shall either (i) become insolvent or generally fail to pay, or admit in writing its inability to pay, its debts as they become due; or (ii) voluntarily commence any proceeding or file any petition under the Bankruptcy Law or similar law seeking dissolution or reorganization or the appointment of a receiver, trustee, custodian or liquidator for itself or a substantial portion of its
property, assets or business or to effect a plan or other arrangement with its creditors, or shall file any answer admitting the jurisdiction of the court and the material allegations of an involuntary petition filed against it in any bankruptcy, insolvency or similar proceeding, or shall be adjudicated bankrupt, or shall make a general assignment for the benefit of creditors, or shall consent to, or acquiesce in the appointment of, a receiver, trustee, custodian or liquidator for itself or a substantial portion of its property, assets or business; or (iii) take any action for the purpose of effectuating any of the foregoing; or

(d) involuntary proceedings or an involuntary petition shall be commenced or filed against the Authority, the City, the Successor Agency or the Financing Agency under the Bankruptcy Law or similar law seeking the dissolution or reorganization of the Authority, the City, the Successor Agency or the Financing Agency or the appointment of a receiver, trustee, custodian or liquidator for the Authority, the City, the Successor Agency or the Financing Agency or of a substantial part of the property, assets or business of the Authority, the City, the Successor Agency or the Financing Agency, or any writ, judgment, warrant of attachment, execution or similar process shall be issued or levied against a substantial part of the property, assets or business of the Authority, the City, the Successor Agency or the Financing Agency, and such proceedings or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded, within thirty (30) days after commencement, filing or levy, as the case may be; or

(e) Any judgments or arbitration awards are entered against the City, or the City enters into any settlement agreements with respect to any litigation or arbitration, in an aggregate amount of $500,000 or more in excess of any insurance coverage, provided that the insurer has issued a letter of responsibility for payment up to the amount of insurance coverage; or

(f) The City shall fail to make a payment on any debt to any Person or entity payable from the City’s general fund in excess of $500,000 (measured in the case of any Swap, by the amount of any settlement amount that would be payable by the City if such Swap were terminated as of such date), or in connection with any credit the City has obtained from the Bank regardless of amount, or any interest or premium thereon when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure continues after the applicable grace period, if any, specified in the agreement or instrument relating to such debt, or the City shall fail to perform or observe any term, covenant or condition in any agreement or instrument relating to any debt to any Person or entity in excess of $500,000 (measured in the case of any Swap, by the amount of any settlement amount that would be payable by the City if such Swap were terminated as of such date) when required to be performed or observed, if the effect of such failure to perform or observe results in the acceleration, or ability to accelerate, the maturity of such debt (or, with respect to any Swap, which results in such Swap being terminated early or being capable of being terminated early); or

(g) Any default occurs under the Lease Agreement or any other Related Document, in each case after the passage of any notice and cure periods; or
(h) The City or the Authority fails to meet the conditions of, or fails to perform (i) any term, covenant, condition or agreement on its part to be performed or observed under Section 5.1(a), (f), (g), (h), (j), (l), (m), (n), (o), (r), (t), (y), (z), (aa) or (bb) hereof, or (ii) any term, covenant, condition or agreement on its part to be performed or observed not specifically referred to in this Article, and such default (solely in the case of clause (ii)) is not cured within thirty (30) days after the Bank has given the City or the Authority, as applicable, written notice of such default; or

(i) Any of the City’s or the Authority’s representations or warranties made herein or in any statement or certificate at any time made or deemed made by or on behalf of the City or the Authority pursuant hereto or in connection herewith, and/or in any of the other Related Documents, is false or misleading in any material respect when made or deemed made; or

(j) The ratings assigned to any long-term, unenhanced general fund obligation of the City shall be withdrawn or suspended or otherwise unavailable for credit-related reasons or reduced below Baal by Moody’s Investors Service, Inc., BBB+ by S&P Global Ratings or BBB+ by Fitch Ratings, Inc. In the event of split ratings, the default will be determined by reference to the lowest rating; or

(k) The leasehold interest of the Authority under either of the Parking Garage Facilities Lease or the City-County Administration Facilities Lease shall terminate; or

(l) A moratorium shall have been declared with respect to the payment of the debts of the Authority or the City; or

(m) Any of the funds or accounts established pursuant to the Indenture or the Lease Agreement or any funds or accounts on deposit, or otherwise to the credit of, such funds or accounts shall become subject to any stay, writ, judgment, warrant of attachment, execution or similar process by any of the creditors of the City or the Authority and such stay, writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or stayed within thirty (30) days after its issue or levy; or

(n) An event shall have occurred that in the opinion of the Bank has a material adverse effect on the financial condition, operations or prospects of the City or its ability to perform its obligations under this Agreement or any Related Document.

If an Event of Default shall have occurred and be continuing, the Bank may (i) give notice to the Trustee under the Indenture of the Bank’s election to cause a mandatory tender of the Bonds because of the occurrence and continuance of an Event of Default hereunder, (ii) declare all unpaid amounts drawn under the Letter of Credit and the corresponding Bank Bonds, together with all interest accrued and unpaid thereon and all other amounts payable to the Bank hereunder to be immediately due and payable, without presentment, demand, protest or any notice of any kind, but subject to Section 2.5 hereof or (iii) exercise any and all rights and remedies available to the Bank under this Agreement or the Indenture, at law or in equity; provided, that the Bank may not cause the acceleration of Base Rental Payments under the Lease Agreement. In the event of the occurrence of an Event of Default described in Section 6.1(c) or
(d), all unpaid amounts drawn under the Letter of Credit and the corresponding Bank Bonds, together with all interest accrued thereon and all other amounts payable to the Bank hereunder shall be immediately due and payable, without notice to the City or the Authority and without presentment, demand, protest or further notice of any kind, but subject to Section 2.5 hereof.

ARTICLE SEVEN

MISCELLANEOUS

Section 7.1. Modification of this Agreement. No amendment, modification or waiver of any provision of this Agreement or any other Related Document, and no consent to any departure by the Authority or the City therefrom, shall be effective unless the same shall be in writing and signed by the Bank and no amendment, modification or waiver of any provision of the Letter of Credit shall in any event be effective unless the same shall be in writing and signed by the Bank. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the City or the Authority in any case shall entitle the City or the Authority to any other or further notice or demand in the same, similar or other circumstances.

Section 7.2. Successors and Assigns. This Agreement is binding on the successors and assignees of the City, the Authority and the Bank. The City and the Authority agree that neither of them may assign this Agreement without the Bank’s prior consent. The Bank may sell participations in this facility without the consent of the City or the Authority, provided that under no circumstances with such grant of participations relieve the Bank of its obligations under the Letter of Credit. The Bank may exchange financial information about the Authority and the City with actual or potential participants or assignees. If participation is sold or the loan is assigned, the purchaser will have the right of set-off against the Authority and the City and will have the benefit of Sections 2.3(f), 7.3, 7.4 and 7.6 hereof. The Bank may collaterally assign and pledge all or any portion of the obligations owing to it hereunder or under the other Related Documents to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, provided that any payment in respect of such assigned obligations made by the Authority or the City to the Bank in accordance with the terms of this Agreement shall satisfy the obligations of the Authority or the City, respectively, hereunder in respect of such assigned obligation to the extent of such payment.

Section 7.3. Administration Costs. Following the Closing Date, the Authority and the City (by payment of Additional Payments under the Lease Agreement) shall pay the Bank for all reasonable fees, charges and expenses payable or incurred by the Bank in connection with the administration of this Agreement and the transactions contemplated by this Agreement, including without limitation, the legal fees and expenses of counsel to the Bank, together with interest on such amounts from the date such payment is due until paid at a rate per annum equal to the Default Rate, and agrees to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such fees, charges and expenses.
Section 7.4. **Enforcement Costs.** The Authority and the City (by payment of Additional Payments under the Lease Agreement) shall reimburse the Bank for any fees, charges and expenses payable or incurred by the Bank in connection with the enforcement or preservation of any rights or remedies under this Agreement and any other documents executed in connection with this Agreement, and in connection with any amendment, waiver, "workout" or restructuring under this Agreement, including without limitation the legal fees and expenses of counsel to the Bank, together with interest on such amounts from the date such payment is due until paid at a rate per annum equal to the Default Rate, and agrees to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such fees, charges and expenses. As used in this paragraph, "legal fees" includes the allocated costs of the Bank's in-house counsel.

Section 7.5. **One Agreement.** This Agreement, the Fee Letter Agreement and any related security or other agreements required by this Agreement, collectively:

(a) represent the sum of the understandings and agreements among the Authority, the Bank and the City concerning this credit;

(b) replace any prior oral or written agreements between or among the Bank and the Authority and/or the City concerning this credit; and

(c) are intended by the Bank, the Authority and the City as the final, complete and exclusive statement of the terms agreed to by them.

In the event of any conflict between this Agreement and the Fee Letter Agreement and any other agreements required by this Agreement, this Agreement and the Fee Letter Agreement will prevail.

Section 7.6. **Indemnification.** To the extent permitted by law, the Authority and the City (by payment of Additional Payments under the Lease Agreement) will indemnify and hold the Bank harmless from any loss, liability, damages, judgments, and costs of any kind relating to or arising directly or indirectly out of (a) this Agreement or any of the Related Documents, (b) any credit extended or committed by the Bank to the Authority and the City hereunder, (c) any claim, whether well-founded or otherwise, that there has been a failure to comply with any law regulating this Agreement, the Bonds or any of the Related Documents, (d) the use storage, presence, disposal or Release of any Hazardous Materials on or about the Property and (e) any litigation or proceeding related to or arising out of this Agreement, any such document, any such credit, or any such claim. This indemnity includes but is not limited to attorneys' fees (including the allocated cost of in-house counsel). This indemnity extends to the Bank, its parent, subsidiaries and all of their directors, officers, employees, agents, successors, attorneys, and assigns. This indemnity will survive the termination of this Agreement and the Lease Agreement and the Authority's and the City's obligations hereunder and thereunder and the payment in full of all Base Rental Payments and Additional Payments. All sums due to the Bank hereunder shall be Obligations of the Authority and the City, due and payable immediately without demand. This indemnity excludes any loss, liability, damages, judgments and costs that result from the gross negligence or willful misconduct of the Bank.
Section 7.7. Notices. Unless otherwise provided in this Agreement or in another agreement among or between the Bank and the Authority and/or the City, all notices required under this Agreement shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to the addresses set forth below, or sent by facsimile to the fax numbers set forth below, or to such other addresses as the Bank, the Authority and the City may specify from time to time in writing. Notices and other communications sent by (a) first class mail shall be deemed delivered on the earlier of actual receipt or on the fourth business day after deposit in the U.S. mail, postage prepaid, (b) overnight courier shall be deemed delivered on the next business day, and (c) telecopy shall be deemed delivered when transmitted.

If to the City:

City of Modesto
1010 Tenth Street, Suite 5200
Modesto, CA 95354
Attn: Director of Finance
Facsimile: 209-571-5880

If to the Authority:

Modesto Public Financing Authority
c/o City of Modesto
1010 Tenth Street, Suite 5200
Modesto, CA 95353
Attn: Auditor and Treasurer
Facsimile: 209-571-5880

If to the Bank:

To the addresses set forth in the Fee Letter Agreement.

Section 7.8. Headings. Article and paragraph headings are for reference only and shall not affect the interpretation or meaning of any provisions of this Agreement.

Section 7.9. Counterparts. This Agreement may be executed in as many counterparts as necessary or convenient, and by the different parties on separate counterparts each of which, when so executed, shall be deemed an original but all such counterparts shall constitute but one and the same agreement. This Agreement may be delivered by the exchange of signed signature pages by facsimile transmission or by attaching a pdf copy to an email, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

Section 7.10. No Waiver; Remedies. No failure on the part of the Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
Section 7.11. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provisions in any other jurisdiction.

Section 7.12. Set-Off. Upon the occurrence and during the continuance of any Event of Default the Bank and each of its affiliates are hereby authorized at any time and from time to time, without notice to the Authority or the City (any such notice being expressly waived by the Authority and the City) and to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisions or final) at any time held and other indebtedness at any time owing by the Bank or any of its affiliates, except in connection with the Letter of Credit as herein provided, to or for the credit or the account of the Authority or the City against any and all of the Obligations of the Authority and the City now or hereafter existing under this Agreement, irrespective of whether or not the Bank shall have made any demand hereunder and although such obligations may not have matured. The rights of the Bank and each of its affiliates under this Section are in addition to other rights and remedies which the Bank and each of its affiliates may have including, without limitation, other rights of set-off. For such purpose, the Bank and each of its affiliates shall have, and the Authority and the City each hereby grants to the Bank and each of its affiliates, a first lien on and security interest in such deposits or indebtedness held or maintained by the Bank or any of its affiliates and the proceeds thereof.

Section 7.13. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

Section 7.14. Waiver of Suretyship. The Authority, City and the Bank intend that the Obligations of the Authority and the City under this Agreement constitute direct obligations of the Authority and the City, respectively, and not obligations in the nature of a guaranty or a surety. Nevertheless, should it ever be deemed that the Authority’s or the City’s Obligations hereunder are in the nature of a guarantor or surety, then the Authority and the City expressly waive any and all rights of subrogation, reimbursement, indemnification and contribution and any other rights and defenses under applicable suretyship or similar laws now or hereafter in effect, including without limitation Sections 2787 to 2855, inclusive, 2899 and 3433 of the California Civil Code. The Authority and the City, respectively, agree that the Bank may enforce this Agreement without the necessity of resorting to or exhausting any security or collateral, and the Authority and the City waive the right to require the Bank to proceed against the other co-obligor to exercise any right or remedy under this Agreement or to pursue any other remedy, or to enforce any other right.

Further, should it ever be deemed that the Authority’s or the City’s Obligations hereunder are in the nature of a guarantor or surety and the Authority’s or the City’s Obligations hereunder are secured by real property, then each of the Authority and the City, respectively, waives all rights and defenses that it may have because the other co-obligor’s Obligations hereunder are secured by real property. This means, among other things: (1) the Bank may collect from either the Authority or the City without first foreclosing on any real or personal property collateral pledged by the other co-obligor; (2) if the Bank forecloses on any real
property collateral pledged by the other co-obligor, (A) the amount of the obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price and (B) the Bank may collect from the Authority or the City even if the Bank, by foreclosing on the real property collateral, has destroyed any right the Authority or the City, as applicable, may have to collect from the other co-obligor. This is an unconditional and irrevocable waiver of any rights and defenses the Authority or the City may have because the other co-obligor’s Obligations hereunder are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure. In addition, each of the Authority and the City, respectively, waives all rights and defenses arising out of an election of remedies by the Bank, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Authority’s or the City’s, as applicable, rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.

Section 7.15. Waiver of Jury Trial.

(a) TO THE FULL EXTENT PERMITTED BY LAW, THE AUTHORITY AND THE CITY EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY FOR ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE LETTER OF CREDIT OR ANY OTHER DOCUMENT DELIVERED IN CONNECTION HEREWITH OR THEREWITH, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY THE AUTHORITY OR THE CITY AGAINST THE BANK OR ANY BANK-RELATED PERSON, PARTICIPANT OR ASSIGNEE, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH OF THE AUTHORITY AND THE CITY FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT JURY. WITHOUT LIMITING THE FOREGOING, TO THE EXTENT PERMITTED BY LAW, EACH OF THE AUTHORITY AND THE CITY FURTHER AGREES THAT ITS RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT, THE LETTER OF CREDIT OR ANY OTHER DOCUMENT DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, THE LETTER OF CREDIT AND ANY OTHER DOCUMENTS DELIVERED IN CONNECTION THEREWITH.

(b) In the event the waiver of jury trial as set forth in subsection (a) of this Section shall be declared void or unenforceable, each of the Authority and the City agrees to refer the dispute to a judicial referee in accordance with the provisions of Section 638 et seq. of the California Code of Civil Procedure.
Section 7.16. **No Advisory or Fiduciary Relationship.** The Authority and the City each acknowledges and agrees that: (i) the transaction contemplated by this Agreement is an arm’s length, commercial transaction among the Authority, the City and the Bank in which the Bank is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the Authority or the City; (ii) the Bank has not assumed any advisory or fiduciary responsibility to the Authority or the City with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank has provided other services or is currently providing other services to the Authority or the City on other matters); (iii) the only obligations the Bank has to the Authority or the City with respect to the transaction contemplated hereby expressly are set forth in this Agreement; and (iv) the Authority and the City each has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

Section 7.17. **Redaction.** In the event on or subsequent to the Closing Date the City or the Authority delivers or causes to be delivered to the Remarketing Agent for delivery to the Municipal Securities Rulemaking Board, or directly to the Municipal Securities Rulemaking Board, in either instance pursuant to Rule G-34 ("CUSIP Numbers, New Issue, and Market Information Requirements"), a copy of this Agreement or the Letter of Credit (including without limitation any amendments hereto or thereto), the City and the Authority shall only provide or cause to be provided a copy of this Agreement and the Letter of Credit (including without limitation any amendments hereto or thereto), in the forms provided by the Bank, that redacts such confidential information contained in this Agreement and the Letter of Credit (including without limitation any amendments hereto or thereto) which could be used in a fraudulent manner, such as any VRDO liquidity bank routing or account numbers, staff names and contact information and fees assessed by the Bank, which redaction is consistent with MSRB Notice 2011-17 (February 23, 2011) and the City and the Authority shall not provide or cause to be provided a copy of the Fee Letter Agreement. The Bank shall provide such redacted copies of this Agreement and the Letter of Credit (including without limitation any amendments hereto or thereto) upon request by the City or the Authority. The City and the Authority shall cause the Remarketing Agent to deliver only such redacted copies of this Agreement and the Letter of Credit (including without limitation any amendments hereto or thereto), in the forms provided by the Bank, and shall not permit delivery of a copy of the Fee Letter Agreement, to the Municipal Securities Rulemaking Board pursuant to said Rule G-34.

[The remainder of this page intentionally left blank]
This Reimbursement Agreement is executed as of the date stated on the first page.

BANK OF THE WEST

By: ____________________________
Typed Name: ____________________________
Title: ____________________________

CITY OF MODESTO

By: ____________________________
Typed Name: ____________________________
Title: ____________________________

ATTEST:

By: ____________________________
Typed Name: ____________________________
City Clerk

APPROVED AS TO FORM:

By: ____________________________
Typed Name: ____________________________
Title: ____________________________

MODESTO PUBLIC FINANCING AUTHORITY

By: ____________________________
Typed Name: ____________________________
Title: ____________________________

Federal law requires the Bank to provide the following notice. This notice is not part of the foregoing agreement or instrument and may not be altered. Please read the notice carefully.

USA PATRIOT ACT NOTICE. Federal law requires all financial institutions to obtain, verify and record information that identifies each Person who opens an account or obtains a loan. The Bank will ask for the Authority's and the City's legal name, address, tax ID number or social security number and other identifying information. The Bank may also ask for additional information or documentation or take other actions reasonably necessary to verify the identity of the Authority, the City, guarantors or other related Persons.
EXHIBIT A

FORM OF LETTER OF CREDIT

[See attached pages]
FEE LETTER AGREEMENT

June [__], 2019

City of Modesto
1010 Tenth Street, Suite 5200
Modesto, California 95354

Modesto Public Financing Authority
c/o City of Modesto
1010 Tenth Street, Suite 5200
Modesto, California 95354

Re: Modesto Public Financing Authority Lease Revenue Refunding Bonds,
Series 2008

Ladies and Gentlemen:

Reference is hereby made to that certain Reimbursement Agreement dated as of June 1, 2019 (as the same may be amended or supplemented from time to time, the “Agreement”), among the City of Modesto (the “City”), the Modesto Public Financing Authority (the “Authority”), and Bank of the West (the “Bank”), pursuant to which the Bank has issued its Irrevocable Transferable Letter of Credit No. [Letter of Credit No.] supporting the above-referenced Bonds. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

Certain provisions of the Agreement make reference to a Fee Letter Agreement dated June [__], 2019 (this “Fee Letter Agreement”) among the City, the Authority and the Bank, as the same may be amended or supplemented from time to time. This is the Fee Letter Agreement referenced in the Agreement, and the terms hereof are incorporated by reference into the Agreement as if fully set forth therein. The City and the Bank hereby agree that the Closing Date shall be the date hereof.

In consideration for the issuance of the Letter of Credit pursuant to the terms of the Agreement, the parties hereto agree as follows:

ARTICLE I. FEES AND PAYMENTS.

Section 1.1. Letter of Credit Fee. The Authority and the City (by payment of Additional Payments under the Lease Agreement) hereby agree to pay or cause to be paid to the Bank a nonrefundable Letter of Credit Fee, payable quarterly in arrears for each calendar quarter from and after the Closing Date, equal to (i) 0.375% per annum multiplied by (ii) the Stated Amount of the Letter of Credit, for each day during such calendar quarter commencing on the first day of
such calendar quarter (or, in the case of the first calendar quarter, the Closing Date) and ending on the last calendar day of such calendar quarter.

Section 1.2. Payment Dates. The Letter of Credit Fee shall be paid quarterly in arrears for the preceding calendar quarter on the first Business Day of each January, April, July and October commencing on October 1, 2019 (such payment to include the Letter of Credit Fee for both calendar quarters commencing on the Closing Date and on July 1, 2019) and on the Expiration Date.

Section 1.3. Other Fees. In addition, the Authority and City (by payment of Additional Payments under the Lease Agreement) shall pay to Bank upon each transfer of the Letter of Credit in accordance with its terms to any successor Trustee, a transfer fee of $2,500 and upon each amendment of the Letter of Credit, the Agreement, this Fee Letter Agreement or any of the other Related Documents, an amendment fee in a minimum amount equal to $5,000 to be determined by the Bank at the time thereof, plus the fees and expenses of counsel to the Bank in connection therewith. In addition, the Authority and City (by payment of Additional Payments under the Lease Agreement) shall pay to Bank in connection with Drawings under the Letter of Credit, a non-refundable annual administration fee in the amount of $1,500, payable in advance on the Closing Date and on each anniversary of the Closing Date occurring thereafter.

Section 1.4. Calculation of Fees and Interest. All fees payable hereunder shall be nonrefundable and shall be calculated on the basis of a 365/366-day year and actual days elapsed, including the Closing Date and the Expiration Date. All interest payable under the Agreement shall be calculated on the basis of a 365/366-day year and actual days elapsed.

Section 1.5. Initial Costs and Expenses. The Authority and the City (by payment of Additional Payments under the Lease Agreement) shall pay to the Bank any and all reasonable fees, charges and expenses, payable or incurred by the Bank (consisting solely of the fees and expenses of counsel to the Bank) in connection with the preparation, due diligence and execution and delivery of the Agreement and the Letter of Credit, together with interest on such amounts from the date such payment is due until paid at a rate per annum equal to the Default Rate, and agrees to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such fees and expenses. The obligations and liabilities under this Section 1.5 shall survive the termination of this Fee Letter Agreement, the Agreement and the Lease Agreement and the Authority’s and the City’s Obligations hereunder and thereunder and the payment in full of all Base Rental Payments and Additional Payments.

Section 1.6. Reimbursement Account. “Reimbursement Account” shall mean the following account of the Bank, or such other account as may be subsequently designated by the Bank in writing to the City, the Authority and the Trustee:

[Insert]
ARTICLE II NOTICES.

Unless otherwise provided in the Agreement or in another agreement among or between the Bank and the Authority and/or the City, all notices required under the Agreement shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to the addresses set forth below, or sent by facsimile to the fax numbers set forth below, or to such other addresses as the Bank, the Authority and the City may specify from time to time in writing. Notices and other communications sent by (a) first class mail shall be deemed delivered on the earlier of actual receipt or on the fourth business day after deposit in the U.S. mail, postage prepaid, (b) overnight courier shall be deemed delivered on the next business day, and (c) telecopy shall be deemed delivered when transmitted.

Address where notices to the Bank are to be sent:

If with respect to draws under the Letter of Credit, to:

Bank of the West
[__________]

Attention: [__________]
Telephone: [__________]
Facsimile: [__________]

If with respect to the Agreement, to:

Bank of the West
[__________]

Attention: [__________]
Telephone: [__________]
Facsimile: [__________]

ARTICLE III MISCELLANEOUS.

Section 2.1. Modification of this Fee Letter Agreement. No amendment, modification or waiver of any provision of this Fee Letter Agreement, and no consent to any departure by the Authority or the City therefrom, shall be effective unless the same shall be in writing and signed by the Bank. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the City or the Authority in any case
shall entitle the City or the Authority to any other or further notice or demand in the same, similar or other circumstances.

Section 2.2. **Governing Law.** This Fee Letter Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

Section 2.3. **Counterparts.** This Fee Letter Agreement may be executed in as many counterparts as necessary or convenient, and by the different parties on separate counterparts each of which, when so executed, shall be deemed an original but all such counterparts shall constitute but one and the same agreement. This Fee Letter Agreement may be delivered by the exchange of signed signature pages by facsimile transmission or by attaching a pdf copy to an email, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

Section 2.4. **Severability.** Any provision of this Fee Letter Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, by ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provisions in any other jurisdiction.

Section 2.5. **One Agreement.** This Agreement, the Fee Letter Agreement and any related security or other agreements required by this Agreement, collectively: (a) represent the sum of the understandings and agreements among the Authority, the Bank and the City with respect to the subject matter hereof; (b) replace any prior oral or written agreements between or among the Bank and the Authority and/or the City concerning the subject matter hereof; and (c) are intended by the Bank, the Authority and the City as the final, complete and exclusive statement of the terms agreed to by them with respect to the subject matter hereof. In the event of any conflict between this Fee Letter Agreement and the Agreement and any other Related Documents, this Fee Letter Agreement will prevail. This Fee Letter Agreement and the Agreement shall be construed as one agreement among the City, the Authority and the Bank and shall be governed by the provisions of the Agreement.

[The remainder of this page intentionally left blank]
If the foregoing accurately reflects our agreement, please indicate the same by signing in the space provided below.

Very truly yours,

BANK OF THE WEST

By __________________________

Its __________________________

Accepted and Agreed to:
CITY OF MODESTO

By __________________________

Its __________________________

Attest:

By __________________________

Its City Clerk __________________________

Approved as to Form:

By __________________________

Its __________________________

S-1
MODESTO PUBLIC FINANCING AUTHORITY

By ________________________________

Its ________________________________
**REMARKETING AND INTEREST SERVICES AGREEMENT**

This REMARKETING AND INTEREST SERVICES AGREEMENT, dated as of May 13, 2019 (the “Remarketing Agreement”), by and between MODESTO PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California (the “Issuer”), and RAYMOND JAMES & ASSOCIATES, INC., a Florida Corporation, as remarketing agent (the “Remarketing Agent”);

**WITNESSETH:**

WHEREAS, the Issuer has authorized the issuance of the Modesto Public Financing Authority Lease Revenue Refunding Bonds Series 2008 in the aggregate principal amount of $65,170,000 (the “Bonds”), pursuant to the provisions of an Indenture, dated as of August 1, 2008 (the “Indenture”), by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the “Trustee”); and

WHEREAS, the Bonds are secured by an irrevocable direct-pay letter of credit (the “Initial Credit Facility”) issued by Bank of America, N.A. (the “Initial Credit Facility Provider”); and

WHEREAS, the Bonds are subject to mandatory tender for purchase by the holders thereof and to remarketing, all as provided in the Indenture, upon the delivery of an Alternate Credit Facility (as defined in the Indenture); and

WHEREAS, the City intends to replace the Initial Credit Facility with an irrevocable transferable letter of credit (the “BotW Credit Facility”) issued by Bank of the West (“BotW”), as the Alternate Credit Facility provider on or about June XX, 2019 (the “2019 Mandatory Purchase Date”), which will be provided pursuant to the terms of a Reimbursement Agreement, dated as of June 1, 2019, by and among the Issuer, the City and BotW (the “BotW Reimbursement Agreement”);

WHEREAS, the Bonds are more fully described in the Official Statement, as originally dated August 26, 2008, and as supplemented on February 25, 2014 and on June 22, 2016, which Official Statement will be further supplemented by the City prior to the 2019 Mandatory Purchase Date (as so supplemented from time to time, the “Original Statement”); and

WHEREAS, the Issuer has requested that the Remarketing Agent act as its successor remarketing agent under the Indenture to perform certain services as provided herein and in accordance with the Indenture, including, without limitation, the remarketing of Bonds tendered for purchase and the setting of the interest rate on the Bonds, and the Remarketing Agent is willing to accept such appointment and perform such services on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, for and in consideration of the covenants herein made, and upon the terms and subject to the conditions herein set forth, the parties hereto agree as follows:
Section 1. **Definitions.** All capitalized terms used herein and not otherwise herein defined shall have the meanings ascribed to them in the Indenture and, if so not defined therein, the Official Statement.

Section 2. **Appointment of Remarketing Agent.** Pursuant to the Indenture and this Remarketing Agreement, the Issuer hereby appoints the Remarketing Agent as its designee with respect to the Bonds, and the Remarketing Agent hereby accepts such appointment, with such duties as described herein and in the Indenture.

Section 3. **Remarketing of Bonds.**

(a) The Remarketing Agent hereby agrees to perform the duties and obligations, and only such duties and obligations, as are expressly imposed upon it as Remarketing Agent herein and under the Indenture and, except as otherwise provided in and subject to the limitations set forth in the Indenture, agrees to use its reasonable best efforts to remarket the Bonds as set forth in the Indenture, as agent for the Issuer and not as principal. The Remarketing Agent may at any time and from time to time seek to obtain an Opinion of Counsel satisfactory to the Remarketing Agent concerning the effect that any action or inaction contemplated by the Remarketing Agent may have on the excludability of interest income on the Bonds from gross income for federal income tax purposes under the Code. The Remarketing Agent may rely on and act in accordance with any such Opinion of Counsel.

It is understood and agreed upon by the parties hereto that the Remarketing Agent is only acting hereunder as the agent of the Issuer, and not as principal, insofar as the purchase of Bonds is concerned, and is only obligated to use its reasonable best efforts to remarket the Bonds. The Remarketing Agent is not and shall not be deemed to be acting as an underwriter for the Bonds and is in no way obligated hereunder to advance its own funds to purchase the Bonds. The foregoing shall in no way be deemed to limit the responsibilities and obligations of any Credit Facility Provider to advance funds under any Credit Facility.

(b) The Remarketing Agent shall have no duty to act hereunder to the extent the Remarketing Agent is not required to perform its obligations under the Indenture and shall have no duty to act under the Indenture to the extent it is not required to perform its obligations hereunder. The Remarketing Agent may for its own account or as broker or agent for others deal in Bonds and may do anything any other Bondholder may do to the same extent as if the Remarketing Agent were not serving as such. The Remarketing Agent may execute and perform any of its duties hereunder or under the Indenture through agents, attorneys, employees or co remarketing agents and shall not be responsible for the misconduct or negligence of any agent, attorney, employee or co remarketing agent appointed with due care.

(c) The Remarketing Agent shall not be required to remarket any Bonds if, subsequent to their date of issuance:

(i) Any representation of the Issuer made or incorporated by reference herein shall prove to have been untrue, incorrect, incomplete or misleading in any material respect and, in the reasonable opinion of the Remarketing Agent, the marketability of the Bonds is materially and adversely affected thereby;
(ii) A default by the Issuer in the observance or performance of any covenant or agreement contained in this Remarketing Agreement shall have occurred and be continuing;

(iii) Legislation shall have been enacted by the United States Congress, or a decision by any court of the United States, including the Tax Court, shall have been rendered, or a ruling, regulation or official statement by or on behalf of the Treasury Department of the United States or any branch thereof, including the Internal Revenue Service, or any other governmental agency shall have been made or proposed, with respect to federal taxation upon interest received on obligations of the general character of the Bonds, or an Event of Taxability or a Determination of Taxability shall have occurred or other action or events shall have transpired that (A) may have the purpose or effect, directly or indirectly, of making interest with respect to the Bonds subject to inclusion in gross income for federal income tax purposes, or (B) in the reasonable opinion of the Remarketing Agent, materially and adversely affects the marketability of the Bonds;

(iv) Any legislation, ordinance, rule or regulation shall have been enacted by any governmental body, department or agency of the State or any decision by any court of competent jurisdiction within the State shall have been rendered that in the reasonable opinion of the Remarketing Agent materially and adversely affects the marketability of the Bonds;

(v) Any legislation shall have been enacted, any decision by a court of the United States shall have been rendered or any stop order, ruling, regulation or official statement by or on behalf of the Securities and Exchange Commission or other governmental agency shall have been made to the effect that the Bonds or the Indenture are not exempt from registration, qualification or other requirements of the Securities Act of 1933, as amended, the Trust Indenture Act of 1939, as amended or other federal securities laws;

(vi) Any legislation shall have been enacted, any decision by a court of the United States shall have been rendered or any ruling, regulation or official statement by or on behalf of, the Comptroller of the Currency or the Federal Reserve Board or other governmental agency shall have been made that would render the Remarketing Agent’s activities hereunder illegal or subject it to registration or licensing to which it is not now subject;

(vii) Any event shall have occurred or condition shall exist (including without limitation insufficient coverage under any Credit Facility of principal, premium, if any, or interest payable on the Bonds while in any particular Mode as may be required by the Indenture, any material adverse change in the financial condition of any Credit Facility Provider, the expiration of any Credit Facility or the issuance of any Alternate Credit Facility) that, in the reasonable opinion of the Remarketing Agent, materially and adversely affects the marketability of the Bonds or the liquidity or security therefor; or
(viii) Any event shall have occurred, or information shall have become known which, in the reasonable judgment of the Remarketing Agent, makes untrue in any material adverse respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading; or

(ix) In the reasonable opinion of the Remarketing Agent the marketability of the Bonds has been affected because (A) additional material restrictions not in force as of their date of issuance shall have been imposed upon trading in securities generally by any governmental authority or by a national securities exchange, (B) any Event of Default exists under the Indenture, (C) a general banking moratorium shall have been established by federal or State authorities, or (D) war or an outbreak of hostilities or other national or international calamity or crisis shall have occurred or escalated to such a magnitude as in the reasonable opinion of the Remarketing Agent to have a materially adverse effect on the marketability of the Bonds.

Section 4. Determination of Modes. The Remarketing Agent shall determine the per annum interest rate with respect to the Bonds in accordance with the Indenture and shall provide notice thereof to the parties, in the manner and at the times set forth in the Indenture.

Section 5. Remarketing Agent Compensation. With respect to Bonds bearing interest at a Weekly Rate or a Flexible Rate, the Issuer agrees to pay to the Remarketing Agent continuing remarketing and tender agent fees computed as 0.07% per annum of the outstanding principal amount of the Bonds, commencing on the effective date of this agreement. Such fees shall be payable in arrears on each March 1, June 1, September 1 and December 1 until the first March 1, June 1, September 1 or December 1 succeeding payment in full of the Bonds, commencing September 1, 2019 (which payment shall include the pro-rated amount otherwise due on June 1). The fee shall be deemed earned in full upon receipt by the Remarketing Agent, and no portion shall be refundable for any reason, including, without limitation, termination of this Remarketing Agreement. The Remarketing Agent reserves the right to periodically review and possibly revise the remarketing and tender agent fees payable by the Issuer hereunder based on prevailing market conditions related to the remarketing of the Bonds and other comparable securities. The Issuer also agrees to reimburse the Remarketing Agent for all reasonable out of pocket expenses incurred by it in connection herewith, including, without limitation, fees and disbursements of counsel to the Remarketing Agent.

For the services of the Remarketing Agent in connection with the remarketing of Bonds upon the adjustment of the Bonds to a Fixed Rate (the “Fixed Rate Conversion Date”), the Issuer shall pay to the Remarketing Agent a fee to be mutually agreed upon by the Issuer and the Remarketing Agent no later than the date the Issuer first notifies the Trustee and the Credit Facility Provider of its intention to convert the Bonds to a Fixed Rate. In the event the Issuer and the Remarketing Agent are unable to agree upon a fee, the Remarketing Agent shall be under no obligation to use its reasonable best efforts to remarket the Bonds upon such conversion to a Fixed Rate.
Section 6. Resignation or Removal of Remarketing Agent.

The Remarketing Agent may at any time resign and be discharged of the duties and obligations created hereunder and under the Indenture. The Remarketing Agent may be removed of all or a portion of its duties and obligations hereunder and under the Indenture at any time, at the direction of the Authority. Upon the resignation or removal of the Remarketing Agent, the Issuer shall appoint a successor Remarketing Agent in accordance with the Indenture.

Section 7. Representations and Warranties of the Issuer. The Issuer represents and warrants to the Remarketing Agent that (i) each of the Issuer’s representations and warranties contained in BotW Reimbursement Agreement true and correct as of the date hereof and is hereby made to the Remarketing Agent as if set forth herein and (ii) the Issuer is in compliance with all terms, covenants and conditions of the BotW Reimbursement Agreement and the Indenture and each other agreement or document relating to the Bonds to which it is a party.

Section 8. Representations and Warranties of the Remarketing Agent. The Remarketing Agent represents and warrants to the Issuer that (i) it meets the requirements set forth in Section 4.20 of the Indenture and (ii) this Remarketing Agreement has been duly authorized, executed and delivered by the Remarketing Agent, and, assuming due authorization, execution and delivery by the Issuer, the Remarketing Agreement constitutes a legal, valid and binding agreement of the Remarketing Agent enforceable in accordance with its respective terms, subject to laws relating in bankruptcy, insolvency or other laws affecting the enforcement of creditors’ rights generally and the application of equitable principles if equitable remedies are sought.

Section 9. Disclosure Covenants.

(a) In the event that the Remarketing Agent, in connection with the remarketing of the Bonds, is required to comply with Rule 15c2-12, as amended (the “Rule”), of the Securities and Exchange Commission, the Issuer agrees to take all actions as are necessary at that time to comply with the provisions of the Rule.

(b) The Issuer hereby approves the use and distribution of the Official Statement (including any amendments, modifications and supplements thereto) and all exhibits and appendices thereto and documents incorporated therein by reference and all other documents provided by the Issuer to the Remarketing Agent for use in the remarketing of the Bonds. The Issuer agrees to cause the Remarketing Agent to be furnished with as many copies of the Official Statement and all exhibits and appendices thereto and documents incorporated by reference therein as the Remarketing Agent may reasonably request. The Issuer further agrees to furnish the Remarketing Agent with such other information as the Issuer deems necessary or as the Remarketing Agent may reasonably request from time to time in connection with the remarketing of the Bonds in accordance with the terms hereof, including, but not limited to, upon the Remarketing Agent’s request, the Issuer’s (a)(i) prompt notification to the Remarketing Agent of any event or condition known to the Issuer relating to or affecting the Issuer or the Bonds or any document or agreement related to the Bonds or executed in connection with the issuance or original purchase and sale thereof shall occur which might affect the accuracy or completeness of any statement of a material fact.
contained in the Official Statement or any exhibit or appendix thereto or document incorporated by reference therein or any other materials or information furnished by the Issuer to the Remarketing Agent in connection with the remarketing or sale of any Bond hereunder or, alternatively, (ii) written confirmation that no event or condition referenced in (a)(i) exists at the time of the Remarketing Agent’s request and (b), if in the opinion of the Issuer, the Remarketing Agent or their respective counsel, any event or condition referenced in (a)(i) requires the preparation and publication of a supplement or amendment to the Official Statement, the Issuer will forthwith prepare and furnish to the Remarketing Agent (at the expense of the Issuer) a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Remarketing Agent) which will amend or supplement the Official Statement so that it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

Section 10. Additional Covenants. The Issuer will cooperate with the Remarketing Agent, and the Issuer will pay all costs and expenses incurred by the Remarketing Agent (a) in obtaining and maintaining a rating on the Bonds by one of the national rating agencies so long as such a rating is reasonably deemed necessary by the Remarketing Agent in its sole discretion in order to remarket the Bonds at the lowest interest cost to the Issuer and (b) in the qualification of the Bonds for offering and sale and the determination of the eligibility of the Bonds for investment under the laws of such jurisdictions as the Remarketing Agent shall designate and will use its reasonable best efforts to continue such qualification in effect so long as required for the remarketing of the Bonds by the Remarketing Agent, provided that neither the Issuer nor the Remarketing Agent shall be required to take any action which would subject it to general service of process or to qualify as a foreign corporation in any jurisdiction where it is not now so subject.

Section 11. Failures by Purchasers. The Remarketing Agent shall not be liable to the Issuer or the Credit Facility Provider on account of the failure of any person to whom the Remarketing Agent has remarketed a Bond to pay for such Bond or deliver any document in respect of such remarketing. If there is such a failure, the Remarketing Agent will use its reasonable best efforts to remarket such Bond to a substitute purchaser on the terms set forth herein and in the Indenture.

Section 12. Notices.

(a) Any notice, request, direction, designation, consent, acknowledgment, certification, appointment, waiver or other communication required or permitted hereunder must be in writing except as expressly provided otherwise.

(b) Except as otherwise provided herein, any notice or other communication shall be sufficiently given and deemed given when (i) delivered by hand, (ii) sent by a nationally recognized overnight courier, (iii) mailed by first-class mail, postage prepaid, or, (iv) unless specifically prohibited under the terms of the Indenture, by telecopy under the provisions of this Remarketing Agreement, addressed as follows:
If to the Trustee:

[The Bank of New York Mellon Trust Company, N.A.
555 Kearny Street, Suite 600
San Francisco, CA 94108
Attention: Corporate Trust
Telephone No.: (415) 263-2418
Facsimile No.: (415) 399-1647] [confirm]

If to the Remarketing Agent:

Raymond James & Associates, Inc.
Attn: Thomas Galvin, Short-Term Products
50 North Front Street
12th Floor
Memphis, TN 38103

with a copy to:

If to the Issuer:

Modesto Public Financing Authority
c/o City of Modesto
City Hall
1010 Tenth Street, Suite 5200
Modesto, CA 95353
Attention: Auditor and Treasurer
Telephone No.: (209) 577-5387
Facsimile No.: (209) 571-5880

If to Bank of America, N.A.:

CA5-704-13-11
315 Montgomery St., 13th Floor
San Francisco, CA 94104
Facsimile: 415-622-5032

If to BotW (effective after the delivery of the BotW Credit facility):

Regarding credit matters:
[to come]

Regarding operational matters:
[to come]
Each of the above parties may, by written notice given hereunder to the others, designate any further or different addresses to which or means by which, subsequent notices, certificates, requests or other communications shall be sent.

Section 13. Governing Law. THIS REMARKETING AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

Section 14. Counterparts. This Remarketing Agreement may be executed in several counterparts, each of which shall be an original and all of which, when taken together, shall constitute but one and the same instrument.

Section 15. Binding Effect. This Remarketing Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, except that the Issuer may not assign any of its rights or obligations hereunder without the consent of the Remarketing Agent.

Section 16. Termination. This Remarketing Agreement shall terminate (except as to rights to any fees, expenses and costs payable and rights to indemnity or contribution, which shall survive any termination) on the earlier of (a) the removal or resignation of the Remarketing Agent pursuant to Section 6 hereof, (b) payment in full of the Bonds, or (c) the Fixed Rate Conversion Date.

Section 17. Miscellaneous.

(a) Nothing herein shall be construed to make any party hereto an employee of the other or to establish any fiduciary relationship among the Issuer and the Remarketing Agent except as expressly provided herein.

(b) Subject to prior written consent required by the terms of the Credit Facility Reimbursement Agreement, this Remarketing Agreement may be amended from time to time only by an instrument in writing executed by the parties hereto.

(c) The headings contained herein are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Remarketing Agreement.

(d) If any one or more of the covenants, provisions or agreements contained in this Remarketing Agreement shall be determined by a court of competent jurisdiction to be invalid, the invalidity of such covenants, provisions and agreements shall in no way affect the validity or effectiveness of the remainder of this Remarketing Agreement, and this Remarketing Agreement shall continue in full force to the fullest extent permitted by law.

(e) All of the representations, warranties and covenants made in this Remarketing Agreement shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any party hereto, (ii) delivery of and any payment for any Bonds hereunder, or (iii) termination or cancellation of this Remarketing Agreement.
(f) No covenant, agreement or obligation contained in this Remarketing Agreement shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee, member or agent of the Issuer in his or her individual capacity, and neither the directors of the Issuer nor any official thereof executing this Remarketing Agreement shall be liable personally on this Remarketing Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof or by reason of the covenants, obligations or agreements of the Issuer contained in this Remarketing Agreement.

[Signature Page Follows]
IN WITNESS WHEREOF, the parties hereto have caused this Remarketing Agreement to be duly executed in their respective names by their duly authorized officers as of the day and year first above written.

MODESTO PUBLIC FINANCING AUTHORITY

By: __________________________
    Auditor and Treasurer

RAYMOND JAMES & ASSOCIATES, INC.

By: __________________________
    Principal
IN WITNESS WHEREOF, the parties hereto have caused this Remarketing Agreement to be duly executed in their respective names by their duly authorized officers as of the day and year first above written.

MODESTO PUBLIC FINANCING AUTHORITY

By: ____________________________
    Auditor and Treasurer

RAYMOND JAMES & ASSOCIATES, INC.

By: ____________________________
    Vice President
SUPPLEMENT NO. 3, DATED JUNE XX, 2019, TO OFFICIAL STATEMENT, ORIGINALLY DATED AUGUST 26, 2008

NOT A NEW ISSUE

RATINGS:
See “RATINGS” herein

$65,170,000
MODESTO PUBLIC FINANCING AUTHORITY
LEASE REVENUE REFUNDING BONDS
SERIES 2008

Dated: Date of Original Delivery
Price: 100% CUSIP: 607796BU2 Due: September 1, 2033

(August 28, 2008)

This Supplement No. 3 to Official Statement (this “Supplement”) sets forth certain information supplementary to that information contained in the Official Statement dated August 26, 2008, as supplemented on February 25, 2014 and as further supplemented on June 22, 2016 (together, the “Original Official Statement”), relating to the Modesto Public Financing Authority Lease Revenue Refunding Bonds Series 2008 (the “2008 Bonds”). The 2008 Bonds were issued pursuant to an Indenture, dated as of August 1, 2008 (the “Indenture”), by and between the Modesto Public Financing Authority (the “Authority”) and The Bank of New York Mellon Trust Company, N.A., as Trustee, in order to provide funds to (i) refund certain bonds previously issued by the Authority, (ii) fund the Reserve Fund for the 2008 Bonds and (iii) pay the costs of issuance of the 2008 Bonds.

Information with respect to the 2008 Bonds is contained in the Original Official Statement, as supplemented by this Supplement. This Supplement should be read together with the Original Official Statement (a copy of which is attached hereto as Appendix A and incorporated herein by reference). To the extent that the information in this Supplement conflicts with the information in the Original Official Statement, this Supplement shall govern. No attempt has been made to update the Original Official Statement except as specifically set forth in this Supplement. Unless otherwise defined in this Supplement, all terms used herein shall have the same meanings as those terms in the Original Official Statement.

The 2008 Bonds were issued in and are currently in a Weekly Mode, and interest on the 2008 Bonds accrues at the Weekly Rate. Payments of the principal of and interest on the 2008 Bonds are currently supported by an irrevocable, direct-pay letter of credit (the “BofA Letter of Credit”) issued by Bank of America, N.A. (“BofA”), which expires on June 22, 2019. Effective June XX, 2019 (the “Substitution Date”), the BofA Letter of Credit will be replaced by an irrevocable, transferable letter of credit (the “BotW Letter of Credit”) to be issued by Bank of the West (“BotW”), pursuant to the terms of a Reimbursement Agreement, dated as of June 1, 2019 (the “Reimbursement Agreement”), by and among the Authority, the City of Modesto (the “City”) and the bank. Under the terms of the Indenture the Trustee is instructed to draw under the BotW Letter of Credit whenever any regularly scheduled payment of principal and interest is payable on the 2008 Bonds. The Trustee may also draw funds under the BotW Letter of Credit to pay the purchase price of 2008 Bonds tendered for payment and not remarketed to the extent other moneys are not available therefor. The BotW Letter of Credit will expire on XXX, 2023. See “LETTER OF CREDIT” and “INFORMATION CONCERNING BANK OF THE WEST ” herein.

The 2008 Bonds are subject to mandatory purchase on the Substitution Date.

As of May XX, 2019, Raymond James & Associates, LLC was appointed as the new remarketing agent for the 2008 Bonds (replacing Merrill Lynch, Pierce, Fenner & Smith Incorporated —i.e., BofAMerrill Lynch)

Certain legal matters in connection with the substitution of the BotW Letter of Credit will be passed upon for the City and the Authority by Norton Rose Fulbright US LLP, San Francisco, California, Bond Counsel. Certain legal matters will be passed upon for the City and the Authority by the City Attorney of the City and for the Bank by Hawkins Delafield & Wood LLP, Los Angeles, California.

Raymond James & Associates, Inc.,
as Remarketing Agent

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SUPPLEMENT NO. 3, DATED JUNE XX, 2019, TO OFFICIAL STATEMENT, ORIGINALLY DATED AUGUST 26, 2008

RELATING TO

$65,170,000
MODESTO PUBLIC FINANCING AUTHORITY
LEASE REVENUE REFUNDING BONDS
SERIES 2008

INTRODUCTION

The purpose of this Supplement No. 3 to Official Statement (this “Supplement”) is to supplement the Official Statement dated August 26, 2008, as supplemented on February 25, 2014 and June 22, 2018 (together, the “Original Official Statement”), relating to the $65,170,000 Modesto Public Financing Authority Lease Revenue Refunding Bonds, Series 2008 (the “2008 Bonds”). The 2008 Bonds are currently outstanding in the aggregate principal amount of $XXX. The 2008 Bonds were issued pursuant to an Indenture, dated as of August 1, 2008 (the “Indenture”), by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as Trustee, in order to provide funds to (i) refund certain bonds previously issued by the Authority, (ii) fund the Reserve Fund for the 2008 Bonds and (iii) pay the costs of issuance of the 2008 Bonds.

Payments of the principal of and interest on the 2008 Bonds and the purchase price of 2008 Bonds tendered for payment and not remarketed to the extent other moneys are not available therefor are currently supported by an irrevocable, direct-pay letter of credit (the “BofA Letter of Credit”) issued by Bank of America, N.A., which expires on June 22, 2019. Effective June XX, 2019 (the “Substitution Date”), the BofA Letter of Credit will be replaced by an irrevocable transferable letter of credit (the “BotW Letter of Credit” or the “Letter of Credit”) to be issued by Bank of the West (“BotW”) pursuant to the terms of a Reimbursement Agreement, dated as of June 1, 2019 (the “Reimbursement Agreement”), by and among the Authority, the City of Modesto (the “City”) and BotW. The 2008 Bonds are subject to mandatory purchase on the Substitution Date.

This Supplement provides information concerning the substitution of the BotW Letter of Credit and execution and delivery of the Reimbursement Agreement. See “CREDIT FACILITY” herein.

This Supplement also provides information about the Bank of the West, which has been provided by Bank. See “INFORMATION CONCERNING BANK OF THE WEST” herein.

Information with respect to the 2008 Bonds is contained in the Original Official Statement, as supplemented by this Supplement. This Supplement should be read together with the Original Official Statement (a copy of which is attached hereto as Appendix A and incorporated herein by reference). To the extent that the information in this Supplement conflicts with the information in the Original Official Statement, this Supplement shall govern. No attempt has been made to update the Original Official Statement except as specifically set forth in this Supplement. Unless otherwise defined in this Supplement, all terms used herein shall have the same meanings as those terms in the Original Official Statement.
CREDIT FACILITY


Reference is made to each of the BotW Letter of Credit and the Reimbursement Agreement in its entirety for the detailed provisions thereof, copies of which are available for inspection from the Trustee.

BotW Letter of Credit

Effective on the Substitution Date, at the request and for the account of the City, the Bank will establish the Letter of Credit in favor of the Trustee. The Letter of Credit will authorize the Trustee to draw on Letter of Credit in an aggregate amount not exceeding $[Stated Amount].00 (as reduced or reinstated from time to time in accordance with the provisions hereof, the “Stated Amount”) of which an amount not exceeding $[Principal Amount].00 (as reduced or reinstated from time to time in accordance with the terms hereof, the “Principal Portion”), may be drawn with respect to payment of the unpaid principal of or the portion of the purchase price corresponding to the unpaid principal of the 2008 Bonds and an initial amount not exceeding $[Interest Amount].00 (as reduced or reinstated from time to time in accordance with the terms hereof, the “Interest Portion”) may be drawn upon with respect to payment of interest actually accrued and unpaid on, or the portion of the purchase price corresponding to interest actually accrued and unpaid on, the 2008 Bonds on or prior to their stated maturity date, but in no event more than interest accrued and unpaid on the 2008 Bonds calculated at a maximum interest rate of 12% per annum (based on a year of 365 days) for the 34 days immediately preceding any drawing. The Stated Amount is comprised of the Principal Portion and the Interest Portion, as they may vary from time to time. The Letter of Credit is only available to be drawn upon with respect to 2008 Bonds bearing interest at a rate other than a fixed rate pursuant to the Indenture.

The Letter of Credit will expire at 4:00 p.m. (California time) on the date (the “Expiration Date”) which is the earliest of: (i) June [___], 2023, unless extended by the Bank in its sole discretion (the “Stated Expiration Date”), (ii) the date on which the Bank honors a drawing which when added to all other drawings honored hereunder and not subject to reinstatement in the aggregate equals the Stated Amount, (iii) the first (1st) Business Day (defined below) which is five (5) days after the date of the Bank’s receipt of a specified certificate from the Trustee stating that (x) the conditions precedent to the acceptance of an Alternate Credit Facility set forth in the Indenture have been satisfied and the Trustee has accepted an Alternate Credit Facility, or (y) no 2008 Bonds remain outstanding under the Indenture or all 2008 Bonds remaining outstanding under the Indenture have been converted to bear interest at a fixed rate until
maturity, (iv) the day the Bank delivers to the Trustee a specified certificate stating that an event of default under the Reimbursement Agreement has occurred and that the Letter of Credit has expired, or (v) the date when the Trustee surrenders the Letter of Credit to the Bank for cancellation. The Trustee will agree to surrender the Letter of Credit to the Bank, and not to make any drawing, after (a) the Expiration Date, or (b) the date on which there are no 2008 Bonds outstanding under the Indenture. Funds under the Letter of Credit will be paid with the Bank’s own funds.

Reimbursement Agreement

General. The following summarizes certain provisions of the Reimbursement Agreement. The Reimbursement Agreement, among other things, sets the terms and conditions whereby the Authority and the City are required to repay to the Bank any amounts drawn by the Trustee under the Letter of Credit. Among other things, the Reimbursement Agreement also provides for the payment or reimbursement to the Bank of certain specified fees, costs and expenses, affirmative and negative covenants to be observed on the part of the Authority and the City and certain indemnification obligations on the part of the Authority and the City. The Reimbursement Agreement will not secure the Trustee, the holders of the 2008 Bonds, or the 2008 Bonds.

For purposes of this summary, “Bankruptcy Law” shall mean Title 9, U.S. Code, as amended or supplemented, any successor statute thereto, or any similar Federal, state, or foreign law for the relief of debtors.

For purposes of this summary, “Related Documents” shall mean the Reimbursement Agreement, the related fee letter, the Letter of Credit, the 2008 Bonds, the Indenture, the Lease Agreement, the Facilities Leases, the Remarketing Agreement, the Official Statement and the other documents, certificates and opinions executed and delivered in connection with issuance of the 2008 Bonds.

For purposes of this summary, “Successor Agency” means the City as the successor agency for the Redevelopment Agency of the City of Modesto as designated under Section 34173 of the California Health & Safety Code.

Events of Default. If any of the following events shall occur and be continuing, each such event shall be an “Event of Default” under the Reimbursement Agreement:

(a) The Authority or the City (by payment of Base Rental Payments or Additional Payments under the Lease Agreement) shall fail to pay when due any amount payable to the Bank under the Reimbursement Agreement or under the Lease Agreement (including any Base Rental Payment or Additional Payment) or under any of the Related Documents; or

(b) Any provision of the 2008 Bonds or any other Related Document ceases to be valid and binding against the Authority, the City, the Successor Agency or the Financing Agency (as the case may be) or shall be declared null and void or the Authority, the City, the Successor Agency or the Financing Agency repudiates its obligations under the Reimbursement Agreement or any of the Related Documents or the pledge and assignment pursuant to the Reimbursement Agreement and pursuant to the Indenture shall for any reason cease to be fully enforceable with the priority required under the Reimbursement Agreement and under the Indenture; or

(c) The Authority, the City, the Successor Agency or the Financing Agency shall either (i) become insolvent or generally fail to pay, or admit in writing its inability to pay, its debts as they become due; or (ii) voluntarily commence any proceeding or file any petition under the Bankruptcy Law or similar law seeking dissolution or reorganization or the appointment of a receiver, trustee, custodian or
liquidator for itself or a substantial portion of its property, assets or business or to effect a plan or other
arrangement with its creditors, or shall file any answer admitting the jurisdiction of the court and the
material allegations of an involuntary petition filed against it in any bankruptcy, insolvency or similar
proceeding, or shall be adjudicated bankrupt, or shall make a general assignment for the benefit of
creditors, or shall consent to, or acquiesce in the appointment of, a receiver, trustee, custodian or
liquidator for itself or a substantial portion of its property, assets or business; or (iii) take any action for
the purpose of effectuating any of the foregoing; or

(d) Involuntary proceedings or an involuntary petition shall be commenced or filed against
the Authority, the City, the Successor Agency or the Financing Agency under the Bankruptcy Law or
similar law seeking the dissolution or reorganization of the Authority, the City, the Successor Agency or
the Financing Agency or the appointment of a receiver, trustee, custodian or liquidator for the Authority,
the City, the Successor Agency or the Financing Agency or of a substantial part of the property, assets or
business of the Authority, the City, the Successor Agency or the Financing Agency, or any writ,
judgment, warrant of attachment, execution or similar process shall be issued or levied against a
substantial part of the property, assets or business of the Authority, the City, the Successor Agency or the
Financing Agency, and such proceedings or petition shall not be dismissed, or such writ, judgment,
warrant of attachment, execution or similar process shall not be released, vacated or fully bonded, within
thirty (30) days after commencement, filing or levy, as the case may be; or

(e) Any judgments or arbitration awards are entered against the City, or the City enters into
any settlement agreements with respect to any litigation or arbitration, in an aggregate amount of
$500,000 or more in excess of any insurance coverage, provided that the insurer has issued a letter of
responsibility for payment up to the amount of insurance coverage; or

(f) The City shall fail to make a payment on any debt to any person or entity payable from
the City’s general fund in excess of $500,000 (measured in the case of any Swap, by the amount of any
settlement amount that would be payable by the City if such Swap were terminated as of such date), or in
connection with any credit the City has obtained from the Bank regardless of amount, or any interest or
premium thereon when due (whether by scheduled maturity, required prepayment, acceleration, demand
or otherwise) and such failure continues after the applicable grace period, if any, specified in the
agreement or instrument relating to such debt, or the City shall fail to perform or observe any term,
covenant or condition in any agreement or instrument relating to any debt to any person or entity in
excess of $500,000 (measured in the case of any Swap, by the amount of any settlement amount that
would be payable by the City if such Swap were terminated as of such date) when required to be
performed or observed, if the effect of such failure to perform or observe results in the acceleration,
or ability to accelerate, the maturity of such debt (or, with respect to any Swap, which results in such Swap
being terminated early or being capable of being terminated early); or

(g) Any default occurs under the Lease Agreement or any other Related Document, in each
case after the passage of any notice and cure periods; or

(h) The City or the Authority fails to meet the conditions of, or fails to perform (i) any term,
covenant, condition or agreement on its part to be performed or observed under certain affirmative
covenants set forth in the Reimbursement Agreement, or (ii) any term, covenant, condition or agreement
on its part to be performed or observed not specifically referred to in any of the Events of Default, and
such default (solely in the case of clause (ii)) is not cured within thirty (30) days after the Bank has given
the City or the Authority, as applicable, written notice of such default; or

(i) Any of the City’s or the Authority’s representations or warranties made in the
Reimbursement Agreement or in any statement or certificate at any time made or deemed made by or on
behalf of the City or the Authority pursuant thereto or in connection therewith, and/or in any of the other Related Documents, is false or misleading in any material respect when made or deemed made; or

(i) The ratings assigned to any long term, unenhanced general fund obligation of the City shall be withdrawn or suspended or otherwise unavailable for credit-related reasons or reduced below Baa1 by Moody’s Investors Service, Inc., BBB+ by S&P Global Ratings or BBB+ by Fitch Ratings, Inc. In the event of split ratings, the default will be determined by reference to the lowest rating; or

(k) The leasehold interest of the Authority under either of the Parking Garage Facilities Lease or the City – County Administration Facilities Lease shall terminate; or

(l) A moratorium shall have been declared with respect to the payment of the debts of the Authority or the City; or

(m) Any of the funds or accounts established pursuant to the Indenture or the Lease Agreement or any funds or accounts on deposit, or otherwise to the credit of, such funds or accounts shall become subject to any stay, writ, judgment, warrant of attachment, execution or similar process by any of the creditors of the City or the Authority and such stay, writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or stayed within thirty (30) days after its issue or levy; or

(n) An event shall have occurred that in the opinion of the Bank has a material adverse effect on the financial condition, operations or prospects of the City or its ability to perform its obligations under the Reimbursement Agreement or any Related Document.

Remedies. If an Event of Default under the Reimbursement Agreement shall have occurred and be continuing, the Bank may (i) give notice to the Trustee under the Indenture of the Bank’s election to cause a mandatory tender of the 2008 Bonds because of the occurrence and continuance of an Event of Default under the Reimbursement Agreement, (ii) declare all unpaid amounts drawn under the Letter of Credit and the corresponding Bank Bonds, together with all interest accrued and unpaid thereon and all other amounts payable to the Bank under the Reimbursement Agreement to be immediately due and payable, without presentment, demand, protest or any notice of any kind, but subject to certain limitations on repayment set forth in the Reimbursement Agreement or (iii) exercise any and all rights and remedies available to the Bank under the Reimbursement Agreement or the Indenture, at law or in equity; provided, that the Bank may not cause the acceleration of Base Rental Payments under the Lease Agreement. In the event of the occurrence of an Event of Default described in paragraphs (c) or (d) above, all unpaid amounts drawn under the Letter of Credit and the corresponding Bank Bonds, together with all interest accrued thereon and all other amounts payable to the Bank under the Reimbursement Agreement shall be immediately due and payable, without notice to the City or the Authority and without presentment, demand, protest or further notice of any kind, but subject to certain limitations on repayment set forth in the Reimbursement Agreement.

INFORMATION CONCERNING BANK OF THE WEST

The information under this caption has been furnished by Bank of the West and no representation is made by the Authority or the City as to the accuracy or completeness or the adequacy of such information. Further, no representation is made by the Authority or the City or the Bank as to the absence of material adverse changes in such information subsequent to the date hereof, or that the information given below or incorporated herein by reference is correct as of any time subsequent to its date. The delivery of this information shall not create any implication that there has been no change in the affairs of the Bank since the date of the most recent filings referenced herein, or that the
Bank of the West is a financial services company headquartered in San Francisco with $87.4 billion in assets as of December 31, 2018. With community bank roots dating back more than 140 years, Bank of the West operates a network of retail, wealth, commercial and business banking branches and offices in 24 states. The Bank has more than 10,400 team members serving the needs of 2.06 million customers.

Through major business areas-Commercial Banking, Consumer Banking, and Wealth Management-Bank of the West originates commercial, small business and consumer loans and leases, and offers a wide range of banking, trust and investment solutions for individuals and businesses.

In addition to banking products offered by Bank of the West, investment and insurance services are offered through its subsidiary, BancWest Investment Services, a registered broker/dealer.

Bank of the West is a subsidiary of BNP Paribas, a leading bank in Europe, which has a presence in 72 countries with more than 200,000 employees.

As of the year ending December 31, 2018, Bank of the West had total assets of approximately $87.4 billion and total deposits of $66.3 billion. Bank of the West reported 2018 earnings of $182.2 million. As of December 31, 2018, the Tier 1 Risk-Based Capital Ratio was 12.32%; Total Risk-Based Capital Ratio was 13.27%; and Tier 1 Leverage Ratio 10.20%.

The principal offices of the Bank are located at 180 Montgomery Street, San Francisco, California, 94104, and its telephone number is (925) 942-8300. The Bank files financial reports with the Federal Deposit Insurance System ("FDIC") and those reports may be viewed on the FDIC’s web site at: http://www.fdic.gov.

Except for the contents under this heading, the Bank did not participate in the preparation of, or in any way verify the information in, any other part of this Supplement and assumes no responsibility for the nature, content, accuracy or completeness of the information set forth in this Supplement.
THE REMARKETING AGENT


RATINGS

Fitch and S&P have assigned the 2008 Bonds the short term and joint ratings of ["AA-/F1" and "A-/A-1"], respectively, based on the Bank’s Letter of Credit supporting the 2008 Bonds. Generally, rating agencies base their ratings on information and material furnished directly to them and on investigations, studies and assumptions made by them. The ratings reflect only the views of such organizations and an explanation of the significance of such ratings may be obtained from Fitch Ratings, 33 Whitehall Street, New York, New York 10004 and Standard & Poor’s Ratings Services, 55 Water Street, New York, New York 10041. Neither the Authority nor the City makes any representation as to the appropriateness of the ratings. There is no assurance that the ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by such rating agencies, if, in the judgment of such rating agencies, circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the 2008 Bonds.

MISCELLANEOUS

This Supplement is not to be construed as a contract or agreement between the Authority or the City and the purchasers or holders of any of the 2008 Bonds. Any statements made in this Supplement involving matters of opinion, whether or not expressly so stated, are intended merely as an opinion and not as representations of fact. The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Supplement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Authority, the City or the Bank since the date hereof.
This Supplement has been duly approved, executed and delivered by the City and the Authority.

CITY OF MODESTO, CALIFORNIA

By: /s/ ____________________________________________
    Finance Director/Treasurer

MODESTO PUBLIC FINANCING AUTHORITY

By: /s/ ____________________________________________
    Auditor and Treasurer
APPENDIX A

COPY OF OFFICIAL STATEMENT, DATED AUGUST 26, 2008,
Irrevocable Transferable Letter of Credit No. [Letter of Credit No.]

Date: June [__], 2019

Irrevocable Transferable Letter of Credit Number: [Letter of Credit No.]

Beneficiary: The Bank of New York Mellon Trust Company, N.A., as Trustee
100 Pine Street, Suite 3100
San Francisco, California 94111
Attention: Corporate Trust Department

Applicant: City of Modesto
1010 Tenth Street, Suite 5200
Modesto, California 95354

Issuer: Bank of the West
Global Trade Operations
13300 Crossroads Parkway North
SC-XRD-2W-G
City of Industry, CA 91746

Amount: [_______________] Dollars ($[_____________].00)

Expiration Date: June [__], 2023 at 4:00 p.m. (California time) at our counters.

Ladies and Gentlemen:

1. At the request and for the account of the City of Modesto (the “City”), we hereby establish this Letter of Credit in your favor as trustee (the “Trustee”) under the Indenture dated as of August 1, 2008 (the “Indenture”), by and between the Trustee and the Modesto Public Financing Authority (the “Authority”), for the owners of the Modesto Public Financing Authority Lease Revenue Refunding Bonds, Series 2008 originally issued in the aggregate principal amount of $65,170,000 and currently outstanding in the aggregate principal amount of $[_____________] (the “Bonds”). We hereby irrevocably authorize you to draw on us by sight drafts in an aggregate amount not exceeding $[Stated Amount].00 (as reduced or reinstated from time to time in accordance with the provisions hereof, the “Stated Amount”) of which an amount not exceeding $[Principal Amount].00 (as reduced or reinstated from time to time in accordance with the terms hereof, the “Principal Portion”), may be drawn with respect to payment of the unpaid principal of or the portion of the purchase price corresponding to the unpaid principal of the Bonds and an initial amount not exceeding $[Interest Amount].00 (as reduced or reinstated from time to time in accordance with the terms hereof, the “Interest Portion”) may be drawn upon with respect to payment of interest actually accrued and unpaid on, or the portion of the purchase price corresponding to interest actually accrued and unpaid on, the Bonds on or prior to their stated maturity date, but in no event more than interest accrued and unpaid on the Bonds calculated at a maximum interest rate of 12% per annum (based on a year of 365 days) for the 34
days immediately preceding any drawing. The Stated Amount is comprised of the Principal Portion and the Interest Portion, as they may vary from time to time. This Letter of Credit is only available to be drawn upon with respect to Bonds bearing interest at a rate other than a fixed rate pursuant to the Indenture. This Letter of Credit is established pursuant to a Reimbursement Agreement, dated as of June 1, 2019 by and among the City, the Authority and us, as it may be amended or supplemented from time to time (the “Reimbursement Agreement”).

2. This Letter of Credit shall expire at 4:00 p.m. (California time) on the date (the “Expiration Date”) which is the earliest of: (i) June [___], 2023, unless extended by us in our sole discretion by delivery of a certificate in the form of Annex L attached hereto (the “Stated Expiration Date”), (ii) the date on which we honor a drawing which when added to all other drawings honored hereunder and not subject to reinstatement in the aggregate equals the Stated Amount, (iii) the first (1st) Business Day (defined below) which is five (5) days after the date of our receipt of a certificate signed by one purporting to be your duly authorized officer in the form of Annex G or H attached hereto appropriately completed, (iv) the day we deliver to you a certificate in the form of Annex F attached hereto stating that an event of default under the Reimbursement Agreement has occurred and that this Letter of Credit has expired, or (v) the date when you surrender this Letter of Credit to us for cancellation. You agree to surrender this Letter of Credit to us, and not to make any drawing, after (a) the Expiration Date, or (b) the date on which there are no Bonds outstanding under the Indenture. “Business Day” means any day of the year on which our office located at the address for presentations of payment documents hereunder is open for business.

3. Funds under this Letter of Credit will be paid with our own funds and will be made available to you against receipt by us of a sight draft in the form attached hereto as Annex K, together with the following items, at the time required below: (a) if the drawing is being made with respect to payment of the purchase price of Bonds tendered pursuant to Section 4.09(A) of the Indenture (an “Optional Tender Draft”), receipt by us of your written certificate in the form of Annex A attached hereto appropriately completed and signed by one purporting to be your duly authorized officer; (b) if the drawing is being made with respect to the principal of the Bonds due upon the maturity date thereof pursuant to Section 5.12 of the Indenture (a “Principal Draft”), receipt by us of your written certificate in the form of Annex B attached hereto appropriately completed and signed by one purporting to be your duly authorized officer; (c) if the drawing is being made with respect to the payment of the interest due on the Bonds on a regularly scheduled bond payment date or upon maturity pursuant to Section 5.12 of the Indenture (an “Interest Draft”), receipt by us of your written certificate in the form of Annex C attached hereto appropriately completed and signed by one purporting to be your duly authorized officer; (d) if the drawing is being made with respect to the payment of principal of and interest on the Bonds upon redemption of the Bonds pursuant to Section 4.01(A), 4.01(B) or 4.01(H) of the Indenture pursuant to Section 5.12 of the Indenture (a “Redemption Draft”), receipt by us of your written certificate in the form of Annex D attached hereto appropriately completed and signed by one purporting to be your duly authorized officer; and (e) if the drawing is being made with respect to the payment of principal and interest constituting the purchase price of Bonds tendered pursuant to Section 4.09(B) of the Indenture (a “Mandatory Tender Draft”), receipt by us of your written certificate in the form of Annex E attached hereto appropriately completed and signed by one purporting to be your duly authorized officer. No
drawing may be made under this Letter of Credit for any payment with respect to Bonds registered to or on behalf of us or our nominee.

4. If an Optional Tender Draft is made by you hereunder at or prior to 8:30 a.m. (California time) on a Business Day, and provided that such drawing and the documents and other items presented in connection therewith conform to the terms and conditions hereof, payment shall be made to you or your designee, of the amount specified, in immediately available funds, not later than 11:30 a.m. (California time) on such Business Day. If an Optional Tender Draft is made by you hereunder after 8:30 a.m. (California time) on a Business Day and provided that such drawing and the documents and other items presented in connection therewith conform to the terms and conditions hereof, payment shall be made to you or your designee, of the amount specified, in immediately available funds, not later than 11:30 a.m. (California time) on the next succeeding Business Day.

If a drawing other than an Optional Tender Draft is made by you hereunder at or prior to 1:00 p.m. (California time) on any Business Day, and provided that such drawing and the documents and other items presented in connection therewith conform to the terms and conditions hereof, payment shall be made to you or your designee, of the amount specified, in immediately available funds, not later than 10:00 a.m. (California time) on the next Business Day. If a drawing other than an Optional Tender Draft is made by you hereunder after 1:00 p.m. (California time) on any Business Day, and provided that such drawing and the documents and other items presented in connection therewith conform to the terms and conditions hereof, payment shall be made to you or your designee, of the amount specified, in immediately available funds, not later than 10:00 a.m. (California time) on the second succeeding Business Day.

Payment under this Letter of Credit will be made by wire transfer of federal funds to the account designated in writing by you in your sight draft.

5. Demands for payment hereunder honored by us shall not, in the aggregate, exceed the Stated Amount, the Principal Portion and the Interest Portion, as the Stated Amount, the Principal Portion and the Interest Portion may have been reduced or reinstated by us as herein provided. Subject to the preceding sentence, each drawing honored by us hereunder shall pro tanto reduce the Principal Portion and/or the Interest Portion of this Letter of Credit as set forth in the certificate presented in connection with such drawing, and any such reduction shall result in a corresponding reduction in the Stated Amount, it being understood that after the effective date of any such reduction you shall no longer have any right to make a drawing hereunder in respect of the amount of such principal of and/or interest on the Bonds or the payment of the purchase price corresponding thereto causing or corresponding to such reduction unless the amount of such drawing is subject to reinstatement and has been reinstated as provided in Section 7 of this Letter of Credit.

6. Upon receipt by us of a certificate in the form of Annex G or H attached hereto appropriately completed and signed by one purporting to be your duly authorized officer the Stated Amount, the Principal Portion and the Interest Portion will be reduced to zero.
7. The amounts of drawings made hereunder will be reinstated by us to the Stated Amount under the following conditions:

(a) with respect to our honoring an Optional Tender Draft or a Mandatory Tender Draft, the Stated Amount shall be reinstated automatically in the amount of said drawing as to the Principal Portion and the Interest Portion (subject to any reduction in such amount as provided in Section 6) when we have sent to you a notice in writing that a reinstatement in the amount of such drawing has been made.

(b) with respect to our honoring an Interest Draft, the amount of said drawing will be reinstated automatically effective at the close of business on the date of such payment in the amount of said drawing (subject to any reduction in said amount as above provided in Section 6); provided, however, that such reinstatement shall not prejudice our right to deliver written notice to the Trustee in the form of Annex J attached hereto that the City is in default under the Reimbursement Agreement.

(c) with respect to our honoring of a Principal Draft, the amount of said drawing and the amount of the Interest Portion corresponding to the amount of said drawing will not be reinstated, and with respect to our honoring of a Redemption Draft, the amount of said drawing will not be reinstated.

8. Only the Trustee may make a drawing under this Letter of Credit. Upon the payment to you, your account, your designee or the account of your designee of the amount demanded hereunder, we shall be fully discharged of our obligation under this Letter of Credit with respect to such demand for payment and we shall not thereafter be obligated to make any further payments under this Letter of Credit in respect of such demand for payment to you or any other person who may have made to you or makes to you a demand for payment of principal or interest on any Bond. By paying to you an amount demanded in accordance herewith, we make no representation as to the correctness of the amount demanded.

9. All demands for payment and certificates to be presented to us hereunder, as well as all communications to us in respect of this Letter of Credit shall be in writing and shall be timely delivered in writing to the following address: Bank of the West, Global Trade Services, 13300 Crossroads Parkway North, SC-XRD-2W-G, City of Industry, CA 91746, Attention: Standby Team 2, Facsimile Number: (323) 727-6405, Telephone Number: (323) 727-6339 or (323) 727-6304, as may be designated by us in a written notice delivered to you and shall make specific reference to “Irrevocable Transferable Letter of Credit No. [Letter of Credit No.], reference: City of Modesto, Modesto Public Financing Authority.” Demands for payment and the accompanying certificates may also be made by facsimile transmission immediately confirmed by telephone, and we shall be entitled to rely thereon as if such demand for payment and the accompanying certificates were presented in person, provided such Drafts, including the required Annexes, are in conformance with the requirements for the same as set forth herein; provided that, the failure to confirm such demand for payment by telephone shall not affect the validity or effectiveness of the drawing. In the event of presentation by facsimile, the facsimile is considered the sole original presentation.
11. If a drawing demand is not, in any instance, in strict conformance with the terms and conditions of this Letter of Credit, we shall give the Trustee prompt notice that the purported drawing was not effected in accordance with this Letter of Credit, stating the reason therefor and that we are holding any documents at the Trustee's disposal or is returning them to the Trustee, as we may elect. Upon being notified that the purported drawing was not effected in conformity with this Letter of Credit, the Trustee may attempt to correct any such nonconforming drawing certificate if, and to the extent that, the Trustee is entitled (without regard to the provisions of this sentence) and is able to do so.

12. To the extent not inconsistent with the express provisions hereof, this Letter of Credit shall be governed by and construed in accordance with the International Standby Practices 1998, International Chamber of Commerce Publication No. 590, and any subsequent revisions thereof (the “ISP 98”). As to matters not governed thereby, this Letter of Credit shall be governed by the internal laws of the State of California, including, without limitation, Article 5 of the Uniform Commercial Code as in effect in the State of California.

13. This Letter of Credit may be transferred more than once but only in the amount of the full Stated Amount to any single transferee who has succeeded the Trustee as trustee under the Indenture. Transfers may be effected only through our office set forth above and only upon presentation to us of a duly executed instrument of transfer in the form attached hereto as Annex I and payment by the City of our transfer fee as set out in the letter agreement referenced in the Reimbursement Agreement. Any transfer of this Letter of Credit as aforesaid must be endorsed by us on the reverse hereof and may not change the time or date of expiration specified above or any other term hereof.

14. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Bonds), except only the certificates referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificates.

Very truly yours,

BANK OF THE WEST

By: ________________________________
Name: ______________________________
Title: ______________________________

By: ________________________________
Name: ______________________________
Title: ______________________________
OPTIONAL TENDER DRAFT

Irrevocable Transferable Letter of Credit No. [Letter of Credit No.]

The undersigned, a duly authorized officer of U.S. Bank National Association, as trustee (the "Trustee"), hereby certifies to Bank of the West (the "Bank"), with reference to Irrevocable Transferable Letter of Credit No. [Letter of Credit No.] (the "Letter of Credit"; any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit) issued by the Bank in favor of the Trustee under the Indenture, that:

(a) The Trustee is the Trustee under the Indenture for the owners of the Bonds and is authorized to make this demand under the terms of the Letter of Credit.

(b) Pursuant to Section 5.12 of the Indenture the Trustee has concurrently herewith presented its sight draft drawn on you in the amount of $_________. The Trustee is making a drawing under the Letter of Credit with respect to payment of the purchase price of the Bonds tendered pursuant to Section 4.09(A) of the Indenture.

(c) The amount demanded hereby is $_________. Such amount represents the Principal Portion in the amount of $_________ and the Interest Portion in the amount of $_________ of the purchase price of Bonds tendered to the Trustee pursuant to Section 4.09(A) of the Indenture less the proceeds of the remarketing of such Bonds. Said amount does not exceed the amount permitted to be drawn under the Letter of Credit in accordance with the Letter of Credit and the Indenture with respect to such Bonds.

(d) The amount demanded hereby does not include any amount in respect of the purchase of any Bonds registered to or on behalf of the Authority, the City or the Bank or its nominee.

(e) Upon receipt by the undersigned of the amount demanded hereby, (a) the undersigned will apply the same directly to the payment when due of the purchase price owing on account of the purchase of Bonds pursuant to the Indenture, (b) no portion of said amount shall be applied by the undersigned for any other purpose, and (c) no portion of said amount shall be commingled with other funds held by the undersigned.

(f) The Principal Portion available under the Letter of Credit (immediately prior to the drawing requested hereby and taking into account any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this drawing) is $_________. After payment of the drawing requested hereby (and any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this drawing), the Principal Portion will be $_________.

Annex A-1
(g) The Interest Portion available under the Letter of Credit (immediately prior to the drawing requested hereby and taking into account any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this certificate) is $_________. After payment of the drawing requested hereby (and any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming (a) no subsequently presented drawing is honored prior to the time of payment of this drawing, and (b) reinstatement of the Interest Portion in accordance with the terms of the Letter of Credit) the Interest Portion will be $_________.

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

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: __________________________________________
Name: __________________________________________
Title: __________________________________________
PRINCIPAL DRAFT

Irrevocable Transferable Letter of Credit No. [Letter of Credit No.]

The undersigned, a duly authorized officer of U.S. Bank National Association, as trustee (the "Trustee"), hereby certifies to Bank of the West (the "Bank"), with reference to Irrevocable Transferable Letter of Credit No. [Letter of Credit No.] (the "Letter of Credit"; any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit) issued by the Bank in favor of the Trustee under the Indenture, that:

(a) The Trustee is the Trustee under the Indenture for the owners of the Bonds and is authorized to make this demand under the terms of the Letter of Credit.

(b) Pursuant to Section 5.12 of the Indenture, the Trustee has concurrently presented its sight draft drawn on you in the amount of $_________. The Trustee is making a drawing under the Principal Portion of the Letter of Credit with respect to payment of principal of the Bonds which amount has become due and payable on their stated maturity.

(c) The amount demanded hereby is $_________. Said amount does not exceed the amount permitted to be drawn under the Letter of Credit in accordance with the Letter of Credit and the Indenture.

(d) The amount demanded hereby does not include any amount in respect of the payment of principal of any Bonds registered to or on behalf of the Authority, the City or the Bank or its nominee.

(e) Upon receipt by the undersigned of the amount demanded hereby, (a) the undersigned will apply the same directly to the payment when due of the principal amount owing with respect to Bonds pursuant to the Indenture, (b) no portion of said amount shall be applied by the undersigned for any other purpose, and (c) no portion of said amount shall be commingled with other funds held by the undersigned.

(f) The Principal Portion available under the Letter of Credit (immediately prior to the drawing requested hereby and taking into account any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this drawing) is $_________. After payment of the drawing requested hereby (and any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this drawing), the Principal Portion will be permanently reduced to $_________.

(g) The Interest Portion available under the Letter of Credit (immediately prior to the drawing requested hereby and taking into account any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this drawing) is $_________. After payment of the drawing requested hereby (and any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this drawing), the Interest Portion will be permanently reduced to $_________.

Annex B-1
to the time of payment of this certificate) is $\_\_\_\_\_\_\_. After payment of the drawing requested hereby (and any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming (a) no subsequently presented drawing is honored prior to the time of payment of this drawing, and (b) reinstatement of the Interest Portion in accordance with the terms of the Letter of Credit) the Interest Portion will be permanently reduced to $\_\_\_\_\_\_.

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

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: ________________________________  
Name: ________________________________  
Title: ________________________________
INTEREST DRAFT

Irrevocable Transferable Letter of Credit No. [Letter of Credit No.]

The undersigned, a duly authorized officer of U.S. Bank National Association, as trustee (the “Trustee”), hereby certifies to Bank of the West (the “Bank”), with reference to Irrevocable Transferable Letter of Credit No. [Letter of Credit No.] (the “Letter of Credit”; any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit) issued by the Bank, in favor of the Trustee under the Indenture, that:

(a) The Trustee is the Trustee under the Indenture for the owners of the Bonds and is authorized to make this demand under the terms of the Letter of Credit.

(b) Pursuant to Section 5.12 of the Indenture, the Trustee has concurrently presented its sight draft drawn on you in the amount of $___________. The Trustee is making a drawing under the Interest Portion of the Letter of Credit with respect to payment of interest due with respect to the Bonds due on a regularly scheduled bond payment date pursuant to Section 2.02 of the Indenture.

(c) The amount demanded hereby is $__________. Said amount does not exceed the amount permitted to be drawn under the Letter of Credit in accordance with the Letter of Credit and the Indenture.

(d) The amount demanded hereby does not include any amount in respect of the payment of interest on Bonds registered to or on behalf of the Authority, the City or the Bank or its nominee.

(e) Upon receipt by the undersigned of the amount demanded hereby, (a) the undersigned will apply the same directly to the payment when due of the interest accrued and owing with respect to the Bonds pursuant to the Indenture, (b) no portion of said amount shall be applied by the undersigned for any other purpose and (c) no portion of said amount shall be commingled with other funds held by the undersigned.

(f) The Interest Portion available under the Letter of Credit (immediately prior to the drawing requested hereby and taking into account any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this certificate) is $___________.

(g) After payment of the drawing requested hereby (and any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming (a) no subsequently presented drawing is honored prior to the time of payment of this drawing, and (b) reinstatement of the Interest Portion in accordance with the terms of the Letter of Credit) the Interest Portion will be reduced to $___________.

Annex C-1
IN WITNESS WHEREOF, the Trustee has executed and delivered this certificate as of the ___ day of ______, ___.

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: ________________________________
Name: ______________________________
Title: ______________________________

Annex C-2
REDEMPTION DRAFT

Irrevocable Transferable Letter of Credit No. [Letter of Credit No.]

The undersigned, a duly authorized officer of U.S. Bank National Association, as trustee (the “Trustee”), hereby certifies to Bank of the West (the “Bank”), with reference to Irrevocable Transferable Letter of Credit No. [Letter of Credit No.] (the “Letter of Credit”; any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit) issued by the Bank in favor of the Trustee under the Indenture, that:

(a) The Trustee is the Trustee under the Indenture for the owners of the Bonds and is authorized to make this demand under the terms of the Letter of Credit.

(b) Pursuant to Section 5.12 of the Indenture the Trustee has concurrently herewith presented its sight draft drawn on you in the amount of $__________. The Trustee is making a drawing under the Letter of Credit with respect to payment of the principal of and interest on [all/a portion of] the Bonds pursuant to Section [4.01(A)]/[4.01(B)]/[4.01(H)] of the Indenture.

(c) The amount demanded hereby is $__________. Of such amount $__________ represents the principal of Bonds to be redeemed and $__________ represents the accrued and unpaid interest on such Bonds. Said amount does not exceed the amount permitted to be drawn under the Letter of Credit in accordance with the Letter of Credit and the Indenture with respect to such Bonds.

(d) The amount demanded hereby does not include any amount in respect of the redemption of any Bonds registered to or on behalf of the Authority, the City or the Bank or its nominee.

(e) Upon receipt by the undersigned of the amount demanded hereby, (a) the undersigned will apply the same directly to the payment when due of the principal amount owing on account of the redemption of Bonds pursuant to the Indenture, (b) no portion of said amount shall be applied by the undersigned for any other purpose, and (c) no portion of said amount shall be commingled with other funds held by the undersigned.

(f) The Principal Portion available under the Letter of Credit (immediately prior to the drawing requested hereby and taking into account any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this drawing) is $__________. After payment of the drawing requested hereby (and any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this drawing), the Principal Portion will be permanently reduced to $__________. The Interest Portion available under the Letter of Credit (immediately prior to the drawing requested hereby and taking into account any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this drawing) is $__________.
of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this certificate) is $_________. After payment of the drawing requested hereby (and any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming (i) no subsequently presented drawing is honored prior to the time of payment of this drawing, and (ii) reinstatement of the Interest Portion in accordance with the terms of the Letter of Credit) the Interest Portion will be permanently reduced to $_________.

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

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: _____________________________
Name: _____________________________
Title: _____________________________
MANDATORY TENDER DRAFT

Irrevocable Transferable Letter of Credit No. [Letter of Credit No.]

The undersigned, a duly authorized officer of U.S. Bank National Association, as trustee (the "Trustee"), hereby certifies to Bank of the West (the "Bank"), with reference to Irrevocable Transferable Letter of Credit No. [Letter of Credit No.] (the "Letter of Credit"; any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit) issued by the Bank in favor of the Trustee under the Indenture, that:

(a) The Trustee is the Trustee under the Indenture for the owners of the Bonds and is authorized to make this demand under the terms of the Letter of Credit.

(b) Pursuant to Section 5.12 of the Indenture the Trustee has concurrently herewith presented its sight draft drawn on you in the amount of $__________. The Trustee is making a drawing under the Letter of Credit with respect to payment of the purchase price of the Bonds tendered pursuant to Section 4.09(B) of the Indenture. Payment of the amount of this drawing shall reduce the Principal Portion, the Interest Portion and the Stated Amount of the Letter of Credit to zero.

(c) The amount demanded hereby is $__________. Such amount represents the Principal Portion in the amount of $__________ of the purchase price of Bonds tendered to the Trustee pursuant to Section 4.09(B) of the Indenture. Said amount does not exceed the amount permitted to be drawn under the Letter of Credit in accordance with the Letter of Credit and the Indenture with respect to such Bonds.

(d) The amount demanded hereby does not include any amount in respect of the purchase of any Bonds registered to or on behalf of the Authority, the City or the Bank or its nominee.

(e) Upon receipt by the undersigned of the amount demanded hereby, (a) the undersigned will apply the same directly to the payment when due of the principal amount owing on account of the purchase of Bonds pursuant to the Indenture, (b) no portion of said amount shall be applied by the undersigned for any other purpose, and (c) no portion of said amount shall be commingled with other funds held by the undersigned.

(f) The Principal Portion available under the Letter of Credit (immediately prior to the drawing requested hereby and taking into account any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this drawing) is $__________. After payment of the drawing requested hereby (and any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this drawing), the Principal Portion will be $__________. The Interest Portion available under the Letter of Credit (immediately prior to the drawing requested hereby and

Annex E-1
taking into account any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming no subsequently presented drawing is honored prior to the time of payment of this certificate) is $________. After payment of the drawing requested hereby (and any other drawing previously or concurrently requested by the Trustee which has not been paid or rejected by the Bank prior to the time of presentation of this certificate and assuming (a) no subsequently presented drawing is honored prior to the time of payment of this drawing, and (b) reinstatement of the Interest Portion in accordance with the terms of the Letter of Credit) the Interest Portion will be reduced to $________.

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

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: ________________________________
Name: ______________________________
Title: ______________________________
NOTICE OF EXPIRATION OF THE LETTER OF CREDIT
AT THE ELECTION OF THE BANK

Irrevocable Transferable Letter of Credit No. [Letter of Credit No.]

The undersigned, a duly authorized officer of Bank of the West (the “Bank”), hereby certifies to U.S. Bank National Association, as trustee (the “Trustee”), with reference to Irrevocable Transferable Letter of Credit No. [Letter of Credit No.] (the “Letter of Credit”; any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit) issued by the Bank in favor of the Trustee, that the city is in default under Section _____ of the Reimbursement Agreement.

We have assumed that you have confirmed that we have purchased all Bonds required to be purchased by us following the mandatory tender thereof pursuant to Section 4.09(B)(2) of the Indenture.

We hereby notify you that the Letter of Credit will expire upon your receipt of this notice.

IN WITNESS WHEREOF, the Bank has executed and delivered this notice as of the ____ day of __________, ___.

BANK OF THE WEST

By: ___________________________
Name: _________________________
Title: _________________________

By: ___________________________
Name: _________________________
Title: _________________________
TRUSTEE’S CERTIFICATE FOR TERMINATION OF LETTER OF CREDIT
(ACCEPTANCE OF ALTERNATE CREDIT FACILITY)

Irrevocable Transferable Letter of Credit No. [Letter of Credit No.]

The undersigned, a duly authorized officer of U.S. Bank National Association, as trustee (the “Trustee”), hereby certifies to Bank of the West (the “Bank”), with reference to Irrevocable Transferable Letter of Credit No. [Letter of Credit No.] (the “Letter of Credit”; any capitalized term used herein and not defined shall have its respective meaning as set forth in, the Letter of Credit) issued by the Bank in favor of the Trustee, that:

(a) The Trustee is the Trustee under the Indenture for the owners of the Bonds and is authorized to make this demand under the terms of the Letter of Credit.

(b) The conditions precedent to the acceptance of an Alternate Credit Facility set forth in the Indenture have been satisfied.

(c) As Trustee under the Indenture, the Trustee has accepted an Alternate Credit Facility.

(d) Upon receipt by the Bank of this certificate the Letter of Credit shall terminate with respect to all outstanding Bonds and the Letter of Credit is being surrendered to you herewith for cancellation.

IN WITNESS WHEREOF, the Trustee has executed and delivered this certificate as of the ___ day of __________, __.

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: ________________________________
Name: _______________________________
Title: _______________________________
TRUSTEE’S CERTIFICATE FOR TERMINATION OF LETTER OF CREDIT
(NO BONDS OUTSTANDING OR CONVERSION OF ALL BONDS TO BEAR INTEREST
AT A FIXED RATE UNTIL MATURITY)

Irrevocable Transferable Letter of Credit No. [Letter of Credit No.]

The undersigned, a duly authorized officer of U.S. Bank National Association, as trustee (the “Trustee”), hereby certifies to Bank of the West (the “Bank”), with reference to Irrevocable Transferable Letter of Credit No. [Letter of Credit No.] (the “Letter of Credit”; any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit) issued by the Bank in favor of the Trustee, that:

(a) The Trustee is the Trustee under the Indenture for the owners of the Bonds and is authorized to make this demand under the terms of the Letter of Credit.

(b) [No Bonds remain outstanding under the Indenture] or [All Bonds remaining outstanding under the Indenture have been converted to bear interest at a fixed rate until maturity as of ________].

(c) Upon receipt by the Bank of this certificate the Letter of Credit shall terminate as provided in clause (iii) of paragraph 2 of the Letter of Credit and the Letter of Credit is being surrendered to you herewith for cancellation.

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

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Trustee

By: ____________________________________________
Name: ___________________________________________
Title: ___________________________________________
ANNEX I

TRANSFER DEMAND

Irrevocable Transferable Letter of Credit No. [Letter of Credit No.]

Bank of the West
Global Trade Services
13300 Crossroads Parkway North
SC-XRD-2W-G
City of Industry, CA 91746
Attention: Standby Team 2

RE: Irrevocable Transferable Letter of Credit No. [Letter of Credit No.]

Ladies and Gentlemen:

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

(Name of Transferee)
(Address)

All rights of the undersigned beneficiary to draw under the above Letter of Credit in its entirety. The transferee has succeeded the undersigned as Trustee under the Indenture (as defined in the Letter of Credit).

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised direct to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof and forward it directly to the transferee with your customary notice of transfer.

Very truly yours,

Signature Authenticated: THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: ______________________________
Name: ______________________________
Title: ______________________________

(Authorized Signature)

Annex I-1
We certify that we have succeeded (Name of Beneficiary) as Trustee under the Indenture (as defined in the Letter of Credit).

Signature Authenticated: [Name of Transferee]

By: ________________________________
Name: ______________________________
Title: ______________________________

(Authorized Signature)

Annex I-2
NOTICE OF MANDATORY TENDER AT THE ELECTION OF THE BANK

Irrevocable Transferable Letter of Credit No. [Letter of Credit No.]

The undersigned, a duly authorized officer of Bank of the West (the "Bank"), hereby certifies to U.S. Bank National Association, as trustee (the "Trustee"), with reference to Irrevocable Transferable Letter of Credit No. [Letter of Credit No.] (the "Letter of Credit"; any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit) issued by the Bank in favor of the Trustee, that the City is in default under Section _____ of the Reimbursement Agreement.

We hereby direct you, upon receipt by you of this certificate to cause the mandatory tender of all outstanding Bonds pursuant to Section 4.09(B)(2) of the Indenture.

IN WITNESS WHEREOF, the Bank has executed and delivered this notice as of the ____ day of ________, ____.

BANK OF THE WEST

By: __________________________________________
Name: _________________________________________
Title: __________________________________________

By: __________________________________________
Name: _________________________________________
Title: __________________________________________

Annex J-1
FORM OF SIGHT DRAFT

Irrevocable Transferable Letter of Credit No. [Letter of Credit No.]

Bank of the West
Global Trade Services
13300 Crossroads Parkway North
SC-XRD-2W-G
City of Industry, CA 91746
Attention: Standby Team 2

This sight draft is presented to you for the amount of $________ for the purposes set forth in the accompanying certificate. The amount demanded hereby and by the accompanying certificate should be wire transferred in federal funds to the following account:

[insert account information]

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Trustee

By: ________________________________
Name: ______________________________
Title: ______________________________

Annex K-1
NOTICE OF EXTENSION

Irrevocable Transferable Letter of Credit No. [Letter of Credit No.]

[Letterhead of Bank of the West]

[Date]

633 West Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Global Corporate Trust Services

Ladies and Gentlemen:

Pursuant to Section 2.1 of the Reimbursement Agreement (the “Reimbursement Agreement”) dated as of June 1, 2019, by and among the City of Modesto, the Modesto Public Financing Authority and Bank of the West (the “Bank”), the Bank has approved an extension of Irrevocable Transferable Letter of Credit No. [Letter of Credit No.] (the “Letter of Credit”), dated June [___], 2019. The Stated Expiration Date of the Letter of Credit shall be extended to _____________________.

You are hereby authorized to attach this Notice of Extension to the Letter of Credit and to treat this Notice of Extension as an amendment to the Letter of Credit.

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Reimbursement Agreement or the Letter of Credit.

Very truly yours,

BANK OF THE WEST

By: ____________________________________________
Name: __________________________________________
Title: ___________________________________________

By: ____________________________________________
Name: __________________________________________
Title: ___________________________________________

Annex L-1