

**TRANSCRIPT**

**\$19,429,912.56**  
**City of Modesto, California**  
**Wastewater Revenue Refunding Bond**  
**Series 2015**

**Closing Date: October 30, 2015**

PROCEEDINGS RELATED TO CLOSING

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Place

Sidley Austin LLP  
555 California Street, Suite 2000  
San Francisco, California 94104

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Time

Virtual Preclosing: Thursday, October 29, 2015, 1:00 p.m. (California Time)

Closing: Friday, October 30, 2015, 9:00 a.m. (California Time)

## Parties

### Interested Parties

City of Modesto, California  
("City")

Public Financial Management, Inc.  
("FA")

\*Capital One Public Funding  
("Purchaser")

The Bank of New York Mellon Trust Company, N.A.  
("Trustee" and "Escrow Agent")

### Counsel

\*Sidley Austin LLP  
("Bond Counsel")

Kronick, Moskovitz, Tiedemann & Girard, A Law Corporation  
("Purchaser's Counsel")

Sam Waldman, Esq.  
("Paying Agent Counsel")

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\* *Transcripts will be prepared in CD-ROM format for all parties. In addition, those parties indicated above with an asterisk (\*) will receive the transcript in paper (binder) format.*

## Closing

The Authority, the City and the Purchaser executed a Bond Purchase Agreement in the principal amount of \$19,429,912.56, pursuant to which the Purchaser purchased a bond (the "Bond") issued by the City, which Bond is secured by Net Revenues under an Indenture. The proceeds of the Bond were applied by the City, together with other available funds of the City, to (i) refund all of the City's Wastewater Revenue Refunding Bonds, Series 2005A (the "2005A Bonds"), which refinanced the acquisition and construction of improvements to the City's wastewater enterprise, (ii) refund a portion of the City's Wastewater Revenue Bonds, Series 2006A (the "2006A Bonds"), which financed the acquisition and construction of improvements to the City's wastewater enterprise, and (iii) pay certain costs of issuance in connection with the financing.

In connection with the execution of the Bond Purchase Agreement, a closing (the "Closing") was held on Friday, October 30, 2015 at 9:00 a.m. (California Time) (the "Closing Date").

A preclosing (the "Preclosing") was hosted on Thursday, October 29, 2015 at 1:00 p.m. (California Time) by Sidley Austin LLP, via Sidley's Virtual Closing Site to confirm that all documents and papers were on hand, in proper form and properly executed.

The parties indicated above delivered each of the respective documents so indicated below in five (5) copies (unless otherwise indicated). The documents were executed in advance of the Closing by the respective parties thereto and delivered no later than the Preclosing. All of such deliveries were deemed to have been placed in escrow until final delivery at the Closing had been made. Responsibility for preparing or assembling the documents is indicated in parentheses.

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I. <u>AUTHORIZING DOCUMENTS; BASIC DOCUMENTS RELATING TO THE FINANCING</u>	
1. Certificate of the City Clerk of the City Council (the "City Council") of the City, with the following attachment:	1
<p style="margin-left: 40px;">RESOLUTION NO. 2015-411, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO APPROVING AS TO FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION WITH THE PRIVATE SALE AND ISSUANCE OF THE CITY OF MODESTO, CALIFORNIA WASTEWATER REVENUE REFUNDING BOND, SERIES 2015 AND AUTHORIZING CERTAIN OTHER MATTERS RELATING THERETO, adopted on October 27, 2015 (City/Bond Counsel)</p>	
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3. SPECIMEN BOND. (Bond Counsel)	3
II. <u>DOCUMENTS RELATING TO PREPAYMENT OF 2005A BONDS AND 2006A BONDS</u>	
1. Copy, certified by the City to be true and correct, of the Wastewater Revenue Bond Indenture, dated as of April 1, 2005 (the "Indenture"), as supplemented by a First Supplemental Indenture, dated as of April 1, 2005, a Second Supplemental Indenture, dated as of April 1, 2005, and a Third Supplemental Indenture, dated as of December 1, 2006, each between the City and the Trustee, pursuant to which the 2005A Bonds and 2006A Bonds were issued. (Bond Counsel)	4
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\$19,429,912.56  
City of Modesto, California  
Wastewater Revenue Refunding Bond  
Series 2015

October 30, 2015

CERTIFICATE OF THE CITY CLERK

I, Stephanie Lopez, certify that I am the City Clerk of the City of Modesto, California (the "City"), a municipal corporation and chartered city duly organized and existing under the Constitution and the laws of the State of California, and that I am authorized to execute this Certificate on behalf of the City.

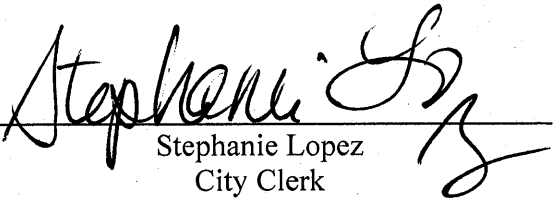
I further certify that the attached Resolution No. 2015-411 (the "Resolution 2015-411") is a copy of the resolution adopted at the regular meeting of the City Council called and held on October 27, 2015, of which meeting all the members of the City Council had due notice and at which quorum was present and acting throughout.

I further certify that I have carefully compared the same with the original Resolution 2015-411 so adopted at the meeting and entered in the minutes of the City Council on file and of record in my office, and that it is a full, true and correct copy of the Resolution; and that the Resolution has not been amended, modified or rescinded since the date of adoption and are now in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of the City Clerk.

CITY OF MODESTO, CALIFORNIA

By:   
Stephanie Lopez  
City Clerk

**MODESTO CITY COUNCIL  
RESOLUTION NO. 2015-411**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO APPROVING AS TO FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION WITH THE PRIVATE SALE AND ISSUANCE OF THE CITY OF MODESTO, CALIFORNIA WASTEWATER REVENUE REFUNDING BOND, SERIES 2015 AND AUTHORIZING CERTAIN OTHER MATTERS RELATING THERETO**

WHEREAS, the City of Modesto is a charter city and a municipal corporation organized and existing under the laws of the State of California (the "City"); and

WHEREAS, pursuant to Section 200 of the Charter of the City of Modesto and the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the "Bond Law"), the City is authorized to issue revenue bonds to finance the acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation of the wastewater treatment facilities of the City (the "Enterprise") or for the purpose of refunding bonds issued for such purposes; and

WHEREAS, the City has entered into a Wastewater Revenue Bond Indenture, dated as of April 1, 2005 (the "Master Indenture"), between the City and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee") to U.S. Bank National Association, providing for the issuance of wastewater revenue bonds thereunder; and

WHEREAS, in accordance with the Series 2015 Bond Law and the Indenture, as supplemented by a First Supplemental Indenture, dated as of April 1, 2005 (the "First Supplemental Indenture"), a Second Supplemental Indenture, dated as of April 1, 2005 (the "Second Supplemental Indenture"), and a Third Supplemental Indenture, dated as of December 1, 2006 (the "Third Supplemental Indenture," and together with the Master

Indenture, the First Supplemental Indenture and the Second Supplemental Indenture, the "Indenture"), each by and between the Trustee, the City has previously issued its City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005A (the "Series 2005A Bonds"), its City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005B ("Series 2005B Bonds") and its City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2006A (the "Series 2006 Bonds," and together with the Series 2005A Bonds and the Series 2005B Bonds, the "Prior Bonds"); and

WHEREAS, the Indenture provides that the City may issue any indebtedness, installment sale obligation, lease obligation or other obligation of the City for borrowed money having an equal lien and charge upon the Net Revenues, therefore payable on a parity with the Series 2015 Bonds (whether or not any Bonds are Outstanding) ("Parity Debt"), from time to time in accordance with the terms of the Indenture; and

WHEREAS, the City desires to issue a bond (the "Series 2015 Bond"), as Parity Debt pursuant to Section 3.15(c) of the Indenture; and

WHEREAS, Section 3.05(c)(5) of the Indenture requires that the Trustee be designated as paying agent or trustee for any Parity Debt; and

WHEREAS, The Bank of New York Mellon Trust Company, N.A. serves as Trustee and has agreed to serve as paying agent, bond registrar and authentication agent (the "Paying Agent") for the Series 2015 Bond; and

WHEREAS, following a request for proposals solicitation, Capital One Public Funding, LLC (the "Purchaser") and two other potential purchasers have provided the City with proposals to purchase the Bond directly from the City;

WHEREAS, the City Finance Director, upon the advice of Public Financial Management, Inc., the City's financial advisor, and based upon cost and other considerations, has recommended that the City accept the Purchaser's proposal;

WHEREAS, in connection with the issuance of the Bond, the City, the Purchaser and the Paying Agent propose to enter into a Bond Purchase Agreement (the "Bond Purchase Agreement"), pursuant to which the Bond will be issued to the Purchaser;

NOW, THEREFORE, the City Council of the City of Modesto does hereby resolve, determine and order as follows:

Recitals. The above recitals are true and correct.

Section 1. Bond Purchase Agreement. The Bond Purchase Agreement, in the form presented at this meeting and on file with the City Clerk, is approved. The Mayor (or in his absence, the Mayor Pro Tem), the City Manager or the Finance Director of the City (each, an "Authorized Officer"), acting singly, is authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Bond Purchase Agreement, as well as the Bond **attached** thereto, with such additions or changes therein, whether material or otherwise, as such Authorized Officer may approve (such approval to be conclusively evidenced by such Authorized Officer's execution and delivery thereof).

Section 2. Refunding of Series 2005A Bonds and Series 2006A Bonds. The City authorizes the refunding of all of the Series 2005A Bonds and the November 1, 2023 and 2024 maturities of the Series 2006A Bonds (collectively, the "Refunded Bonds") from proceeds of the Bond, and directs the Finance Director to take such action as necessary to complete the refunding.

CITY CLERK  
CITY OF MODESTO

Section 3. Other Acts. The Authorized Officers and all other officers of the City are authorized and directed, jointly and severally, to do any and all things, to execute and deliver any and all documents that they may deem necessary or advisable in order to consummate the sale, issuance and delivery of the Bonds, or otherwise to effectuate the purposes of this Resolution, the Bond Purchase Agreement, and any such actions previously taken by such officers are hereby ratified and confirmed.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of October, 2015, by Councilmember Gunderson, who moved its adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following vote.

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

ATTEST: Stephanie Lopez  
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Adam Lindgren  
ADAM LINDGREN, City Attorney

THIS IS TO CERTIFY THAT THIS  
IS A TRUE COPY OF THE DOCUMENT ON  
FILE WITH THIS OFFICE.

DATE October 30, 2015

Stephanie Lopez  
SIGNATURE  
CITY CLERK  
CITY OF MODESTO, CA

**BOND PURCHASE AGREEMENT**

by and among

**THE CITY OF MODESTO,  
as the City**

**CAPITAL ONE PUBLIC FUNDING, LLC,  
as Purchaser**

and

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Paying Agent**

Dated as of October 30, 2015

Relating to  
City of Modesto, California  
Wastewater Revenue Refunding Bond  
Series 2015

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## BOND PURCHASE AGREEMENT

This BOND PURCHASE AGREEMENT, dated for convenience of reference as of October 30, 2015 (this "Agreement" or "Bond Purchase Agreement"), by and among The City of Modesto, a charter city and municipal corporation duly organized and validly existing under the laws of the State of California (the "City"), Capital One Public Funding, LLC (the "Purchaser"), and The Bank of New York Mellon Trust Company, N.A., as Paying Agent (the "Paying Agent").

### WITNESSETH:

WHEREAS, the City of Modesto is a charter city and a municipal corporation organized and existing under the laws of the State of California (the "City"); and

WHEREAS, pursuant to Section 200 of the Charter of the City of Modesto and the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the "Bond Law"), the City is authorized to issue revenue bonds to finance the acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation of the wastewater treatment facilities of the City (the "Enterprise") or for the purpose of refunding bonds issued for such purposes; and

WHEREAS, the City has entered into a Wastewater Revenue Bond Indenture, dated as of April 1, 2005 (the "Master Indenture"), between the City and The Bank of New York Trust Company, N.A., as successor trustee (the "Trustee") to U.S. Bank National Association, providing for the issuance of wastewater revenue bonds thereunder; and

WHEREAS, in accordance with the Series 2015 Bond Law and the Indenture, as supplemented by a First Supplemental Indenture, dated as of April 1, 2005 (the "First Supplemental Indenture"), a Second Supplemental Indenture, dated as of April 1, 2005 (the "Second Supplemental Indenture"), and a Third Supplemental Indenture, dated as of December 1, 2006 (the "Third Supplemental Indenture," and together with the Master Indenture, the First Supplemental Indenture and the Second Supplemental Indenture, the "Indenture"), each by and between the City and the Trustee, the City has previously issued its City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005A (the "Series 2005A Bonds"), its City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005B ("Series 2005B Bonds") and its City of Modesto, California Wastewater Revenue Bonds, Series 2006A (the "Series 2006 Bonds," and together with the Series 2005A Bonds and the Series 2005B Bonds, the "Prior Bonds"); and

WHEREAS, the Indenture provides that the City may issue any indebtedness, installment sale obligation, lease obligation or other obligation of the City for borrowed money having an equal lien and charge upon the Net Revenues, therefore payable on a parity with the Series 2015 Bond (whether or not any Bonds are Outstanding) ("Parity Debt"), from time to time in accordance with the terms of the Indenture; and

WHEREAS, the City has determined to issue a bond (the "Series 2015 Bond") as Parity Debt pursuant to Section 3.05(c) of the Indenture; and

WHEREAS, the City has determined that the Series 2015 Bond shall be substantially in the form attached as Exhibit A hereto, with such variations, omissions and insertions as are required or permitted by this Bond Purchase Agreement; and

WHEREAS, Section 3.05(c)(5) of the Indenture requires that the Trustee be designated as paying agent or trustee for any Parity Debt; and

WHEREAS, The Bank of New York Mellon Trust Company, N.A. has agreed to serve as paying agent, bond registrar and authentication agent (the "Paying Agent") for the Series 2015 Bond under this Bond Purchase Agreement; and

WHEREAS, the City, the Purchaser and the Paying Agent have duly authorized the execution and delivery of this Bond Purchase Agreement;

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Definitions. The following terms shall, for purposes of this Bond Purchase Agreement, have the respective meanings ascribed to them in this Section 1. All capitalized terms used in this Bond Purchase Agreement which are not defined herein but are defined in the Indenture shall have the meanings specified in the Indenture.

"Bond Payment Account" means a special account created and designated by the provisions of Section 9 hereof.

"City Representative" means the Mayor, the City Manager, the Deputy City Manager or the Finance Director of the City, or any person designated by any of them in writing, to act on behalf of the City.

"Closing Time" means the Closing Time specified in accordance with Section 2 of this Bond Purchase Agreement.

"Code" means the Internal Revenue Code of 1986 as in effect on the date of original issuance of the Series 2015 Bond or (except as otherwise referenced herein or in the Installment Sale Agreement) as it may be amended to apply to obligations issued on the date of original issuance of the Series 2015 Bond, together with regulations promulgated, and official public guidance published, under the Code.

"Commitment Letter" means the letter, dated October 1, 2015, by which the Purchaser issued its commitment to purchase the Series 2015 Bond.

"Costs of Issuance" means any costs or expenses paid or incurred in connection with the preparation, execution and delivery of the Series 2015 Bond, including but not limited to printing costs, word processing costs, special counsel and other legal fees and expenses, rating agency fees, financial advisor fees, verification agent fees, accounting fees, legal fees, payable to any other consultants or experts retained by the City in connection with such preparation, execution and delivery, and any other cost, charge or fee in connection with the original issuance of the Series 2015 Bond which constitutes a "cost of issuance" within the meaning of the Code. Costs of Issuance shall not include any costs or expenses of the Purchaser.

“Costs of Issuance Account” means a special account created and designated by the provisions of Section 9 hereof.

“Counsel” means attorneys, selected by the City and acceptable to the Purchaser, who are nationally recognized in the issuance of tax-exempt municipal obligations.

“Event of Default” means (a) any default in the payment of principal, or interest on the Series 2015 Bond when due, (b) any “Event of Default” as defined in the Indenture, and (c) failure by the City to observe or perform any covenant, condition, agreement or provision in this Bond Purchase Agreement, on its part to be observed or performed, other than as referred to in subsection (a) or (b) of this definition, for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, has been given to the City by the Purchaser or the Paying Agent; except that, if such failure can be remedied but not within such thirty (30) day period and if the City has taken all action reasonably possible to remedy such failure within such thirty (30) day period, such failure shall not become an Event of Default for so long as the City shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Purchaser.

“Indenture Bond” means any Bond (other than the Series 2015 Bond) issued under the Indenture.

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

“Purchaser” means Capital One Public Funding, LLC, the purchaser of the Series 2015 Bond issued hereunder and its successors and assigns as permitted under Section 6(d) herein.

“Series 2015 Bond” means the bond issued under the provisions of Section 2 of this Bond Purchase Agreement for the Financing Purposes.

“Tax Agreement” means the Tax Certificate and Agreement, dated the date hereof, by the City (or similar instruments), pertaining to the use and investment of proceeds of the Series 2015 Bond, executed and delivered by a duly authorized officer of the City at the Closing Time, including any and all exhibits and attachments thereto.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, “Bond”, “owner”, “holder” and “person” shall include the plural as well as the singular number, “person” shall mean any individual, corporation, partnership, joint-venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof, and “holder” or “bondholder” when used herein with respect to the Series 2015 Bond shall mean the owner of the Series 2015 Bond.

Section 2. Issuance and Purchase of the Series 2015 Bond. The City shall issue the Series 2015 Bond substantially in the form attached as Exhibit A hereto, with such appropriate variations, omissions and insertions as are permitted or required by this Bond Purchase Agreement. The Series 2015 Bond may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law with respect thereto or as may be authorized by the

City. The Series 2015 Bond shall be in the aggregate principal amount of \$19,429,912.56, shall be designated "City of Modesto, California Wastewater Revenue Refunding Bond, Series 2015", shall be dated the date of delivery of and payment therefor shall bear interest from its date until payment, such interest to the maturity or earlier prepayment thereof being payable each May 1 and November 1, commencing May 1, 2016, and principal payable in annual installments on each November 1, commencing November 1, 2016, and ending November 1, 2024, subject to the right of prepayment, all as set forth in the Series 2015 Bond. The Series 2015 Bond shall bear interest at a rate equal to 2.42% per annum, accruing from the date of delivery. Interest shall be computed on the basis of a year consisting of twelve 30-day months.

In reliance upon the representations, warranties and agreements contained herein and in the Indenture, and subject to the conditions herein set forth, at the Closing Time the City agrees to issue and sell the Series 2015 Bond to the Purchaser, and the Purchaser agrees to purchase the Series 2015 Bond from the City, for a price of 100% of the principal amount thereof. Payment for the Series 2015 Bond shall be made by the Purchaser at or about 10:00 A.M., New York time, October 30, 2015, by wire transfer of immediately available funds to an account specified by the City against delivery of the Series 2015 Bond at the office of Sidley Austin LLP, San Francisco, California, or at such other time and place as may be mutually agreed upon by the parties hereto (the "Closing Time").

Following the transfers by the City to the Paying Agent pursuant to Section 10 hereof, all payments with respect to the Series 2015 Bond will be paid by the Paying Agent to the Purchaser and shall satisfy all obligations of the City with respect to such payments. Upon final payment of the Series 2015 Bond, the Series 2015 Bond shall be surrendered to the City for cancellation.

The initial Bond shall be numbered "R-1."

Section 3. Representations, Warranties and Agreements of the City; Tax Covenants of the City; City Acknowledgments.

(a) *Representations, Warranties and Agreements of the City.* The City hereby represents and warrants to, and agrees with, the Purchaser as follows:

(i) The City is a charter city and a municipal corporation organized and existing under the laws of the State of California. The City is authorized under the Series 2015 Bond Law to borrow money and issue the Series 2015 Bond therefor to finance the acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation of the Enterprise (as defined in the Indenture) or for the purpose of refunding bonds issued for such purposes (collectively, the "Financing Purposes").

(ii) The City has full power and authority to issue the Series 2015 Bond pursuant to the Charter and the Bond Law for the Financing Purposes, and to carry out and consummate all transactions contemplated by this Bond Purchase Agreement and the Series 2015 Bond.

(iii) Pursuant to the Charter, the Bond Law and Resolution No. 2015-411 of the City Council of the City relating to the Series 2015 Bond, the City has duly authorized: (A) the issuance and sale of the Series 2015 Bond; (B) the execution, delivery and

due performance of this Bond Purchase Agreement and the Series 2015 Bond; and (C) the taking of any and all action as may be required on the part of the City to carry out, give effect to and consummate the transactions contemplated hereby. The fully executed Series 2015 Bond, fully executed counterparts of this Bond Purchase Agreement and certified copies of the resolution of the City authorizing the City's undertakings contemplated hereby shall be delivered to the Purchaser by the City at the Closing Time, and they shall be in the respective forms theretofore submitted to the Purchaser and approved by the Purchaser, with only such changes or modifications thereof as the Purchaser and the City shall agree upon.

(iv) So long as the Series 2015 Bond is outstanding, the City will not issue or sell any bond or obligations (other than the Series 2015 Bond), the interest, premium or principal of which shall be payable in whole or in part from the Net Revenues, except as permitted hereunder and under the Indenture.

(v) There is no action, suit, proceeding or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the City, threatened against or affecting the City, nor to the knowledge of the City is there any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Bond Purchase Agreement, or which, in any way, would adversely affect the validity of the Series 2015 Bond, this Bond Purchase Agreement or any other agreement or instrument to which the City is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

(vi) The execution, delivery and due performance by the City of this Bond Purchase Agreement, the Series 2015 Bond and the other agreements contemplated hereby and compliance with the provisions hereof and thereof will not conflict with, or constitute on the part of the City a breach of, or a default under, any existing law, administrative regulation, decree or court order or any provision of any legislative act, constitutional or other proceeding applicable to or establishing or relating to the existence of the City or its affairs or resolutions, or any agreement, indenture, mortgage, lease or other instrument to which the City is subject or by which it is or may be bound.

(vii) Payment of principal and interest on the Series 2015 Bond is secured by a pledge of Net Revenues, which pledge is on parity with the pledge of Net Revenues for the Indenture Bonds, as further described herein. The Series 2015 Bond constitutes "Parity Debt" under the Indenture.

(viii) The obligation of the City to make payment of the principal of and interest on the Series 2015 Bond is a special, limited obligation of the City, payable solely from the Net Revenues, as more fully described in Section 15.

(ix) The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Bond Purchase Agreement, in the Series 2015 Bond, and in all proceedings of the City pertaining thereto and will faithfully observe and perform at all times any and all covenants, undertakings, stipulations and provisions of the Indenture on its part to be observed or performed. The City covenants that it is duly authorized under the Constitution and laws of the State, including particularly and

without limitation the Bond Law, to issue the Series 2015 Bond, to enter into this Bond Purchase Agreement and to pledge the Net Revenues in the manner set forth herein; that action on its part for the issuance of the Series 2015 Bond and the execution and delivery of this Bond Purchase Agreement has been duly and effectively taken; and that the Series 2015 Bond in the hands of the owner thereof is and will be the valid and enforceable special, limited obligation of the City according to the tenor and import thereof.

(x) The City shall not amend, supplement or otherwise modify or consent to the amendment, supplement or modification, in whole or in part, of the Indenture except as permitted by the Indenture, provided that no such amendment, supplement or modification may be made without the consent of the Purchaser if it would materially and adversely affect the security for the Series 2015 Bond.

(xi) The City covenants that it shall promptly execute and deliver or cause to be executed and delivered all other and further assurances, documents or instruments and promptly do or cause to be done all such other and further things as may be necessary or reasonably required in order to carry out the purposes and intentions of this Bond Purchase Agreement and for preserving and protecting the rights and interests of the Purchaser.

(b) *Tax Covenants of the City.* The City hereby covenants to, and agrees with, the City and the Purchaser as follows:

(i) The City hereby covenants that, notwithstanding any other provisions of this Bond Purchase Agreement, it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the tax-exempt status of interest on the Series 2015 Bond under Section 103 of the Code. The City shall not, directly or indirectly, use or permit the use of proceeds of the Series 2015 Bond or any of the property financed or refinanced with proceeds of the Series 2015 Bond, or any portion thereof, by any person other than a governmental unit (as such term is used in Section 141 of the Code), in such manner or to such extent as would adversely affect the Tax-exempt status of interest on the Series 2015 Bond.

(ii) The City shall not take any action, or fail to take any action, if any such action or failure to take action would cause the Series 2015 Bond to be a "private activity bond" within the meaning of Section 141 of the Code, and in furtherance thereof, shall not make any use of the proceeds of the Series 2015 Bond or any of the property financed or refinanced with proceeds of the Series 2015 Bond, or any portion thereof, or any other funds of the City, that would cause the Series 2015 Bond to be a "private activity bond" within the meaning of Section 141 of the Code. To that end, so long as the Series 2015 Bond is Outstanding, the City, with respect to such proceeds and property and such other funds, will comply with applicable requirements of the Code and all regulations of the United States Department of the Treasury issued thereunder, to the extent such requirements are, at the time, applicable and in effect.

(iii) The City shall not, directly or indirectly, use or permit the use of any proceeds of the Series 2015 Bond, or of any property financed or refinanced thereby, or other funds of the City, or take or omit to take any action, that would cause the Series 2015 Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. To that end, the City

shall comply with all requirements of Section 148 of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, in effect and applicable to the Series 2015 Bond.

(iv) The City shall not make any use of the proceeds of the Series 2015 Bond or any other funds of the City, or take or omit to take any other action, that would cause the Series 2015 Bond to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

(v) In furtherance of the foregoing tax covenants, the City covenants that it will comply with the provisions of the Tax Agreement, which is incorporated herein as if fully set forth herein. These covenants shall survive payment in full or defeasance of the Series 2015 Bond. The Paying Agent shall be deemed conclusively to have complied with this Section and the Tax Agreement if it follows the directions of the City or the City given pursuant to the Tax Agreement, and shall have no liability or responsibility to determine if the City’s or the City’s actions are in compliance with this Section or the Tax Agreement or to enforce compliance by the City or the City with the terms of this Section or the Tax Agreement.

(c) *City Acknowledgements relating to Purchaser.* The City acknowledges that the Purchaser:

(i) is acting solely for its own loan account and not as a fiduciary for the City or in the capacity of broker, dealer, placement agent, municipal securities underwriter, municipal advisor or fiduciary;

(ii) has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the City (including to any financial advisor or any placement agent engaged by the City) with respect to the structuring, issuance, sale or delivery of the Series 2015 Bond; and

(iii) has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the City with respect to the transactions relating to the structuring, issuance, sale or delivery of the Series 2015 Bond and the discussions, undertakings and procedures leading thereto.

The City represents to the Purchaser that it will obtain such financial, legal (including securities law), tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters and compliance with legal requirements applicable to such parties) with respect to the Series 2015 Bond from its own financial, legal, tax and other advisors (and not from the undersigned or its affiliates) to the extent that the City requires such advice.

The transactions between the City and the Purchaser are arm’s length, commercial transactions in which the Purchaser is acting and has acted solely as a principal and for its own interest and the Purchaser has not made recommendations to the City with respect to the transactions relating to the Series 2015 Bond.

Section 4. Conditions of Purchaser’s Obligations to Purchase. The Purchaser shall accept delivery of the Series 2015 Bond only upon the following conditions:

(a) The Series 2015 Bond shall have been duly authorized, executed and delivered, in form satisfactory to the Purchaser.

(b) The Purchaser shall have received an opinion of the City Attorney, substantially in the form of Annex I.

(c) The Purchaser and the Paying Agent shall have received the approving opinion of Sidley Austin LLP, Bond Counsel, substantially in the form of Annex II.

(d) The Purchaser shall have received a copy, duly certified by the City Clerk, of the resolution referred to in Section 3(a)(iii) hereof.

(e) The Purchaser shall have received evidence that all of the conditions specified in the Commitment Letter have been satisfied.

(f) The Purchaser shall have received such other documentation and certificates as may be reasonably required by the Purchaser.

(g) The Purchaser shall have received a Certificate of the City evidencing the City's compliance with Sections 3.03 and 3.05(c).

Section 5. Conditions of the City's Obligations. The issuance by the City of the Series 2015 Bond hereunder is subject to the conditions set forth in Section 4 hereof and the receipt by the City of the opinions of counsel substantially in the respective forms of those required by subsections (b), (c) and (d) of Section 4. The payment for the Series 2015 Bond by the Purchaser shall conclusively evidence the satisfaction of the conditions set forth in Sections 4 and 5.

Section 6. Purchase For Investment Only; Independent Investigation. The Purchaser certifies to the City and the Paying Agent as follows:

(a) The Purchaser has full power and authority to carry on its business as now conducted and make the representations and certifications contained herein.

(b) The Purchaser is a lender that regularly extends credit by purchasing loans in the form of state and local government obligations such as the Series 2015 Bond; has knowledge and experience in financial and business matters that make it capable of evaluating the City, the City, the Series 2015 Bond and the risks associated with the purchase of the Series 2015 Bond; has the ability to bear the economic risk of an investment in the Series 2015 Bond; and is an "accredited investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended. The Purchaser is not acting as a broker, dealer, municipal securities underwriter, municipal advisor or fiduciary in connection with its purchase of the Series 2015 Bond.

(c) The Purchaser has conducted its own investigation of the financial condition of the City, the purpose for which the Series 2015 Bond is being executed and delivered and of the security for the payment of the principal of and interest on the Series 2015 Bond, and has obtained such information regarding the Series 2015 Bond, the City and its

operations, financial condition and financial prospects as the Purchaser deems necessary to make an informed investment decision with respect to the purchase of the Series 2015 Bond.

(d) The Purchaser is purchasing the Series 2015 Bond as a vehicle for making a commercial loan for its own loan account and without any present intention of distributing or selling any interest therein or portion thereof, provided that the Purchaser retains the right at any time to sell or transfer the Series 2015 Bond (in whole but not in part), but agrees that any such sale or transfer by the Purchaser shall be to:

(i) an affiliate of the Purchaser; or

(ii) a bank, insurance company or other financial institution; provided, however, that, as a condition of transfer, any purchaser or assignee of the Series 2015 Bond shall execute an assignment and assumption of the rights and obligations of the Purchaser under this Bond Purchase Agreement in form acceptable to the City.

Nothing herein shall limit the right of the Purchaser to sell or assign participation interests in the Series 2015 Bond to one or more institutions listed in (i) or (ii), provided that neither the City nor the City shall have any obligation or liability to such participants and such participants shall look solely to the Purchaser to enforce any such obligations under the Series 2015 Bond or this Agreement against the City or the City.

(e) The Purchaser acknowledges that the Series 2015 Bond (a) has not been registered under the Securities Act of 1933, as amended, and has not been registered or otherwise qualified for sale under the securities laws of any state, (b) will not be listed on any securities exchange and (c) there is no established market for the Series 2015 Bond and that none is likely to develop. The Purchaser understands and acknowledges that (i) the offering of the Series 2015 Bond is not intended to be subject to the requirements of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended and (ii) in connection with its purchase of the Series 2015 Bond, neither the City nor the City has prepared or caused to be prepared, any official statement, private placement memorandum or other offering document in connection with the sale and purchase of the Series 2015 Bond.

Section 7. Execution. The Series 2015 Bond shall be executed in the name and on behalf of the City with the facsimile or manual signature of the Mayor, the City Manager or the Finance Director of the City and attested by the facsimile or manual signature of the City Clerk under the printed seal of the City, provided one such signature shall be manual. Such seal may be in the form of a facsimile of the City's seal and may be reproduced, imprinted or impressed on the Series 2015 Bond. The Series 2015 Bond shall then be delivered to the Paying Agent for authentication by it. In case any of the officers who shall have signed or attested the Series 2015 Bond shall cease to be such officer or officers of the City before the Series 2015 Bond so signed or attested shall have been authenticated or delivered by the Paying Agent or issued by the City, such Series 2015 Bond may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the City as though those who signed and attested the same had continued to be such officers of the City, and also the Series 2015 Bond may be signed and attested on behalf of the City by such persons as at the actual date of execution of such Series 2015 Bond shall be the proper officers of the City although at the

nominal date of such Series 2015 Bond any such person shall not have been such officer of the City.

Section 8. Registration and Transfer of Series 2015 Bond.

(a) Registration of Series 2015 Bond. The Paying Agent will keep or cause to be kept, at its Corporate Trust Office sufficient books for the registration and transfer of the Series 2015 Bond, which shall at all times be open to inspection during normal business hours by the City upon reasonable prior notice; and, upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such books, the Series 2015 Bond as hereinbefore provided.

(b) Transfer of Series 2015 Bond. The Series 2015 Bond may, in accordance with its terms, be transferred, upon the register required to be kept pursuant to the provisions of Section 8(a) hereof, by the person in whose name it is registered, in person or by his or her duly authorized attorney, upon surrender of such Series 2015 Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Paying Agent.

Whenever the Series 2015 Bond shall be surrendered for transfer, the City shall execute and the Paying Agent shall authenticate and deliver a new Series 2015 Bond or Bonds, of the same Series, tenor, maturity and interest rate and for a like aggregate principal amount. The Paying Agent shall require the bondholder requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer.

Section 9. Bond Payment Account and Costs of Issuance Account.

(a) The Paying Agent shall create two escrow accounts, one designated as the "Costs of Issuance Account" and one designated as the "Bond Payment Account." Each of such accounts shall be held by the Paying Agent separate and apart from other moneys of the City or the Paying Agent.

(b) The Costs of Issuance Account shall be funded by the City as provided in Section 13 hereof. Moneys in the Costs of Issuance Account shall be applied at the direction of the City to the payment of the costs of issuing the Series 2015 Bond. Pending such application, such moneys may be invested solely at the direction of the City. If no directions are provided by the Trustee, the funds shall be held uninvested. Any moneys remaining in the Costs of Issuance Account on April 30, 2015 shall be returned to the City for any lawful purpose.

(c) The Bond Payment Account will be funded by the City as provided in Section 10. Moneys in the Bond Payment Account will be held in trust for the security and payment of the Series 2015 Bond, and will be applied solely for the payment of principal and interest on the Series 2015 Bond as the same becomes due. Pending such application, such moneys may be invested solely at the direction of the City in Permitted Investments (as defined in the Indenture) which mature on or before the payment date. If no directions are provided by the Trustee, the funds shall be held uninvested.

Section 10. Pledge of Net Revenues; Payment of Series 2015 Bond

(a) The City hereby pledges the Net Revenues to secure payment of the principal of and interest on the Series 2015 Bond, which pledge is hereby made on a parity basis with the pledge of Net Revenues made by the City under the Indenture, and is subject to the provisions of the Indenture permitting the application of Net Revenues for the purposes and on the terms and conditions set forth therein.

(b) In order to provide for the payment of the Series 2015 Bond on a parity with the Indenture Bonds, the City agrees that, pursuant to Section 5.01(B) of the Indenture, on or before the third Business Day prior to each interest payment date or principal payment date on the Series 2015 Bond, it will transfer to the Paying Agent from Net Revenues on deposit with the City, an amount equal to the interest becoming due and payable on the Series 2015 Bond together with the principal coming due on such date, it being understood that such transfers shall be made on a parity with, and at the same as, such transfers with respect to the payment of the Indenture Bonds. The Paying Agent shall immediately deposit such Net Revenues into the Bond Payment Account, and shall use moneys in the Bond Payment Account solely to make payment of interest and principal on the 2015 Bond as the same become due in accordance with the terms of the Series 2015 Bond, such payments to be made in the manner described in Section 13.

(c) Any moneys remaining in the Bond Payment Account after payment of the Series 2015 Bond in full as provided herein shall be transferred to the City to be used for any lawful purpose of the City.

Section 11. Prepayment. The Series 2015 Bond shall not be subject to prepayment except as provided therein. The Series 2015 Bond shall be prepayable in whole, on any date on or after May 1, 2020, at a price of par plus accrued interest to the date of prepayment. The City shall give the Purchaser at least 30 days prior written notice of such prepayment.

Such notice shall be mailed, postage prepaid, to the Purchaser as provided in Section 18(e) setting forth the date fixed for prepayment. On the date so designated for prepayment, notice having been mailed in the manner and under the conditions hereinabove provided, the Series 2015 Bond shall become and be due and payable on such date, and, if sufficient moneys for payment of the prepayment price and the accrued interest are made available to the Purchaser for the payment thereof, interest on the Series 2015 Bond so prepaid shall cease to accrue, the Series 2015 Bond shall cease to be entitled to any benefit or security under this Bond Purchase Agreement, and the Purchaser shall have no rights in respect thereof except to receive payment of the prepayment price thereof and the accrued interest. Such notice may state that such prepayment shall be conditional upon the receipt by the Paying Agent on or prior to the date fixed for such redemption of moneys sufficient to pay the principal, premium, if any, and interest on the Series 2015 Bond and that if such moneys shall not have been so received said notice shall be of no force and effect and the Paying Agent shall not be required to prepay the Series 2015 Bond. In the event that such notice of prepayment contains such a condition and such moneys are not so received, the redemption shall not be made and the Paying Agent shall be within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

Section 12. Notation of Payments. The Purchaser shall permit the City, at any time during regular business hours, to make at such Purchaser's office an appropriate notation or

notations on its Bond of payments of principal thereon, if at least five days prior thereto the City shall have given written notice of its intention to do so and it shall not have received from the Purchaser a written confirmation that the requested notation or notations shall have been made by the Purchaser. In the event that the Series 2015 Bond shall be transferred by the Purchaser as permitted by Sections 6(d) and 8 hereof, the Purchaser will make or cause to be made notations thereon of all payments of principal with respect to which no prior notations have been made and of the date to which interest thereon has been paid.

Section 13. Disposition of Series 2015 Bond Proceeds. At or about the Closing Time the proceeds received from the sale of the Series 2015 Bond (together with \$1,970,548.34 of the City's legally available funds) shall be applied as follows:

(a) \$17,489,451.66 shall be transferred to the Trustee, which, together with \$1,970,548.34 on deposit with the Trustee in the Reserve Fund for the Series 2005A Bonds, represent an amount equal to the scheduled principal with respect to Series 2005A Bonds due on November 1, 2015, together with the redemption price of the Series 2005A Bonds to be redeemed on such date. Such amounts shall be used by the Trustee to pay or redeem the Series 2005A Bonds on November 1, 2015;

(b) \$1,800,000.00 shall be transferred to the Trustee, which represents an amount equal to the scheduled principal with respect to Series 2006A Bonds due on November 1, 2015, together with the redemption price of the Series 2005A Bonds to be redeemed on such date. Such amounts shall be used by the Trustee to pay or redeem the Series 2006A Bonds on November 1, 2015; and

(c) \$140,460.90 shall be transferred to the City and deposited in the Costs of Issuance Account.

Section 14. Paying Agent.

(a) Appointment; Duties, Immunities and Liabilities of Paying Agent.

(i) The Bank of New York Mellon Trust Company, N.A. is hereby appointed as paying agent, registrar and authentication agent under this Bond Purchase Agreement and hereby accepts the trust imposed upon it as Paying Agent hereunder and to perform all the functions and duties of the Paying Agent hereunder, subject to the terms and conditions set forth in this Bond Purchase Agreement. The Paying Agent shall perform such duties and only such duties as are specifically set forth in this Bond Purchase Agreement and no implied covenants shall be read into this Bond Purchase Agreement against the Paying Agent.

(ii) The City may not remove the Paying Agent unless the City at the same time removes the Trustee under the Indenture, in which event the successor trustee under the Indenture must become the successor Paying Agent hereunder.

(iii) The Paying Agent may at any time resign by giving written notice of such resignation to the City and the Purchaser by mail at the addresses shown on the registration books maintained by the Paying Agent, provided that the Paying Agent may not resign unless it resigns at the same time from its duties as trustee under the Indenture. Upon

receiving such notice of resignation, the City shall promptly appoint a successor Paying Agent and Trustee by an instrument in writing.

(iv) Any removal or resignation of the Paying Agent and appointment of a successor Paying Agent shall become effective upon acceptance of appointment by the successor Paying Agent. If no successor Paying Agent shall have been appointed and have accepted appointment within forty-five (45) days of giving notice of removal or notice of resignation as aforesaid, the resigning Paying Agent or the Purchaser may petition any court of competent jurisdiction for the appointment of a successor Paying Agent, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Paying Agent. Any successor Paying Agent appointed under this Bond Purchase Agreement, shall signify its acceptance of such appointment by executing and delivering to the City and to its predecessor Paying Agent a written acceptance thereof, and thereupon such successor Paying Agent, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Paying Agent, with like effect as if originally named Paying Agent herein; but, nevertheless at the Request of the City or the request of the successor Paying Agent, such predecessor Paying Agent shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Paying Agent all the right, title and interest of such predecessor Paying Agent in and to any property held by it under this Bond Purchase Agreement and shall pay over, transfer, assign and deliver to the successor Paying Agent any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Paying Agent, the City shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Paying Agent all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Paying Agent as provided in this subsection, the City shall give notice of the succession of such Paying Agent to the Purchaser at the address shown on the registration books maintained by the Paying Agent. If the City fails to mail such notice within fifteen (15) days after acceptance of appointment by the successor Paying Agent, the successor Paying Agent shall cause such notice to be mailed at the expense of the City.

(v) Any Paying Agent appointed under the provisions of this Section in succession to the Paying Agent shall be a trust company, national banking association or bank having the powers of a trust company having a corporate trust office in the State, having a combined capital and surplus of at least fifty million dollars (\$50,000,000) and subject to supervision or examination by federal or state authority. If such bank, national banking association or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Paying Agent shall cease to be eligible in accordance with the provisions of this subsection (v), the Paying Agent shall resign immediately in the manner and with the effect specified in this Section.

If, by reason of the judgment of any court, the Paying Agent or any successor Paying Agent is rendered unable to perform its duties hereunder, and if no successor Paying Agent be

then appointed, all such duties and all of the rights and powers of the Paying Agent hereunder shall be assumed by and vest in the Treasurer of the City in trust for the benefit of the bondholder.

(b) Merger or Consolidation. Any company into which the Paying Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Paying Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under subsection (a) of this Section 14, shall be the successor to such Paying Agent without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

(c) Liability of Paying Agent.

(i) The recitals of facts herein and in the Series 2015 Bond contained shall be taken as statements of the City, and the Paying Agent assumes no responsibility for the correctness of the same (other than the certificate of authentication of the Paying Agent on the Series 2015 Bond), and makes no representations as to the validity or sufficiency of this Bond Purchase Agreement or of the Series 2015 Bond, as to the sufficiency of the Net Revenues, or the priority of the lien of this Bond Purchase Agreement thereon, or as to the financial or technical feasibility of the Enterprise (as defined in the Indenture) and shall not incur any responsibility in respect of any such matter, other than in connection with the duties or obligations expressly herein or in the Bonds assigned to or imposed upon it. The Paying Agent shall, however, be responsible for its representations contained in its certificate of authentication on the Series 2015 Bond. The Paying Agent shall not be liable in connection with the performance of its duties hereunder, except for its own negligence, willful misconduct or breach of the express terms and conditions hereof. The Paying Agent may in good faith hold any form of indebtedness of the City, own, accept or negotiate any drafts, bills of exchange, acceptances or obligations of the City and make disbursements for the City and enter into any commercial or business arrangement therewith, without limitation.

(ii) The Paying Agent shall not be liable for any error of judgment made in good faith by a responsible officer unless it shall be proved that the Paying Agent was negligent in ascertaining the pertinent facts. The Paying Agent may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the Paying Agent shall not be answerable for the negligence or misconduct of any such attorney, agent, or receiver selected by it with due care.

(iii) The Paying Agent shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Purchaser.

(iv) The Paying Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Bond Purchase Agreement at the request, order or direction of the Series 2015 Bond holder pursuant to the provisions of this Bond Purchase Agreement, including, without limitation, the provisions relating to Events of Default, unless

such bondholder shall have offered to the Paying Agent security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby.

(v) No provision of this Bond Purchase Agreement shall require the Paying Agent to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder.

(vi) The Paying Agent shall not be deemed to have knowledge of and shall not be required to take any action with respect to, any Event of Default. Without limiting the generality of the foregoing, the Paying Agent shall not be required to ascertain, monitor or inquire as to the performance or observance by the City of the terms, conditions, covenants or agreements set forth herein or under the Indenture, except as expressly provided herein or in the Indenture.

(vii) No permissive power, right or remedy conferred upon the Paying Agent hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(viii) The Paying Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document but the Paying Agent, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Paying Agent shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the City, personally or by agent or attorney.

(1) The Paying Agent shall not be responsible for:

(A) the application or handling by the City of any Net Revenues or other moneys transferred to or pursuant to any Requisition or Request of the City in accordance with the terms and conditions of the Master Indenture;

(B) the application and handling by the City of any other fund or account designated to be held by the City under the Indenture or herein;

(C) any error or omission by the City in making any computation or giving any instruction pursuant to the insurance provisions of Sections 6.07 of the Indenture and the records and accounts provisions of Section 6.08 of the Indenture and may rely conclusively on any computations or instructions furnished to it by the City in connection with the requirements of Section 6.08 of the Indenture and the Tax Certificate; or

(D) the construction, operation or maintenance of the Enterprise by the City.

(ix) Whether or not therein expressly so provided, every provision of this Bond Purchase Agreement relating to the conduct or affecting the liability of or affording protection to the Paying Agent shall be subject to the provisions of this Section 14.

(x) The Paying Agent shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Series 2015 Bond.

(xi) The Paying Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Bond Purchase Agreement and delivered using Electronic Means ("Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Paying Agent, or another method or system specified by the Paying Agent as available for use in connection with its services hereunder); provided, however, that the City shall provide to the Paying Agent an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the City whenever a person is to be added or deleted from the listing. If the City elects to give the Paying Agent Instructions using Electronic Means and the Paying Agent in its discretion elects to act upon such Instructions, the Paying Agent's understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Paying Agent cannot determine the identity of the actual sender of such Instructions and that the Paying Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Paying Agent have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Paying Agent and that the City and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the City. The Paying Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Paying Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Paying Agent, including without limitation the risk of the Paying Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Paying Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the City; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Paying Agent immediately upon learning of any compromise or unauthorized use of the security.

(d) Right of Paying Agent to Rely on Documents. The Paying Agent shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Paying Agent may consult with counsel, including, without limitation, counsel of or to the City, with regard to legal questions, and the opinion of

such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance herewith unless it shall be proved that the Paying Agent was negligent in ascertaining the pertinent facts.

Whenever in the administration of the trusts imposed upon it by this Bond Purchase Agreement the Paying Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate of the City, and such Certificate shall be full warrant to the Paying Agent for any action taken or suffered in good faith under the provisions of this Bond Purchase Agreement in reliance upon such Certificate, but in its discretion the Paying Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable. The Paying Agent may also rely conclusively on any report or certification of any certified public accountant, investment banker, financial consultant, or other expert selected by the City or selected by the Paying Agent with due care in connection with matters required to be proven or ascertained in connection with its administration of the trusts created by the Indenture.

(e) Compensation and Indemnification of Paying Agent. The City shall cause to be paid to the Paying Agent from time to time reasonable compensation for all service rendered under this Bond Purchase Agreement, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under this Bond Purchase Agreement, subject to the provisions of Section 11.10 of the Indenture relating to moneys set aside for the payment of particular Indenture Bonds. The City further agrees to indemnify and save the Paying Agent, its officers, directors and employees harmless from and against any costs, claims, expenses or liabilities, including fees and expenses of its attorneys, which it may incur in the exercise and performance of its powers and duties hereunder, and which are not due to its negligence, misconduct or default. The Paying Agent's rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and final payment or defeasance of the Bonds. All indemnifications and releases from liability granted herein to the Paying Agent shall extend to the directors, officers, employees and agents of the Paying Agent.

Section 15. Liability of City Limited to Net Revenues. Notwithstanding anything in this Bond Purchase Agreement or in the Series 2015 Bond contained, the City shall not be required to advance any moneys derived from any source other than the Net Revenues and other assets pledged hereunder for any of the purposes in this Bond Purchase Agreement mentioned, whether for the payment of the principal or prepayment price of or interest on the Series 2015 Bond or for any other purpose of this Bond Purchase Agreement.

The Series 2015 Bond is a special, limited obligation of the City. The Series 2015 Bond shall not be deemed to constitute a debt or liability of the City, the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory provision, or a pledge of the faith and credit of the City, the State of California or of any political subdivision thereof, but shall be payable, except to the extent of certain amounts held hereunder pledged therefor, solely from Net Revenues. Neither the faith and credit nor the taxing power of the City,

the State of California or of any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Series 2015 Bond. The issuance of the Series 2015 Bond shall not directly or indirectly or contingently obligate the City, the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment.

Section 16. Amendments. Alterations and modifications of this Bond Purchase Agreement may be made only with the written consent of the City, the Purchaser and the Paying Agent.

Section 17. Limitation of Liability of City. No covenant, condition or agreement contained herein shall be deemed to be a covenant, agreement or obligation of a present or future member, trustee, officer, employee or agent of the City or the City in his or her individual capacity, and no officer of the City executing the Series 2015 Bond shall be liable personally on the Series 2015 Bond or be subject to any personal liability or accountability by reason of the issuance thereof or by virtue of the execution and delivery of this Bond Purchase Agreement. No trustee, officer, employee or agent of the City shall incur any personal liability with respect to any other action or failure to act pursuant to this Bond Purchase Agreement, provided such member, trustee, officer, employee or agent acts in good faith.

Section 18. Miscellaneous.

(a) The City agrees to pay (i) all Costs of Issuance; (ii) all taxes, if any, upon any documents or transactions pursuant to this Bond Purchase Agreement; (iii) all expenses incidental to all filings or recordings pursuant to this Bond Purchase Agreement and the Indenture; and (iv) all costs of collection (including reasonable counsel fees) in the event of default in the payment of the principal of or interest on the Series 2015 Bond or other charges payable under this Bond Purchase Agreement.

(b) This Bond Purchase Agreement shall be binding upon and inure to the benefit of the Purchaser, the City and the Paying Agent and their respective successors and assigns.

(c) Upon payment of the Series 2015 Bond, the City shall be relieved of all further obligations with respect to the Series 2015 Bond and this Bond Purchase Agreement. Upon payment, either at or before maturity, the Series 2015 Bond shall be cancelled and shall be delivered to the City when such payment or prepayment is made, at which time the Paying Agent shall destroy the Series 2015 Bond.

(d) Upon the happening and continuance of any Event of Default, the Purchaser, by written notice to the City, shall have the right to:

(1) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any officer or employee of the City, and to compel the City or any such officer or employee to perform and carry out its or his or her duties under the law and the agreements and covenants required to be performed by it or him or her contained in this Bond Purchase Agreement or in the Indenture;

(2) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the City; or

(3) by suit in equity upon the happening of an Event of Default to require the City and its officers and employees to account as the trustee of an express trust.

The Purchaser shall have no right to accelerate payment of the Series 2015 Bond.

(e) Any notice, demand, direction, request or other instrument authorized or required by this Bond Purchase Agreement to be given to or filed with the City, the Purchaser or the Paying Agent shall be deemed to have been sufficiently given or filed for all purposes of this Bond Purchase Agreement if mailed, by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to the City: City of Modesto  
1010 Tenth Street  
Modest, California 95354  
Attention: Director of Finance

If to the Purchaser: Capital One Public Funding, LLC  
275 Broadhollow Road  
Melville, New York 11747  
Attention: Jonathan A. Lewis, President

If to the Paying Agent: The Bank of New York Mellon Trust Company,  
N.A.  
400 South Hope Street, 4th Floor  
Los Angeles, CA 90071  
Attention: Corporate Trust Services

The City, the Purchaser and the Paying Agent may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. The Purchaser agrees to furnish copies of any documents received by it pursuant to this Bond Purchase Agreement to the City.

(f) Unless otherwise directed by the Purchaser in writing not less than 15 days prior to a payment date, all payments of principal and interest shall be made by wire transfer to the Purchaser to the following account:

Capital One Bank  
Rtg 065000090  
Beneficiary: JAMSAB Realty Corp./Capital One Public Funding  
AC # 3124063607  
Re: City of Modesto – Wastewater (must always be included in all payments to Capital One Public Funding, LLC)

(g) Except as herein otherwise expressly provided, nothing in this Bond Purchase Agreement expressed or implied is intended or shall be construed to confer upon any

person, firm or corporation other than the parties hereto any right, remedy or claim, legal or equitable, under or by reason of this Bond Purchase Agreement or any provision hereof, this Bond Purchase Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the parties hereto, and the holder from time to time of the Series 2015 Bond.

(h) The terms of this Bond Purchase Agreement shall survive following the execution and delivery of the Series 2015 Bond to the Purchaser against the purchase price therefor. Furthermore, the representations, warranties and covenants of the parties hereto shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the City or the Purchaser and shall survive execution, delivery and acceptance of, and payment for the Series 2015 Bond.

(i) In case any one or more of the provisions of this Bond Purchase Agreement or of the Series 2015 Bond shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Bond Purchase Agreement or of the Series 2015 Bond, but this Bond Purchase Agreement and the Series 2015 Bond shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Series 2015 Bond or in this Bond Purchase Agreement shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

(j) All notices provided to the Indenture Bond holders shall also be provided to the Purchaser.

(k) This Agreement shall be governed by and construed in accordance with the laws of the State.

(l) If the date for making payment, or the last date for performance of any act or the exercising of any right, as provided in this Bond Purchase Agreement or the Series 2015 Bond, shall be a legal holiday or a day on which banking institutions in the State are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions in the State are authorized by law to remain closed, with the same force and effect as if done on the nominal date provided in this Bond Purchase Agreement or the Series 2015 Bond, and no interest shall accrue for the period after such nominal date.

(m) Whenever the consent or approval of any party to this Bond Purchase Agreement is required by the terms of this Bond Purchase Agreement, the consent or approval of such party shall not be unreasonably withheld.

(n) This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

(o) Any headings preceding the text of the several sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and

shall not constitute a part of this Bond Purchase Agreement, and they shall not affect its meaning, construction or effect.

IN WITNESS WHEREOF, the parties hereto have caused this Bond Purchase Agreement to be executed all as of the date first above written.

CITY OF MODESTO

By: *Gloriette Genereux*  
Gloriette Genereux  
Director of Finance

CAPITAL ONE PUBLIC FUNDING, LLC

By: \_\_\_\_\_  
Authorized Officer

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

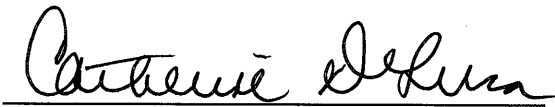
By: \_\_\_\_\_  
Authorized Officer

IN WITNESS WHEREOF, the parties hereto have caused this Bond Purchase Agreement to be executed all as of the date first above written.

CITY OF MODESTO

By: \_\_\_\_\_  
Gloriette Genereux  
Director of Finance

CAPITAL ONE PUBLIC FUNDING, LLC

By:   
Authorized Officer

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

By: \_\_\_\_\_  
Authorized Officer

IN WITNESS WHEREOF, the parties hereto have caused this Bond Purchase Agreement to be executed all as of the date first above written.


CITY OF MODESTO

By: \_\_\_\_\_  
Gloriette Genereux  
Director of Finance

CAPITAL ONE PUBLIC FUNDING, LLC

By: \_\_\_\_\_  
Authorized Officer

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

By:  \_\_\_\_\_  
Authorized Officer

**THIS BOND MAY ONLY BE SOLD OR TRANSFERRED IN WHOLE  
UPON SATISFACTION OF THE CONDITIONS  
SET FORTH IN THE BOND PURCHASE AGREEMENT**

No. R-1

\$19,429,912.56

Date of Issuance: October 30, 2015

United States of America  
State of California

City of Modesto, California  
Wastewater Revenue Refunding Bond  
Series 2015

The City of Modesto, California, a charter city and municipal corporation duly organized and existing under the laws of the State of California (the "City"), for value received, hereby promises to pay to CAPITAL ONE PUBLIC FUNDING, LLC, Melville, New York (the "Purchaser"), or its registered assigns or legal representative, in any coin or currency in the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, the principal sum of Nineteen Million Four Hundred Twenty-Nine Thousand Nine Hundred Twelve Dollars and Fifty-Six Cents (\$19,429,912.56), together with interest in like coin or currency on the unpaid principal from the date hereof until payment in full at the rate per annum set forth below. Following the transfers by the City to the Paying Agent pursuant to Section 10 of the Bond Purchase Agreement, all payments of interest and principal on this Bond shall be made by the Paying Agent to the Purchaser by wire transfer in accordance with the Bond Purchase Agreement (defined below); provided, however, that the City's obligations hereunder to pay principal and interest, and its right to prepay principal as herein provided, shall be satisfied upon the receipt by the Purchaser of payments from the Paying Agent pursuant to the Bond Purchase Agreement. Upon final payment, this Bond shall be surrendered to the City.

The principal amount of this Bond shall be payable in annual installments on each November 1, commencing November 1, 2016, and ending November 1, 2024, as set forth in the attached amortization schedule, subject to the right of prepayment. The interest accruing on this Bond shall be payable semi-annually on each May 1 and November 1, commencing May 1, 2016. This Bond shall bear interest at a rate equal to 2.42% per annum, accruing from the date of issuance. Interest shall be computed on the basis of a year consisting of twelve 30-day months.

The City may exercise its option to prepay the Bond, in whole, on any date on or after May 1, 2020, at a prepayment price equal to the principal amount of this Bond to be prepaid, plus accrued interest to the prepayment date, without premium.

Payment of or on account of the principal of and interest on this Bond shall be made by the Paying Agent to the Purchaser as provided in Section 18(f) of the Bond Purchase Agreement unless otherwise instructed by the Purchaser or unless the Purchaser has assigned all rights under the Bond Purchase Agreement.

The City has entered into a Bond Purchase Agreement, dated as of October 30, 2015 (the "Bond Purchase Agreement"), with Capital One Public Funding, LLC, as the purchaser of this bond (the "Purchaser") and The Bank of New York Mellon Trust Company, N.A., as paying agent (the "Paying Agent"), providing for the issuance and sale by the City, and the purchase by the Purchaser, of this Bond upon the terms and conditions therein provided. Reference is hereby made to the Bond Purchase Agreement for the provisions, among others, with respect to the custody and application of the proceeds of this Bond, the nature and extent of the security, the terms and conditions under which this Bond is issued, the rights, duties and obligations of the City and of the Purchaser and the rights of the holders of this Bond, and, by the acceptance of this Bond, the holder hereof assents to all of the provisions of the Bond Purchase Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Bond Purchase Agreement.

Under the terms of the Bond Purchase Agreement, the City shall make payments at the times required and in amounts sufficient to pay the principal of and interest on this Bond as the same shall become due and payable. The Paying Agent shall make payments to the Purchaser for the account of the City.

This Bond is issued and the Bond Purchase Agreement was authorized, executed and delivered under and issued pursuant to Section 200 of the Charter of the City of Modesto and the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the "Bond Law") and the Bond Purchase Agreement. This Bond is issued for the purpose of refunding certain of the City's Wastewater Revenue Bonds issued under the Indenture.

This Bond is a special, limited obligation of the City. This Bond shall not be deemed to constitute a debt or liability of the City, the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory provision, or a pledge of the faith and credit of the City, the State of California or of any political subdivision thereof, but shall be payable, except to the extent of certain amounts held under the Bond Purchase Agreement pledged therefor, solely from Net Revenues (as defined in the Indenture hereinafter mentioned). Neither the faith and credit nor the taxing power of the City, the State of California or of any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or the interest on this Bond. The issuance of this Bond shall not directly or indirectly or contingently obligate the City, the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment.

The Bond constitutes Parity Debt under the Indenture.

Modifications or alterations of the Bond Purchase Agreement, or of any agreement supplemental thereto, may be made by the City, the Purchaser and the Paying Agent only to the extent and in the circumstances permitted thereunder.

All acts, conditions and things required by the Constitution and laws of the State of California, including the City Charter, and the rules and regulations of the City to happen, exist and be performed precedent to and in connection with the issuance of this Bond and the execution and delivery of the Bond Purchase Agreement have happened, exist and have been performed as so required.

**EXHIBIT A TO BOND**  
**AMORTIZATION SCHEDULE**

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>	<u>Notation of Payment</u>
05/01/2016		\$236,408.07	\$236,408.07	
11/01/2016	\$2,350,026.76	235,101.95	2,585,128.71	
05/01/2017		206,666.62	206,666.62	
11/01/2017	2,394,504.33	206,666.62	2,601,170.95	
05/01/2018		177,693.11	177,693.11	
11/01/2018	2,459,095.38	177,693.11	2,636,788.49	
05/01/2019		147,938.06	147,938.06	
11/01/2019	2,521,327.25	147,938.06	2,669,265.31	
05/01/2020		117,430.00	117,430.00	
11/01/2020	2,577,643.55	117,430.00	2,695,073.55	
05/01/2021		86,240.51	86,240.51	
11/01/2021	2,644,114.31	86,240.51	2,730,354.82	
05/01/2022		54,246.73	54,246.73	
11/01/2022	2,708,638.88	54,246.73	2,762,885.61	
05/01/2023		21,472.20	21,472.20	
11/01/2023	876,794.95	21,472.20	898,267.15	
05/01/2024		10,862.98	10,862.98	
11/01/2024	897,767.15	10,862.98	908,630.13	
<b>TOTAL</b>	<b>\$19,429,912.56</b>	<b>\$2,116,610.44</b>	<b>\$21,546,523.00</b>	

**ANNEX I**

**FORM OF OPINION OF CITY ATTORNEY**

October 30, 2015

City of Modesto  
Modesto, California

Capital One Public Funding, LLC  
Melville, New York

**Opinion of City Attorney**

with reference to

\$19,429,912.56  
City of Modesto, California  
Wastewater Revenue Refunding Bond  
Series 2015

Ladies and Gentlemen:

I am the City Attorney of the City of Modesto (the "City"). In such capacity, in connection with the issuance of the above-captioned bond (the "Bond") by the City, I have examined the original, certified copies, or copies otherwise identified to my satisfaction as being true copies of such resolutions, documents, certificates, and records as I have deemed relevant and necessary (except as I have specifically limited the scope of my investigation herein) as the basis for the opinions set forth herein relying on such examination and pertinent law and subject to the limitations and qualifications hereinafter set forth. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bond Purchase Agreement, dated as of October 30, 2015 (the "Bond Purchase Agreement"), among the City, Capital One Public Funding, LLC (the "Purchaser") and The Bank of New York Mellon Trust Company, N.A. (the "Paying Agent"), relating to the Series 2015 Bond. Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Bond Purchase Agreement.

Relying on such examination and pertinent law and subject to the limitations and qualifications hereinafter set forth, I am of the opinion that:

1. The City is a charter city and municipal corporation, duly organized and validly existing under the State of California;

2. Resolution No. 2015-411 of the City Council of the City relating to the Series 2015 Bond, was duly adopted at a meeting of the City Council held on October 27, 2015, which meeting was called and held pursuant to law, with all public notice required by law and at which a quorum was present and acting throughout, and such Resolution has not been amended since its date of adoption and is now in full force and effect; and

3. To the best of my knowledge, there is no action, suit or proceeding before or by any court, public board or body pending or threatened wherein an unfavorable decision, ruling or finding would (a) affect the creation, organization, existence or powers of the City or the titles of its officers to their respective offices, (b) in any way question or affect the validity or enforceability of the Bond Purchase Agreement or the Indenture, or (c) find illegal, invalid or unenforceable, or materially impair the City's ability to perform under, such agreements or the transactions contemplated thereby, or any other agreement or instrument related to the issuance of the Series 2015 Bond to which the City is a party.

Respectfully submitted,

**ANNEX II**

**FORM OF APPROVING OPINION OF BOND COUNSEL**

October 30, 2015

City of Modesto  
Modesto, California

Capital One Public Funding, LLC  
Melville, New York

The Bank of New York Mellon Trust Company, N.A.  
Los Angeles, California

\$19,429,912.56  
City of Modesto, California  
Wastewater Revenue Refunding Bond  
Series 2015

Ladies and Gentlemen:

In our capacity as bond counsel to the City of Modesto, California, a charter city and municipal corporation existing under the laws of the State of California (the "City"), we have examined (i) a record of proceedings relating to the issuance of the above-captioned bond (the "Bond") of the City, (ii) the Bond Purchase Agreement, dated as of October 30, 2015 (the "Bond Purchase Agreement"), among the City of Modesto, California (the "City"), Capital One Public Funding, LLC (the "Purchaser"), and The Bank of New York Mellon Trust Company, N.A., as paying agent (the "Paying Agent"), (iii) the Wastewater Revenue Bond Indenture, dated as of April 1, 2005 (the "Master Indenture"), between the City and The Bank of New York Trust Company, N.A., successor trustee (the "Trustee") to U.S. Bank National Association, as supplemented by a First Supplemental Indenture, dated as of April 1, 2005 (the "First Supplemental Indenture"), a Second Supplemental Indenture, dated as of April 1, 2005 (the "Second Supplemental Indenture"), and a Third Supplemental Indenture, dated as of December 1, 2006 (the "Third Supplemental Indenture," and together with the Master Indenture, the First Supplemental Indenture and the Second Supplemental Indenture, the "Indenture"), each by and between the City and the Trustee, (iv) the Project Finance Agreement, dated as of August 26, 2011, as amended on October 4, 2011 and May 11, 2012 (the "Project Finance Agreement"), by and between by and between the State Water Resources Control Board, an administrative and regulatory agency of the State of California and the City; (v) the Tax Certificate and Agreement executed and delivered by the City in connection with the issuance of the Series 2015 Bond (the "Tax Agreement"), (vi) resolutions of the City, and (vii) such other documents, certificates,

opinions and matters of law as we have deemed necessary to enable us to render the opinions expressed herein. As to questions of fact material to this opinion, we have relied upon such certificates and documents without undertaking to verify the same by independent investigation. All capitalized terms used but not defined herein have the meanings ascribed to them in the Bond Purchase Agreement.

The Series 2015 Bond is issued under and pursuant to Section 200 of the Charter of the City of Modesto and the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the "Bond Law"). The Series 2015 Bond is issued to provide funds to finance the 2015 Projects, to current refund all of the City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005A and a portion of the City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2006A.

We are of the opinion that, under existing law:

1. The Bond Purchase Agreement has been duly and lawfully authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by the Purchaser, is in full force and effect in accordance with its terms and is valid and binding upon the City and enforceable in accordance with its terms, and no other authorization for the Bond Purchase Agreement is required. The Bond Purchase Agreement creates the valid pledge which it purports to create of the Net Revenues for the purposes and on the terms and conditions set forth in the Bond Purchase Agreement.

2. The City is duly authorized and entitled to issue the Series 2015 Bond, and the Series 2015 Bond has been duly and validly authorized and issued by the City in accordance with the Constitution and laws of the State of California (the "State"), including the Charter and the Bond Law, the Indenture and the Project Finance Agreement, and in accordance with the Bond Purchase Agreement. The Series 2015 Bond constitutes the valid and binding special, limited obligation of the City as provided in the Bond Purchase Agreement, is enforceable in accordance with its terms and the terms of the Bond Purchase Agreement and is entitled to the benefits of the Bond Law and the Bond Purchase Agreement.

3. The Series 2015 Bond is not a debt, a liability or an obligation of the City, the State, or any subdivision of the State, and none of the City, the State, nor any other subdivision thereof shall be liable thereon, nor in any event shall the Series 2015 Bond be payable out of any funds or properties of the City other than the Net Revenues. None of the City, said County, said State, or any other public agency or instrumentality of the State, or the City shall be obligated to pay the Series 2015 Bond or the interest thereon except as provided in the Series 2015 Bond, and neither the faith and credit nor the taxing power of the State, the County, the City, any public agency or instrumentality of the State, or any member of the City, is pledged to the payment of the principal of or the interest on the Series 2015 Bond. The City has no taxing power.

4. The Series 2015 Bond constitutes “parity debt” under the Indenture and accordingly is payable from Net Revenues on a parity with Bonds issued under the Indenture and the obligations of the City under the Project Finance Agreement.

5. Assuming continuing compliance by the City with certain covenants in the Bond Purchase Agreement, the Tax Agreement and other documents pertaining to the Series 2015 Bond and requirements of the Internal Revenue Code of 1986, as amended (the “Code”), regarding the use, expenditure and investment of the proceeds of the Series 2015 Bond and the timely payment of certain investment earnings to the United States, interest on the Series 2015 Bond is not includable in gross income for federal income tax purposes. Failure to comply with such covenants and requirements may cause interest on the Series 2015 Bond to be included in federal gross income retroactive to the date of issuance of the Series 2015 Bond.

6. Interest on the Series 2015 Bond is not treated as an item of tax preference in calculating the federal alternative minimum taxable income of individuals and corporations. Interest on the Series 2015 Bond, however, is included as an adjustment in the calculation of federal corporate alternative minimum taxable income and may therefore affect a corporation’s alternative minimum tax liability.

7. Interest on the Series 2015 Bond is exempt from personal income taxes imposed by the State of California.

The Code contains other provisions that could result in tax consequences as a result of the ownership of, or receipt of interest on, the Series 2015 Bond, as to which we express no opinion. Further, certain requirements and procedures contained or referred to in the Bond Purchase Agreement, the Indenture, the Tax Agreement or other documents pertaining to the Series 2015 Bond may be changed, and certain actions may be taken or not taken, under the circumstances and subject to the terms and conditions set forth in such documents with the approval of counsel nationally recognized in the area of state and local obligations. No opinion is expressed herein as to the effect on the exclusion from gross income of interest on the Series 2015 Bond for federal income tax purposes of any change to the aforementioned requirements and procedures or of any action taken or not taken after the date of this opinion without our approval. Other than as described herein, we have not addressed and we are not opining on the tax consequences to any person of the investment in, or the accrual of or receipt of interest on, the Series 2015 Bond.

With respect to the opinions expressed herein, the rights of the owners of the Series 2015 Bond and the enforceability thereof are subject to bankruptcy, insolvency, reorganization, arrangement, moratorium and other laws affecting the enforcement of creditors’ rights, to the application of equitable principles (regardless of whether such enforceability is considered in equity or at law), to the exercise of judicial discretion in appropriate cases, and to the limitations on legal remedies against charter cities in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver provisions contained in the foregoing documents. We do not express any opinion with respect to the quality of title to, or interests in, any of the real or personal property described in or subject

City of Modesto  
Capital One Public Funding, LLC  
October 30, 2015  
Page 4

to the lien of the Indenture or with respect to the accuracy or sufficiency of the description of any such property contained therein and in the Bond Purchase Agreement.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of any such actions or events.

Respectfully submitted,

**THIS BOND MAY ONLY BE SOLD OR TRANSFERRED IN WHOLE  
UPON SATISFACTION OF THE CONDITIONS  
SET FORTH IN THE BOND PURCHASE AGREEMENT**

No. R-1

\$19,429,912.56

Date of Issuance: October 30, 2015

United States of America  
State of California

City of Modesto, California  
Wastewater Revenue Refunding Bond  
Series 2015

The City of Modesto, California, a charter city and municipality duly organized and existing under the laws of the State of California (the "City"), for value received, hereby promises to pay to CAPITAL ONE PUBLIC FUNDING, LLC, Melville, New York (the "Purchaser"), or its registered assigns or legal representatives in any coin or currency in the United States of America which on the date of payment thereof legal tender for the payment of public and private debts, the principal sum of Nineteen Million Four Hundred Twenty-Nine Thousand Nine Hundred Twelve Dollars and Fifty Six Cents (\$19,429,912.56), together with interest in like coin or currency on the unpaid principal from the date hereof until payment in full at the rate per annum set forth below. Following the transfers by the City to the Paying Agent pursuant to Section 10 of the Bond Purchase Agreement, all payments of interest and principal on this Bond shall be made by the Paying Agent to the Purchaser by wire transfer in accordance with the Bond Purchase Agreement (defined below); provided, however, that the City's obligations hereunder to pay principal and interest, and its right to prepay principal as herein provided, shall be satisfied upon the receipt by the Purchaser of payments from the Paying Agent pursuant to the Bond Purchase Agreement. Upon final payment, this Bond shall be surrendered to the City.

The principal amount of this Bond shall be payable in annual installments on each November 1, commencing November 1, 2016, and ending November 1, 2024, as set forth in the attached amortization schedule, subject to the right of prepayment. The interest accruing on this Bond shall be payable semi-annually on each May 1 and November 1, commencing May 1, 2016. This Bond shall bear interest at a rate equal to 2.42% per annum, accruing from the date of issuance. Interest shall be computed on the basis of a year consisting of twelve 30-day months.

The City may exercise its option to prepay the Bond, in whole, on any date on or after May 1, 2020, at a prepayment price equal to the principal amount of this Bond to be prepaid, plus accrued interest to the prepayment date, without premium.

Payment of or on account of the principal of and interest on this Bond shall be made by the Paying Agent to the Purchaser as provided in Section 18(f) of the Bond Purchase Agreement

unless otherwise instructed by the Purchaser or unless the Purchaser has assigned all rights under the Bond Purchase Agreement.

The City has entered into a Bond Purchase Agreement, dated as of October 30, 2015 (the "Bond Purchase Agreement"), with Capital One Public Funding, LLC, as the purchaser of this bond (the "Purchaser") and The Bank of New York Mellon Trust Company, N.A., as paying agent (the "Paying Agent"), providing for the issuance and sale by the City, and the purchase by the Purchaser, of this Bond upon the terms and conditions therein provided. Reference is hereby made to the Bond Purchase Agreement for the provisions, among others, with respect to the custody and application of the proceeds of this Bond, the nature and extent of the security, the terms and conditions under which this Bond is issued, the rights, duties and obligations of the City and of the Purchaser and the rights of the holders of this Bond, and, by the acceptance of this Bond, the holder hereof assents to all of the provisions of the Bond Purchase Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Bond Purchase Agreement.

Under the terms of the Bond Purchase Agreement, the City shall make payments at the times required and in amounts sufficient to pay the principal of and interest on this Bond as the same shall become due and payable. The Paying Agent shall make payments to the Purchaser for the account of the City.

This Bond is issued and the Bond Purchase Agreement was authorized, executed and delivered under and issued pursuant to Section 200 of the Charter of the City of Modesto and the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the "Bond Law") and the Bond Purchase Agreement. This Bond is issued for the purpose of refunding certain of the City's Wastewater Revenue Bonds issued under the Indenture.

This Bond is a special limited obligation of the City. This Bond shall not be deemed to constitute a debt or liability of the City, the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory provision, or a pledge of the faith and credit of the City, the State of California or of any political subdivision thereof, but shall be payable, except to the extent of certain amounts held under the Bond Purchase Agreement pledged therefor, solely from Net Revenues (as defined in the Indenture hereinafter mentioned). Neither the faith and credit nor the taxing power of the City, the State of California or of any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or the interest on this Bond. The issuance of this Bond shall not directly or indirectly or contingently obligate the City, the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment.

The Bond constitutes Parity Debt under the Indenture.

Modifications or alterations of the Bond Purchase Agreement, or of any agreement supplemental thereto, may be made by the City, the Purchaser and the Paying Agent only to the extent and in the circumstances permitted thereunder.

All acts, conditions and things required by the Constitution and laws of the State of California, including the City Charter, and the rules and regulations of the City to happen, exist and be performed precedent to and in connection with the issuance of this Bond and the execution and delivery of the Bond Purchase Agreement have happened, exist and have been performed as so required.

**SPECIMEN**

IN WITNESS WHEREOF, the City of Modesto, California, has caused this Bond to be signed by the Director of Finance and the City Manager, and its corporate seal to be impressed hereon, all as of the date of the delivery thereof and payment therefor.

CITY OF MODESTO, CALIFORNIA

By: *Murielle Genereux*  
Director of Finance

By: *James [Signature]*  
City Manager

[SEAL]

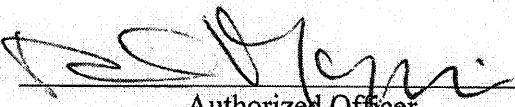
ATTEST: *Stephanie Lopez*  
STEPHANIE LOPEZ, City Clerk

**SPECIMEN**

This Bond has been authenticated and registered on the date set forth below.

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

Dated: October 30, 2015

By:   
Authorized Officer

**SPECIMEN**

**EXHIBIT A TO BOND  
AMORTIZATION SCHEDULE**

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>	<u>Notation of Payment</u>
05/01/2016		\$236,408.07	\$236,408.07	
11/01/2016	\$2,350,026.76	235,101.95	2,585,128.71	
05/01/2017		206,666.62	206,666.62	
11/01/2017	2,394,504.33	206,666.62	2,601,170.95	
05/01/2018		177,693.11	177,693.11	
11/01/2018	2,459,095.38	177,693.11	2,636,788.49	
05/01/2019		147,938.06	147,938.06	
11/01/2019	2,521,327.25	147,938.06	2,669,265.31	
05/01/2020		117,430.00	117,430.00	
11/01/2020	2,577,643.55	117,430.00	2,695,073.55	
05/01/2021		86,240.51	86,240.51	
11/01/2021	2,644,114.31	86,240.51	2,730,354.82	
05/01/2022		54,246.73	54,246.73	
11/01/2022	2,708,638.88	54,246.73	2,762,885.61	
05/01/2023		21,472.20	21,472.20	
11/01/2023	876,794.95	21,472.20	898,267.15	
05/01/2024		10,862.98	10,862.98	
11/01/2024	897,767.15	10,862.98	908,630.13	
<b>TOTAL</b>	<b>\$19,429,912.56</b>	<b>\$1,116,611.44</b>	<b>\$21,546,523.00</b>	

SPECIMEN

\$36,495,000  
City of Modesto, California  
Wastewater Revenue Refunding Bonds  
Series 2005A

\$16,535,000  
City of Modesto, California  
Wastewater Revenue Bonds  
Series 2006A

October 30, 2015

CERTIFIED COPY OF INDENTURE AND FIRST, SECOND, AND THIRD  
SUPPLEMENTAL INDENTURES

I, Gloriette Genereux, Director of Finance of the City of Modesto, California (the "City"), in connection with the City of Modesto, California Wastewater Revenue Refunding Bonds Series 2005A (the "2005A Bonds"), DO HEREBY CERTIFY that attached hereto are true and correct copies of (i) the Wastewater Revenue Bond Indenture, dated as of April 1, 2005, (ii) the First Supplemental Indenture, dated as of April 1, 2005, (iii) the Second Supplemental Indenture, dated as of April 1, 2005, and (iv) the Third Supplemental Indenture, dated as of December 1, 2006, each between the City and The Bank of New York Mellon Trust Company, N.A., as successor trustee, relating to the above-captioned Bonds.

CITY OF MODESTO, CALIFORNIA

By: *Gloriette Genereux*  
Gloriette Genereux  
Director of Finance

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WASTEWATER REVENUE BOND INDENTURE

by and between the

CITY OF MODESTO, CALIFORNIA

and

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

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Dated as of April 1, 2005

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## WASTEWATER REVENUE BOND INDENTURE

This WASTEWATER REVENUE BOND INDENTURE, dated as of April 1, 2005 (the "Indenture"), by and between the CITY OF MODESTO, CALIFORNIA (the "City"), a municipal corporation and chartered city duly organized and existing under the Constitution and laws of the State of California, and U.S. BANK NATIONAL ASSOCIATION, as trustee (the "Trustee");

### WITNESSETH:

WHEREAS, the City of Modesto is a charter city and a municipal corporation organized and existing under the laws of the State of California (the "City"); and

WHEREAS, pursuant to Section 200 of the Charter of the City of Modesto and the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the "Bond Law"), the City is authorized to issue revenue bonds to finance the acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation of the wastewater treatment facilities of the City (the "Enterprise") or for the purpose of refunding bonds issued for such purposes; and

WHEREAS, in accordance with the Bond Law, and pursuant to Resolution No. 87-1242 adopted November 24, 1987 and an Indenture of Trust, dated as of December 1, 1987 (the "Prior Indenture"), the City has previously issued its Wastewater Treatment Facility Refunding Revenue Bonds, Series 1987 (the "Series 1987 Bonds") in an aggregate principal amount of \$11,785,000 to provide funds to advance refund certain outstanding wastewater revenue bonds; and

WHEREAS, in accordance with the Bond Law, and pursuant to Resolution No. 93-467 adopted August 10, 1993 and the Prior Indenture, as amended and supplemented by a First Supplemental Indenture, dated as of September 1, 1993 (the "First Supplemental Indenture"), the City has previously issued its Wastewater Revenue Bonds, Series 1993 (the "Series 1993 Bonds") in an aggregate principal amount of \$8,555,000 to provide funds for the acquisition and construction of improvements to the Enterprise; and

WHEREAS, in accordance with the Bond Law, and pursuant to Resolution No. 96-206 adopted April 23, 1996 and the Prior Indenture, as previously amended and supplemented and as amended and supplemented by a Second Supplemental Indenture, dated as of August 1, 1996 (the "Second Supplemental Indenture"), the City has previously issued its Wastewater Treatment Facility Refunding Revenue Bonds, Series 1996 (the "Series 1996 Bonds") in an aggregate principal amount of \$8,695,000 to provide funds to current refund the Series 1987 Bonds; and

WHEREAS, in accordance with the Bond Law, and pursuant to Resolution No. 97-182 adopted April 8, 1997 and the Prior Indenture, as previously amended and supplemented and as amended and supplemented by a Third Supplemental Indenture, dated as of April 1, 1997 (the "Third Supplemental Indenture"), the City has previously issued its Wastewater Treatment Facility Revenue Bonds, Series 1997 (the "Series 1997 Bonds") in an aggregate principal amount of \$32,400,000 to finance the acquisition and construction of improvements to the Enterprise;

WHEREAS, the City has determined that it is desirable and necessary and in the best interest of the City to refund all of the outstanding Series 1993 Bonds, Series 1996 Bonds and Series 1997 Bonds and to enter into this Indenture in order to provide for the authentication and delivery of wastewater revenue bonds (the "Bonds") hereafter, to establish and declare the terms and conditions upon which the Bonds shall be issued and secured and to secure the payment of the principal thereof and premium (if any) and interest thereon;

WHEREAS, the execution and delivery of this Indenture has in all respects been duly and validly authorized by resolutions duly passed and approved by the City; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and the entering into of this Indenture do exist, have happened and have been performed in due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Indenture;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of, premium, if any, and the interest on all Bonds at any time issued, authenticated and delivered hereunder and to provide the terms and conditions under which all property, rights and interests hereby assigned and pledged are to be dealt with and disposed of, and to secure the performance and observance of the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes hereinafter expressed, and in consideration of the premises and of the material covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable consideration, the receipt of which is hereby acknowledged, the City does hereby agree and covenant with the Trustee for the benefit of the respective Owners, from time to time, of the Bonds, as follows:

## ARTICLE I

### EQUALITY OF SECURITY; DEFINITIONS; CONTENT OF CERTIFICATES AND OPINIONS

SECTION 1.01. Equality of Security. In consideration of the acceptance of the Bonds by the Owners thereof from time to time, this Indenture shall be deemed to be and shall constitute a contract between the City, the Trustee and the Owners from time to time of the Bonds and the covenants and agreements herein set forth to be performed by or on behalf of the City or the Trustee shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds, without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reasons of the series, time of issue, sale or negotiation thereof or for any cause whatsoever, except as expressly provided therein or herein. Nothing herein shall prevent additional security being provided to particular Bonds or the creation of a separate bond reserve fund therefor under any Supplemental Indenture.

SECTION 1.02. Definitions. The terms defined in this Section shall, for all purposes of this Indenture and of any Supplemental Indenture and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

Accreted Value

“Accreted Value” means, with respect to any Capital Appreciation Indebtedness, the principal amount thereof plus the interest accrued thereon, compounded at the interest rate thereon on each date as specified therein.

Annual Debt Service

“Annual Debt Service” means, for any Fiscal Year, the aggregate amount of principal and interest on all Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

Average Annual Debt Service

“Average Annual Debt Service” means, as of any date of calculation, an amount equal to (i) the Annual Debt Service remaining to be paid on all Bonds and Parity Debt on the date of calculation, divided by (ii) the number of Fiscal Years (or partial years) commencing with the Fiscal Year of the date of calculation to and including the Fiscal Year which includes the first date on which none of such Bonds or Parity Debt remains Outstanding. Such interest and principal shall be calculated on the assumption that no Bonds or Parity Debt at the date of calculation shall cease to be Outstanding except by reason of the payment when due of each principal installment (including mandatory sinking account payments).

Balloon Indebtedness

“Balloon Indebtedness” means any Series of Bonds or Parity Debt 50% or more of the principal of which matures or is payable on the same date and which is not required by the instrument pursuant to which such Bonds or Parity Debt were issued to be amortized by payment or redemption prior to such date.

Bond Law

“Bond Law” means the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code, as now in effect or as hereafter amended.

Bond Obligation

“Bond Obligation” means, as of any given date of calculation, (1) with respect to any Current Interest Indebtedness, the principal amount thereof, and (2) with respect to any Capital Appreciation Indebtedness, the Accreted Value thereof.

Bonds; Serial Bonds; Term Bonds

“Bonds” means the City of Modesto, California Wastewater Revenue Bonds authorized by, and at any time Outstanding pursuant to, this Indenture.

“Serial Bonds” means Bonds, maturing in specified years, for which no mandatory sinking fund payments are provided.

“Term Bonds” means Bonds payable at or before their specified maturity date or dates from mandatory sinking fund payments established for that purpose and calculated to retire such Bonds on or before their specified maturity date or dates.

Business Day

“Business Day” means any day other than (1) a Saturday, Sunday, or a day on which banking institutions in the State or the State of New York are authorized or obligated by law or executive order to be closed, and (2) for purposes of payments and other actions relating to Bonds secured by a letter of credit, a day upon which commercial banks in the city in which is located the office of the issuing bank at which demands for payment under the letter of credit are to be presented are authorized or obligated by law or executive order to be closed.

Capital Appreciation Indebtedness

“Capital Appreciation Indebtedness” means Bonds and Parity Debt on which interest is compounded and paid less frequently than annually.

Certificate, Statement, Request, Requisition or Order of the City

“Certificate,” “Statement,” “Request,” “Requisition” or “Order” of the City mean, respectively, a written certificate, statement, request, requisition or order signed in the name of the City by its City Manager, Finance Director or any other person authorized by the City Manager or Finance Director to execute such instruments. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument. If and to the extent required by Section 1.03 hereof, certificates and opinions shall include the statements provided for in Section 1.03 hereof.

Charter

“Charter” means the City Charter of the City, as amended from time to time.

City

“City” means the City of Modesto, California.

City Council

“City Council” means the City Council of the City or any other legislative body of the City hereafter provided for pursuant to law.

### Code

“Code” means the Internal Revenue Code of 1986, and the regulations issued thereunder, as the same may be amended from time to time, and any successor provisions of law. Reference to a particular section of the Code shall be deemed to be a reference to any successor to any such Section.

### Continuing Disclosure Agreement

“Continuing Disclosure Agreement” means any Continuing Disclosure Agreement executed and delivered by the City relating to any Series of Bonds.

### Corporate Trust Office

“Corporate Trust Office” or “corporate trust office” means the corporate trust office of the Trustee at One California Street, Suite 2550, San Francisco, California 94111, Attention: Corporate Trust Services, or such other or additional offices as may be designated by the Trustee.

### Costs of Issuance

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City and related to the authorization, execution, sale and delivery of the Bonds, including but not limited to advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, travel expenses and costs relating to rating agency meetings and other meetings concerning the Bonds, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of consultants and professionals, financial advisor fees and expenses, rating agency fees, fees and charges for preparation, execution, transportation and safekeeping of Bonds, surety, insurance and credit enhancement costs, and any other cost, charge or fee in connection with the delivery of Bonds.

### Current Interest Indebtedness

“Current Interest Indebtedness” means Bonds and Parity Debt on which interest is paid at least annually.

### Debt Service

“Debt Service” means, during any period of computation, the amount of principal and interest becoming due and payable on all Bonds and Parity Debt for such period, determined by totaling the following amounts:

- (a) The Bond Obligation of all Outstanding Serial Bonds and all Parity Debt coming due and payable by their terms in such period;
- (b) The minimum Bond Obligation of all Outstanding Term Bonds and all Parity Debt scheduled to be redeemed by operation of mandatory sinking fund deposits in such period, together with any premium thereon; and

(c) The interest which would be due during such period on the aggregate principal amount of Bonds and Parity Debt which would be Outstanding in such period if the Bonds or Parity Debt are retired as scheduled, but deducting and excluding from such aggregate amount the amount of Bonds or Parity Debt no longer Outstanding;

provided, that for the purposes of determining compliance with Sections 3.01(d) and 6.09 and the amount of the Reserve Fund Requirement, the following provisions apply:

(i) Generally. Except as otherwise provided in subparagraph (ii) below with respect to Variable Interest Rate Indebtedness, in subparagraph (iii) below with respect to Bonds or Parity Debt with respect to which a Public Finance Contract is in force, and in subparagraph (iv) below with respect to Balloon Indebtedness, interest on any Bond or Parity Debt shall be calculated based on the actual amount of interest that is payable under such Bond or Parity Debt;

(ii) Interest on Variable Interest Rate Indebtedness. Interest deemed to be payable on any Variable Interest Rate Indebtedness for periods when the actual interest rate can be determined shall be the actual Variable Interest Rates and for periods when the actual interest rate cannot yet be determined shall be calculated on the assumption that the interest rate on such Variable Interest Rate Indebtedness would be equal to (a) the average rate that accrued on such Variable Interest Rate Indebtedness over the preceding twelve (12) months, or (b) if the Variable Interest Rate Indebtedness has not been accruing interest at a variable rate for twelve (12) months, the average interest rate that accrued on any outstanding Variable Interest Rate Indebtedness for which interest is computed on substantially the same basis during the preceding twelve (12) month period, or (c) if no such comparable Variable Interest Rate Indebtedness was outstanding during the twelve (12) months preceding the date of calculation, then (x) if the interest on such Variable Interest Rate Indebtedness is excluded from gross income for purposes of Federal income taxation, 90% of the average rate of interest for The Bond Buyer Revenue Bond Index over the preceding twelve (12) months, or, if that index is no longer published, an interest rate equal to 80% of the yield for outstanding United States Treasury bonds having an equivalent maturity as the Variable Rate Interest Indebtedness, or if there are no such Treasury Bonds having equivalent maturities, 80% of the lowest prevailing prime rate of any of the five largest commercial banks in the United States, ranked by assets, and (y) if interest on such Variable Interest Rate Indebtedness is not excluded from gross income for purposes of Federal income taxation, 110% of the yield for outstanding United States Treasury bonds having an equivalent maturity as the Variable Rate Interest Indebtedness, or if there are no such United States Treasury Bonds having equivalent maturities, 110% of the lowest prevailing prime rate of any of the five largest commercial banks in the United States, ranked by assets;

(iii) Interest on Bonds or Parity Debt with respect to which a Public Finance Contract is in force. Interest deemed to be payable on any Bonds or Parity Debt with respect to which a Public Finance Contract is in force shall be based on the net economic effect on the City expected to be produced by the terms of such Bonds or Parity Debt and such Public Finance Contract, including but not limited to the effects that (a) such Bonds or Parity Debt would, but for such Public Finance Contract, be treated as an obligation bearing interest at a Variable Interest Rate instead shall be treated as an obligation bearing interest at a fixed interest rate, and (b) such Bonds or Parity Debt would, but for such Public Finance Contract, be treated as an obligation bearing interest at a fixed interest rate instead shall be treated as an obligation bearing interest at a Variable Interest Rate; and accordingly, the amount of interest deemed to be payable on any Bonds or Parity Debt with respect to which a Public Finance Contract is in force shall be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Bonds or Parity Debt plus the Public Finance Contract Payments minus the Public Finance Contract Receipts, and for the purpose of calculating as nearly as practicable the Public Finance Contract Receipts and the Public Finance Contract Payments under such Bonds or Parity Debt, the following assumptions shall be made:

(1) City Obligated to Pay Net Variable Payments. If a Public Finance Contract has been entered into by the City with respect to Bonds or Parity Debt resulting in the payment of a net variable interest rate with respect to such Bonds or Parity Debt and Public Finance Contract by the City, the interest rate on such Bonds or Parity Debt for future periods when the actual interest rate cannot yet be determined shall be assumed (but only during the period the Public Finance Contract is in effect) to be equal to the sum of (x) the fixed rate or rates stated in such Bonds or Parity Debt, minus (y) the fixed rate paid by the Qualified Counterparty to the City, plus (z) the lesser of (A) the interest rate cap, if any, provided by a Qualified Counterparty with respect to such Public Finance Contract (but only during the period that such interest rate cap is in effect) and (B) the applicable Variable Interest Rate calculated in accordance with subparagraph (ii) above; and

(2) City Obligated to Pay Net Fixed Payments. If a Public Finance Contract has been entered into by the City with respect to Bonds or Parity Debt resulting in the payment of a net fixed interest rate with respect to such Bonds or Parity Debt and Public Finance Contract by the City, the interest on such Bonds or Parity Debt shall be included in the calculation of Debt Service (but only during the period the Public Finance Contract is in effect) by including for each Fiscal Year or twelve (12) calendar month period an amount equal to the amount of interest payable at the fixed interest rate pursuant to such Public Finance Contract;

(iv) Interest on Balloon Indebtedness. If any outstanding Bonds or Parity Debt constitute Balloon Indebtedness (and such Bonds or Parity Debt do

not constitute Short-Term Indebtedness excluded from the calculation of the Debt Service pursuant to clause (v), below) or if Bonds or Parity Debt proposed to be incurred would constitute Balloon Indebtedness (and such Bonds or Parity Debt would not constitute Short-Term Indebtedness excluded from the calculation of the Debt Service pursuant to clause (v), below), then such Balloon Indebtedness shall be treated as if the principal amount of such Bonds or Parity Debt were amortized from the date originally incurred in substantially equal installments of principal and interest over a term of thirty (30) years; provided, however, that the full principal amount of such Balloon Indebtedness shall be included in making such calculation if such principal amount is due within ninety (90) days of the date such calculation is being made); and, if interest accrues under such Balloon Indebtedness at other than a fixed rate, the interest rate used for such computation shall be (x) if the interest on such Bonds or Parity Debt is excluded from gross income for purposes of Federal income taxation, 90% of the average rate of interest for The Bond Buyer Revenue Bond Index over the preceding twelve (12) months, or if that index is no longer published, an interest rate equal to 80% of the yield for outstanding United States Treasury bonds having an equivalent maturity as the Bonds or Parity Debt on the date incurred, or if there are no such United States Treasury bonds having equivalent maturities, 80% of the lowest prevailing prime rate of any of the five largest commercial banks in the United States, ranked by assets, and (y) if the interest on such Bonds or Parity Debt is not excluded from gross income for purposes of Federal income taxation, the rate equal to 110% of the yield for outstanding United States Treasury bonds having an equivalent maturity as the Balloon Indebtedness, or, if there are no such United States Treasury Bonds having equivalent maturities, 110% of the lowest prevailing prime rate of any of the five largest commercial banks in the United States, ranked by assets;

(v) Exclusion of Certain Short-Term Indebtedness. If any outstanding Bonds or Parity Debt constitute Short-Term Indebtedness or if the Bonds or Parity Debt proposed to be issued would constitute Short-Term Indebtedness, and such Short-Term Indebtedness are or will be payable only out of Net Revenues of the Fiscal Year in which such Short-Term Indebtedness are incurred, then such Short-Term Indebtedness shall be disregarded and not included in calculating Debt Service;

(vi) Credit for Accrued and Capitalized Interest. If amounts constituting accrued interest or capitalized interest have been deposited with a trustee for such Bonds or Parity Debt, then the interest payable from such amounts with respect to such Bonds or Parity Debt shall be disregarded and not included in calculating Debt Service.

## Defeasance Securities

“Defeasance Securities” means any of the following:

(i) any bonds or other obligations which as to principal and interest constitute direct obligations of the United States of America;

(ii) any certificates, receipts, securities or other obligations evidencing ownership of, or the right to receive, a specified portion of one or more interest payments or principal payments, or any combination thereof, to be made on any bond, note, or other obligation described above in clause (i) held by a bank or trust company as custodian, under which the owner thereof is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying bonds or other obligations which as to principal and interest constitute direct obligations of the United States of America are not available to any person claiming through the custodian or to whom the custodian may be obligated; or

(iii) any bonds or other obligations of any state of the United States of America or any political subdivision thereof (a) which are not callable prior to maturity or as to which irrevocable instructions have been given to the trustee of such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (b) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described above in clause (i) or (ii) which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the interest payment dates and the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, (c) as to which the principal of and interest on the bonds and obligations of the character described above in clause (i) or (ii) which have been deposited in such fund along with any cash on deposit in such fund are sufficient to pay the principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (iii) on the interest payment dates and the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (iii), as appropriate, and (d) which have been rated “AAA” by Standard & Poor’s and “Aaa” by Moody’s or which are eligible to be rated “AAA” by Standard & Poor’s under the then existing defeasance criteria of Standard & Poor’s;

## Enterprise

“Enterprise” means any and all facilities of the City for the disposal or reuse of wastewater, including sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage and any necessary lands, rights of way and other real or personal property useful in connection therewith. The term “Enterprise” does not include, however, facilities relating to the production, distribution and use of methane gas.

Event of Default

“Event of Default” means any of the events specified in Section 7.01 hereof.

Fiscal Year

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month period hereafter selected and designated as the official fiscal year period of the City which designation shall be provided to the Trustee in a Certificate of the City.

Generally Accepted Accounting Principles Applicable to Governments

“Generally Accepted Accounting Principles Applicable to Governments” means generally accepted accounting principles applicable to governments as promulgated by the Governmental Accounting Standards Board or its successor.

Gross Revenues

“Gross Revenues” means all gross income and revenue received by the City from the ownership and operation of the Enterprise, including (a) all fees and charges received by the City for the services of the Enterprise, (b) all other income and revenue howsoever derived by the City from the ownership and operation of the Enterprise or arising from the Enterprise, and (c) all sums deposited, or required hereunder to be deposited, in the Sewer Enterprise Fund; but excluding (x) the proceeds of any ad valorem property taxes received by the City to pay debt service on any outstanding obligations of the City, (y) any contributed capital (other than connection fees), and (z) any moneys received by the City as a result of litigation arising out of perchloroethylene (PCE) contamination that are to be expended on capital costs of the Enterprise.

Indenture

“Indenture” means this Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City and the Trustee, as originally executed and as it may from time to time be supplemented or amended by any Supplemental Indenture delivered pursuant to the provisions hereof.

Independent Accountant

“Independent Accountant” means any accountant or firm of such accountants appointed and paid by the City, and who, or each of whom-

- (a) is in fact independent and not under domination of the City;
- (b) does not have any substantial interest, direct or indirect, with the City; and

(c) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or other audits of the books of or reports to the City.

#### Information Services

“Information Services” means national information services that disseminate securities redemption notices; or, in accordance with then current guidelines of the Securities and Exchange Commission, such other services providing information with respect to called bonds, or no such services as the City may designate in a written request delivered to the Trustee.

#### Interest Fund

“Interest Fund” means the fund by that name established with the Trustee pursuant to Section 5.01 hereof.

#### Investment Securities

“Investment Securities” means the following:

(i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the federal agencies and federally sponsored entities set forth in clause (iii) below to the extent unconditionally guaranteed by the United States of America;

(ii) any certificates, receipts, securities or other obligations evidencing ownership of, or the right to receive, a specified portion of one or more interest payments or principal payments, or any combination thereof, to be made on any bond, note, or other obligation described above in clause (i);

(iii) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, Federal Home Loan Banks, and Federal Home Loan Mortgage Corporation;

(iv) obligations of any state, territory or commonwealth of the United States of America or any political subdivision thereof or any agency or department of the foregoing; provided that at the time of their purchase such obligations are rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(v) any bonds or other obligations of any state of the United States of America or any political subdivision thereof (a) which are not callable prior to maturity or as to which irrevocable instructions have been given to the trustee of such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (b) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described above in clause (i), (ii) or (iii) which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or

other obligations on the interest payment dates and the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, (c) as to which the principal of and interest on the bonds and obligations of the character described above in clause (i), (ii) or (iii) which have been deposited in such fund along with any cash on deposit in such fund are sufficient to pay the principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (v) on the interest payment dates and the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (v), as appropriate, and (d) which have been rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(vi) bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by any corporation which are, at the time of purchase, rated by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) in their respective highest short-term Rating Categories, or, if the term of such indebtedness is longer than three (3) years, rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(vii) demand or time deposits or certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee), provided that such certificates of deposit shall be purchased directly from such a bank, trust company or national banking association and shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities and obligations as are described above in clauses (i) through (iv), inclusive, which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such certificates of deposit and shall be lodged with the Trustee, as custodian, by the bank, trust company or national banking association issuing such certificates of deposit, and the bank, trust company or national banking association issuing each such certificate of deposit required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(viii) taxable commercial paper or tax-exempt commercial paper, rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(ix) variable rate obligations required to be redeemed or purchased by the obligor or its agent or designee upon demand of the holder thereof secured as to such redemption or purchase requirement by a liquidity agreement with a corporation and as to the payment of interest and principal either upon maturity or redemption (other than upon demand by the holder thereof) thereof by an unconditional credit facility of a corporation provided that the variable rate obligations themselves are rated in their respective highest Rating Categories for its short-term rating, if any, and not lower than their respective ratings on the Bonds for its long-term rating, if

any, by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds), and that the corporations providing the liquidity agreement and credit facility have, at the date of acquisition of the variable rate obligation by the Trustee, an outstanding issue of unsecured, uninsured and unguaranteed debt obligations rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(x) any repurchase agreement with any bank or trust company organized under the laws of any state of the United States or any national banking association (including the Trustee) having a minimum permanent capital of one hundred million dollars (\$100,000,000) and with short-term debt rated by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) in their respective four highest short-term rating categories or with government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities and obligations described in clauses (i), (ii) or (iii) above, which shall have a market value (exclusive of accrued interest and valued at least monthly) at least equal to the principal amount of such investment and shall be lodged with the Trustee or other fiduciary, as custodian for the Trustee, by the bank, trust company, national banking association or bond dealer executing such repurchase agreement, and the entity executing each such repurchase agreement required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such repurchase agreement (as valued at least monthly) will be an amount equal to the principal amount of each such repurchase agreement and the Trustee shall be entitled to rely on each such undertaking;

(xi) any cash sweep or similar account arrangement of or available to the Trustee, the investments of which are limited to investments described in clauses (i), (ii), (iii), (iv) and (x) of this definition of Investment Securities and any money market fund, the entire investments of which are limited to investments described in clauses (i), (ii), (iii), (iv) and (x) of this definition of Investment Securities and which money market fund is rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds); provided that as used in this clause (xi) and clause (xii) investments will be deemed to satisfy the requirements of clause (x) if they meet the requirements set forth in clause (x) ending with the words "clauses (i), (ii) or (iii) above" and without regard to the remainder of such clause (x);

(xii) investment agreements with a domestic or foreign bank or corporation (other than a life or property casualty insurance company) the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline financial guaranty insurance company, claims paying ability, of the guarantor is rated at least "AA" by Standard & Poor's and "Aa" by Moody's; provided that the terms of the investment agreement shall be approved in writing by each insurer of the Bonds, if any;

(xiii) shares of beneficial interest in diversified management companies investing exclusively in securities and obligations described in clauses (i) through (xii) of this definition of Investment Securities and which companies are rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard

& Poor's is then rating the Bonds) or have an investment advisor registered with the Securities and Exchange Commission with not less than 5 years experience investing in such securities and obligations and with assets under management in excess of \$500,000,000;

(xiv) the California Asset Management Program (CAMP);

(xv) forward purchase and sale agreements for underlying securities otherwise authorized under this definition of "Investment Securities" with providers acceptable to each insurer of the Bonds, if any; and

(xvi) any other investment approved by the City Council.

#### Maximum Annual Debt Service

"Maximum Annual Debt Service" means the greatest amount of principal and interest becoming due and payable on all Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year using the principles and assumptions set forth under the definition of Debt Service.

#### Moody's

"Moody's" means Moody's Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

#### Net Revenues

"Net Revenues" means, with respect to any period, the amount of the Gross Revenues received during such period less the amount of Operating Expenses becoming payable during such period.

#### Operating Expenses

"Operating Expenses" means the reasonable and necessary costs of maintaining and operating the Enterprise, calculated on the basis of generally accepted accounting principles, including (among other things) the reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Enterprise in good repair and working order, and reasonable amounts for administration, overhead, insurance, taxes (if any) and other similar costs, but excluding (a) depreciation, replacement and obsolescence charges or reserves therefor or other bookkeeping entries of a similar nature, and (b) interest on the Bonds and any Parity Debt.

#### Opinion of Bond Counsel

"Opinion of Bond Counsel" means a written opinion of a law firm of national standing in the field of public finance selected by the City.

### Outstanding

“Outstanding,” when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 11.09) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except (1) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (2) Bonds with respect to which all liability of the City shall have been discharged in accordance with Section 10.02, including Bonds (or portions of Bonds) referred to in Section 11.10; and (3) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to this Indenture.

### Owner or Bondholder or Bondowner

“Owner” or “Bondholder” or “Bondowner,” whenever used herein with respect to a Bond, means the person in whose name such Bond is registered.

### Parity Debt

“Parity Debt” means any indebtedness, installment sale obligation, lease obligation or other obligation of the City for borrowed money having an equal lien and charge upon the Net Revenues, therefore payable on a parity with the Bonds (whether or not any Bonds are Outstanding).

### Parity Reserve Fund

“Parity Reserve Fund” means the fund by that name established with the Trustee pursuant to Section 5.01 hereof.

### Principal Fund

“Principal Fund” means the fund by that name established with the Trustee pursuant to Section 5.01 hereof.

### Public Finance Contract

“Public Finance Contract” means a written agreement for the purpose of managing or reducing the City’s exposure to fluctuations in interest rates or for any other interest rate, investment, asset or liability managing purposes, entered into either on a current or forward basis by the City and a Qualified Counterparty as authorized under any applicable laws of the State in connection with, or incidental to, the issuance of Bonds or Parity Debt, that provides for an exchange of payments based on interest rates, ceilings or floors on such payments, options on such payments or any combination thereof, or any similar device.

### Public Finance Contract Payments

“Public Finance Contract Payments” means the amounts periodically required to be paid by the City to all Qualified Counterparties under all Public Finance Contracts.

### Public Finance Contract Receipts

“Public Finance Contract Receipts” means the amounts periodically required to be paid by all Qualified Counterparties to the City under all Public Finance Contracts.

### Qualified Counterparty

“Qualified Counterparty” means a party (other than the City or a party related to the City) who is the other party to a Public Finance Contract and (1) (A) who is rated at least “A2” from Moody’s and “A” from Standard & Poor’s, or (B) whose senior debt obligations are rated at least “A2” from Moody’s and “A” from Standard & Poor’s, or guaranteed by an entity so rated, or (C) whose obligations under the Public Finance Contract are guaranteed for the entire term of the Public Finance Contract by a bond insurer or other institution which has been assigned a credit rating at least equal to “A2” from Moody’s and “A” from Standard & Poor’s, or (D) whose obligations under the Public Finance Contract are collateralized in such a manner as to obtain a rating at least equal to the ratings assigned by each of the Rating Agencies to the Bonds or Parity Debt to which such Public Finance Contract relates, and (2) who is otherwise qualified to act as the other party to a Public Finance Contract under all applicable laws of the State.

### Rating Category

“Rating Category” means (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

### Rebate Fund

“Rebate Fund” means the fund by that name established with the Trustee pursuant to Section 6.11 hereof.

### Rebate Requirement

“Rebate Requirement” means the Rebate Requirement defined in the Tax Certificate.

### Redemption Fund

“Redemption Fund” means the fund by that name established with the Trustee pursuant to Section 5.04 hereof.

### Redemption Price

“Redemption Price” means, with respect to any Bond (or portion thereof) the Bond Obligation of such Bond (or portion thereof) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Bond and this Indenture.

### Reserve Fund Requirement

“Reserve Fund Requirement” means, as of any date of determination and excluding any Parity Debt for which no reserve fund is to be maintained or for which a separate reserve fund is to be maintained, the lesser of (a) the Maximum Annual Debt Service on all Bonds and Parity Debt to be secured by the Parity Reserve Fund, or (b) one hundred twenty-five percent (125%) of the Average Annual Debt Service on all Bonds and Parity Debt to be secured by the Parity Reserve Fund; provided that in no event shall the deposit to the Parity Reserve Fund with respect to any Series of Bonds or Parity Debt to be secured by the Parity Reserve Fund be an amount greater than ten percent (10%) of the initial offering price to the public of each Series of Bonds and any Parity Debt to be secured by the Parity Reserve Fund as determined under the Code, all as computed and determined by the City and specified in writing to the Trustee.

### Securities Depositories

“Securities Depositories” means the following registered securities depository: The Depository Trust Company, 55 Water Street, 50th Floor, New York, New York 10041 0099, Attention: Call Notification Department, Fax (212) 855 7232; or in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depositories, or no such other securities depositories, as the City may designate in a written request delivered to the Trustee.

### Series

“Series,” whenever used herein with respect to Bonds, means all of the Bonds designated as being of the same series, authenticated and delivered in a simultaneous transaction, regardless of variations in maturity, interest rate, redemption and other provisions, and any Bonds thereafter authenticated and delivered upon transfer or exchange or in lieu of or in substitution for (but not to refund) such Bonds as herein provided.

### Sewer Enterprise Fund

“Sewer Enterprise Fund” means the existing fund by that name established and held by the City with respect to the Enterprise.

### Short-Term Indebtedness

“Short-Term Indebtedness” means Bonds or Parity Debt having an original maturity of less than or equal to one year and which are not renewable at the option of the City for a term greater than one year beyond the date of original incurrence.

### Standard & Poor’s

“Standard & Poor’s” means Standard & Poor’s, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

State

“State” means the State of California.

Supplemental Indenture

“Supplemental Indenture” means any indenture hereafter duly executed and delivered, supplementing, modifying or amending this Indenture, but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

Tax Certificate

“Tax Certificate” means the Tax Certificate delivered by the City at the time of the issuance and delivery of any Series of Bonds, as the same may be amended or supplemented in accordance with its terms.

Trustee

“Trustee” means U.S. Bank National Association, acting as trustee hereunder, or its successor, as Trustee as provided in Section 8.01.

Variable Interest Rate

“Variable Interest Rate” means any variable interest rate or rates to be paid under any Bonds or Parity Debt, the method of computing which variable interest rate shall be as specified in the Supplemental Indenture providing for the issuance of the applicable Bonds or the instrument providing for the issuance of the Parity Debt, which Supplemental Indenture or other instrument shall also specify either (i) the payment period or periods or time or manner of determining such period or periods or time for which each value of such variable interest rate shall remain in effect, and (ii) the time or times based upon which any change in such variable interest rate shall become effective, and which variable interest rate may, without limitation, be based on the interest rate on certain bonds or may be based on interest rate, currency, commodity or other indices.

Variable Interest Rate Indebtedness

“Variable Interest Rate Indebtedness” means, for any period of time, any Bonds or Parity Debt that bear a Variable Interest Rate during such period, except that no Bonds or Parity Debt shall be treated as a Variable Interest Rate Indebtedness if the net economic effect of a Public Finance Contract with respect to any particular Bonds or Parity Debt is to produce obligations that bear interest at a fixed interest rate, and any Bonds or Parity Debt with respect to which a Public Finance Contract is in force shall be treated as a Variable Interest Rate Indebtedness if the net economic effect of the Public Finance Contract is to produce obligations that bear interest at a Variable Interest Rate.

SECTION 1.03. Content of Certificates and Opinions. Every certificate or opinion provided for in this Indenture with respect to compliance with any provision hereof shall include (1) a statement that the person making or giving such certificate or opinion has read such

provision and the definitions herein relating thereto; (2) a brief statement as to the nature and scope of the examination or investigation upon which the certificate or opinion is based; (3) a statement that, in the opinion of such person, he has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion with respect to the subject matter referred to in the instrument to which his signature is affixed; and (4) a statement as to whether, in the opinion of such person, such provision has been complied with.

Any such certificate or opinion made or given by an officer of the City may be based, insofar as it relates to legal or accounting matters, upon a certificate or opinion of or representation by counsel, an accountant, a financial advisor, an investment banker or an independent consultant, unless such officer knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which such certificate or statement may be based, as aforesaid, is erroneous. Any such certificate or opinion made or given by counsel, an accountant or an independent consultant may be based, insofar as it relates to factual matters (with respect to which information is in the possession of the City) upon a certificate or opinion of or representation by an officer of the City, unless such counsel, accountant or independent consultant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which such person's certificate or opinion or representation may be based, as aforesaid, is erroneous. The same officer of the City, or the same counsel or accountant or independent consultant, as the case may be, need not certify to all of the matters required to be certified under any provision of this Indenture, but different officers, counsel, accountants or independent consultants may certify to different matters, respectively.

## ARTICLE II

### THE BONDS

SECTION 2.01. Authorization of Bonds. Bonds may be issued hereunder, in book-entry form or otherwise, from time to time as the issuance thereof is approved by the City. The maximum principal amount of Bonds which may be issued hereunder is not limited; subject, however, to the right of the City, which is hereby reserved, to limit the aggregate principal amount of Bonds which may be issued or Outstanding hereunder. The Bonds are designated generally as "City of Modesto, California Wastewater Revenue Bonds"; each Series thereof to bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Bonds. The Bonds may be issued in such Series as from time to time shall be established and authorized by the City, subject to the covenants, provisions and conditions herein contained.

SECTION 2.02. Terms of the Bonds. The Bonds of each Series shall bear interest, if any, at such rate or rates or determined in such manner and payable at such intervals as may be determined by the City at the time of issuance thereof pursuant to the Supplemental Indenture under which such Bonds are issued, not to exceed the maximum rate of interest permitted by law and shall mature and become payable on such date or dates and in such year or years as the City may determine by the Supplemental Indenture creating such Series. Principal of, premium, if

any, and interest on such Bonds shall be payable in such manner as may be specified in the Supplemental Indenture creating such Series.

The Bonds of any Series may be issued in such denominations as may be authorized by the Supplemental Indenture creating such Series in fully registered form without coupons or in fully registered book-entry form or, for a Series maturing in one year or less, bearer form.

**SECTION 2.03. Form of Bonds.** The Bonds of any Series shall be in such form or forms as may be specified in the Supplemental Indenture creating such Series.

**SECTION 2.04. Execution of Bonds.** The Bonds shall be executed in the name and on behalf of the City with the facsimile or manual signature of the Mayor, the City Manager or the Finance Director of the City and attested by the facsimile or manual signature of the City Clerk under the printed seal of the City. Such seal may be in the form of a facsimile of the City's seal and may be reproduced, imprinted or impressed on the Bonds. Unless otherwise provided in any Supplemental Indenture, the Bonds shall then be delivered to the Trustee for authentication by it. In case any of the officers who shall have signed or attested any of the Bonds shall cease to be such officer or officers of the City before the Bonds so signed or attested shall have been authenticated or delivered by the Trustee or issued by the City, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the City as though those who signed and attested the same had continued to be such officers of the City, and also any Bond may be signed and attested on behalf of the City by such persons as at the actual date of execution of such Bond shall be the proper officers of the City although at the nominal date of such Bond any such person shall not have been such officer of the City.

Except as may be provided in any Supplemental Indenture, only such of the Bonds as shall bear thereon a certificate of authentication substantially in the form recited in the Supplemental Indenture creating such Series, manually executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of authentication when manually executed by the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

**SECTION 2.05. Transfer of Bonds.** Any Bond may, in accordance with its terms, be transferred, upon the register required to be kept pursuant to the provisions of Section 2.07 hereof, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Trustee.

Whenever any Bond or Bonds shall be surrendered for transfer, the City shall execute and the Trustee shall authenticate and deliver a new Bond or Bonds, of the same Series, tenor, maturity and interest rate and for a like aggregate principal amount; provided that no registration or transfer may occur during the period established by the Trustee for selection of Bonds for redemption, or of any Bond or portion of a Bond so selected for redemption. The Trustee shall require the Bondholder requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer.

SECTION 2.06. Exchange of Bonds. Bonds may be exchanged at the Corporate Trust Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations of the same Series, tenor, maturity and interest rate by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation; provided that, unless otherwise provided in any Supplemental Indenture, no exchange may occur during the period established by the Trustee for selection of Bonds for redemption, or of any Bond or portion of a Bond so selected for redemption. The Trustee shall require the Bondholder requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange.

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

SECTION 2.08. Temporary Bonds. The Bonds may be issued in temporary form exchangeable for definitive Bonds. Any temporary Bond may be printed, lithographed or typewritten, shall be of such denomination as may be determined by the City, shall be in registered form and may contain such reference to any of the provisions of this Indenture as may be appropriate. A temporary Bond may be in the form of a single Bond payable in installments, each on the date, in the amount and at the rate of interest established for the Bonds maturing on such date. Every temporary Bond shall be executed by the City and authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the City issues temporary Bonds it will execute and deliver definitive Bonds after being requested to do so, and thereupon the temporary Bonds may be surrendered, for cancellation, in exchange therefor at the Corporate Trust Office of the Trustee and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations of the same Series, tenor and maturity or maturities. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds authenticated and delivered hereunder.

SECTION 2.09. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the City, at the expense of the Owner of said Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be cancelled by it and delivered to, or upon the Order of, the City. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and the Trustee and, if such evidence be satisfactory to both and indemnity satisfactory to them shall be given, the City, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been called for redemption, instead of issuing a substitute Bond, the Trustee may pay the same without surrender thereof upon receipt of the aforementioned indemnity). The City may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be

incurred by the City and the Trustee in the premises. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the City whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be entitled to the benefits of this Indenture with all other Bonds secured by this Indenture. Neither the City nor the Trustee shall be required to treat both the original Bond and any replacement Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and replacement Bond shall be treated as one and the same.

### ARTICLE III

#### ISSUANCE OF BONDS AND PARITY DEBT

SECTION 3.01. Issuance of Bonds. The City may by Supplemental Indenture establish one or more Series of Bonds payable from Net Revenues and secured by the pledge made under this Indenture equally and ratably with Bonds previously issued, and the City may issue, and the Trustee may authenticate and deliver to the purchasers thereof, Bonds of any Series so established, in such principal amount as shall be determined by the City, but only, with respect to each Series of Bonds, upon compliance by the City with the provisions of Section 3.02 hereof (except any Series of Bonds delivered under a Supplemental Indenture of even date herewith may be issued upon compliance by the City with the requirements of Section 3.02(c) and without further condition) and any additional requirements set forth in said Supplemental Indenture and subject to the following specific conditions, which are hereby made conditions precedent to the issuance of any such additional Series of Bonds:

- (a) no Event of Default shall have occurred and then be continuing;
- (b) the aggregate principal amount of Bonds issued hereunder shall not exceed any limitation imposed by law or otherwise;
- (c) there shall be deposited in the Parity Reserve Fund an amount of money so as to increase the amount on deposit therein to the Reserve Fund Requirement; and
- (d) The Net Revenues, calculated on sound accounting principles, as shown by the books of the City for the latest Fiscal Year or any more recent twelve (12) month period selected by the City ending not more than sixty (60) days prior to the adoption of the Supplemental Indenture pursuant to which such Series of Bonds are issued or the instrument pursuant to which such Parity Debt is issued, as shown by the books of the City, plus, at the option of the City, any or all of the items designated in (i) and (ii) below, but excluding connection charges, shall at least equal one hundred twenty-five percent (125%) of the Maximum Annual Debt Service on all Bonds and Parity Debt to be Outstanding immediately subsequent to the issuance of such Series of Bonds or Parity Debt. The items any or all of which may be added to such Net Revenues for the purpose of issuing or incurring additional Series of Bonds or Parity Debt hereunder are the following:

(i) An allowance for Net Revenues from any additions to or improvements or extensions of the Enterprise to be made with the proceeds of such additional Series of Bonds or Parity Debt, and also for Net Revenues from any such additions, improvements or extensions which have been made from moneys from any source but in any case which, during all or any part of such Fiscal Year or such twelve (12) month period, were not in service, all in an amount equal to ninety-five percent (95%) of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first thirty-six (36) month period in which each addition, improvement or extension is respectively to be in operation, all as shown by a Certificate of the City filed with the Trustee.

(ii) An allowance for earnings arising from any increase in the charges made for service from the Enterprise which has become effective prior to the incurring of such additional Series of Bonds or Parity Debt but which, during all or any part of such Fiscal Year or such twelve (12) month period, was not in effect, in an amount equal to ninety-five percent (95%) of the amount by which the Net Revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year or such twelve (12) month period, all as shown by a Certificate of the City filed with the Trustee.

In the event additional assets or revenues are included within the definition of "Net Revenues" by a Supplemental Indenture, such additional assets or revenues shall be included in the calculations in subsection (d) above, as appropriate, as if such additional assets or revenues had always been included in Net Revenues.

**SECTION 3.02. Proceedings for Issuance of Additional Series of Bonds.** Whenever the City shall determine to issue a Series of Bonds pursuant to Section 3.01, the City shall authorize the execution of a Supplemental Indenture specifying the principal amount, and prescribing the form or forms of Bonds of such additional Series and providing the terms, conditions, distinctive designation, denominations, date, maturity date or dates, interest rate or rates (or the manner of determining the same), redemption provisions and place or places of payment of principal or Redemption Price, if any, of and interest on such Bonds, and any other provisions respecting the Bonds of such Series not inconsistent with the terms of this Indenture.

Before such additional Series of Bonds shall be issued and delivered, the City shall file the following documents with the Trustee (upon which documents the Trustee may conclusively rely in determining whether the conditions precedent to the issuance of such Series of Bonds have been satisfied):

- (a) an executed copy of the Supplemental Indenture authorizing such Series;
- (b) a Certificate of the City stating that no Event of Default has occurred and is then continuing;
- (c) an Opinion of Bond Counsel to the effect that the execution of the Supplemental Indenture has been duly authorized by the City in accordance with this

Indenture; that such Series, when duly executed by the City and authenticated and delivered by the Trustee, will be valid and binding limited obligations of the City, and that upon the delivery of such Series the aggregate principal amount of Bonds then Outstanding will not exceed the amount permitted by law or otherwise;

(d) the Certificate of the City required by Section 3.01(d); and

(e) a Certificate of the City or of an independent certified public accountant that upon delivery of such Bonds, the aggregate principal amount of Bonds then Outstanding will not exceed the amount permitted hereunder.

**SECTION 3.03. Issuance of Refunding Bonds.** Notwithstanding any provisions herein, there shall be no limitation on the ability of the City to issue any Bonds at any time to refund any outstanding Bonds or Parity Debt; provided, however, that the Maximum Annual Debt Service with respect to any such refunding Bonds shall not exceed 1.10 times the Maximum Annual Debt Service with respect to the Bonds or Parity Debt being refunded.

**SECTION 3.04. Application of Proceeds.** Proceeds of each Series of Bonds shall be applied as specified in the Supplemental Indenture pursuant to which such Series of Bonds is created.

**SECTION 3.05. Limitations on the Issuance of Obligations.** The City will not, so long as any of the Bonds are Outstanding, issue any obligations or securities, howsoever denominated, payable in whole or in part from Net Revenues, except the following:

(a) Bonds of any Series authorized pursuant to Sections 3.01 and 3.02;

(b) refunding Bonds authorized pursuant to Section 3.03;

(c) Parity Debt payable on a parity with the Bonds and which will have, when issued, an equal lien and charge upon the Net Revenues, provided that the following conditions to the issuance of such Parity Debt are satisfied:

(1) such Parity Debt has been duly and legally authorized for any lawful purpose;

(2) no Event of Default shall have occurred and then be continuing, as evidenced in a Certificate of the City filed with the Trustee;

(3) unless such Parity Debt is for the refunding purposes specified in Section 3.03, the City shall have obtained and placed on file with the Trustee a Certificate of the City that (on the basis of calculations as of the date of delivery of such Parity Debt) the requirements of Section 3.01(d) with respect to additional Bonds have been met with respect to such Parity Debt;

(4) the City shall have filed with the Trustee an Opinion of Bond Counsel to the effect that such Parity Debt has been duly authorized in accordance

with law and constitutes a valid and binding obligation of the City payable from Net Revenues on a parity with the Bonds; and

(5) the Trustee shall be designated as paying agent or trustee for such Parity Debt and the City shall deliver to the Trustee a transcript of the proceedings providing for the issuance of such Parity Debt (but the Trustee shall not be responsible for the validity or sufficiency of such proceedings or such Parity Debt); or

(d) Obligations which are junior and subordinate to the payment of the principal, premium, interest and reserve fund requirements for the Bonds and all Parity Debt and which subordinated obligations are payable as to principal, premium, interest and reserve fund requirements, if any, only out of Net Revenues, after the prior payment of all amounts then required to be paid hereunder from Net Revenues, for principal, premium, interest and reserve fund requirements for the Bonds and all Parity Debt, as the same become due and payable and at the times and in the manner as required in this Indenture.

#### ARTICLE IV

#### REDEMPTION OF BONDS

**SECTION 4.01. Terms of Redemption.** Each Series of Bonds may be made subject to redemption or mandatory or optional tender and purchase prior to their respective stated maturities, as a whole or in part, at such time or times, upon such terms and conditions and upon such notice and with such effect as may be provided in the Supplemental Indenture creating such Series of Bonds.

Unless otherwise specified in a Supplemental Indenture, each notice of redemption shall be mailed by the Trustee, not less than thirty (30) nor more than sixty (60) days prior to the redemption date, to each Owner, the Securities Depositories and two or more Information Services. Notice of redemption to the Securities Depositories shall be given by certified, registered or overnight mail or by such other method as may be requested by the Securities Depositories. Each notice of redemption shall state the date of such notice, the date of issue of the Bonds to which such notice relates, the redemption date, the Redemption Price, the place or places of redemption (including the name and appropriate address or addresses of the Trustee), the CUSIP number (if any) of the maturity or maturities, and, if less than all of any such maturity, the distinctive certificate numbers of the Bonds of such maturity to be redeemed and, in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on said date there will become due and payable on each of said Bonds the Redemption Price thereof or of said specified portion of the principal amount thereof in the case of a Bond to be redeemed in part only, together with interest accrued thereon to the date fixed for redemption, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered at the address or addresses of the Trustee specified in the redemption notice. Neither the City nor the Trustee shall have any responsibility for any defect in the CUSIP number that appears on any Bond or in any redemption notice with respect thereto, and any such redemption

notice may contain a statement to the effect that CUSIP numbers have been assigned by an independent service for convenience of reference and that neither the City nor the Trustee shall be liable for any inaccuracy in such numbers.

With respect to any notice of optional redemption of Bonds, unless upon the giving of such notice, such Bonds shall be deemed to have been paid within the meaning of Section 10.01 of the Indenture or unless the Trustee has cash or Defeasance Securities sufficient to pay the principal, premium, if any, and interest on the Bonds to be redeemed, such notice may state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal, premium, if any, and interest on such Bonds and that if such moneys shall not have been so received said notice shall be of no force and effect and the Trustee shall not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such moneys are not so received, the redemption shall not be made and the Trustee shall be within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

Failure by the Trustee to give notice to any one or more of the Information Services or Securities Depositories or failure of any Owner to receive notice or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

## ARTICLE V

### NET REVENUES

#### SECTION 5.01. Pledge of Net Revenues; Sewer Enterprise Fund.

(A) The Bonds are revenue obligations of the City and are payable as to both principal and interest, and any premium upon redemption thereof, exclusively from Net Revenues and from the other funds pledged hereunder. All Net Revenues are hereby pledged to secure the payment of the principal of and redemption premium, if any, and interest on the Bonds and any Parity Debt in accordance with their terms, subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein. There are hereby pledged to secure the payment of the principal of and redemption premium, if any, and interest on the Bonds in accordance with their terms all amounts (including proceeds of the Bonds) held by the Trustee hereunder (except for amounts held in the Rebate Fund), subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein. Said pledge shall constitute a first lien on the Net Revenues and amounts in such funds and shall be valid and binding from and after delivery by the Trustee of the Bonds or Parity Debt, without any physical delivery thereof or further act.

The Net Revenues are hereby pledged to the payment of Bonds and Parity Debt without priority or distinction of one over the other and the Net Revenues constitute a trust fund for the security and payment of the Bonds and Parity Debt; but nevertheless out of Net Revenues, certain amounts may be applied for other purposes as provided herein.

Out of Net Revenues, there shall be applied as hereinafter set forth all sums required for the payment of the principal of (including any premium thereon) and interest on the Bonds and all Parity Debt, together with any reserve fund requirements with respect thereto. All remaining Net Revenues, after making the foregoing allocation, shall be available to the City for all lawful City purposes. The pledge of Net Revenues herein made shall be irrevocable until all of the Bonds and all Parity Debt are no longer outstanding.

(B) In order to carry out and effectuate the obligation of the City contained herein to pay the Bonds, so long as any Bonds are Outstanding, the City covenants and agrees that all Gross Revenues, when and as received, will be received, deposited and held by the City in the Sewer Enterprise Fund and will be accounted for through and held in trust in the Sewer Enterprise Fund, and the City shall have no beneficial right or interest in any of such moneys except only as in this Indenture provided. The City hereby covenants and agrees to maintain the Sewer Enterprise Fund at all times so long as any Bonds shall be Outstanding hereunder. All Gross Revenues and Net Revenues, whether held by the City or deposited with the Trustee, all as herein provided, shall nevertheless be disbursed, allocated, and applied solely to the uses and purposes hereinafter set forth.

All amounts in the Sewer Enterprise Fund required to pay Operating Expenses of the Enterprise shall be applied for such purpose from time to time by the City. So long as any Bonds are Outstanding, the City shall transfer the remaining moneys in the Sewer Enterprise Fund to the Trustee as required for deposit into the following respective funds (each of which the Trustee shall establish, maintain and hold in trust for the benefit of the Owners of the Bonds) in the following amounts, in the following order of priority, the requirements of each such fund (including the making up of any deficiencies in any such fund resulting from lack of Net Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any fund subsequent in priority; provided that on a parity with such deposits the Trustee may set aside or transfer amounts with respect to outstanding Parity Debt as provided in the proceedings for such Parity Debt (which shall be proportionate in the event such amounts are insufficient to provide for all deposits required as of any date to be made with respect to the Bonds and such Parity Debt):

(1) Interest Fund. The City shall transfer to the Trustee and the Trustee shall set aside in the Interest Fund on or before the third Business Day prior to each interest payment date therefor an amount equal to the interest becoming due and payable on the Outstanding Bonds (excluding interest for which there are moneys on deposit in the Interest Fund from the proceeds of any Series of Bonds or other source to pay such interest).

(2) Principal Fund; Sinking Accounts. The City shall transfer to the Trustee and the Trustee shall set aside in the Principal Fund on or before the third Business Day prior to each principal or mandatory sinking fund payment date therefor an amount equal to (a) the amount of Bond Obligation becoming due and payable on the Outstanding Serial Bonds, plus (b) the mandatory sinking fund payments to be paid into the respective Sinking Accounts for the Term Bonds; provided that if the City certifies to the Trustee that any principal payments are expected to be refunded on or prior to their respective due dates or paid from excess amounts on deposit in the Parity Reserve Fund or other

bond reserve fund upon such payment, no amounts need be set aside towards such principal to be so refunded or paid. All of the aforesaid mandatory sinking fund payments shall be made without priority of any payment into any one such Sinking Account over any other such payment.

(3) Parity Reserve Fund. Upon the occurrence of any deficiency in the Parity Reserve Fund established pursuant to Section 5.05 hereof, the City shall transfer to the Trustee and the Trustee shall set aside in the Parity Reserve Fund an amount equal to the aggregate amount of each unreplenished prior withdrawal from the Parity Reserve Fund until there is on deposit in the Parity Reserve Fund an amount equal to the Reserve Fund Requirement.

(C) Any Net Revenues remaining in the Sewer Enterprise Fund after the foregoing transfers described in subsection (B) above, except as otherwise provided in a Supplemental Indenture, shall be held free and clear of this Indenture by the City and it may use and apply such Net Revenues for any lawful purpose of the City, including the redemption of Bonds upon the terms and conditions set forth in the Supplemental Indenture relating to such Bonds and the purchase of Bonds as and when and at such prices as it may determine.

(D) If on any principal payment date, interest payment date or mandatory sinking fund redemption date the amounts on deposit in the Interest Fund and Principal Fund, including the Sinking Accounts therein, are insufficient to make such payments, the Trustee shall immediately notify the City, by telephone or facsimile machine, of such deficiency and direct that the City transfer the amount of such deficiency to the Trustee on such payment date. The City hereby covenants and agrees to transfer to the Trustee from any Net Revenues in its possession the amount of such deficiency on the principal, interest or mandatory redemption date referenced in such notice.

**SECTION 5.02. Application of Interest Fund.** All amounts in the Interest Fund shall be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity pursuant to this Indenture). In addition if so directed by the City, the Trustee may deposit into the Interest Fund, Public Finance Contract Receipts of the City and may pay from the Interest Fund, Public Finance Contract Payments on behalf of the City.

**SECTION 5.03. Application of Principal Fund.**

(A) All amounts in the Principal Fund shall be used and withdrawn by the Trustee solely for the purposes of paying the Bond Obligation of the Bonds when due and payable, except that all amounts in the Sinking Accounts shall be used and withdrawn by the Trustee solely to purchase or redeem or pay at maturity Term Bonds, as provided herein.

(B) The Trustee shall establish and maintain within the Principal Fund a separate sinking account for the Term Bonds of each Series and maturity. On or before the Business Day prior to any date upon which a mandatory sinking fund payment is due, the Trustee shall transfer the amount of such mandatory sinking fund payment (being the principal thereof, in the case of Current Interest Bonds and the Accreted Value, in the case of Capital Appreciation Bonds from

the Principal Fund to the applicable Sinking Account. With respect to each Sinking Account, on each mandatory sinking fund payment date established for such Sinking Account, the Trustee shall apply the mandatory sinking fund payment required on that date to the redemption of Term Bonds of such Series and maturity for which such Sinking Account was established, in the manner provided in the Supplemental Indenture pursuant to which such Series of Bonds was created; provided that, at any time prior to giving such notice of such redemption, the Trustee shall, upon receipt of a Request of the City, apply moneys in such Sinking Account to the purchase of Term Bonds of such Series and maturity at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Fund) as is directed by the City, except that the purchase price (excluding accrued interest, in the case of Current Interest Bonds) shall not exceed the principal amount or Accreted Value thereof. If the Trustee has purchased Term Bonds of such Series and maturity with moneys in such Sinking Account, or purchased or redeemed Term Bonds of such Series and maturity at any time from the Redemption Fund and allocable to said mandatory sinking fund payment, or if the City has purchased or otherwise acquired Term Bonds and deposited such Term Bonds with the Trustee, such Term Bonds so purchased or deposited or redeemed by the Trustee or the City shall be applied, to the extent of the full principal amount thereof, to reduce said mandatory sinking fund payment. All Term Bonds purchased or deposited pursuant to this subsection shall be cancelled and destroyed by the Trustee. Any amounts remaining in a Sinking Account when all of the Term Bonds for which such account was established are no longer Outstanding shall be withdrawn by the Trustee and transferred to the City to be deposited in the Sewer Enterprise Fund. All Term Bonds so purchased shall be allocated first to the next succeeding mandatory sinking fund payment for such Series and maturity of Term Bonds, then as a credit against such future mandatory sinking fund payment for such Series and maturity of Term Bonds as may be specified in a Request of the City. All Term Bonds redeemed from the Redemption Fund shall be credited to such future mandatory sinking fund payment for such Series and maturity of Term Bonds as may be specified in a Request of the City.

SECTION 5.04. Application of Redemption Fund. The Trustee shall establish, maintain and hold in trust a special fund designated as the "Redemption Fund" when required. All moneys deposited by the City with the Trustee for the purpose of redeeming Bonds of any Series pursuant to optional redemption or special mandatory redemption provisions applicable to such Series of Bonds shall, unless otherwise directed by the City, be deposited in the Redemption Fund. All amounts deposited in the Redemption Fund shall be used and withdrawn by the Trustee solely for the purpose of redeeming Bonds of such Series, in the manner, at the times and upon the terms and conditions specified in the Supplemental Indenture pursuant to which such Series of Bonds was created; provided that, at any time prior to giving notice of such redemption, the Trustee shall, upon receipt of a Request of the City, apply such amounts to the purchase of Bonds of such Series at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding, in the case of Current Interest Bonds, accrued interest, which is payable from the Interest Account) as is directed by the City, except that the purchase price (exclusive of such accrued interest) may not exceed the Redemption Price then applicable to such Bonds. All Term Bonds purchased or redeemed from the Redemption Fund shall be allocated to mandatory sinking fund payments applicable to such Series and maturity of Term Bonds as may be specified in a Request of the City.

**SECTION 5.05. Parity Reserve Fund.**

(A) The Trustee shall establish and maintain and hold in trust so long as Bonds or Parity Debt to be secured thereby remain outstanding, a special fund designated as the "Parity Reserve Fund." Amounts on deposit in the Parity Reserve Fund are hereby pledged to the payment of the Bonds and any Parity Debt to be secured by the Parity Reserve Fund and shall be applied only for such purposes as hereinafter permitted. The Trustee shall deposit in the Parity Reserve Fund, upon the direction of the City, the Reserve Fund Requirement and such other amounts transferred to the Trustee by the City pursuant to Section 5.01(B)(3) hereof. No deposit need be made in the Parity Reserve Fund so long as there shall be on deposit therein a sum equal to at least the amount required by this clause (A) to be on deposit therein. Whenever the amount on deposit in the Parity Reserve Fund is less than the Reserve Fund Requirement, notice thereof shall be provided to the insurer of the Bonds, if any, and such amount shall be increased to the Reserve Fund Requirement as provided for in this clause (A) not later than twelve months thereafter. Moneys on deposit in the Parity Reserve Fund (including all amounts that may be obtained from letters of credit and surety bonds and insurance policies, as provided below, on deposit in the Parity Reserve Fund) shall be transferred by the Trustee to the Principal Fund and Interest Fund to pay principal of and interest on the Bonds on any interest payment date in the event amounts on deposit therein are insufficient for such purposes. The Trustee shall also, from such amounts on deposit in the Parity Reserve Fund, transfer or cause to be transferred to any applicable debt service fund for any Parity Debt to be secured by the Parity Reserve Fund, without preference or priority between transfers made pursuant to this sentence and the preceding sentence, and in the event of any insufficiency of such moneys ratably without discrimination or preference, that sum or sums, if any, equal to the amount required to be deposited therein pursuant to the documents under which any such Parity Debt to be secured by the Parity Reserve Fund is issued or incurred. Amounts on deposit in the Parity Reserve Fund in excess of the Reserve Fund Requirement shall, at the written Request of the City, be withdrawn from the Parity Reserve Fund and transferred to the City.

(B) The City may provide for all or any part of the Reserve Fund Requirement by delivering to the Trustee an irrevocable letter of credit issued by a financial institution having unsecured debt obligations rated in one of the two highest Rating Categories of Moody's and Standard & Poor's, securing an amount, together with moneys, Investment Securities or surety bonds or insurance policies (as described in clause (C) below) on deposit in the Parity Reserve Fund, equal to the Reserve Fund Requirement. Such letter of credit shall have an original term of no less than three (3) years or, if less, the final maturity of the Bonds and such letter of credit shall provide by its terms that it may be drawn upon as provided herein. At least one year prior to the stated expiration of such letter of credit, the City shall either (i) deliver a replacement letter of credit, (ii) deliver an extension of the letter of credit for at least an additional year or, if less, the maturity of the Bonds or (iii) deliver to the Trustee a surety bond or an insurance policy satisfying the requirements of clause (C) below. Upon delivery of such replacement letter of credit, extended letter of credit, or surety bond or insurance policy, the Trustee shall deliver the then effective letter of credit to or upon the order of the City. If the City shall fail to deposit a replacement letter of credit, extended letter of credit, surety bond or insurance policy with the Trustee, the City shall immediately commence to make monthly deposits with the Trustee so that an amount equal to the Reserve Fund Requirement will be on deposit in the Parity Reserve Fund no later than the stated expiration date of the letter of credit. If an amount equal to the Reserve

Fund Requirement, as of the date following the expiration of the letter of credit, is not on deposit in the Parity Reserve Fund one week prior to the stated expiration date of the letter of credit (excluding from such determination the letter of credit), the Trustee shall draw on the letter of credit to fund the amount of any such deficiency in the Parity Reserve Fund.

(C) The City may also provide for all or any part of the Parity Reserve Fund by delivering to the Trustee a surety bond or an insurance policy securing an amount, together with moneys, Investment Securities or letters of credit on deposit in the Parity Reserve Fund, equal to the Reserve Fund Requirement. Such surety bond or insurance policy shall be issued by an insurance company whose unsecured debt obligations (or obligations secured by such insurance company's insurance policies) are rated in one of the two highest Rating Categories of Moody's and Standard & Poor's. Such surety bond or insurance policy shall have a term of no less than the final maturity of the Bonds. In the event that such surety bond or insurance policy for any reason lapses or expires, the City shall immediately implement (i) or (iii) of clause (B) above or make the required deposits to the Parity Reserve Fund. Repayment of any draw under any such surety bond or insurance policy, and any expenses and accrued interest related to such draw (collectively the "Policy Costs") shall commence in the first month following each such draw, and shall be paid at the time specified in clause (A) above in an amount not less than one-twelfth (1/12th) of the aggregate of the Policy Costs related to such draw. If and to the extent that cash has also been deposited in the Parity Reserve Fund, all such cash shall be used (including investments purchased with such cash, which shall be liquidated and the proceeds thereof applied as required hereunder) prior to any drawing under surety bond or insurance policy, and repayment of any Policy Costs shall be made prior to any replenishment of any such cash amounts. If the City shall fail to repay any Policy Costs in accordance herewith, the insurance company issuing such surety bond or insurance policy shall be entitled to exercise any and all remedies available at law or hereunder other than (i) an acceleration of the interest on or principal of the Bonds as provided herein or (ii) any other remedy that would adversely affect Bondholders. The Trustee shall ascertain the necessity for a claim upon any surety bond or insurance policy provided hereby and provide notice to the insurance company issuing such bond or policy in accordance with the terms and conditions of such bond or insurance policy not less than two (2) Business Days prior to any interest payment date upon which such a claim should be paid.

(D) In the event of any deficiency in the Principal Fund or Interest Fund for the payment of principal and interest payments for the Bonds pursuant to clause (A) above, the Trustee shall, after first applying all cash and Investment Securities held in the Parity Reserve Fund to pay the Bond Obligation of, any mandatory sinking fund payments with respect to, and interest on, the Bonds when due, on a pro rata basis with respect to the portion of the Parity Reserve Fund held in the form of letters of credit and amounts held in the form of surety bonds and insurance policies (calculated by reference to the maximum amounts of such letters of credit and surety bonds and insurance policies), draw under each letter of credit or surety bond or insurance policy issued with respect to the Parity Reserve Fund, in a timely manner and pursuant to the terms of such letter of credit or surety bond or insurance policy to the extent necessary in order to obtain sufficient funds on or prior to the date such funds are needed to pay the Bond Obligation of, any mandatory sinking fund payments with respect to, and interest on, the Bonds when due. In the event that the Trustee has written notice from the City or any Bondholder that any payment of principal of, or interest on, a Bond has been recovered from a Bondholder

pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Trustee, pursuant to and provided that the terms of the letter of credit or surety bond or insurance policy, if any, credited to the Parity Reserve Fund so provide, shall so notify the issuer thereof and draw on such letter of credit or surety bond or insurance policy to the lesser of the extent required or the maximum amount of such letter of credit or surety bond or insurance policy in order to pay to such Bondholder the principal of and interest so recovered. All amounts in the Parity Reserve Fund (other than amounts that may be obtained from letters of credit and surety bonds and insurance policies on deposit in the Parity Reserve Fund) may be used and withdrawn by the Trustee, if so directed by the City, for the payment or redemption of all Bonds then Outstanding, or for the payment of the final principal and interest payments of the Bonds.

**SECTION 5.06. Investment of Moneys in Funds and Accounts.** All moneys in any of the funds and accounts held by the Trustee and established pursuant to this Indenture shall be invested, as directed by the City, solely in Investment Securities; provided, however, that Investment Securities (other than those described in clauses (x), (xii), (xv) or (xvi) of the definition thereof) purchased with moneys held by the Trustee in the Parity Reserve Fund shall have an average weighted term to maturity not greater than five years. All Investment Securities shall, as directed by the City in writing or by telephone, promptly confirmed in writing, be acquired subject to the limitations as to maturities hereinafter in this Section set forth and such additional limitations or requirements consistent with the foregoing as may be established by Request of the City. The Trustee may conclusively rely upon any investment direction from the City as a certification to the Trustee that such investment constitutes an Investment Security. If and to the extent the Trustee does not receive investment instructions from the City with respect to the moneys in the funds and accounts held by the Trustee pursuant to this Indenture, such moneys shall be invested in Investment Securities described in clause (xi) of the definition thereof and the Trustee shall thereupon request investment instructions from the City for such moneys.

Unless otherwise provided herein or in a Supplemental Indenture, all interest, profits and other income received from the investment of moneys in any fund or account, other than the Rebate Fund, shall be transferred by the Trustee to the City for deposit in the Sewer Enterprise Fund when received. All interest, profits and other income received from the investment of moneys in the Rebate Fund shall be deposited in the Rebate Fund, except as provided in Section 6.11. Notwithstanding anything to the contrary contained herein, an amount of interest received with respect to any Investment Security equal to the amount of accrued interest, if any, paid as part of the purchase price of such Investment Security shall be credited to the fund or account from which such accrued interest was paid.

The Trustee may commingle any of the funds or accounts established pursuant to this Indenture into a separate fund or funds for investment purposes only, provided that all funds or accounts held by the Trustee hereunder shall be accounted for separately as required by this Indenture. The Trustee may act as principal or agent in the making or disposing of any investment and, with the prior written consent of the City, may impose its customary charge therefor. The Trustee may sell or present for redemption, any Investment Securities so purchased whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund or account to which such Investment Security

is credited, and the Trustee shall not be liable or responsible for any loss resulting from such investment.

The Trustee and the City shall each keep proper books of record and accounts containing complete and correct entries of all transactions made by it relating to the receipt, investment, disbursement, allocation and application of the moneys related to the Bonds, including moneys derived from, pledged to, or to be used to make payments on the Bonds. Such records shall specify the account or fund to which each investment (or portion thereof) is to be allocated and shall set forth, in the case of each investment security, (a) its purchase price, (b) identifying information, including par amount, coupon rate, and payment dates, (c) the amount received at maturity or its sale price, as the case may be, including accrued interest, (d) the amounts and dates of any payments made with respect thereto, and (e) the dates of acquisition and disposition or maturity.

The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City will not receive such confirmations to the extent permitted by law. The Trustee will furnish the City periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

The Trustee may make any investments hereunder through its own bond or investment department or trust investment department, or those of its parent or any affiliate.

The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder.

The Trustee shall also provide to the City in accordance with a Request of the City, with respect to each Investment Security such documentation as is reasonably available to the Trustee and specified by the City to the Trustee in writing and is required by the Code or other applicable law to be obtained by the City as evidence to establish that each investment had been acquired and disposed of on an established market in an arm's-length transaction at a price equal to its fair market value and with no amounts having been paid to reduce the yield on the investments, or shall be United States Treasury Obligations-State and Local Government Series as set forth in the Tax Certificate.

## ARTICLE VI

### COVENANTS

**SECTION 6.01. Punctual Payment.** The City will punctually pay or cause to be paid the principal or Redemption Price of and interest on all the Bonds, in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, and shall punctually pay or cause to be paid all mandatory sinking fund payments, but in each case only out of Net Revenues, as provided in this Indenture.

**SECTION 6.02. Operation of Enterprise in Efficient and Economical Manner.** The City covenants and agrees to operate the Enterprise in an efficient and economical manner and to operate, maintain and preserve the Enterprise in good repair and working order.

**SECTION 6.03. Waiver of Laws.** The City will not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the City to the extent permitted by law.

**SECTION 6.04. Further Assurances.** The City will make, execute and deliver any and all such instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Indenture.

**SECTION 6.05. Discharge of Claims.** The City covenants that in order to fully preserve and protect the priority and security of the Bonds, the City shall pay from the Gross Revenues and discharge all lawful claims for labor, materials and supplies furnished for or in connection with Enterprise which, if unpaid, may become a lien or charge upon the Gross Revenues or the Net Revenues prior or superior to the lien of the Bonds and impair the security of the Bonds. The City shall also pay from the Gross Revenues all taxes and assessments or other governmental charges lawfully levied or assessed upon or in respect of the Enterprise or upon any part thereof or upon any of the Gross Revenues or the Net Revenues therefrom.

**SECTION 6.06. Against Sale, Eminent Domain.** Except as provided herein, the City covenants that the property, facilities and improvements of the Enterprise shall not be mortgaged or otherwise encumbered, sold, leased, pledged, any charge placed thereon, or disposed of as a whole or substantially as a whole unless: (a) the City shall cause to be filed with the Trustee written evidence from each Rating Agency that such sale or other disposition will not cause a reduction or withdrawal of the rating then assigned to the Bonds by each such Rating Agency; (b) such sale or other disposition shall be so arranged as to provide for a continuance of payments into the Sewer Enterprise Fund sufficient in amount to permit payment therefrom of the principal of and interest on and premiums, if any, due upon the call and redemption thereof, of the Outstanding Bonds, and also to provide for such payments into the funds as are required under the terms of this Indenture and any Supplemental Indenture; and (c) the City shall have filed with the Trustee an opinion of nationally-recognized bond counsel to the effect that such sale or other disposition will not adversely affect the exemption from federal income taxation of interest on the Bonds. The City further covenants that the Net Revenues or any other funds pledged or otherwise made available to secure payment of the principal of and interest on the Outstanding Bonds shall not be mortgaged, encumbered, sold, leased, pledged, any charge placed thereon, or disposed of or used except as authorized by the terms of this Indenture. The City further covenants that it will not enter into any agreement which impairs the operation of the Enterprise or any part of it necessary to secure adequate Net Revenues to pay the principal and interest of the Bonds or which otherwise would impair the rights of the Bond Owners with respect to the Net Revenues. If any substantial part of the Enterprise is sold the payment therefor shall either be used for the acquisition and/or construction of improvements and extensions of the Enterprise or shall be deposited with the Trustee and shall be used to redeem the Outstanding Bonds and Parity Debt in respective amounts and on the respective dates identified by the City in writing.

The City covenants that any amounts received as awards as a result of the taking of all or any part of the Enterprise by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the City, shall either (a) be used for the acquisition and or construction of improvements and extension of the Enterprise, or (b) be deposited with the Trustee (in an amount required to redeem the maximum amount of Outstanding Bonds and Parity Debt) to be used to pay or redeem the Outstanding Bonds and Parity Debt in respective amounts and on the respective dates identified by the City in writing.

**SECTION 6.07. Insurance.** The City covenants that it shall at all times maintain with responsible insurers all such insurance on the Enterprise as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties. If any useful part of the Enterprise shall be damaged or destroyed, such part shall be restored to use. The money collected from insurance against accident to or destruction of the physical Enterprise shall either (a) be used for repairing or rebuilding the damaged or destroyed Enterprise, and to the extent not so applied shall be deposited with the Trustee (in an amount required to redeem the maximum amount of Outstanding Bonds and Parity Debt) to be used to pay or redeem the Outstanding Bonds and Parity Debt in respective amounts and on the respective dates identified by the City in writing.

Any such insurance shall be in the form of policies or contracts for insurance with insurers of good standing and shall be payable to the City, or may in the form of self-insurance by the City. The City shall establish such fund or funds or reserves as are necessary to provide for its share of any such self-insurance. The City shall file or cause to be filed with the Trustee, annually within one hundred twenty (120) days after the close of each Fiscal Year, a Certificate of the City (a) stating that the City is then in compliance with the requirements of this Section, and (b) stating whether during the preceding Fiscal Year any loss has been incurred with respect to the Enterprise and, if so, the amount of insurance proceeds, including the proceeds of any self-insurance fund covering such loss and specifying the reasonable and necessary costs of repair, reconstruction or replacement thereof.

**SECTION 6.08. Records and Accounts.** The City covenants that it shall keep proper books of record and accounts of the Enterprise, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the Enterprise. Said books shall, upon reasonable request, be subject to the inspection of the Owners of not less than ten percent (10%) of the Outstanding Bonds or their representatives authorized in writing.

The City covenants that it will cause the books and accounts of the Enterprise to be audited annually by an Independent Accountant and will make available for inspection by the Bond Owners at the Trust Office of the Trustee, upon reasonable request, a copy of the report of such Independent Accountant.

**SECTION 6.09. Rates and Charges.** The City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Enterprise during each Fiscal Year which (together with other funds accumulated from Gross Revenues and which are lawfully available to the City for payment of any of the following amounts during such Fiscal Year) are at least sufficient, after making allowances for contingencies and error in the estimates, to pay the following amounts in the following order:

- (a) all Operating Expenses estimated by the City to become due and payable in such Fiscal Year;
- (b) the Debt Service on the Outstanding Bonds and Parity Debt becoming due and payable during such Fiscal Year;
- (c) all other payments required for compliance with this Indenture and the instruments pursuant to which any Parity Debt shall have been issued; and
- (d) all payments required to meet any other obligations of the City which are charges, liens, encumbrances upon or payable from the Gross Revenues or the Net Revenues.

In addition, the City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Enterprise during each Fiscal Year which are sufficient to yield Net Revenues during such Fiscal Year equal to at least 1.25 times the amount determined pursuant to the preceding clause (b) of this Section. The City may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce such fees and charges below those then in effect unless the Gross Revenues from such reduced fees and charges will at all times be sufficient to meet the requirements of this Section 6.09.

**SECTION 6.10. No Priority for Additional Obligations.** The City covenants that no additional bonds, notes or other indebtedness shall be issued or incurred having any priority in payment of principal or interest out of the Net Revenues over the Bonds. Nothing in this Indenture shall prohibit or impair the authority of the City to issue bonds or other obligations which are unsecured or which are secured by a lien on Net Revenues which is subordinate to the lien established hereunder, upon such terms and in such principal amount as the City may determine.

**SECTION 6.11. Rebate Fund.**

(A) The Trustee shall establish and maintain, so long as any Bonds remain Outstanding, a fund separate from any other fund established and maintained hereunder designated as the "Rebate Fund" (the "Rebate Fund"). All amounts at any time on deposit in the Rebate Fund shall be held by the Trustee to the extent required to satisfy the requirement to make rebate payments to the United States (the "Rebate Requirement") pursuant to Section 148 of the Code and the Treasury Regulations promulgated thereunder (the "Treasury Regulations"). Such amounts shall be free and clear of any lien under this Indenture and shall be governed by this Section and Section 6.12 of this Indenture and by the Tax Certificate.

(B) Within 45 days of the end of each Bond Year (as such term is defined in the Tax Certificate), (i) the City shall calculate or cause to be calculated with respect to the Bonds the amount that would be considered the "rebate amount" within the meaning of Section 1.148-3 of the Treasury Regulations, using as the "computation date" for this purpose the end of such Bond Year, and (ii) upon the City's written direction, the Trustee shall deposit to the Rebate Fund from amounts received by the City, if and to the extent required, amounts sufficient to cause the balance in the Rebate Fund to be equal to the "rebate amount" so calculated.

The Trustee shall not be required to deposit any amount to the Rebate Fund in accordance with the preceding sentence if the amount on deposit in the Rebate Fund prior to the deposit required to be made under this paragraph (B) equals or exceeds the "rebate amount" calculated in accordance with the preceding sentence. Such excess may be withdrawn from the Rebate Fund to the extent permitted under paragraph (C) of this Section.

The City shall not be required to calculate the "rebate amount," and the Trustee shall not be required to deposit any amount to the Rebate Fund in accordance with this paragraph (B), with respect to all or a portion of the proceeds of the Bonds (including amounts treated as proceeds of the Bonds) (i) to the extent such proceeds satisfy the expenditure requirements of Section 148(f)(4)(B) or Section 148(f)(4)(C) of the Code or Section 1.148-7(d) of the Treasury Regulations, whichever is applicable, and otherwise qualify for the exception to the Rebate Requirement pursuant to whichever of said sections is applicable, (ii) to the extent such proceeds are subject to an election by the City under Section 148(f)(4)(C)(vii) of the Code to pay a 1½% penalty in lieu of arbitrage rebate in the event any of the percentage expenditure requirements of Section 148(f)(4)(C) are not satisfied, or (iii) to the extent such proceeds qualify for the exception to arbitrage rebate under Section 148(f)(4)(A)(ii) of the Code for amounts in a "bona fide debt service fund."

(C) Any funds remaining in the Rebate Fund after payment of all the Bonds hereunder and any amounts described in clause (2) of paragraph (D) of this section, or provision made therefor, including accrued interest, shall be transferred by the Trustee to the City for deposit to the Sewer Enterprise Fund.

(D) Subject to the exceptions contained in paragraph (A) of this section to the requirement to calculate the "rebate amount" and make deposits to the Rebate Fund, the Trustee shall, upon the City's written direction, pay to the United States, from amounts on deposit in the Rebate Fund,

(1) not later than 60 days after the end of (i) the fifth Bond Year, and (ii) each fifth Bond Year thereafter, an amount that, together with all previous rebate payments, is equal to at least 90% of the "rebate amount" calculated as of the end of such Bond Year in accordance with Section 1.148-3 of the Treasury Regulations; and

(2) not later than 60 days after the payment of all Bonds, an amount equal to 100% of the "rebate amount" calculated as of the date of such payment (and any income attributable to the "rebate amount" determined to be due and payable) in accordance with Section 1.148-3 of the Treasury Regulations.

(E) Each payment required to be made pursuant to paragraph (D) of this section shall be made to the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255 on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038 T, which shall be completed by or on behalf of the City and provided to the Trustee.

(F) In the event that, prior to the time any payment is required to be made from the Rebate Fund, the amount in the Rebate Fund is not sufficient to make such payment when such payment is due, the City shall calculate the amount of such deficiency and direct the Trustee to

deposit an amount equal to such deficiency into the Rebate Fund prior to the time such payment is due.

(G) In the event that immediately following the calculation required by paragraph (B) of this section, but prior to any deposit made under said paragraph, the amount on deposit in the Rebate Fund exceeds the "rebate amount" calculated in accordance with said paragraph, the City shall transfer the excess from the Rebate Fund to the Sewer Enterprise Fund.

(H) The City shall retain records of all determinations made hereunder until six years after the final payment or discharge of all Bonds.

(I) Notwithstanding anything in this Indenture to the contrary, the Rebate Requirement shall survive the payment in full or defeasance of the Bonds.

(J) The Trustee shall not be responsible for calculating rebate amounts or for the adequacy or correctness or any rebate report or rebate calculations. The Trustee shall be deemed conclusively to have complied with the provisions of this Indenture regarding calculation and payment of rebate if it follows the directions of the City and it shall have no independent duty to review or such calculations or enforce the compliance with such rebate requirements. The Trustee may conclusively rely upon and shall be fully protected from all liability in relying upon the determinations, calculations and certifications required by this Section.

**SECTION 6.12. Tax Covenants.** The City covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds under Section 103 of the Code; provided that, prior to the issuance of any Series of Bonds, the City may exclude the application of the covenants contained in this Section 6.12 and Section 6.11 hereof to such Series of Bonds. The City will not directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the City, or take or omit to take any action that would cause the Bonds to be arbitrage bonds within the meaning of Section 148(a) of the Code. To that end, the City will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds. In the event that at any time the City is of the opinion that for purposes of this Section 6.12 it is necessary to restrict or limit the yield on the investment of any moneys held by the Trustee under this Indenture, the City shall so instruct the Trustee in writing, and the Trustee shall take such action as may be necessary in accordance with such instructions.

Without limiting the generality of the foregoing, the City agrees that there shall be paid from time to time all amounts required to be rebated to the federal government of the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the Bonds from time to time. The City specifically covenants to pay or cause to be paid to the federal government of the United States of America the Rebate Requirement at the times and in the amounts determined under and as described in the Tax Certificate.

Notwithstanding any provision of this Section 6.12 and Section 6.11 hereof, if the City shall receive an Opinion of Bond Counsel to the effect that any action required under this Section 6.12 and Section 6.11 hereof is no longer required, or to the effect that some further action is

required, to maintain the exclusion from gross income of the interest on the Bonds pursuant to Section 103 of the Code, the City and the Trustee may rely conclusively on such opinion in complying with the provisions hereof, and the covenants hereunder shall be deemed to be modified to that extent.

SECTION 6.13. Continuing Disclosure Agreement. The City will comply with and carry out all of its obligations under any Continuing Disclosure Agreement executed in connection with a Series of Bonds. Upon the failure of the City to comply with the Continuing Disclosure Agreement relating to any Series of Bonds, the Trustee (at the written request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or the Owners of at least 25% in aggregate Bond Obligation of the related Series of Bonds, shall, but only to the extent indemnified to its satisfaction from any liability or expense, including, without limitation, fees and expenses of its attorneys) or any Owner or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City, to comply with its obligations under this section. For purposes of this section, "Beneficial Owner" shall have the meaning prescribed thereto in the respective Continuing Disclosure Agreement relating to such Series of Bonds.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES OF BONDHOLDERS

SECTION 7.01. Events of Default. The following events shall be Events of Default:

- (a) default in the due and punctual payment of the principal or Redemption Price of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise in the amounts and at the times provided therefor;
- (b) default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable;
- (c) failure by the City to observe or perform any covenant, condition, agreement or provision in this Indenture on its part to be observed or performed, other than as referred to in subsection (a) or (b) of this Section, for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, has been given to the City by the Trustee; except that, if such failure can be remedied but not within such thirty (30) day period and if the City has taken all action reasonably possible to remedy such failure within such thirty (30) day period, such failure shall not become an Event of Default for so long as the City shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Trustee or any insurer of the Bonds;
- (d) default by the City under any agreement governing any Parity Debt and the continuance of such default beyond the therein stated grace period, if any, with respect to such default;

(e) the filing by the City of a petition in voluntary bankruptcy for the composition of its affairs or for its corporate reorganization under any state or federal bankruptcy or insolvency law, or an assignment by the City for the benefit of creditors, or the admission by the City in writing to its insolvency or inability to pay debts as they mature, or the consent by the City in writing to the appointment of a trustee or receiver for itself;

(f) the entering by a court of competent jurisdiction of an order, judgment or decree declaring the City insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the City, or approving a petition filed against the City seeking reorganization of the City under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof; or

(g) the assumption, under the provisions of any other law for the relief or aid of debtors, by any court of competent jurisdiction of custody or control of the City or of the Net Revenues and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control.

**SECTION 7.02. Application of Net Revenues and Other Funds After Default; Acceleration.** If an Event of Default shall occur and be continuing, the City shall immediately transfer to the Trustee all Net Revenues held by it and received thereafter and the Trustee shall apply all Net Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of this Indenture (except as otherwise provided in this Indenture) as follows and in the following order:

(1) To the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Owners of the Bonds and Parity Debt, including the costs and expenses of the Trustee and the Bondholders in declaring such Event of Default, and payment of reasonable fees and expenses of the Trustee (including reasonable fees and disbursements of its counsel and other agents) incurred in and about the performance of its powers and duties under this Indenture;

(2) To the payment of the whole amount of Bond Obligation then due on the Bonds and Parity Debt (upon presentation of the Bonds and Parity Debt to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) subject to the provisions of this Indenture, with interest on such Bond Obligation at the rate or rates of interest borne by the respective Bonds and Parity Debt, to the payment to the persons entitled thereto of all installments of interest then due and the unpaid principal or Redemption Price of any Bonds and Parity Debt which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, with interest on the overdue Bond Obligation and Parity Debt at the rate borne by the respective Bonds and Parity Debt, and, if the amount available shall not be sufficient to pay in full all the Bonds and Parity Debt due on any date, together with such interest, then to the payment thereof ratably, according to the amounts of principal or interest or Accreted Value (plus accrued interest) due on such date to the persons entitled thereto, without any discrimination or preference.

In each and every such case during the continuance of such Event of Default (and subject to any rights granted to any insurer of the Bonds with respect to the enforcement of remedies upon an Event of Default pursuant to a Supplemental Indenture), the Owners of not less than a majority in aggregate amount of Bond Obligation of the Bonds at the time Outstanding shall be entitled, upon notice in writing to the City, to declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Bonds contained to the contrary notwithstanding.

This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, the City shall pay to or shall deposit with the Trustee a sum sufficient to pay all principal on such Bonds matured prior to such declaration and all matured installments of interest (if any) upon all the Bonds, and the reasonable fees and expenses of the Trustee, and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Owners of not less than a majority in aggregate amount of Bond Obligation of the Bonds at the time Outstanding, by written notice to the City and to the Trustee, may, on behalf of the Owners of all the Bonds, rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

**SECTION 7.03. Trustee to Represent Bondholders.** The Trustee is hereby irrevocably appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney-in-fact of the Owners of the Bonds for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, this Indenture and applicable provisions of any other law. Upon the occurrence and continuance of an Event of Default or other occasion giving rise to a right in the Trustee to represent the Bondholders, the Trustee in its discretion may, and upon the written request of the Owners of not less than twenty-five percent (25%) in aggregate amount of Bond Obligation of the Bonds then Outstanding, and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of such Owners by such appropriate action, suit, mandamus or other proceedings as it shall deem most effectual to protect and enforce any such right, at law or in equity, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable right or remedy vested in the Trustee or in such Owners under this Indenture or any other law; and upon instituting such proceeding, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver of the Net Revenues, and other assets pledged under this Indenture, pending such proceedings. All rights of action under this Indenture or the Bonds or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Owners of such Bonds, subject to the provisions of this Indenture (including Section 7.05).

SECTION 7.04. Bondholders' Direction of Proceedings. Anything in this Indenture to the contrary notwithstanding, the Owners of a majority in aggregate amount of Bond Obligation of the Bonds then Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee and upon furnishing the Trustee with indemnification satisfactory to it, to direct the method of conducting all remedial proceedings taken by the Trustee hereunder, provided that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Bondholders or holders of Parity Debt not parties to such direction.

SECTION 7.05. Limitation on Bondholders' Right to Sue. No Owner of any Bond shall have the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under this Indenture or any other applicable law with respect to such Bond, unless (1) such Owner shall have given to the Trustee written notice of the occurrence of an Event of Default; (2) the Owners of not less than twenty-five percent (25%) in aggregate amount of Bond Obligation of the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (3) such Owner or said Owners shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (4) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee; and (5) the Trustee shall not have received contrary directions from the Owners of a majority in aggregate amount of Bond Obligation of the Bonds then Outstanding.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder or under law; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture or the rights of any other Owners of Bonds, or to enforce any right under this Indenture or other applicable law with respect to the Bonds, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Owners of the Outstanding Bonds, subject to the provisions of this Indenture.

SECTION 7.06. Absolute Obligation of the City. Nothing in any other provision of this Indenture or in the Bonds contained shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the principal or Redemption Price of and interest on the Bonds to the respective Owners of the Bonds at their respective due dates therefor or upon call for redemption, as herein provided, but only out of the Net Revenues and other assets herein pledged therefor, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Bonds.

SECTION 7.07. Termination of Proceedings. In case any proceedings taken by the Trustee or any one or more Bondholders on account of any Event of Default shall have been

discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Bondholders, then in every such case the City, the Trustee and the Bondholders, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the City, the Trustee and the Bondholders shall continue as though no such proceedings had been taken.

SECTION 7.08. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee or to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

SECTION 7.09. No Waiver of Default. No delay or omission of the Trustee or of any Owner of the Bonds to exercise any right or power arising upon the occurrence of any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or to the Owners of the Bonds may be exercised from time to time and as often as may be deemed expedient.

## ARTICLE VIII

### THE TRUSTEE

#### SECTION 8.01. Appointment; Duties, Immunities and Liabilities of Trustee.

(A) U.S. Bank National Association is hereby appointed as Trustee under this Indenture and hereby accepts the trust imposed upon it as Trustee hereunder and to perform all the functions and duties of the Trustee hereunder, subject to the terms and conditions set forth in this Indenture. The Trustee shall, prior to an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants shall be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(B) The City may remove the Trustee at any time unless an Event of Default shall have occurred and then be continuing, and shall remove the Trustee if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate amount of Bond Obligation of the Bonds then Outstanding (or their attorneys duly authorized in writing) or if at any time the Trustee shall cease to be eligible in accordance with subsection (E) of this Section, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee, and thereupon shall appoint a successor Trustee by an instrument in writing.

(C) The Trustee may at any time resign by giving written notice of such resignation to the City and by giving the Bondholders notice of such resignation by mail at the addresses shown on the registration books maintained by the Trustee. Upon receiving such notice of resignation, the City shall promptly appoint a successor Trustee by an instrument in writing.

(D) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and have accepted appointment within forty-five (45) days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or any Bondholder (on behalf of himself and all other Bondholders) may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture, shall signify its acceptance of such appointment by executing and delivering to the City and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Request of the City or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the City shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the City shall give notice of the succession of such Trustee to the trusts hereunder by mail to the Bondholders at the addresses shown on the registration books maintained by the Trustee. If the City fails to mail such notice within fifteen (15) days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the City.

(E) Any Trustee appointed under the provisions of this Section in succession to the Trustee shall be a trust company or bank having the powers of a trust company having a corporate trust office in the State, having a combined capital and surplus of at least fifty million dollars (\$50,000,000) and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (E), the Trustee shall resign immediately in the manner and with the effect specified in this Section.

If, by reason of the judgment of any court, the Trustee or any successor Trustee is rendered unable to perform its duties hereunder, and if no successor Trustee be then appointed,

all such duties and all of the rights and powers of the Trustee hereunder shall be assumed by and vest in the Treasurer of the City in trust for the benefit of the Bondowners.

SECTION 8.02. Merger or Consolidation. Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under subsection (E) of Section 8.01, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

SECTION 8.03. Liability of Trustee.

(A) The recitals of facts herein and in the Bonds contained shall be taken as statements of the City, and the Trustee assumes no responsibility for the correctness of the same (other than the certificate of authentication of the Trustee on each Bond), and makes no representations as to the validity or sufficiency of this Indenture or of the Bonds or of any Investment Security, as to the sufficiency of the Net Revenues, or the priority of the lien of this Indenture thereon, or as to the financial or technical feasibility of the Enterprise and shall not incur any responsibility in respect of any such matter, other than in connection with the duties or obligations expressly herein or in the Bonds assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence, willful misconduct or breach of the express terms and conditions hereof. The Trustee and its directors, officers, employees or agents may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Owner of a Bond may be entitled to take, with like effect as if the Trustee was not the Trustee under this Indenture. The Trustee may in good faith hold any other form of indebtedness of the City, own, accept or negotiate any drafts, bills of exchange, acceptances or obligations of the City and make disbursements for the City and enter into any commercial or business arrangement therewith, without limitation.

(B) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts. The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, but the Trustee shall be answerable for the negligence or misconduct of any such attorney, agent, or receiver selected by it; provided, however, that the Trustee shall not be answerable for the negligence or misconduct of any attorney or certified public accountant selected by it with due care.

(C) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than twenty-five percent (25%) in aggregate amount of Bond Obligation of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Indenture.

(D) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Bondholders pursuant to the provisions of this Indenture, including, without limitation, the provisions of Article VII hereof, unless such Bondholders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby.

(E) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder.

(F) The Trustee shall not be deemed to have knowledge of and shall not be required to take any action with respect to, any Event of Default (other than an Event of Default described in subsections (a) or (b) of Section 7.01) or event which would, with the giving of notice, the passage of time or both, constitute an Event of Default, unless the Trustee shall have actual knowledge of such event or shall have been notified of such event by the City or the Owners of twenty-five percent (25%) in aggregate amount of Bond Obligation of the Bonds at the time Outstanding. Without limiting the generality of the foregoing, the Trustee shall not be required to ascertain, monitor or inquire as to the performance or observance by the City of the terms, conditions, covenants or agreements set forth in Article VI hereof (including, without limitation, the covenants of the City set forth in Sections 6.07 or 6.08 hereof), other than the covenants of the City to make payments with respect to the Bonds when due as set forth in Section 6.01 and to file with the Trustee when due, such reports and certifications as the City is required to file with the Trustee hereunder.

(G) No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(H) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the City, personally or by agent or attorney.

(I) The Trustee shall not be responsible for:

(1) the application or handling by the City of any Net Revenues or other moneys transferred to or pursuant to any Requisition or Request of the City in accordance with the terms and conditions hereof;

(2) the application and handling by the City of any other fund or account designated to be held by the City hereunder;

(3) any error or omission by the City in making any computation or giving any instruction pursuant to Sections 6.07 and 6.08 hereof and may rely conclusively on

any computations or instructions furnished to it by the City in connection with the requirements of Section 6.08 and the Tax Certificate; or

(4) the construction, operation or maintenance of the Enterprise by the City.

(J) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article VIII.

(K) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

**SECTION 8.04. Right of Trustee to Rely on Documents.** The Trustee shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, including, without limitation, counsel of or to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance herewith unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate of the City, and such Certificate shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Certificate, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable. The Trustee may also rely conclusively on any report or certification of any certified public accountant, investment banker, financial consultant, or other expert selected by the City or selected by the Trustee with due care in connection with matters required to be proven or ascertained in connection with its administration of the trusts created hereby.

**SECTION 8.05. Compensation and Indemnification of Trustee.** The City shall cause to be paid to the Trustee from time to time reasonable compensation for all service rendered under this Indenture, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under this Indenture, subject to the provisions of Section 11.10 hereof. The City further agrees to indemnify and save the Trustee, its officers, directors and employees harmless from and against any costs, claims, expenses or liabilities, including fees and expenses of its attorneys, which it may incur in the exercise and performance of its powers and duties hereunder, and which are not due to its negligence, misconduct or default.

## ARTICLE IX

### MODIFICATION OR AMENDMENT OF THIS INDENTURE

#### SECTION 9.01. Amendments Permitted.

(A) (1) This Indenture and the rights and obligations of the City, the Owners of the Bonds and the Trustee may be modified or amended from time to time and at any time by a Supplemental Indenture, which the City and the Trustee may enter into with the written consent of the Owners of a majority in aggregate amount of Bond Obligation of the Bonds (or, if such Supplemental Indenture is only applicable to a Series of Bonds, such Series of Bonds) then Outstanding shall have been filed with the Trustee; provided that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any particular maturity remain Outstanding, the consent of the Owners of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Bonds Outstanding under this Section.

(2) For any Series of Bonds for which there is a letter of credit or policy of bond insurance in place securing such Series of Bonds, the written consents of each provider of a letter of credit or a policy of bond insurance for such Series of Bonds filed with the Trustee shall be accepted in lieu of consent of the Owners of such Series of Bonds and shall be deemed to be the consent of all of the Owners of such Series of Bonds for purposes of satisfying the requirements of Section 9.01(A)(1) hereof, provided that at the time such consent is given the payment of all the principal of and interest on all Outstanding Bonds of such Series shall be insured by a policy or policies of municipal bond insurance or payable under a letter of credit the provider of which shall be a financial institution or association having unsecured debt obligations rated, or insuring or securing other debt obligations rated on the basis of such insurance or letters of credit, in one of the two highest Rating Categories of Moody's or Standard & Poor's.

(3) No such modification or amendment shall (a) extend the fixed maturity of any Bond, or reduce the amount of principal thereof, or extend the time of payment or reduce the amount of any mandatory sinking fund payment provided for the payment of any Bond, or reduce the rate of interest thereon, or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof exclusively, without the consent of the Owner of each Bond so affected, or (b) reduce the aforesaid percentage of Bond Obligation the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Net Revenues and other assets pledged under this Indenture prior to or on a parity with the lien created by this Indenture, or deprive the Owners of the Bonds of the lien created by this Indenture on such Net Revenues and other assets (in each case, except as expressly provided in this Indenture), without the consent of the Owners of all of the Bonds then Outstanding. It shall not be necessary for the consent of the Bondholders to approve the particular form of any Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof. Promptly after the execution and delivery by the Trustee and the City of any Supplemental Indenture pursuant to this subsection (A), the Trustee shall mail a notice, setting forth in general terms the substance of such Supplemental Indenture to the Owners of the Bonds at the addresses shown on the registration books of the Trustee. Any failure to give

such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplemental Indenture.

(4) A copy of each Supplemental Indenture entered into by the City and the Trustee pursuant to this Section 9.01(A) shall be sent by the City to Moody's and Standard & Poor's.

(B) This Indenture and the rights and obligations of the City, of the Trustee and of the Owners of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the City may adopt without the consent of any Bondholders but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the City in this Indenture contained other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the City;

(2) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as the City may deem necessary or desirable, and which shall not materially and adversely affect the interests of the Owners of the Bonds;

(3) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said Act or similar federal statute, and which shall not materially and adversely affect the interests of the Owners of the Bonds;

(4) to make modifications or adjustments necessary, appropriate or desirable to provide for the issuance of Variable Rate Indebtedness, Capital Appreciation Indebtedness or Parity Debt with such interest rate, payment, maturity and other terms as the City may deem desirable; subject to the provisions of Section 3.01, 3.03 and 3.05;

(5) to provide for the issuance of Bonds in book-entry form or bearer form, provided that no such provision shall materially and adversely affect the interests of the Owners of the Bonds;

(6) if the City agrees in a Supplemental Indenture to maintain the exclusion of interest on a Series of Bonds from gross income for purposes of federal income taxation, to make such provisions as are necessary or appropriate to ensure such exclusion;

(7) to provide for the issuance of an additional Series of Bonds pursuant to provisions of Section 3.02 or Section 3.03; and

(8) for any other purpose that does not materially and adversely affect the interests of the Owners of the Bonds.

SECTION 9.02. Effect of Supplemental Indenture. From and after the time any Supplemental Indenture becomes effective pursuant to this Article, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the City, the Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 9.03. Endorsement of Bonds; Preparation of New Bonds. Bonds delivered after any Supplemental Indenture becomes effective pursuant to this Article may, and if the Trustee so determines shall, bear a notation by endorsement or otherwise in form approved by the City and the Trustee as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand of the Owner of any Bond Outstanding at the time of such execution and presentation of his Bond for such purpose at the Corporate Trust Office or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation shall be made on such Bond. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the City and the Trustee, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the City and authenticated by the Trustee, and upon demand of the Owners of any Bonds then Outstanding shall be exchanged at the Principal Corporate Trust Office, without cost to any Bondholder, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amounts of the same Series, tenor and maturity.

SECTION 9.04. Amendment of Particular Bonds. The provisions of this Article shall not prevent any Bondholder from accepting any amendment as to the particular Bonds held by him, provided that due notation thereof is made on such Bonds.

## ARTICLE X

### DEFEASANCE

SECTION 10.01. Discharge of Indenture. Bonds of any Series or a portion thereof may be paid by the City in any of the following ways:

- (a) by paying or causing to be paid the Bond Obligation of and interest on such Outstanding Bonds, as and when the same become due and payable;
- (b) by depositing with the Trustee, an escrow agent or other fiduciary, in trust, at or before maturity, money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem such Outstanding Bonds; or
- (c) by delivering to the Trustee, for cancellation by it, such Outstanding Bonds.

If the City shall pay all Series for which any Bonds are Outstanding and also pay or cause to be paid all other sums payable hereunder by the City, then and in that case (but subject to any additional requirements in connection therewith as may be imposed by any insurer of the Bonds

and set forth in a Supplemental Indenture), at the election of the City (evidenced by a Certificate of the City filed with the Trustee signifying the intention of the City to discharge all such indebtedness and this Indenture), and notwithstanding that any Bonds shall not have been surrendered for payment, this Indenture and the pledge of Net Revenues and other assets made under this Indenture and all covenants, agreements and other obligations of the City under this Indenture shall cease, terminate, become void and be completely discharged and satisfied. In such event, upon Request of the City, the Trustee shall cause an accounting for such period or periods as may be requested by the City to be prepared and filed with the City and shall execute and deliver to the City all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver to the City all moneys or securities or other property held by it pursuant to this Indenture which, as evidenced by a verification report, upon which the Trustee may conclusively rely, from a firm of certified public accountants, are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption.

**SECTION 10.02. Discharge of Liability on Bonds.** Upon the deposit with the Trustee, escrow agent or other fiduciary, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be redeemed prior to maturity, notice of such redemption shall have been given as in Article IV provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, then (but subject to any additional requirements with respect thereto as may be imposed by any insurer of the Bonds and set forth in a Supplemental Indenture) all liability of the City in respect of such Bond shall cease, terminate and be completely discharged, provided that the Owner thereof shall thereafter be entitled to the payment of the principal of and premium, if any, and interest on the Bonds, and the City shall remain liable for such payment, but only out of such money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 10.04 and the continuing duties of the Trustee hereunder.

The City may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the City may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

**SECTION 10.03. Deposit of Money or Securities with Trustee.** Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to this Indenture and shall be:

- (a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as in Article IV provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or Redemption Price of such Bonds and all unpaid interest thereon to the redemption date; or

(b) Defeasance Securities, the principal of and interest on which when due will, in the opinion of an independent certified public accountant delivered to the Trustee (upon which opinion the Trustee may conclusively rely), provide money sufficient to pay the principal or Redemption Price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such principal or Redemption Price and interest become due, provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article IV provided or provision satisfactory to the Trustee shall have been made for the giving of such notice;

provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of this Indenture or by Request of the City) to apply such money to the payment of such principal or Redemption Price and interest with respect to such Bonds.

**SECTION 10.04. Payment of Bonds After Discharge of Indenture.** Any moneys held by the Trustee in trust for the payment of the principal or Redemption Price of, or interest on, any Bonds and remaining unclaimed for two years after the principal of all of the Bonds has become due and payable (whether at maturity or upon call for redemption as provided in this Indenture), if such moneys were so held at such date, or two (2) years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall be repaid to the City free from the trust created by this Indenture, and all liability of the Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the City as aforesaid, the Trustee may (at the cost of the City) first mail to the Owners of any Bonds remaining unpaid at the addresses shown on the registration books maintained by the Trustee a notice, in such form as may be deemed appropriate by the Trustee, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the City of the moneys held for the payment thereof. All moneys held by or on behalf of the Trustee for the payment of principal or Accreted Value of or interest or premium on Bonds, whether at redemption or maturity, shall be held in trust for the account of the Owners thereof and the Trustee shall not be required to pay Owners any interest on, or be liable to the Owners or any other person (other than the City) for any interest earned on, moneys so held. Any interest earned thereon shall belong to the City and shall be deposited monthly by the Trustee into the Sewer Enterprise Fund.

## ARTICLE XI

### MISCELLANEOUS

**SECTION 11.01. Liability of City Limited to Net Revenues.** Notwithstanding anything in this Indenture or in the Bonds contained, the City shall not be required to advance any moneys derived from any source other than the Net Revenues and other assets pledged hereunder for any of the purposes in this Indenture mentioned, whether for the payment of the principal or Redemption Price of or interest on the Bonds or for any other purpose of this Indenture.

The Bonds are special, limited obligations of the City. The Bonds shall not be deemed to constitute a debt or liability of the City, the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory provision, or a pledge of the faith

and credit of the City, the State of California or of any political subdivision thereof, but shall be payable, except to the extent of certain amounts held hereunder pledged therefor, solely from Net Revenues. Neither the faith and credit nor the taxing power of the City, the State of California or of any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Bonds. The issuance of the Bonds shall not directly or indirectly or contingently obligate the City, the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment.

**SECTION 11.02. Successor is Deemed Included in All References to Predecessor.** Whenever in this Indenture either the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**SECTION 11.03. Limitation of Rights to City, Trustee and Bondholders.** Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person other than the City, the Trustee and the Owners of the Bonds and any Parity Debt, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the City, the Trustee and the Owners of the Bonds and any Parity Debt.

**SECTION 11.04. Waiver of Notice.** Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**SECTION 11.05. Destruction or Delivery of Cancelled Bonds.** Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to the City of any Bonds, the Trustee may, in its sole discretion, in lieu of such cancellation and delivery, destroy such Bonds, and deliver a certificate of such destruction to the City.

**SECTION 11.06. Severability of Invalid Provisions.** If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The City hereby declares that it would have executed and delivered this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

**SECTION 11.07. Notice to City and Trustee.** Any notice to or demand upon the Trustee may be served or presented, and such demand may be made, at the Corporate Trust Office of the

Trustee. Any notice to or demand upon the City, shall be deemed to have been sufficiently given or served for all purposes by being deposited, first-class mail postage prepaid, in a post office letter box, addressed, as the case may be, to the City at 1010 Tenth Street, Modesto, California 95354, Attention: Director of Finance (or such other address as may have been filed in writing by the City with the Trustee).

**SECTION 11.08. Evidence of Rights of Bondholders.** Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Bondholders may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Bondholders in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any person of Bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and of the City if made in the manner provided in this Section.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of Bonds shall be proved by the bond registration books held by the Trustee. The Trustee may establish a record date as of which to measure consent of the Bondowners in order to determine whether the requisite consents are received.

Any request, consent, or other instrument or writing of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the City in accordance therewith or reliance thereon.

**SECTION 11.09. Disqualified Bonds.** In determining whether the Owners of the requisite aggregate amount of Bond Obligation have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the City, or by any other obligor on the Bonds, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the City or any other obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the City or any other obligor on the Bonds. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

**SECTION 11.10. Money Held for Particular Bonds.** The money held by the Trustee for the payment of the interest, principal or Redemption Price due on any date with respect to

particular Bonds (or portions of Bonds in the case of registered Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Bonds entitled thereto, subject, however, to the provisions of Section 10.04.

SECTION 11.11. Funds and Accounts. Any fund required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds shall at all times be maintained in accordance with customary standards of the industry, to the extent practicable, and with due regard for the protection of the security of the Bonds and the rights of every holder thereof.

SECTION 11.12. Article and Section Headings and References. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Indenture.

All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

SECTION 11.13. Waiver of Personal Liability. No Council member, officer, agent or employee of the City or the Trustee shall be individually or personally liable for the payment of the principal or Redemption Price of or interest on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such Council member, officer, agent or employee of the City or the Trustee from the performance of any official duty provided by law or by this Indenture.

SECTION 11.14. Governing Law. This Indenture shall be construed and governed in accordance with the laws of the State of California.

SECTION 11.15. Business Day. Except as specifically set forth in a Supplemental Indenture, any payments or transfers which would otherwise become due on any day which is not a Business Day shall become due or shall be made on the next succeeding Business Day with the same effect as if made on such preceding non-Business Day.

SECTION 11.16. Effective Date of Indenture. This Indenture shall take effect upon its execution and delivery.

SECTION 11.17. Execution in Counterparts. This Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Indenture by their officers thereunto duly authorized as of the day and year first written above.

CITY OF MODESTO, CALIFORNIA

By: Gregory M. Baird  
Deputy Director of Finance

(Seal)

ATTEST:

By: Jean Zahr  
City Clerk

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

IN WITNESS WHEREOF, the parties hereto have executed this Indenture by their officers thereunto duly authorized as of the day and year first written above.

CITY OF MODESTO, CALIFORNIA

By: \_\_\_\_\_  
Deputy Director of Finance

(Seal)

ATTEST:

By: \_\_\_\_\_  
City Clerk

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: *Myra P. Chornik*  
Authorized Officer

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FIRST SUPPLEMENTAL  
WASTEWATER REVENUE BOND INDENTURE

by and between the

CITY OF MODESTO, CALIFORNIA

and

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

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Dated as of April 1, 2005

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(Supplemental to the Wastewater Revenue  
Bond Indenture dated as of April 1, 2005)

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FIRST SUPPLEMENTAL  
WASTEWATER REVENUE BOND INDENTURE

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First Supplemental Wastewater Revenue Bond Indenture  
(Supplemental to the Wastewater Revenue Bond Indenture  
dated as of April 1, 2005)  
Authorizing the Issuance of  
\$36,495,000 Aggregate Principal Amount of  
City of Modesto, California  
Wastewater Revenue Refunding Bonds, Series 2005A

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This FIRST SUPPLEMENTAL WASTEWATER REVENUE BOND INDENTURE, dated as of April 1, 2005 (the "First Supplement"), by and between the CITY OF MODESTO, CALIFORNIA (the "City"), a municipal corporation and chartered city duly organized and existing under the Constitution and laws of the State of California, and U.S. BANK NATIONAL ASSOCIATION, as trustee (the "Trustee"),

W I T N E S S E T H :

WHEREAS, Section 200 of the Charter of the City of Modesto and the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the "Bond Law") authorizes the City to issue revenue bonds to finance the acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation of the wastewater treatment facilities of the City (the "Enterprise") or for the purpose of refunding bonds issued for such purposes; and

WHEREAS, in accordance with the Bond Law and an Indenture of Trust, dated as of December 1, 1987 (the "Prior Indenture"), the City has previously issued its Wastewater Treatment Facility Refunding Revenue Bonds, Series 1987 (the "Series 1987 Bonds") in an aggregate principal amount of \$11,785,000 to provide funds to advance refund certain outstanding wastewater revenue bonds of the City; and

WHEREAS, in accordance with the Bond Law and the Prior Indenture, as amended and supplemented by a First Supplemental Indenture, dated as of September 1, 1993 (the "First Supplemental Indenture"), the City has previously issued its Wastewater Revenue Bonds, Series 1993 (the "Series 1993 Bonds") in an aggregate principal amount of \$8,555,000 to provide funds for the acquisition and construction of improvements to the Enterprise; and

WHEREAS, in accordance with the Bond Law and the Prior Indenture, as previously amended and supplemented, and as amended and supplemented by a Second Supplemental Indenture, dated as of August 1, 1996 (the "Second Supplemental Indenture"), the City has previously issued its Wastewater Treatment Facility Refunding Revenue Bonds, Series 1996 (the "Series 1996 Bonds") in an aggregate principal amount of \$8,695,000 to provide funds to current refund the 1987 Bonds; and

WHEREAS, in accordance with the Bond Law and the Prior Indenture, as previously amended and supplemented, and as amended and supplemented by a Third Supplemental Indenture, dated as of April 1, 1997 (the "Third Supplemental Indenture"), the City has previously issued its Wastewater Treatment Facility Revenue Bonds, Series 1997 (the "Series 1997 Bonds") in an aggregate principal amount of \$32,400,000 to finance the acquisition and construction of improvements to the Enterprise;

WHEREAS, the City has determined that it is desirable and necessary and in the best interest of the City to refund all of the outstanding Series 1993 Bonds, Series 1996 Bonds and Series 1997 Bonds and to enter into a Wastewater Revenue Bond Indenture, dated as of April 1, 2005 (the "Indenture"), between the City and the Trustee, providing for the issuance of wastewater revenue bonds hereafter thereunder (the "Bonds"); and

WHEREAS, the Indenture provides that the City may issue Bonds from time to time as authorized by a supplemental indenture; and

WHEREAS, this First Supplement is supplemental to the Indenture; and

WHEREAS, the City has determined that it is necessary and required that the City enter into this First Supplement in order to establish and declare, in conjunction with the Indenture, the terms and conditions upon which City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005A (the "Series 2005A Bonds") shall be issued and secured and to secure the payment of the principal thereof and premium (if any) and interest thereon; and

WHEREAS, the City has determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and the entering into of this First Supplement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this First Supplement;

NOW, THEREFORE, the parties hereto agree, as follows:

## ARTICLE XII

### THE 2005A BONDS

SECTION 12.01. Definitions. The terms defined in this Section shall, for all purposes of this First Supplement and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Terms defined in the Indenture not otherwise defined herein shall have the meanings specified therein.

#### 1993 Bonds Escrow Agreement

"1993 Bonds Escrow Agreement" means the Escrow Agreement, dated as of April 1, 2005, between the City and U.S. Bank National Association, as escrow agent, relating to the defeasance of the outstanding Series 1993 Bonds.

### 1997 Bonds Escrow Agreement

“1997 Bonds Escrow Agreement” means the Escrow Agreement, dated as of April 1, 2005, between the City and U.S. Bank National Association, as escrow agent, relating to the defeasance of the outstanding Series 1997 Bonds.

### First Supplement

“First Supplement” means this First Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, between the City and the Trustee.

### Prior Indenture

“Prior Indenture” means the Indenture of Trust, dated as of December 1, 1987, by and between the City and U.S. Bank National Association, as successor trustee, as amended and supplemented to the date hereof.

### Second Supplement

“Second Supplement” means the Second Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, between the City and the Trustee, pursuant to which the Series 2005B Bonds are issued.

### Securities Depository

“Securities Depository” shall have the meaning assigned to such term in Section 12.12(A) hereof.

### Series 1993 Bonds

“Series 1993 Bonds” means the City of Modesto, California Wastewater Revenue Bonds, Series 1993 issued and outstanding under the Prior Indenture.

### Series 1997 Bonds

“Series 1997 Bonds” means the City of Modesto, California Wastewater Treatment Facility Revenue Bonds, Series 1997 issued and outstanding under the Prior Indenture.

### Series 2005 Bonds

“Series 2005 Bonds” means collectively, the Series 2005A Bonds and the Series 2005B Bonds.

### Series 2005 Costs of Issuance Fund

“Series 2005 Costs of Issuance Fund” means the fund by that name established pursuant to Section 12.11 hereof.

### Series 2005A Bonds

“Series 2005A Bonds” means the City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005A, as described in Section 12.02(A) hereof.

Series 2005A Bond Insurance Policy

“Series 2005A Bond Insurance Policy” means the insurance policy issued by the Series 2005A Bond Insurer guaranteeing the scheduled payment of principal of and interest on the Series 2005A Bonds when due.

Series 2005A Bond Insurer

“Series 2005A Bond Insurer” means Financial Security Assurance, Inc., a New York stock insurance company, or any successor thereto or assignee thereof.

Series 2005B Bonds

“Series 2005B Bonds” means the City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005B (Taxable), issued simultaneously with the Series 2005A Bonds, pursuant to the Second Supplement.

SECTION 12.02. Authorization; Terms of the Series 2005A Bonds.

(A) A first Series of Bonds to be issued under the Indenture is hereby created. Such Series shall be known as the “City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005A” (herein referred to as the “Series 2005A Bonds”). The Series 2005A Bonds shall be issued in the aggregate initial principal amount of \$36,495,000 in accordance with the Bond Law and this Indenture for the purposes of (i) refunding the outstanding Series 1993 Bonds and Series 1997 Bonds, (ii) funding a deposit to the Parity Reserve Fund, and (iii) paying the Costs of Issuance in connection with the issuance and delivery of the Series 2005A Bonds.

(B) The Series 2005A Bonds shall be issued in fully registered form and shall be initially registered in the name of “Cede & Co.”, as nominee of The Depository Trust Company. The Series 2005A Bonds shall be evidenced by one Series 2005A Bond maturing on each of the maturity dates as set forth in subsection 12.02(C) in a denomination corresponding to the total principal amount of the Series 2005A Bonds of such maturity. Each Series 2005A Bond may be assigned by the Trustee a distinctive number or letter and number, and a record of the same shall be maintained by the Trustee. Registered ownership of the Series 2005A Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section 12.12.

(C) The Series 2005A Bonds shall be dated the date of delivery, shall be bonds which are Current Interest Indebtedness, shall be issued in denominations of \$5,000 or any integral multiple thereof, and shall bear interest from the date thereof at the following rates per annum and shall mature on November 1 in the following years in the following amounts:

Maturity Date (November 1)	Principal Amount	Interest Rate
2005	\$ 440,000	3.00%
2006	575,000	3.00
2007	595,000	3.00
2008	1,660,000	3.00
2009	1,710,000	3.00
2010	1,765,000	5.00
2011	1,855,000	5.00
2012	1,955,000	5.00
2013	2,050,000	5.00
2014	2,160,000	5.00
2015	2,270,000	5.00
2016	2,385,000	4.00
2017	2,485,000	5.25
2018	2,625,000	5.25
2019	2,765,000	5.00
2020	2,905,000	5.25
2021	3,065,000	5.25
2022	3,230,000	5.25

The Series 2005A Bonds maturing on November 1, 2005 through November 1, 2022 inclusive, are designated Serial Bonds.

Interest on the Series 2005A Bonds shall be payable commencing on November 1, 2005 and semiannually thereafter on May 1 and November 1 of each year in lawful money of the United States of America by check mailed by first-class mail on each interest payment date to the Owner thereof as of the close of business on the fifteenth (15th) day of the calendar month immediately preceding such interest payment date; provided, that upon the written request of an Owner of one million dollars (\$1,000,000) or more in aggregate principal amount of Series 2005A Bonds received by the Trustee prior to the applicable Record Date (which such request shall remain in effect until rescinded in writing by such Owner), interest shall be paid by wire transfer in immediately available funds. Interest on the Series 2005A Bonds shall be computed on the basis of a 360-day year of twelve 30-day months. The principal of and premium, if any, on the Series 2005A Bonds are payable when due upon presentation thereof at the Corporate Trust Office of the Trustee, in lawful money of the United States of America.

So long as the Series 2005A Bonds are maintained in book-entry form, payments of principal, premium, if any, and interest shall be made by the Trustee to the Securities Depository by wire transfer.

The Trustee shall provide to Bondholders CUSIP number identification, with appropriate dollar amounts for each CUSIP number, on all redemption payments and interest payments, whether by check or by wire transfer.

**SECTION 12.03. Redemption of Series 2005A Bonds.**

(A) **Optional Redemption.** The Series 2005A Bonds maturing on or before November 1, 2015 are not subject to call or redemption prior to maturity. The Series 2005A Bonds maturing on or after November 1, 2016 shall be subject to redemption prior to their respective stated maturities, at the option of the City, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the City and by lot within a maturity), on or after November 1, 2015, at a Redemption Price equal to 100% of the principal amount of Series 2005A Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

(B) **Special Mandatory Redemption From Insurance or Condemnation Proceeds.** The Series 2005A Bonds shall also be subject to redemption as a whole or in part on any date, among such maturities as designated by the City and by lot within a maturity, to the extent of hazard insurance proceeds not used to repair or rebuild the Enterprise or condemnation proceeds received with respect to the Enterprise to be used for such purpose pursuant to Sections 6.06 or 6.07 of the Indenture, at a Redemption Price equal to the principal amount of the Series 2005A Bonds plus interest accrued thereon to the date fixed for redemption, without premium. Notwithstanding the foregoing, in the event of a special mandatory redemption of less than all of the Outstanding Series 2005A Bonds pursuant to this Section 12.03(B), the designation by the City of the maturities of the Series 2005A Bonds from which such redemption will be made shall be subject to the prior written approval of the Series 2005A Bond Insurer.

**SECTION 12.04. Selection of Series 2005A Bonds for Redemption.** Whenever provision is made in this First Supplement for the redemption of less than all of the Series 2005A Bonds of any maturity (and interest rate), the Trustee shall select the Series 2005A Bonds to be redeemed, from all Series 2005A Bonds of the respective maturity (and interest rate) not previously called for redemption, in authorized denominations, by lot in any manner which the Trustee in its sole discretion shall deem appropriate. The Trustee shall promptly notify the City in writing of the Series 2005A Bonds so selected for redemption.

**SECTION 12.05. Notice of Redemption of Series 2005A Bonds.** The City shall notify the Trustee at least forty-five (45) days prior to the redemption date for Series 2005A Bonds pursuant to Section 12.03(A) or (B). Notice of redemption of any Series 2005A Bonds shall be mailed by the Trustee, not less than thirty (30) nor more than sixty (60) days prior to the redemption date, (i) to the respective Owners of any Series 2005A Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee by first-class mail, (ii) to the Securities Depositories by facsimile and by first-class mail, and (iii) to the Information Services by first-class mail. Notice of redemption shall be given in the form and in accordance with the terms of the Indenture.

**SECTION 12.06. Partial Redemption of Series 2005A Bonds.** Upon surrender of any Series 2005A Bond redeemed in part only, the City shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the City, a new Series 2005A Bond of authorized denominations, and of the same maturity and interest rate, equal in aggregate principal amount to the unredeemed portion of the Series 2005A Bond surrendered.

SECTION 12.07. Effect of Redemption of Series 2005A Bonds. Notice of redemption having been duly given as aforesaid, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Series 2005A Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Series 2005A Bonds (or portions thereof) so called for redemption shall become due and payable at the Redemption Price specified in such notice, together with interest accrued thereon to the date fixed for redemption, interest on the Series 2005A Bonds so called for redemption shall cease to accrue, said Series 2005A Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Series 2005A Bonds shall have no rights in respect thereof except to receive payment of said Redemption Price and accrued interest.

All Series 2005A Bonds redeemed pursuant to the provisions of this Article shall be cancelled upon surrender thereof and destroyed.

SECTION 12.08. Form of Series 2005A Bonds. The Series 2005A Bonds and the certificate of authentication and registration to be executed thereon shall be in substantially the form set forth as Exhibit A hereto. The Series 2005A Bond designation letters and numbers, maturity dates, principal amounts, and interest rates and yields to maturity shall be inserted therein in conformity with Section 12.02.

SECTION 12.09. Issuance of Series 2005A Bonds. At any time after the execution and delivery of this First Supplement, the City may execute and the Trustee shall authenticate and deliver the Series 2005A Bonds in the aggregate principal amount of \$36,495,000 upon the Order of the City.

SECTION 12.10. Application of Proceeds of Series 2005A Bonds.

(A) The proceeds of the sale of the Series 2005A Bonds in the amount of \$38,434,769.37 (computed as \$36,495,000.00 aggregate principal amount of the Series 2005A Bonds, less \$227,734.04 Underwriter's discount, plus \$2,300,405.35 net original issue premium, less \$132,901.94 directly transferred, at the request and direction of the City and on behalf of the Trustee, by the Underwriter to the Series 2005A Bond Insurer, said amount representing the bond insurance premium for the Series 2005A Bond Insurance Policy) shall be received by the Trustee on behalf of the City and held in trust and set aside as follows:

(i) The Trustee shall transfer to U.S. Bank National Association, as escrow agent under the 1993 Bonds Escrow Agreement, \$4,137,837.71, to be applied, together with certain other amounts deposited therein at the direction of the City, towards the defeasance of the Series 1993 Bonds pursuant to the 1993 Bonds Escrow Agreement;

(ii) The Trustee shall transfer to U.S. Bank National Association, as escrow agent under the 1997 Bonds Escrow Agreement, \$34,114,056.00, to be applied, together with certain other amounts deposited therein at the direction of the City, towards the defeasance of the Series 1997 Bonds pursuant to the 1997 Bonds Escrow Agreement; and

(iii) The Trustee shall deposit in the 2005 Costs of Issuance Fund \$182,875.66, to be applied, together with certain other amounts transferred thereto at the direction of the City, in accordance with Section 12.11 hereof.

(B) On the date hereof, the Trustee shall transfer to the Parity Reserve Fund from the 1997 reserve account for the Series 1997 Bonds \$3,196,568.08, which shall be equal to the amount of the Reserve Fund Requirement attributable to the Series 2005 Bonds.

**SECTION 12.11. Establishment and Application of Series 2005 Costs of Issuance Fund.** The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Series 2005 Costs of Issuance Fund," which fund is hereby created and which fund the Trustee hereby agrees to maintain with the Trustee until November 1, 2005. The Trustee shall deposit to the Series 2005 Costs of Issuance Fund the amounts specified in Section 12.10 hereof and the amounts specified in Section 13.10 of the Second Supplement. All money in the Series 2005 Costs of Issuance Fund shall be used and withdrawn by the Trustee to pay the Costs of Issuance of the Series 2005 Bonds upon receipt of Requisitions of the City filed with the Trustee, each of which shall be sequentially numbered and shall state the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. On November 1, 2005 or upon the earlier Request of the City, any remaining balance in the Series 2005 Costs of Issuance Fund shall be transferred to the City.

**SECTION 12.12. Use of Depository.** Notwithstanding any provision of the Indenture or this First Supplement to the contrary:

(A) The Series 2005A Bonds shall be issued in fully registered form, in authorized denominations and shall be initially registered in the name of "Cede & Co.", as nominee of The Depository Trust Company (the "Securities Depository"), and shall be evidenced by one Series 2005A Bond maturing on each of the maturity dates as set forth in subsection 12.02(C) in a denomination corresponding to the total principal amount of the Series 2005A Bonds of such maturity. Each Series 2005A Bond shall be assigned by the Trustee a distinctive number or letter or letter and number, and a record of the same shall be maintained by the Trustee.

Registered ownership of the Series 2005A Bonds, or any portions thereof, may not thereafter be transferred except:

(i) To any successor of The Depository Trust Company or its nominee, or to any substitute depository designated pursuant to clause (ii) of this subsection (A) (a "Substitute Depository"); provided that any successor of The Depository Trust Company or Substitute Depository shall be qualified under any applicable laws to provide the services proposed to be provided by it;

(ii) To any Substitute Depository not objected to by the Trustee, upon (1) the resignation of The Depository Trust Company or its successor (or any Substitute Depository or its successor) from its functions as depository, or (2) a determination by the City that The Depository Trust Company or its successor (or any Substitute Depository or its successor) is no longer able to carry out its functions as depository;

provided that any such Substitute Depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) To any person as provided below, upon (1) the resignation of The Depository Trust Company or its successor (or Substitute Depository or its successor) from its functions as depository; provided that no Substitute Depository which is not objected to by the Trustee can be obtained, or (2) a determination by the City that it is in the best interests of the City to remove The Depository Trust Company or its successor (or any Substitute Depository or its successor) from its function as depository.

(B) In the case of any transfer pursuant to clause (i) or clause (ii) of subsection 12.12(A), upon receipt of all Outstanding Series 2005A Bonds by the Trustee, together with a Certificate of the City to the Trustee, a single new Series 2005A Bond for each maturity shall be executed and delivered, registered in the name of such successor or such Substitute Depository, or their nominees, as the case may be, all as specified in such Certificate of the City. In the case of any transfer pursuant to clause (iii) of subsection 12.12(A) hereof, upon receipt of all Outstanding Series 2005A Bonds by the Trustee together with a Certificate of the City to the Trustee, new Series 2005A Bonds shall be executed and delivered in such denominations and registered in the names of such persons as are requested in such a Certificate of the City, subject to the limitations of Section 12.02 hereof; provided the Trustee shall not be required to deliver such new Series 2005A Bonds within a period less than 60 days from the date of receipt of such a Certificate of the City.

(C) In the case of partial redemption, cancellation or an advance refunding of any Series 2005A Bonds evidencing all or a portion of the principal maturing in a particular year, The Depository Trust Company shall make an appropriate notation on the Series 2005A Bonds indicating the date and amounts of such reduction in principal, in form acceptable to the Trustee.

(D) The City and the Trustee shall be entitled to treat the person in whose name any Series 2005A Bond is registered as the Owner thereof for all purposes of the Indenture and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the City; and the City and the Trustee shall have no responsibility for transmitting payments to, communication with, notifying, or otherwise dealing with any beneficial owners of the Series 2005A Bonds. Neither the City nor the Trustee will have any responsibility or obligations, legal or otherwise, to the beneficial owners or to any other party including The Depository Trust Company or its successor (or Substitute Depository or its successor), except to the Owner of any Series 2005A Bond.

(E) So long as all Outstanding Series 2005A Bonds are registered in the name of "Cede & Co." or its registered assign, the City and the Trustee shall cooperate with "Cede & Co.," as sole registered Owner, and its registered assigns in effecting payment of the principal of and redemption premium, if any, and interest on the Series 2005A Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

**SECTION 12.13. Bond Insurance Provisions.** Notwithstanding any other provision of the Indenture or this First Supplement to the contrary, so long as the Series 2005A Bond

Insurance Policy is in full force and effect and the Series 2005A Bond Insurer is not in default in its payment of obligations thereunder, the following provisions shall be in effect:

(A) The prior written consent of the Series 2005A Bond Insurer shall be a condition precedent to the deposit of any letter of credit, surety bond or insurance policy into the Parity Reserve Fund pursuant to Section 5.05 of the Indenture for purposes of satisfying all or any part of the Reserve Fund Requirement.

(B) Pursuant to the provisions of Section 9.01(A)(2) of the Indenture, any modification, amendment or supplement to the Indenture pursuant to Section 9.01(A) of the Indenture shall require the consent of the Series 2005A Bond Insurer in lieu of consent of the Owners of the Series 2005A Bonds. Copies of any Supplemental Indenture sent to Moody's and Standard & Poor's pursuant to Section 9.01(A)(4) shall be sent at least 10 days prior to the effective date thereof.

(C) (1) The Series 2005A Bond Insurer shall be deemed to be the sole Owner of the Series 2005A Bonds insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the Owners of the Series 2005A Bonds insured by it are entitled to take pursuant to Article VII (pertaining to defaults and remedies) of the Indenture and Article VIII (pertaining to the Trustee) of the Indenture. The maturity of the Series 2005A Bonds insured by the Series 2005A Bond Insurer shall not be accelerated without the consent of the Series 2005A Bond Insurer.

(2) In the event the maturity of the Series 2005A Bonds is accelerated, the Series 2005A Bond Insurer may elect, in its sole discretion, to pay accelerated principal and interest accrued on such principal to the date of acceleration (to the extent unpaid by the City) and the Trustee shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Series 2005A Bond Insurer's obligations under the Series 2005A Bond Insurance Policy with respect to such Series 2005A Bonds shall be fully discharged.

(3) The rights granted to the Series 2005A Bond Insurer hereunder to request, consent to or direct any action are rights granted to the Series 2005A Bond Insurer in consideration of its issuance of the Series 2005A Bond Insurance Policy. Any exercise by the Series 2005A Bond Insurer of such rights is merely an exercise of the Series 2005A Bond Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit or on behalf of the Owners of the Series 2005A Bonds nor does such action evidence any position of the Series 2005A Bond Insurer, positive or negative, as to whether consent of the Owners of the Series 2005A Bonds is required in addition to consent of the Series 2005A Bond Insurer.

(4) In determining whether any amendment, consent or other action to be taken, or any failure to act, under the Indenture would adversely affect the security for the Series 2005A Bonds or the rights of the Owners, the Trustee shall consider the effect of any such amendment, consent, action or inaction as if there were no Series 2005A Bond Insurance Policy.

(5) The allowable grace period for the City to cure a failure to observe or perform any covenant, condition, agreement or provision of the Indenture prior to such failure

becoming an Event of Default pursuant to Section 7.01(b) of the Indenture shall not be extended beyond a sixty (60) day period without the prior written consent of the Series 2005A Bond Insurer. Notwithstanding any provision to the contrary that may be contained in any agreement governing any Parity Debt, for purposes of Section 7.01(d) of the Indenture there shall be no grace period for the default by the City in the due and punctual payment of any Parity Debt.

(D) (1) To the extent that the Indenture confers upon or gives or grants to the Series 2005A Bond Insurer any right, remedy or claim under or by reason of the Indenture, the Series 2005A Bond Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted thereunder or hereunder.

(2) Except as permitted under the terms of the Indenture, no contract shall be entered into by the City nor any action taken by the City by which the rights of the Series 2005A Bond Insurer or security for or sources of payment of the Series 2005A Bonds may be impaired or prejudiced except upon obtaining the prior written consent of the Series 2005A Bond Insurer.

(E) (1) In connection with any defeasance of Series 2005A Bonds pursuant to Article X of the Indenture, in addition to the requirements of Article X of the Indenture, the City shall cause to be delivered (i) an escrow deposit agreement (which shall be acceptable in form and substance to the Series 2005A Bond Insurer), and (ii) an opinion of nationally recognized bond counsel (which shall be acceptable in form and substance to the Series 2005A Bond Insurer) to the effect that the Series 2005A Bonds being defeased are no longer "Outstanding" under the Indenture, addressed to the City, the Trustee and the Series 2005A Bond Insurer. The Series 2005A Bond Insurer shall be provided with final drafts of the above-referenced documentation not less than five Business Days prior to the funding of the escrow. Any Series 2005A Bonds being defeased shall be deemed "Outstanding" under the Indenture unless and until they are in fact paid and retired or the above criteria are met.

(2) Amounts paid by the Series 2005A Bond Insurer under the Series 2005A Bond Insurance Policy shall not be deemed paid for purposes of the Indenture and shall remain Outstanding and continue to be due and owing until paid by the City in accordance with the Indenture.

(3) The Indenture shall not be discharged unless all amounts due or to become due to the Series 2005A Bond Insurer have been paid in full or duly provided for.

(F) While the Series 2005A Bond Insurance Policy is in effect, the City or the Trustee, as appropriate, shall furnish to the Series 2005A Bond Insurer:

(1) annual audited financial statements of the City within 150 days after the end of the City's Fiscal Year (together with a certification of the City that it is not aware of any Event of Default or any event which the passage of time or the giving of notice would constitute an Event of Default under the Indenture), and the City's annual budget within 30 days after the approval thereof, together with such other information, data or reports as the Series 2005A Bond Insurer shall reasonably request from time to time;

(2) notice of any draw upon the Parity Reserve Fund within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Reserve Fund Requirement and (ii) withdrawals in connection with a refunding of Series 2005A Bonds;

(3) notice of any Event of Default under the Indenture known to the Trustee or the City within five Business Days after knowledge thereof;

(4) prior notice of the advance refunding or redemption of any of the Series 2005A Bonds, including the principal amount, maturities and CUSIP numbers thereof;

(5) notice of the resignation or removal of the Trustee and the appointment of, and acceptance of duties by, any successor thereto;

(6) notice of the commencement of any proceeding by or against the City commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding");

(7) notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of or interest on the Series 2005A Bonds;

(8) a full original transcript of all proceedings relating to the execution of any amendment or supplement to the Indenture; and

(9) all reports, notices and correspondence to be delivered under the terms of the Indenture.

(G) As long as the Series 2005A Bond Insurance Policy shall be in full force and effect, the City and the Trustee agree to comply with the following provisions:

(1) If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date") there is not on deposit with the Trustee after making all transfers and deposits required under the Indenture, moneys sufficient to pay the principal of and interest on the Series 2005A Bonds due on such Payment Date, the Trustee shall give notice to the Series 2005A Bond Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Series 2005A Bonds due on such Payment Date, the Trustee shall make a claim under the Series 2005A Bond Insurance Policy and give notice to the Series 2005A Bond Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Series 2005A Bonds and the amount required to pay principal of the Series 2005A Bonds, confirmed in writing to the Series 2005A Bond Insurer and the Insurer's Fiscal Agent by

12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Series 2005A Bond Insurance Policy.

(2) In the event the claim to be made is for a mandatory sinking fund redemption installment upon receipt of the moneys due, the Trustee shall authenticate and deliver to affected Owners of the Series 2005A Bonds who surrender their Series 2005A Bonds a new Series 2005A Bond or Series 2005A Bonds in an aggregate principal amount equal to the unredeemed portion of the Series 2005A Bond surrendered. The Trustee shall designate any portion of payment of principal on Series 2005A Bonds paid by the Series 2005A Bond Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Series 2005A Bonds registered to the then current Owner of such Series 2005A Bonds, whether DTC or its nominee or otherwise, and shall issue a replacement Series 2005A Bond to the Series 2005A Bond Insurer, registered in the name of Financial Security Assurance Inc., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Trustee's failure to so designate any payment or issue any replacement Series 2005A Bond shall have no effect on the amount of principal or the interest payable by the City on any Series 2005A Bond or the subrogation rights of the Series 2005A Bond Insurer.

(3) The Trustee shall keep a complete and accurate record of all funds deposited by the Series 2005A Bond Insurer into the Policy Payments Account (referred to below) and the allocation of such funds to payment of interest on and principal paid in respect of any Series 2005A Bond. The Series 2005A Bond Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Trustee.

(4) Upon payment of a claim under the Series 2005A Bond Insurance Policy, the Trustee shall establish a separate special purpose trust account for the benefit of the Owners of the Series 2005A Bonds referred to herein as the "Policy Payments Account" and over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall receive any amount paid under the Series 2005A Bond Insurance Policy in trust on behalf of the Owners of the Series 2005A Bonds and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Trustee to the Owners of the Series 2005A Bonds in the same manner as principal and interest payments are to be made with respect to the Series 2005A Bonds under the sections hereof regarding payment of Series 2005A Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments. Notwithstanding anything to the contrary otherwise set forth in the Indenture, and to the extent permitted by law, in the event amounts paid under the Series 2005A Bond Insurance Policy are applied to claims for payment of principal of or interest on the Series 2005A Bonds, interest on such principal of and interest on such Series 2005A Bonds shall accrue and be payable from the date of such payment at the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank or its successor at its principal office in the City of New York, as its prime or base lending rate plus 3%, and (ii) the then applicable rate of interest on the Series 2005A

Bonds provided that in no event shall such rate exceed the maximum rate permissible under applicable usury or similar laws limiting interest rates.

(5) Funds held in the Policy Payments Account shall not be invested by the Trustee and may not be applied to satisfy any costs, expenses or liabilities of the Trustee.

(6) Any funds remaining in the Policy Payments Account following a Series 2005A Bond payment date shall promptly be remitted to the Series 2005A Bond Insurer.

(7) The Series 2005A Bond Insurer shall, to the extent it makes any payment of principal of or interest on the Series 2005A Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Series 2005A Bond Insurance Policy.

(8) The City shall pay or reimburse the Series 2005A Bond Insurer any and all changes, fees, costs and expenses which the Series 2005A Bond Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights or security in the Indenture; (ii) the pursuit of any remedies under the Indenture or otherwise afforded by law or equity; (iii) any amendment, waiver or other action with respect to, or related to, the Indenture whether or not executed or completed, (iv) the violation by the City of any law, rule or regulation, or any judgment, order or decree applicable to it; or (v) any litigation or other dispute in connection with the Indenture or the transaction contemplated thereby, other than amounts resulting from the failure of the Series 2005A Bond Insurer to honor its obligations under the Series 2005A Bond Insurance Policy. The Series 2005A Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Indenture.

(9) The Series 2005A Bond Insurer shall be entitled to pay principal or interest on the Series 2005A Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment (as such terms are defined in the Series 2005A Bond Insurance Policy) by the City and any amounts due on the Series 2005A Bonds as a result of the acceleration of the maturity thereof in accordance with the Indenture, whether or not the Series 2005A Bond Insurer has received a Notice of Nonpayment (as such term is defined in the Series 2005A Bond Insurance Policy) or a claim upon the Series 2005A Bond Insurance Policy.

(10) The notice address of the Series 2005A Bond Insurer is: Financial Security Assurance Inc., 350 Park Avenue, New York, New York 10022-6022, Attention: Managing Director – Surveillance; Re: Policy No. 204583-N; Telephone: (212) 826-0100; Telecopier: (212) 339-3556. In each case in which notice or other communication refers to an Event of Default, then a copy of such notice or other communication shall also be sent to the attention of General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

**SECTION 12.14. Terms of Series 2005A Bonds Subject to the Indenture.** Except as in this First Supplement expressly provided, every term and condition contained in the Indenture

shall apply to the First Supplement and to the Series 2005A Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to the First Supplement.

The First Supplement and all the terms and provisions herein contained shall form part of the Indenture as fully and with the same effect as if all such terms and provisions had been set forth in the Indenture. The Indenture is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby, subject to the next sentence.

**SECTION 12.15. Effective Date of First Supplement.** The First Supplement shall take effect upon its execution and delivery.

**SECTION 12.16. Execution in Counterparts.** The First Supplement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed the First Supplement by their officers thereunto duly authorized as of the day and year first written above.

CITY OF MODESTO, CALIFORNIA

By: Gregory M. Baird  
Deputy Director of Finance

(Seal)

ATTEST:

By: Jean Zahr  
City Clerk

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
Authorized Officer

IN WITNESS WHEREOF, the parties hereto have executed the First Supplement by their officers thereunto duly authorized as of the day and year first written above.

CITY OF MODESTO, CALIFORNIA

By: \_\_\_\_\_  
Deputy Director of Finance

(Seal)

ATTEST:

By: \_\_\_\_\_  
City Clerk

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: *Myrna P. Charon*  
Authorized Officer

EXHIBIT A

(FORM OF SERIES 2005A BOND)

No. \_\_\_\_\_

\$ \_\_\_\_\_

CITY OF MODESTO, CALIFORNIA  
WASTEWATER REVENUE REFUNDING BONDS,  
SERIES 2005A

<u>Maturity Date</u>	<u>Interest Rate Per Annum</u>	<u>Dated Date</u>	<u>CUSIP</u>
		April 13, 2005	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The CITY OF MODESTO, CALIFORNIA a municipal corporation and chartered city duly organized and existing under the Constitution and the laws of the State of California (the "City"), for value received, hereby promises to pay (but only out of the Net Revenues of the City's wastewater Enterprise and other funds hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above (subject to any right of prior redemption or payment as provided in the hereinafter mentioned Indenture), the principal sum specified above together with interest thereon from the dated date specified above until the principal hereof shall have been paid, at the interest rate per annum specified above, payable on November 1, 2005, and semiannually thereafter on May 1 and November 1 in each year. Interest hereon is payable in lawful money of the United States of America by (except as otherwise provided in the hereinafter mentioned Indenture) check mailed by first-class mail on each interest payment date to the registered owner as of the close of business on the 15th day of the calendar month immediately preceding such interest payment date. The principal hereof and premium, if any, hereon are payable when due upon presentation hereof at the Corporate Trust Office (as defined in the Indenture) of U.S. Bank National Association, as trustee (together with any successor as trustee under said Indenture, the "Trustee"), in lawful money of the United States of America.

This bond is one of a duly authorized issue of City of Modesto, California Wastewater Revenue Bonds (the "Bonds") of the series and designation indicated on the face hereof. Said authorized issue of Bonds is not limited in aggregate principal amount, except as otherwise provided in said Indenture, and consists or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Indenture

provided, all issued and to be issued pursuant to the provisions of Section 200 of the Charter of the City and the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code. This Bond is issued pursuant to a Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City and the Trustee, providing for the issuance of the Bonds, and a First Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005 (the "First Supplement"), by and between the City and the Trustee, authorizing the issuance of a series of bonds (the "Series 2005A Bonds") of which this Bond is one (said indenture as amended and supplemented, including as supplemented by the First Supplement collectively, the "Indenture"). Reference is hereby made to the Indenture for a description of the terms under which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Net Revenues of the Enterprise (as those terms are defined in the Indenture), and the rights of the registered owners of the Bonds; and all the terms of the Indenture are hereby incorporated herein and constitute a contract between the City and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued, and indebtedness may be incurred, on a parity with the Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Indenture.

The Bonds and the Parity Debt (as defined in the Indenture) hereafter issued by the City are payable from, and are secured by a pledge of and lien on, the Net Revenues and all amounts held by the Trustee under the Indenture (except for amounts held in the Rebate Fund), subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions provided in the Indenture.

The Bonds are revenue obligations of the City and are payable as to both principal and interest, and any premium upon redemption thereof, exclusively from Net Revenues and certain other funds pledged under the Indenture. The Bonds are special, limited obligations of the City. The Bonds shall not be deemed to constitute a debt or liability of the City, the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory provision, or a pledge of the faith and credit of the City, the State of California or of any political subdivision thereof, but shall be payable, except to the extent of certain amounts held under the Indenture pledged therefor, solely from Net Revenues. Neither the faith and credit nor the taxing power of the City, the State of California or of any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Bonds. The issuance of the Bonds shall not directly or indirectly or contingently obligate the City, the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment.

The Series 2005A Bonds maturing on or before November 1, 2015 are not subject to call or redemption prior to maturity. The Series 2005A Bonds maturing on or after November 1, 2016 shall be subject to redemption prior to their respective stated maturities, at the option of the City, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the City and by lot within a maturity), on or after November 1, 2015, at the a redemption price equal to 100% of the principal amount of Series 2005A Bonds called for redemption), plus accrued interest to the date fixed for redemption, without premium.

The Series 2005A Bonds shall also be subject to redemption as a whole or in part on any date, among such maturities as designated by the City and by lot within a maturity, to the extent of hazard insurance proceeds not used to repair or rebuild the Enterprise or condemnation proceeds received with respect to the Enterprise to be used for such purpose pursuant to the Indenture, at a redemption price equal to the principal amount of the Series 2005A Bonds plus interest accrued thereon to the date fixed for redemption, without premium.

This Bond is transferable or exchangeable for other authorized denominations by the registered owner hereof, in person or by its duly authorized attorney, at the Corporate Trust Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer or exchange a new fully registered Bond or Bonds, of authorized denomination or denominations, of the same series, tenor, maturity and interest rate for the same aggregate principal amount will be issued to the registered owner in exchange herefor.

The City, the Trustee and any paying agent may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the City, the Trustee and any paying agent shall not be affected by any notice to the contrary.

The rights and obligations of the City and of the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Indenture, which provide, in certain circumstances, for modifications and amendments without the consent of or notice to the registered owners of the Bonds.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this Bond, together with all other indebtedness of the City pertaining to the Net Revenues, is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture or otherwise.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

Capitalized terms used but not defined herein shall have the meanings assigned to them in the Indenture.

IN WITNESS WHEREOF, THE CITY OF MODESTO, CALIFORNIA has caused this Bond to be executed in its name and on its behalf by the Mayor of the City and countersigned by the City Clerk by their facsimile signatures and the seal of the City to be reproduced hereon, and this Bond to be dated the \_\_\_\_ day of \_\_\_\_\_, 2005.

CITY OF MODESTO, CALIFORNIA

By: \_\_\_\_\_  
Mayor

(SEAL)

Attested:

By: \_\_\_\_\_  
City Clerk

[FORM OF CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION]

This is one of the Bonds described in the within mentioned Indenture and registered on the date set forth below.

Dated:

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
Authorized Officer

## STATEMENT OF INSURANCE

Financial Security Assurance Inc. ("Financial Security"), New York, New York, has delivered its municipal bond insurance policy with respect to the scheduled payments due of principal of and interest on this Bond to U.S. Bank National Association, San Francisco, California (the "Trustee"), or its successor, as trustee for the Bonds. Said policy is on file and available for inspection at the corporate trust office of the Trustee and a copy thereof may be obtained from Financial Security or the Trustee.

[FORM OF ASSIGNMENT]

For value received \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_ the within Bond and hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer the same on the books of the City at the office of the Trustee, with full power of substitution in the premises.

NOTE: The signature to this Assignment must correspond with the name on the face of the within registered bond in every particular, without alteration or enlargement or any change whatsoever.

Dated: \_\_\_\_\_

Signature Guaranteed by:

NOTE: Signature must be guaranteed by an eligible guarantor institution.

**SECOND SUPPLEMENTAL  
WASTEWATER REVENUE BOND INDENTURE**

by and between the

**CITY OF MODESTO, CALIFORNIA**

and

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

---

Dated as of April 1, 2005

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**(Supplemental to the Wastewater Revenue  
Bond Indenture dated as of April 1, 2005)**

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SECOND SUPPLEMENTAL  
WASTEWATER REVENUE BOND INDENTURE

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Second Supplemental Wastewater Revenue Bond Indenture  
(Supplemental to the Wastewater Revenue Bond Indenture  
dated as of April 1, 2005)  
Authorizing the Issuance of  
\$2,740,000 Aggregate Principal Amount of  
City of Modesto, California  
Wastewater Revenue Refunding Bonds, Series 2005B (Taxable)

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This SECOND SUPPLEMENTAL WASTEWATER REVENUE BOND INDENTURE, dated as of April 1, 2005 (the "Second Supplement"), by and between the CITY OF MODESTO, CALIFORNIA (the "City"), a municipal corporation and chartered city duly organized and existing under the Constitution and laws of the State of California, and U.S. BANK NATIONAL ASSOCIATION, as trustee (the "Trustee"),

W I T N E S S E T H :

WHEREAS, Section 200 of the Charter of the City of Modesto and the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the "Bond Law") authorizes the City to issue revenue bonds to finance the acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation of the wastewater treatment facilities of the City (the "Enterprise") or for the purpose of refunding bonds issued for such purposes; and

WHEREAS, in accordance with the Bond Law and an Indenture of Trust, dated as of December 1, 1987 (the "Prior Indenture"), the City has previously issued its Wastewater Treatment Facility Refunding Revenue Bonds, Series 1987 (the "Series 1987 Bonds") in an aggregate principal amount of \$11,785,000 to provide funds to advance refund certain outstanding wastewater revenue bonds of the City; and

WHEREAS, in accordance with the Bond Law and the Prior Indenture, as amended and supplemented by a First Supplemental Indenture, dated as of September 1, 1993 (the "First Supplemental Indenture"), the City has previously issued its Wastewater Revenue Bonds, Series 1993 (the "Series 1993 Bonds") in an aggregate principal amount of \$8,555,000 to provide funds for the acquisition and construction of improvements to the Enterprise; and

WHEREAS, in accordance with the Bond Law and the Prior Indenture, as previously amended and supplemented, and as amended and supplemented by a Second Supplemental Indenture, dated as of August 1, 1996 (the "Second Supplemental Indenture"), the City has previously issued its Wastewater Treatment Facility Refunding Revenue Bonds, Series 1996 (the "Series 1996 Bonds") in an aggregate principal amount of \$8,695,000 to provide funds to current refund the 1987 Bonds; and

WHEREAS, in accordance with the Bond Law and the Prior Indenture, as previously amended and supplemented, and as amended and supplemented by a Third Supplemental Indenture, dated as of April 1, 1997 (the "Third Supplemental Indenture"), the City has previously issued its Wastewater Treatment Facility Revenue Bonds, Series 1997 (the "Series 1997 Bonds") in an aggregate principal amount of \$32,400,000 to finance the acquisition and construction of improvements to the Enterprise;

WHEREAS, the City has determined that it is desirable and necessary and in the best interest of the City to refund all of the outstanding Series 1993 Bonds, Series 1996 Bonds and Series 1997 Bonds and to enter into a Wastewater Revenue Bond Indenture, dated as of April 1, 2005 (the "Indenture"), between the City and the Trustee, providing for the issuance of wastewater revenue bonds hereafter thereunder (the "Bonds"); and

WHEREAS, the Indenture provides that the City may issue Bonds from time to time as authorized by a supplemental indenture; and

WHEREAS, this Second Supplement is supplemental to the Indenture; and

WHEREAS, the City has determined that it is necessary and required that the City enter into this Second Supplement in order to establish and declare, in conjunction with the Indenture, the terms and conditions upon which City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005B (Taxable) (the "Series 2005B Bonds") shall be issued and secured and to secure the payment of the principal thereof and premium (if any) and interest thereon; and

WHEREAS, the City has determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and the entering into of this Second Supplement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Second Supplement;

NOW, THEREFORE, the parties hereto agree, as follows:

### ARTICLE XIII

#### THE 2005B BONDS

SECTION 13.01. Definitions. The terms defined in this Section shall, for all purposes of this Second Supplement and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Terms defined in the Indenture not otherwise defined herein shall have the meanings specified therein.

1996 Bonds Escrow Agreement

“1996 Bonds Escrow Agreement” means the Escrow Agreement, dated as of April 1, 2005, between the City and U.S. Bank National Association, as escrow agent, relating to the defeasance of the outstanding Series 1996 Bonds.

First Supplement

“First Supplement” means the First Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, between the City and the Trustee, pursuant to which the Series 2005A Bonds are issued.

Prior Indenture

“Prior Indenture” means the Indenture of Trust, dated as of December 1, 1987, by and between the City and U.S. Bank National Association, as successor trustee, as amended and supplemented to the date hereof.

Second Supplement

“Second Supplement” means this Second Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, between the City and the Trustee.

Securities Depository

“Securities Depository” shall have the meaning assigned to such term in Section 13.11(A) hereof.

Series 1996 Bonds

“Series 1996 Bonds” means the City of Modesto, California Wastewater Treatment Facility Refunding Revenue Bonds, Series 1996 issued and outstanding under the Prior Indenture.

Series 2005 Bonds

“Series 2005 Bonds” means collectively, the Series 2005A Bonds and the Series 2005B Bonds.

Series 2005 Costs of Issuance Fund

“Series 2005 Costs of Issuance Fund” means the fund by that name established pursuant to Section 12.11 of the First Supplement.

Series 2005A Bonds

“Series 2005A Bonds” means the City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005A, issued simultaneously with the Series 2005B Bonds, pursuant to the First Supplement.

Series 2005B Bond Insurance Policy

“Series 2005B Bond Insurance Policy” means the insurance policy issued by the Series 2005B Bond Insurer guaranteeing the scheduled payment of principal of and interest on the Series 2005B Bonds when due.

Series 2005B Bond Insurer

“Series 2005B Bond Insurer” means Financial Security Assurance, Inc., a New York stock insurance company, or any successor thereto or assignee thereof.

Series 2005B Bonds

“Series 2005B Bonds” means the City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005B (Taxable), as described in Section 13.02(A) hereof.

SECTION 13.02. Authorization; Terms of the Series 2005B Bonds.

(A) A second Series of Bonds to be issued under the Indenture is hereby created. Such Series shall be known as the “City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005B (Taxable)” (herein referred to as the “Series 2005B Bonds”). The Series 2005B Bonds shall be issued in the aggregate initial principal amount of \$2,740,000 in accordance with the Bond Law and this Indenture for the purposes of (i) refunding the outstanding Series 1996 Bonds, (ii) funding a deposit to the Parity Reserve Fund, and (iii) paying the Costs of Issuance in connection with the issuance and delivery of the Series 2005B Bonds.

(B) The Series 2005B Bonds shall be issued in fully registered form and shall be initially registered in the name of “Cede & Co.”, as nominee of The Depository Trust Company. The Series 2005B Bonds shall be evidenced by one Series 2005B Bond maturing on each of the maturity dates as set forth in subsection 13.02(C) in a denomination corresponding to the total principal amount of the Series 2005B Bonds of such maturity. Each Series 2005B Bond may be assigned by the Trustee a distinctive number or letter and number, and a record of the same shall be maintained by the Trustee. Registered ownership of the Series 2005B Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section 13.11.

(C) The Series 2005B Bonds shall be dated the date of delivery, shall be bonds which are Current Interest Indebtedness, shall be issued in denominations of \$5,000 or any integral multiple thereof, and shall bear interest from the date thereof at the following rates per annum and shall mature on November 1 in the following years in the following amounts:

<u>Maturity Date (November 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2005	\$ 550,000	3.60%
2006	1,075,000	4.14
2007	1,115,000	4.40

The Series 2005B Bonds are designated Serial Bonds.

Interest on the Series 2005B Bonds shall be payable commencing on November 1, 2005 and semiannually thereafter on May 1 and November 1 of each year in lawful money of the United States of America by check mailed by first-class mail on each interest payment date to the Owner thereof as of the close of business on the fifteenth (15th) day of the calendar month immediately preceding such interest payment date; provided, that upon the written request of an Owner of one million dollars (\$1,000,000) or more in aggregate principal amount of Series 2005B Bonds received by the Trustee prior to the applicable Record Date (which such request shall remain in effect until rescinded in writing by such Owner), interest shall be paid by wire transfer in immediately available funds. Interest on the Series 2005B Bonds shall be computed on the basis of a 360-day year of twelve 30-day months. The principal of and premium, if any, on the Series 2005B Bonds are payable when due upon presentation thereof at the Corporate Trust Office of the Trustee, in lawful money of the United States of America.

So long as the Series 2005B Bonds are maintained in book-entry form, payments of principal, premium, if any, and interest shall be made by the Trustee to the Securities Depository by wire transfer.

The Trustee shall provide to Bondholders CUSIP number identification, with appropriate dollar amounts for each CUSIP number, on all redemption payments and interest payments, whether by check or by wire transfer.

**SECTION 13.03. Redemption of Series 2005B Bonds.**

(A) No Optional Redemption. The Series 2005B Bonds are not subject to optional call or redemption prior to maturity.

(B) Special Mandatory Redemption From Insurance or Condemnation Proceeds. The Series 2005B Bonds shall also be subject to redemption as a whole or in part on any date, among such maturities as designated by the City and by lot within a maturity, to the extent of hazard insurance proceeds not used to repair or rebuild the Enterprise or condemnation proceeds received with respect to the Enterprise to be used for such purpose pursuant to Sections 6.06 or 6.07 of the Indenture, at a Redemption Price equal to the principal amount of the Series 2005B Bonds plus interest accrued thereon to the date fixed for redemption, without premium. Notwithstanding the foregoing, in the event of a special mandatory redemption of less than all of the Outstanding Series 2005B Bonds pursuant to this Section 13.03(B), the designation by the City of the maturities of the Series 2005B Bonds from which such redemption will be made shall be subject to the prior written approval of the Series 2005B Bond Insurer.

**SECTION 13.04. Selection of Series 2005B Bonds for Redemption.** Whenever provision is made in this Second Supplement for the redemption of less than all of the Series 2005B Bonds of any maturity (and interest rate), the Trustee shall select the Series 2005B Bonds to be redeemed, from all Series 2005B Bonds of the respective maturity (and interest rate) not previously called for redemption, in authorized denominations, by lot in any manner which the Trustee in its sole discretion shall deem appropriate. The Trustee shall promptly notify the City in writing of the Series 2005B Bonds so selected for redemption.

**SECTION 13.05. Notice of Redemption of Series 2005B Bonds.** The City shall notify the Trustee at least forty-five (45) days prior to the redemption date for Series 2005B Bonds pursuant to Section 13.03(B). Notice of redemption of any Series 2005B Bonds shall be mailed by the Trustee, not less than thirty (30) nor more than sixty (60) days prior to the redemption date, (i) to the respective Owners of any Series 2005B Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee by first-class mail, (ii) to the Securities Depositories by facsimile and by first-class mail, and (iii) to the Information Services by first-class mail. Notice of redemption shall be given in the form and in accordance with the terms of the Indenture.

**SECTION 13.06. Partial Redemption of Series 2005B Bonds.** Upon surrender of any Series 2005B Bond redeemed in part only, the City shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the City, a new Series 2005B Bond of authorized denominations, and of the same maturity and interest rate, equal in aggregate principal amount to the unredeemed portion of the Series 2005B Bond surrendered.

**SECTION 13.07. Effect of Redemption of Series 2005B Bonds.** Notice of redemption having been duly given as aforesaid, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Series 2005B Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Series 2005B Bonds (or portions thereof) so called for redemption shall become due and payable at the Redemption Price specified in such notice, together with interest accrued thereon to the date fixed for redemption, interest on the Series 2005B Bonds so called for redemption shall cease to accrue, said Series 2005B Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Series 2005B Bonds shall have no rights in respect thereof except to receive payment of said Redemption Price and accrued interest.

All Series 2005B Bonds redeemed pursuant to the provisions of this Article shall be cancelled upon surrender thereof and destroyed.

**SECTION 13.08. Form of Series 2005B Bonds.** The Series 2005B Bonds and the certificate of authentication and registration to be executed thereon shall be in substantially the form set forth as Exhibit A hereto. The Series 2005B Bond designation letters and numbers, maturity dates, principal amounts, and interest rates and yields to maturity shall be inserted therein in conformity with Section 13.02.

**SECTION 13.09. Issuance of Series 2005B Bonds.** At any time after the execution and delivery of this Second Supplement, the City may execute and the Trustee shall authenticate and deliver the Series 2005B Bonds in the aggregate principal amount of \$2,740,000 upon the Order of the City.

**SECTION 13.10. Application of Proceeds of Series 2005B Bonds.**

(A) The proceeds of the sale of the Series 2005B Bonds in the amount of \$2,715,981.32 (computed as \$2,740,000.00 aggregate principal amount of the Series 2005B Bonds, less \$17,097.99 Underwriter's discount, less \$6,920.69 directly transferred, at the

request and direction of the City and on behalf of the Trustee, by the Underwriter to the Series 2005B Bond Insurer, said amount representing the bond insurance premium for the Series 2005B Bond Insurance Policy) shall be received by the Trustee on behalf of the City and held in trust and set aside as follows:

(i) The Trustee shall transfer to U.S. Bank National Association, as escrow agent under the 1996 Bonds Escrow Agreement, \$2,454,847.30, to be applied, together with certain other amounts deposited therein at the direction of the City, towards the defeasance of the Series 1996 Bonds pursuant to the 1996 Bonds Escrow Agreement.

(ii) The Trustee should deposit in the Parity Reserve Fund \$239,994.42, which shall be the amount necessary to cause the amount on deposit therein to be equal to the Reserve Fund Requirement upon the issuance of the Series 2005B Bonds, to be applied in accordance with Section 5.05 in the Indenture.

(iii) The Trustee shall deposit in the 2005 Costs of Issuance Fund \$21,139.60, to be applied, together with certain other amounts deposited therein or transferred thereto at the direction of the City, in accordance with Section 12.11 of the First Supplement.

SECTION 13.11. Use of Depository. Notwithstanding any provision of the Indenture or this Second Supplement to the contrary:

(A) The Series 2005B Bonds shall be issued in fully registered form, in authorized denominations and shall be initially registered in the name of "Cede & Co.", as nominee of The Depository Trust Company (the "Securities Depository"), and shall be evidenced by one Series 2005B Bond maturing on each of the maturity dates as set forth in subsection 13.02(C) in a denomination corresponding to the total principal amount of the Series 2005B Bonds of such maturity. Each Series 2005B Bond shall be assigned by the Trustee a distinctive number or letter or letter and number, and a record of the same shall be maintained by the Trustee.

Registered ownership of the Series 2005B Bonds, or any portions thereof, may not thereafter be transferred except:

(i) To any successor of The Depository Trust Company or its nominee, or to any substitute depository designated pursuant to clause (ii) of this subsection (A) (a "Substitute Depository"); provided that any successor of The Depository Trust Company or Substitute Depository shall be qualified under any applicable laws to provide the services proposed to be provided by it;

(ii) To any Substitute Depository not objected to by the Trustee, upon (1) the resignation of The Depository Trust Company or its successor (or any Substitute Depository or its successor) from its functions as depository, or (2) a determination by the City that The Depository Trust Company or its successor (or any Substitute Depository or its successor) is no longer able to carry out its functions as depository; provided that any such Substitute Depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) To any person as provided below, upon (1) the resignation of The Depository Trust Company or its successor (or Substitute Depository or its successor) from its functions as depository; provided that no Substitute Depository which is not objected to by the Trustee can be obtained, or (2) a determination by the City that it is in the best interests of the City to remove The Depository Trust Company or its successor (or any Substitute Depository or its successor) from its function as depository.

(B) In the case of any transfer pursuant to clause (i) or clause (ii) of subsection 13.11(A), upon receipt of all Outstanding Series 2005B Bonds by the Trustee, together with a Certificate of the City to the Trustee, a single new Series 2005B Bond for each maturity shall be executed and delivered, registered in the name of such successor or such Substitute Depository, or their nominees, as the case may be, all as specified in such Certificate of the City. In the case of any transfer pursuant to clause (iii) of subsection 13.11(A) hereof, upon receipt of all Outstanding Series 2005B Bonds by the Trustee together with a Certificate of the City to the Trustee, new Series 2005B Bonds shall be executed and delivered in such denominations and registered in the names of such persons as are requested in such a Certificate of the City, subject to the limitations of Section 13.02 hereof; provided the Trustee shall not be required to deliver such new Series 2005B Bonds within a period less than 60 days from the date of receipt of such a Certificate of the City.

(C) In the case of partial redemption, cancellation or an advance refunding of any Series 2005B Bonds evidencing all or a portion of the principal maturing in a particular year, The Depository Trust Company shall make an appropriate notation on the Series 2005B Bonds indicating the date and amounts of such reduction in principal, in form acceptable to the Trustee.

(D) The City and the Trustee shall be entitled to treat the person in whose name any Series 2005B Bond is registered as the Owner thereof for all purposes of the Indenture and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the City; and the City and the Trustee shall have no responsibility for transmitting payments to, communication with, notifying, or otherwise dealing with any beneficial owners of the Series 2005B Bonds. Neither the City nor the Trustee will have any responsibility or obligations, legal or otherwise, to the beneficial owners or to any other party including The Depository Trust Company or its successor (or Substitute Depository or its successor), except to the Owner of any Series 2005B Bond.

(E) So long as all Outstanding Series 2005B Bonds are registered in the name of "Cede & Co." or its registered assign, the City and the Trustee shall cooperate with "Cede & Co.," as sole registered Owner, and its registered assigns in effecting payment of the principal of and redemption premium, if any, and interest on the Series 2005B Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

**SECTION 13.12. Bond Insurance Provisions.** Notwithstanding any other provision of the Indenture of this Second Supplement to the contrary, so long as the Series 2005B Bond Insurance Policy is in full force and effect and the Series 2005B Bond Insurer is not in default in its payment of obligations thereunder, the following provisions shall be in effect:

(A) The prior written consent of the Series 2005B Bond Insurer shall be a condition precedent to the deposit of any letter of credit, surety bond or insurance policy into the Parity Reserve Fund pursuant to Section 5.05 of the Indenture for purposes of satisfying all or any part of the Reserve Fund Requirement.

(B) Pursuant to the provisions of Section 9.01(A)(2) of the Indenture, any modification, amendment or supplement to the Indenture pursuant to Section 9.01(A) of the Indenture shall require the consent of the Series 2005B Bond Insurer in lieu of consent of the Owners of the Series 2005B Bonds. Copies of any Supplemental Indenture sent to Moody's and Standard & Poor's pursuant to Section 9.01(A)(4) shall be sent at least 10 days prior to the effective date thereof.

(C) (1) The Series 2005B Bond Insurer shall be deemed to be the sole Owner of the Series 2005B Bonds insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the Owners of the Series 2005B Bonds insured by it are entitled to take pursuant to Article VII (pertaining to defaults and remedies) of the Indenture and Article VIII (pertaining to the Trustee) of the Indenture. The maturity of the Series 2005B Bonds insured by the Series 2005B Bond Insurer shall not be accelerated without the consent of the Series 2005B Bond Insurer.

(2) In the event the maturity of the Series 2005B Bonds is accelerated, the Series 2005B Bond Insurer may elect, in its sole discretion, to pay accelerated principal and interest accrued on such principal to the date of acceleration (to the extent unpaid by the City) and the Trustee shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Series 2005B Bond Insurer's obligations under the Series 2005B Bond Insurance Policy with respect to such Series 2005B Bonds shall be fully discharged.

(3) The rights granted to the Series 2005B Bond Insurer hereunder to request, consent to or direct any action are rights granted to the Series 2005B Bond Insurer in consideration of its issuance of the Series 2005B Bond Insurance Policy. Any exercise by the Series 2005B Bond Insurer of such rights is merely an exercise of the Series 2005B Bond Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit or on behalf of the Owners of the Series 2005B Bonds nor does such action evidence any position of the Series 2005B Bond Insurer, positive or negative, as to whether consent of the Owners of the Series 2005B Bonds is required in addition to consent of the Series 2005B Bond Insurer.

(4) In determining whether any amendment, consent or other action to be taken, or any failure to act, under the Indenture would adversely affect the security for the Series 2005B Bonds or the rights of the Owners, the Trustee shall consider the effect of any such amendment, consent, action or inaction as if there were no Series 2005B Bond Insurance Policy.

(5) The allowable grace period for the City to cure a failure to observe or perform any covenant, condition, agreement or provision of the Indenture prior to such failure becoming an Event of Default pursuant to Section 7.01(b) of the Indenture shall not be extended beyond a sixty (60) day period without the prior written consent of the Series 2005B Bond Insurer. Notwithstanding any provision to the contrary that may be contained in any agreement

governing any Parity Debt, for purposes of Section 7.01(d) of the Indenture there shall be no grace period for the default by the City in the due and punctual payment of any Parity Debt.

(D) (1) To the extent that the Indenture confers upon or gives or grants to the Series 2005B Bond Insurer any right, remedy or claim under or by reason of the Indenture, the Series 2005B Bond Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted thereunder or hereunder.

(2) Except as permitted under the terms of the Indenture, no contract shall be entered into by the City nor any action taken by the City by which the rights of the Series 2005B Bond Insurer or security for or sources of payment of the Series 2005B Bonds may be impaired or prejudiced except upon obtaining the prior written consent of the Series 2005B Bond Insurer.

(E) (1) In connection with any defeasance of Series 2005B Bonds pursuant to Article X of the Indenture, in addition to the requirements of Article X of the Indenture, the City shall cause to be delivered (i) an escrow deposit agreement (which shall be acceptable in form and substance to the Series 2005B Bond Insurer), and (ii) an opinion of nationally recognized bond counsel (which shall be acceptable in form and substance to the Series 2005B Bond Insurer) to the effect that the Series 2005B Bonds being defeased are no longer "Outstanding" under the Indenture, addressed to the City, the Trustee and the Series 2005B Bond Insurer. The Series 2005B Bond Insurer shall be provided with final drafts of the above-referenced documentation not less than five Business Days prior to the funding of the escrow. Any Series 2005B Bonds being defeased shall be deemed "Outstanding" under the Indenture unless and until they are in fact paid and retired or the above criteria are met.

(2) Amounts paid by the Series 2005B Bond Insurer under the Series 2005B Bond Insurance Policy shall not be deemed paid for purposes of the Indenture and shall remain Outstanding and continue to be due and owing until paid by the City in accordance with the Indenture.

(3) The Indenture shall not be discharged unless all amounts due or to become due to the Series 2005B Bond Insurer have been paid in full or duly provided for.

(F) While the Series 2005B Bond Insurance Policy is in effect, the City or the Trustee, as appropriate, shall furnish to the Series 2005B Bond Insurer:

(1) annual audited financial statements of the City within 150 days after the end of the City's Fiscal Year (together with a certification of the City that it is not aware of any Event of Default or any event which the passage of time or the giving of notice would constitute an Event of Default under the Indenture), and the City's annual budget within 30 days after the approval thereof, together with such other information, data or reports as the Series 2005B Bond Insurer shall reasonably request from time to time;

(2) notice of any draw upon the Parity Reserve Fund within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Reserve Fund Requirement and (ii) withdrawals in connection with a refunding of Series 2005B Bonds;

(3) notice of any Event of Default under the Indenture known to the Trustee or the City within five Business Days after knowledge thereof;

(4) prior notice of the advance refunding or redemption of any of the Series 2005B Bonds, including the principal amount, maturities and CUSIP numbers thereof;

(5) notice of the resignation or removal of the Trustee and the appointment of, and acceptance of duties by, any successor thereto;

(6) notice of the commencement of any proceeding by or against the City commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding");

(7) notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal or interest on the Series 2005B Bonds;

(8) a full original transcript of all proceedings relating to the execution of any amendment or supplement to the Indenture; and

(9) all reports, notices and correspondence to be delivered under the terms of the Indenture.

(G) As long as the Series 2005B Bond Insurance Policy shall be in full force and effect, the City and the Trustee agree to comply with the following provisions:

(1) If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date") there is not on deposit with the Trustee after making all transfers and deposits required under the Indenture, moneys sufficient to pay the principal of and interest on the Series 2005B Bonds due on such Payment Date, the Trustee shall give notice to the Series 2005B Bond Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Series 2005B Bonds due on such Payment Date, the Trustee shall make a claim under the Series 2005B Bond Insurance Policy and give notice to the Series 2005B Bond Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Series 2005B Bonds and the amount required to pay principal of the Series 2005B Bonds, confirmed in writing to the Series 2005B Bond Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Series 2005B Bond Insurance Policy.

(2) In the event the claim to be made is for a mandatory sinking fund redemption installment upon receipt of the moneys due, the Trustee shall authenticate and deliver to affected Owners of the Series 2005B Bonds who surrender their Series 2005B

Bonds a new Series 2005B Bond or Series 2005B Bonds in an aggregate principal amount equal to the unredeemed portion of the Series 2005B Bond surrendered. The Trustee shall designate any portion of payment of principal on Series 2005B Bonds paid by the Series 2005B Bond Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Series 2005B Bonds registered to the then current Owner of such Series 2005B Bonds, whether DTC or its nominee or otherwise, and shall issue a replacement Series 2005B Bond to the Series 2005B Bond Insurer, registered in the name of Financial Security Assurance Inc., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Trustee's failure to so designate any payment or issue any replacement Series 2005B Bond shall have no effect on the amount of principal or the interest payable by the City on any Series 2005B Bond or the subrogation rights of the Series 2005B Bond Insurer.

(3) The Trustee shall keep a complete and accurate record of all funds deposited by the Series 2005B Bond Insurer into the Policy Payments Account (referred to below) and the allocation of such funds to payment of interest on and principal paid in respect of any Series 2005B Bond. The Series 2005B Bond Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Trustee.

(4) Upon payment of a claim under the Series 2005B Bond Insurance Policy, the Trustee shall establish a separate special purpose trust account for the benefit of the Owners of the Series 2005B Bonds referred to herein as the "Policy Payments Account" and over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall receive any amount paid under the Series 2005B Bond Insurance Policy in trust on behalf of the Owners of the Series 2005B Bonds and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Trustee to the Owners of the Series 2005B Bonds in the same manner as principal and interest payments are to be made with respect to the Series 2005B Bonds under the sections hereof regarding payment of Series 2005B Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments. Notwithstanding anything to the contrary otherwise set forth in the Indenture, and to the extent permitted by law, in the event amounts paid under the Series 2005B Bond Insurance Policy are applied to claims for payment of principal of or interest on the Series 2005B Bonds, interest on such principal of and interest on such Series 2005B Bonds shall accrue and be payable from the date of such payment at the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank or its successor at its principal office in the City of New York, as its prime or base lending rate plus 3%, and (ii) the then applicable rate of interest on the Series 2005B Bonds provided that in no event shall such rate exceed the maximum rate permissible under applicable usury or similar laws limiting interest rates.

(5) Funds held in the Policy Payments Account shall not be invested by the Trustee and may not be applied to satisfy any costs, expenses or liabilities of the Trustee.

(6) Any funds remaining in the Policy Payments Account following a Series 2005B Bond payment date shall promptly be remitted to the Series 2005B Bond Insurer.

(7) The Series 2005B Bond Insurer shall, to the extent it makes any payment of principal or interest on the Series 2005B Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Series 2005B Bond Insurance Policy.

(8) The City shall pay or reimburse the Series 2005B Bond Insurer any and all changes, fees, costs and expenses which the Series 2005B Bond Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights or security in the Indenture; (ii) the pursuit of any remedies under the Indenture or otherwise afforded by law or equity; (iii) any amendment, waiver or other action with respect to, or related to, the Indenture whether or not executed or completed, (iv) the violation by the City of any law, rule or regulation, or any judgment, order or decree applicable to it; or (v) any litigation or other dispute in connection with the Indenture or the transaction contemplated thereby, other than amounts resulting from the failure of the Series 2005B Bond Insurer to honor its obligations under the Series 2005B Bond Insurance Policy. The Series 2005B Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Indenture.

(9) The Series 2005B Bond Insurer shall be entitled to pay principal or interest on the Series 2005B Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment (as such terms are defined in the Series 2005B Bond Insurance Policy) by the City and any amounts due on the Series 2005B Bonds as a result of the acceleration of the maturity thereof in accordance with the Indenture, whether or not the Series 2005B Bond Insurer has received a Notice of Nonpayment (as such term is defined in the Series 2005B Bond Insurance Policy) or a claim upon the Series 2005B Bond Insurance Policy.

(10) The notice address of the Series 2005B Bond Insurer is: Financial Security Assurance Inc., 350 Park Avenue, New York, New York 10022-6022, Attention: Managing Director – Surveillance; Re: Policy No. 204583-N; Telephone: (212) 826-0100; Telecopier: (212) 339-3556. In each case in which notice or other communication refers to an Event of Default, then a copy of such notice or other communication shall also be sent to the attention of General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

**SECTION 13.13. Terms of Series 2005B Bonds Subject to the Indenture.** Except as in this Second Supplement expressly provided, every term and condition contained in the Indenture shall apply to the Second Supplement and to the Series 2005B Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to the Second Supplement.

The Second Supplement and all the terms and provisions herein contained shall form part of the Indenture as fully and with the same effect as if all such terms and provisions had been set forth in the Indenture. The Indenture is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby, subject to the next sentence.

SECTION 13.14. Effective Date of Second Supplement. The Second Supplement shall take effect upon its execution and delivery.

SECTION 13.15. Execution in Counterparts. The Second Supplement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have executed the Second Supplement by their officers thereunto duly authorized as of the day and year first written above.

CITY OF MODESTO, CALIFORNIA

By: Gregory M. Band  
Deputy Director of Finance

(Seal)

ATTEST:

By: Jan Fahr  
City Clerk

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
Authorized Officer

IN WITNESS WHEREOF, the parties hereto have executed the Second Supplement by their officers thereunto duly authorized as of the day and year first written above.

CITY OF MODESTO, CALIFORNIA

By: \_\_\_\_\_  
Deputy Director of Finance

(Seal)

ATTEST:

By: \_\_\_\_\_  
City Clerk

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: *Mylena P. Chorna*  
Authorized Officer

EXHIBIT A

(FORM OF SERIES 2005B BOND)

No. \_\_\_\_\_

\$ \_\_\_\_\_

CITY OF MODESTO, CALIFORNIA  
WASTEWATER REVENUE REFUNDING BONDS,  
SERIES 2005B (TAXABLE)

<u>Maturity Date</u>	<u>Interest Rate Per Annum</u>	<u>Dated Date</u>	<u>CUSIP</u>
		April 13, 2005	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The CITY OF MODESTO, CALIFORNIA a municipal corporation and chartered city duly organized and existing under the Constitution and the laws of the State of California (the "City"), for value received, hereby promises to pay (but only out of the Net Revenues of the City's wastewater Enterprise and other funds hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above (subject to any right of prior redemption or payment as provided in the hereinafter mentioned Indenture), the principal sum specified above together with interest thereon from the dated date specified above until the principal hereof shall have been paid, at the interest rate per annum specified above, payable on November 1, 2005, and semiannually thereafter on May 1 and November 1 in each year. Interest hereon is payable in lawful money of the United States of America by (except as otherwise provided in the hereinafter mentioned Indenture) check mailed by first-class mail on each interest payment date to the registered owner as of the close of business on the 15th day of the calendar month immediately preceding such interest payment date. The principal hereof and premium, if any, hereon are payable when due upon presentation hereof at the Corporate Trust Office (as defined in the Indenture) of U.S. Bank National Association, as trustee (together with any successor as trustee under said Indenture, the "Trustee"), in lawful money of the United States of America.

This bond is one of a duly authorized issue of City of Modesto, California Wastewater Revenue Bonds (the "Bonds") of the series and designation indicated on the face hereof. Said authorized issue of Bonds is not limited in aggregate principal amount, except as otherwise provided in said Indenture, and consists or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Indenture

provided, all issued and to be issued pursuant to the provisions of Section 200 of the Charter of the City and the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code. This Bond is issued pursuant to a Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City and the Trustee, providing for the issuance of the Bonds, and a Second Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005 (the "Second Supplement"), by and between the City and the Trustee, authorizing the issuance of a series of bonds (the "Series 2005B Bonds") of which this Bond is one (said indenture as amended and supplemented, including as supplemented by the Second Supplement collectively, the "Indenture"). Reference is hereby made to the Indenture for a description of the terms under which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Net Revenues of the Enterprise (as those terms are defined in the Indenture), and the rights of the registered owners of the Bonds; and all the terms of the Indenture are hereby incorporated herein and constitute a contract between the City and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued, and indebtedness may be incurred, on a parity with the Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Indenture.

The Bonds and the Parity Debt (as defined in the Indenture) hereafter issued by the City are payable from, and are secured by a pledge of and lien on, the Net Revenues and all amounts held by the Trustee under the Indenture (except for amounts held in the Rebate Fund), subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions provided in the Indenture.

The Bonds are revenue obligations of the City and are payable as to both principal and interest, and any premium upon redemption thereof, exclusively from Net Revenues and certain other funds pledged under the Indenture. The Bonds are special, limited obligations of the City. The Bonds shall not be deemed to constitute a debt or liability of the City, the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory provision, or a pledge of the faith and credit of the City, the State of California or of any political subdivision thereof, but shall be payable, except to the extent of certain amounts held under the Indenture pledged therefor, solely from Net Revenues. Neither the faith and credit nor the taxing power of the City, the State of California or of any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Bonds. The issuance of the Bonds shall not directly or indirectly or contingently obligate the City, the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment.

The Series 2005B Bonds are not subject to optional call or redemption prior to maturity.

The Series 2005B Bonds shall be subject to redemption as a whole or in part on any date, among such maturities as designated by the City and by lot within a maturity, to the extent of hazard insurance proceeds not used to repair or rebuild the Enterprise or condemnation proceeds received with respect to the Enterprise to be used for such purpose pursuant to the Indenture, at a redemption price equal to the principal amount of the Series 2005B Bonds plus interest accrued thereon to the date fixed for redemption, without premium.

This Bond is transferable or exchangeable for other authorized denominations by the registered owner hereof, in person or by its duly authorized attorney, at the Corporate Trust Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer or exchange a new fully registered Bond or Bonds, of authorized denomination or denominations, of the same series, tenor, maturity and interest rate for the same aggregate principal amount will be issued to the registered owner in exchange herefor.

The City, the Trustee and any paying agent may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the City, the Trustee and any paying agent shall not be affected by any notice to the contrary.

The rights and obligations of the City and of the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Indenture, which provide, in certain circumstances, for modifications and amendments without the consent of or notice to the registered owners of the Bonds.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this Bond, together with all other indebtedness of the City pertaining to the Net Revenues, is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture or otherwise.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

Capitalized terms used but not defined herein shall have the meanings assigned to them in the Indenture.

IN WITNESS WHEREOF, THE CITY OF MODESTO, CALIFORNIA has caused this Bond to be executed in its name and on its behalf by the Mayor of the City and countersigned by the City Clerk by their facsimile signatures and the seal of the City to be reproduced hereon, and this Bond to be dated the \_\_\_\_ day of \_\_\_\_\_, 2005.

CITY OF MODESTO, CALIFORNIA

By: \_\_\_\_\_  
Mayor

(SEAL)

Attested:

By: \_\_\_\_\_  
City Clerk

[FORM OF CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION]

This is one of the Bonds described in the within mentioned Indenture and registered on the date set forth below.

Dated:

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
Authorized Officer

## STATEMENT OF INSURANCE

Financial Security Assurance Inc. ("Financial Security"), New York, New York, has delivered its municipal bond insurance policy with respect to the scheduled payments due of principal of and interest on this Bond to U.S. Bank National Association, San Francisco, California (the "Trustee"), or its successor, as trustee for the Bonds. Said policy is on file and available for inspection at the corporate trust office of the Trustee and a copy thereof may be obtained from Financial Security or the Trustee.

[FORM OF ASSIGNMENT]

For value received \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_ the within Bond and hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer the same on the books of the City at the office of the Trustee, with full power of substitution in the premises.

NOTE: The signature to this Assignment must correspond with the name on the face of the within registered bond in every particular, without alteration or enlargement or any change whatsoever.

Dated: \_\_\_\_\_

Signature Guaranteed by:

NOTE: Signature must be guaranteed by an eligible guarantor institution.

**THIRD SUPPLEMENTAL  
WASTEWATER REVENUE BOND INDENTURE**

**by and between the**

**CITY OF MODESTO, CALIFORNIA**

**and**

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

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**Dated as of December 1, 2006**

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**(Supplemental to the Wastewater Revenue  
Bond Indenture dated as of April 1, 2005)**

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THIRD SUPPLEMENTAL  
WASTEWATER REVENUE BOND INDENTURE

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Third Supplemental Wastewater Revenue Bond Indenture  
(Supplemental to the Wastewater Revenue Bond Indenture  
dated as of April 1, 2005)  
Authorizing the Issuance of  
\$16,535,000 Aggregate Principal Amount of  
City of Modesto, California  
Wastewater Revenue Bonds, Series 2006A

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This THIRD SUPPLEMENTAL WASTEWATER REVENUE BOND INDENTURE, dated as of December 1, 2006 (the "Third Supplement"), by and between the CITY OF MODESTO, CALIFORNIA (the "City"), a municipal corporation and chartered city duly organized and existing under the Constitution and laws of the State of California, and THE BANK OF NEW YORK TRUST COMPANY, N.A., as successor trustee (the "Trustee"),

WITNESSETH:

WHEREAS, Section 200 of the Charter of the City of Modesto and the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the "Bond Law") authorizes the City to issue revenue bonds to finance the acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation of the wastewater treatment facilities of the City (the "Enterprise"); and

WHEREAS, the City has entered into a Wastewater Revenue Bond Indenture, dated as of April 1, 2005 (the "Indenture"), between the City and U.S. Bank National Association (which has been succeeded by The Bank of New York Trust Company, N.A.), as Trustee, providing for the issuance of wastewater revenue bonds thereunder; and

WHEREAS, in accordance with the Bond Law and the Indenture, as supplemented by a First Supplemental Indenture, dated as of April 1, 2005 (the "First Supplemental Indenture"), and Second Supplemental Indenture, dated as of April 1, 2005 (the "Second Supplemental Indenture"), the City has previously issued its City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005A, and its City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005B (collectively, the "Series 2005 Bonds"); and

WHEREAS, the Indenture provides that the City may issue Bonds from time to time as authorized by a supplemental indenture; and

WHEREAS, this Third Supplement is supplemental to the Indenture; and

WHEREAS, in order to provide moneys to finance certain improvements to the Enterprise, the City has determined that it is necessary and required that the City enter into this Third Supplement in order to establish and declare, in conjunction with the Indenture, the terms

and conditions upon which City of Modesto, California Wastewater Revenue Bonds, Series 2006A (the "Series 2006A Bonds") shall be issued and secured and to secure the payment of the principal thereof and premium (if any) and interest thereon; and

WHEREAS, the City has determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and the entering into of this Third Supplement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Third Supplement;

NOW, THEREFORE, the parties hereto agree, as follows:

#### ARTICLE XIV

#### THE 2006A BONDS

SECTION 14.01. Definitions. The terms defined in this Section shall, for all purposes of this Third Supplement and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Terms defined in the Indenture not otherwise defined herein shall have the meanings specified therein.

##### Securities Depository

"Securities Depository" shall have the meaning assigned to such term in Section 14.14(A) hereof.

##### Series 2006A Bond Insurance Policy

"Series 2006A Bond Insurance Policy" means the insurance policy issued by the Series 2006A Bond Insurer guaranteeing the scheduled payment of principal of and interest on the Series 2006A Bonds when due.

##### Series 2006A Bond Insurer

"Series 2006A Bond Insurer" means Financial Security Assurance, Inc., a New York stock insurance company, or any successor thereto or assignee thereof.

##### Series 2006A Bonds

"Series 2006A Bonds" means the City of Modesto, California Wastewater Revenue Bonds, Series 2006A, as described in Section 14.02(A) hereof.

##### Series 2006A Costs of Issuance Fund

"Series 2006A Costs of Issuance Fund" means the fund by that name established pursuant to Section 14.13 hereof.

Series 2006A Wastewater Enterprise Project Fund

“Series 2006A Wastewater Enterprise Project Fund” means the fund by that name established pursuant to Section 14.12 hereof.

Third Supplement

“Third Supplement” means this Third Supplemental Wastewater Revenue Bond Indenture, dated as of December 1, 2006, between the City and the Trustee.

SECTION 14.02. Authorization; Terms of the Series 2006A Bonds.

(A) A third Series of Bonds to be issued under the Indenture is hereby created. Such Series shall be known as the “City of Modesto, California Wastewater Revenue Bonds, Series 2006A” (herein referred to as the “Series 2006A Bonds”). The Series 2006A Bonds shall be issued in the aggregate principal amount of \$16,535,000 in accordance with the Bond Law and this Indenture for the purposes of (i) financing the acquisition and construction of improvements to the Enterprise, (ii) funding a deposit to the Parity Reserve Fund and (iii) paying the Costs of Issuance in connection with the issuance and delivery of the Series 2006A Bonds.

(B) The Series 2006A Bonds shall be issued in fully registered form and shall be initially registered in the name of “Cede & Co.”, as nominee of The Depository Trust Company. The Series 2006A Bonds shall be evidenced by one Series 2006A Bond maturing on each of the maturity dates as set forth in subsection 14.02(C) in a denomination corresponding to the total principal amount of the Series 2006A Bonds of such maturity. Each Series 2006A Bond may be assigned by the Trustee a distinctive number or letter and number, and a record of the same shall be maintained by the Trustee. Registered ownership of the Series 2006A Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section 14.14.

(C) The Series 2006A Bonds shall be dated the date of delivery, shall be bonds which are Current Interest Indebtedness, shall be issued in denominations of \$5,000 or any integral multiple thereof, and shall bear interest from the date thereof at the following rates per annum and shall mature on November 1 in the following years in the following amounts:

<u>Maturity Date (November 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2023	\$ 880,000	4.50%
2024	920,000	4.50
2025	960,000	4.20
2026	1,005,000	4.25
2031	5,710,000	4.25
2036	7,060,000	4.25

The Series 2006A Bonds maturing on November 1, 2023 through November 1, 2026, inclusive, are designated Serial Bonds. The Series 2006A Bonds maturing on November 1, 2031 and November 1, 2036 are designated as Term Bonds.

Interest on the Series 2006A Bonds shall be payable commencing on May 1, 2007 and semiannually thereafter on November 1 and May 1 of each year in lawful money of the United States of America by check mailed by first-class mail on each interest payment date to the Owner thereof as of the close of business on the fifteenth (15th) day of the calendar month immediately preceding such interest payment date; provided, that upon the written request of an Owner of one million dollars (\$1,000,000) or more in aggregate principal amount of Series 2006A Bonds received by the Trustee prior to the applicable Record Date (which such request shall remain in effect until rescinded in writing by such Owner), interest shall be paid by wire transfer in immediately available funds. Interest on the Series 2006A Bonds shall be computed on the basis of a 360-day year of twelve 30-day months. The principal of and premium, if any, on the Series 2006A Bonds are payable when due upon presentation thereof at the Corporate Trust Office of the Trustee, in lawful money of the United States of America.

So long as the Series 2006A Bonds are maintained in book-entry form, payments of principal, premium, if any, and interest shall be made by the Trustee to the Securities Depository by wire transfer.

The Trustee shall provide to Bondholders CUSIP number identification, with appropriate dollar amounts for each CUSIP number, on all redemption payments and interest payments, whether by check or by wire transfer.

**SECTION 14.03. Redemption of Series 2006A Bonds.**

**(A) Optional Redemption.**

(i) The Series 2006A Bonds maturing on November 1, 2023 and November 1, 2024 shall be subject to redemption prior to their respective stated maturities, at the option of the City, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the City and by lot within a maturity), on or after November 1, 2011, at a Redemption Price equal to 100% of the principal amount of such Series 2006A Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

(ii) The Series 2006A Bonds maturing on and after November 1, 2025 shall be subject to redemption prior to their respective stated maturities, at the option of the City, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the City and by lot within a maturity), on or after November 1, 2016, at a Redemption Price equal to 100% of the principal amount of such Series 2006A Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

**(B) Mandatory Sinking Fund Redemption.** The Series 2006A Bonds maturing on November 1, 2031 and November 1, 2036 shall also be subject to mandatory redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in Section 14.08, commencing on November 1, 2027 for the Series 2006A Bonds maturing on November 1, 2031, and commencing on November 1, 2032 for the Series 2006A

Bonds maturing on November 1, 2036, at a redemption price equal to the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.

(C) Special Mandatory Redemption From Insurance or Condemnation Proceeds. The Series 2006A Bonds shall also be subject to redemption as a whole or in part on any date, among such maturities as designated by the City and by lot within a maturity, to the extent of hazard insurance proceeds not used to repair or rebuild the Enterprise or condemnation proceeds received with respect to the Enterprise to be used for such purpose pursuant to Sections 6.06 or 6.07 of the Indenture, at a Redemption Price equal to the principal amount of the Series 2006A Bonds plus interest accrued thereon to the date fixed for redemption, without premium. Notwithstanding the foregoing, in the event of a special mandatory redemption of less than all of the Outstanding Series 2006A Bonds pursuant to this Section 14.03(C), the designation by the City of the maturities of the Series 2006A Bonds from which such redemption will be made shall be subject to the prior written approval of the Series 2006A Bond Insurer.

SECTION 14.04. Selection of Series 2006A Bonds for Redemption. Whenever provision is made in this Third Supplement for the redemption of less than all of the Series 2006A Bonds of any maturity (and interest rate), the Trustee shall select the Series 2006A Bonds to be redeemed, from all Series 2006A Bonds of the respective maturity (and interest rate) not previously called for redemption, in authorized denominations, by lot in any manner which the Trustee in its sole discretion shall deem appropriate. The Trustee shall promptly notify the City in writing of the Series 2006A Bonds so selected for redemption.

SECTION 14.05. Notice of Redemption of Series 2006A Bonds. The City shall notify the Trustee at least forty-five (45) days prior to the redemption date for Series 2006A Bonds pursuant to Section 14.03(A) or (C). Notice of redemption of any Series 2006A Bonds shall be sent by the Trustee, by approved means, not less than thirty (30) nor more than sixty (60) days prior to the redemption date, (i) to the respective Owners of any Series 2006A Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee, (ii) to the Securities Depositories, and (iii) to the Information Services. Notice of redemption shall be given in the form and in accordance with the terms of the Indenture.

SECTION 14.06. Partial Redemption of Series 2006A Bonds. Upon surrender of any Series 2006A Bond redeemed in part only, the City shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the City, a new Series 2006A Bond of authorized denominations, and of the same maturity and interest rate, equal in aggregate principal amount to the unredeemed portion of the Series 2006A Bond surrendered.

SECTION 14.07. Effect of Redemption of Series 2006A Bonds. Notice of redemption having been duly given as aforesaid, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Series 2006A Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Series 2006A Bonds (or portions thereof) so called for redemption shall become due and payable at the Redemption Price specified in such notice, together with interest accrued thereon to the date fixed for redemption, interest on the Series 2006A Bonds so called for redemption shall cease to accrue, said Series 2006A Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Series 2006A

Bonds shall have no rights in respect thereof except to receive payment of said Redemption Price and accrued interest.

All Series 2006A Bonds redeemed pursuant to the provisions of this Article shall be cancelled upon surrender thereof and destroyed. Any purchase of the Series 2006A Bonds in lieu of redemption shall require the prior written approval of the Series 2006A Bond Insurer if any Series 2006A Bond so purchased is not cancelled upon purchase.

SECTION 14.08. Series 2006A Sinking Account. An account is hereby established within the Principal Fund created by Section 5.01 of the Indenture to be designated the "Series 2006A Sinking Account." On each Business Day prior to the following payment dates, the Trustee shall transfer from the Principal Fund to the Series 2006A Sinking Account an amount equal to the payment due on such date as set forth below:

Term Series 2006A Bonds Due November 1, 2031

Mandatory Sinking Account Payment Dates (November 1)	Mandatory Sinking Account Payments
2027	\$1,045,000
2028	1,095,000
2029	1,140,000
2030	1,190,000
2031†	1,240,000

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† Final Maturity.

Term Series 2006A Bonds Due November 1, 2036

Mandatory Sinking Account Payment Dates (November 1)	Mandatory Sinking Account Payments
2032	\$1,295,000
2033	1,350,000
2034	1,410,000
2035	1,470,000
2036†	1,535,000

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† Final Maturity.

Moneys in the Series 2006A Sinking Account shall be applied as provided in Section 5.01(B) and Section 5.03(B) of the Indenture.

**SECTION 14.09. Form of Series 2006A Bonds.** The Series 2006A Bonds and the certificate of authentication and registration to be executed thereon shall be in substantially the form set forth as Exhibit A hereto. The Series 2006A Bond designation letters and numbers, maturity dates, principal amounts, and interest rates and yields to maturity shall be inserted therein in conformity with Section 14.02.

**SECTION 14.10. Issuance of Series 2006A Bonds.** At any time after the execution and delivery of this Third Supplement, the City may execute and the Trustee shall authenticate and deliver the Series 2006A Bonds in the aggregate principal amount of \$16,535,000 upon the Order of the City.

**SECTION 14.11. Application of Proceeds of Series 2006A Bonds.** The proceeds of the sale of the Series 2006A Bonds in the amount of \$16,051,156.14 (computed as \$16,535,000.00 aggregate principal amount of the Series 2006A Bonds, less \$88,247.69 Underwriter's discount, less \$323,866.90 net original issue discount, less \$71,729.27 directly transferred, at the request and direction of the City and on behalf of the Trustee, by the Underwriter to the Series 2006A Bond Insurer, said amount representing the bond insurance premium for the Series 2006A Bond Insurance Policy) shall be received by the Trustee on behalf of the City and held in trust and set aside as follows:

(i) The Trustee shall transfer to the City for deposit in the Series 2006A Wastewater Enterprise Project Fund \$15,600,000.00, to be applied in accordance with Section 14.12.

(ii) The Trustee shall deposit in the Parity Reserve Fund \$225,608.83, which shall be the amount necessary to cause the amount on deposit therein to be equal to the Reserve Fund Requirement upon the issuance of the Series 2006A Bonds, to be applied in accordance with Section 5.05 in the Indenture.

(iii) The Trustee shall deposit in the Series 2006A Costs of Issuance Fund \$225,547.31, to be applied in accordance with Section 14.13 hereof.

**SECTION 14.12. Establishment and Application of the Series 2006A Wastewater Enterprise Project Fund.** The City shall establish, maintain and hold in trust a separate fund designated as the "Series 2006A Wastewater Enterprise Project Fund." The moneys in the Series 2006A Wastewater Enterprise Project Fund shall be used and withdrawn by the City to pay the costs of acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation of the wastewater treatment facilities of the City; or incidental of, or in connection with, the operation of the Enterprise. Moneys on deposit in the Series 2006A Wastewater Enterprise Project Fund shall be invested in Investment Securities. Interest, profit and other income received from the investment of moneys in the Series 2006A Wastewater Enterprise Project Fund shall be credited to such Fund except as otherwise provided herein. Interest, profit or other income derived from the investment of moneys may also be deposited in the Rebate Fund in an amount determined by the City to be required.

Unless the Series 2006A Bond Insurer otherwise directs, upon the occurrence and continuance of an Event of Default or an event which with notice or lapse of time would constitute an Event of Default under the Indenture, amounts on deposit in the Series 2006A Wastewater Enterprise Project Fund shall not be disbursed, but shall instead be applied to the payment of debt service or redemption price of the Series 2006A Bonds.

**SECTION 14.13. Establishment and Application of Series 2006A Costs of Issuance Fund.** The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Series 2006A Costs of Issuance Fund," which fund is hereby created and which fund the Trustee hereby agrees to maintain with the Trustee until June 1, 2007. The Trustee shall deposit to the Series 2006A Costs of Issuance Fund the amounts specified in Section 14.11 hereof. All money in the Series 2006A Costs of Issuance Fund shall be used and withdrawn by the Trustee to pay the Costs of Issuance of the Series 2006A Bonds upon receipt of a Requisition of the City filed with the Trustee, each of which shall be sequentially numbered and shall state the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. On June 1, 2007 or upon the earlier Request of the City, any remaining balance in the Series 2006A Costs of Issuance Fund shall be transferred to the City.

**SECTION 14.14. Use of Depository.** Notwithstanding any provision of the Indenture or this Third Supplement to the contrary:

(A) The Series 2006A Bonds shall be issued in fully registered form, in authorized denominations and shall be initially registered in the name of "Cede & Co.", as nominee of The Depository Trust Company (the "Securities Depository"), and shall be evidenced by one Series 2006A Bond maturing on each of the maturity dates as set forth in subsection 14.02(C) in a denomination corresponding to the total principal amount of the Series 2006A Bonds of such maturity. Each Series 2006A Bond shall be assigned by the Trustee a distinctive number or letter or letter and number, and a record of the same shall be maintained by the Trustee.

Registered ownership of the Series 2006A Bonds, or any portions thereof, may not thereafter be transferred except:

(i) To any successor of The Depository Trust Company or its nominee, or to any substitute depository designated pursuant to clause (ii) of this subsection (A) (a "Substitute Depository"); provided that any successor of The Depository Trust Company or Substitute Depository shall be qualified under any applicable laws to provide the services proposed to be provided by it;

(ii) To any Substitute Depository not objected to by the Trustee, upon (1) the resignation of The Depository Trust Company or its successor (or any Substitute Depository or its successor) from its functions as depository, or (2) a determination by the City that The Depository Trust Company or its successor (or any Substitute Depository or its successor) is no longer able to carry out its functions as depository; provided that any such Substitute Depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) To any person as provided below, upon (1) the resignation of The Depository Trust Company or its successor (or Substitute Depository or its successor) from its functions as depository; provided that no Substitute Depository which is not objected to by the Trustee can be obtained, or (2) a determination by the City that it is in the best interests of the City to remove The Depository Trust Company or its successor (or any Substitute Depository or its successor) from its function as depository.

(B) In the case of any transfer pursuant to clause (i) or clause (ii) of subsection 14.14(A), upon receipt of all Outstanding Series 2006A Bonds by the Trustee, together with a Certificate of the City to the Trustee, a single new Series 2006A Bond for each maturity shall be executed and delivered, registered in the name of such successor or such Substitute Depository, or their nominees, as the case may be, all as specified in such Certificate of the City. In the case of any transfer pursuant to clause (iii) of subsection 14.14(A) hereof, upon receipt of all Outstanding Series 2006A Bonds by the Trustee together with a Certificate of the City to the Trustee, new Series 2006A Bonds shall be executed and delivered in such denominations and registered in the names of such persons as are requested in such a Certificate of the City, subject to the limitations of Section 14.02 hereof; provided the Trustee shall not be required to deliver such new Series 2006A Bonds within a period less than 60 days from the date of receipt of such a Certificate of the City.

(C) In the case of partial redemption, cancellation or an advance refunding of any Series 2006A Bonds evidencing all or a portion of the principal maturing in a particular year, The Depository Trust Company shall make an appropriate notation on the Series 2006A Bonds indicating the date and amounts of such reduction in principal, in form acceptable to the Trustee.

(D) The City and the Trustee shall be entitled to treat the person in whose name any Series 2006A Bond is registered as the Owner thereof for all purposes of the Indenture and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the City; and the City and the Trustee shall have no responsibility for transmitting payments to, communication with, notifying, or otherwise dealing with any beneficial owners of the Series 2006A Bonds. Neither the City nor the Trustee will have any responsibility or obligations, legal or otherwise, to the beneficial owners or to any other party including The Depository Trust Company or its successor (or Substitute Depository or its successor), except to the Owner of any Series 2006A Bond.

(E) So long as all Outstanding Series 2006A Bonds are registered in the name of "Cede & Co." or its registered assign, the City and the Trustee shall cooperate with "Cede & Co.," as sole registered Owner, and its registered assigns in effecting payment of the principal of and redemption premium, if any, and interest on the Series 2006A Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

**SECTION 14.15. Bond Insurance Provisions.** Notwithstanding any other provision of the Indenture or this Third Supplement to the contrary, so long as the Series 2006A Bond Insurance Policy is in full force and effect and the Series 2006A Bond Insurer is not in default in its payment of obligations thereunder, the following provisions shall be in effect:

(A) The prior written consent of the Series 2006A Bond Insurer shall be a condition precedent to the deposit of any letter of credit, surety bond or insurance policy into the Parity Reserve Fund pursuant to Section 5.05 of the Indenture for purposes of satisfying all or any part of the Reserve Fund Requirement.

(B) Pursuant to the provisions of Section 9.01(A)(2) of the Indenture, any modification, amendment or supplement to the Indenture pursuant to Section 9.01(A) of the Indenture shall require the consent of the Series 2006A Bond Insurer in lieu of consent of the Owners of the Series 2006A Bonds.

(C) (1) The Series 2006A Bond Insurer shall be deemed to be the sole Owner of the Series 2006A Bonds insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the Owners of the Series 2006A Bonds insured by it are entitled to take pursuant to Article VII (pertaining to defaults and remedies) of the Indenture and Article VIII (pertaining to the Trustee) of the Indenture. The maturity of the Series 2006A Bonds insured by the Series 2006A Bond Insurer shall not be accelerated without the consent of the Series 2006A Bond Insurer.

(2) In the event the maturity of the Series 2006A Bonds is accelerated, the Series 2006A Bond Insurer may elect, in its sole discretion, to pay accelerated principal and interest accrued on such principal to the date of acceleration (to the extent unpaid by the City) and the Trustee shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Series 2006A Bond Insurer's obligations under the Series 2006A Bond Insurance Policy with respect to such Series 2006A Bonds shall be fully discharged.

(3) The rights granted to the Series 2006A Bond Insurer hereunder to request, consent to or direct any action are rights granted to the Series 2006A Bond Insurer in consideration of its issuance of the Series 2006A Bond Insurance Policy. Any exercise by the Series 2006A Bond Insurer of such rights is merely an exercise of the Series 2006A Bond Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit or on behalf of the Owners of the Series 2006A Bonds nor does such action evidence any position of the Series 2006A Bond Insurer, positive or negative, as to whether consent of the Owners of the Series 2006A Bonds is required in addition to consent of the Series 2006A Bond Insurer.

(4) In determining whether any amendment, consent or other action to be taken, or any failure to act, under the Indenture would adversely affect the security for the Series 2006A Bonds or the rights of the Owners, the Trustee shall consider the effect of any such amendment, consent, action or inaction as if there were no Series 2006A Bond Insurance Policy.

(5) The allowable grace period for the City to cure a failure to observe or perform any covenant, condition, agreement or provision of the Indenture prior to such failure becoming an Event of Default pursuant to Section 7.01(b) of the Indenture shall not be extended beyond a sixty (60) day period without the prior written consent of the Series 2006A Bond Insurer. Notwithstanding any provision to the contrary that may be contained in any agreement governing any Parity Debt, for purposes of Section 7.01(d) of the Indenture there shall be no grace period for the default by the City in the due and punctual payment of any Parity Debt.

(D) (1) To the extent that the Indenture confers upon or gives or grants to the Series 2006A Bond Insurer any right, remedy or claim under or by reason of the Indenture, the Series 2006A Bond Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted thereunder or hereunder.

(2) Except as permitted under the terms of the Indenture, no contract shall be entered into by the City nor any action taken by the City by which the rights of the Series 2006A Bond Insurer or security for or sources of payment of the Series 2006A Bonds may be impaired or prejudiced except upon obtaining the prior written consent of the Series 2006A Bond Insurer.

(3) Each of the City and the Trustee agree to take such action (including as applicable, filing of UCC financing statements and continuations thereof) as is necessary from time to time to preserve the priority of the pledge of the Net Revenues under applicable law.

(E) (1) In connection with any defeasance of Series 2006A Bonds pursuant to Article X of the Indenture, in addition to the requirements of Article X of the Indenture, the City shall cause to be delivered (i) an escrow deposit agreement (which shall be acceptable in form and substance to the Series 2006A Bond Insurer), and (ii) an opinion of nationally recognized bond counsel (which shall be acceptable in form and substance to the Series 2006A Bond Insurer) to the effect that the Series 2006A Bonds being defeased are no longer "Outstanding" under the Indenture, addressed to the City, the Trustee and the Series 2006A Bond Insurer. The Series 2006A Bond Insurer shall be provided with final drafts of the above-referenced documentation not less than five Business Days prior to the funding of the escrow. Any Series 2006A Bonds being defeased shall be deemed "Outstanding" under the Indenture unless and until they are in fact paid and retired or the above criteria are met.

(2) Amounts paid by the Series 2006A Bond Insurer under the Series 2006A Bond Insurance Policy shall not be deemed paid for purposes of the Indenture and shall remain Outstanding and continue to be due and owing until paid by the City in accordance with the Indenture.

(3) The Indenture shall not be discharged unless all amounts due or to become due to the Series 2006A Bond Insurer have been paid in full or duly provided for.

(F) While the Series 2006A Bond Insurance Policy is in effect, the City or the Trustee, as appropriate, shall furnish to the Series 2006A Bond Insurer:

(1) annual audited financial statements of the City within the later of 180 days after the end of the City's Fiscal Year or 30 days after acceptance or adoption of such audited financial statements by the City, whichever is later (together with a certification of the City that it is not aware of any Event of Default or any event which the passage of time or the giving of notice would constitute an Event of Default under the Indenture), and the City's annual budget within 30 days after the approval thereof, together with such other information, data or reports as the Series 2006A Bond Insurer shall reasonably request from time to time;

(2) notice of any draw upon the Parity Reserve Fund within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Reserve Fund Requirement and (ii) withdrawals in connection with a refunding of Series 2006A Bonds;

(3) notice of any Event of Default under the Indenture known to the Trustee or the City within five Business Days after knowledge thereof;

(4) prior notice of the advance refunding or redemption of any of the Series 2006A Bonds, including the principal amount, maturities and CUSIP numbers thereof;

(5) notice of the resignation or removal of the Trustee and the appointment of, and acceptance of duties by, any successor thereto;

(6) notice of the commencement of any proceeding by or against the City commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding");

(7) notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of or interest on the Series 2006A Bonds;

(8) a full original transcript of all proceedings relating to the execution of any amendment or supplement to the Indenture; and

(9) all reports, notices and correspondence to be delivered under the terms of the Indenture.

(G) As long as the Series 2006A Bond Insurance Policy shall be in full force and effect, the City and the Trustee agree to comply with the following provisions:

(1) If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date") there is not on deposit with the Trustee after making all transfers and deposits required under the Indenture, moneys sufficient to pay the principal of and interest on the Series 2006A Bonds due on such Payment Date, the Trustee shall give notice to the Series 2006A Bond Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Series 2006A Bonds due on such Payment Date, the Trustee shall make a claim under the Series 2006A Bond Insurance Policy and give notice to the Series 2006A Bond Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Series 2006A Bonds and the amount required to pay principal of the Series 2006A Bonds, confirmed in writing to the Series 2006A Bond Insurer and the Insurer's Fiscal Agent by

12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Series 2006A Bond Insurance Policy.

(2) The Trustee shall designate any portion of payment of principal on Series 2006A Bonds paid by the Series 2006A Bond Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Series 2006A Bonds registered to the then current Owner of such Series 2006A Bonds, whether DTC or its nominee or otherwise, and shall issue a replacement Series 2006A Bond to the Series 2006A Bond Insurer, registered in the name of Financial Security Assurance Inc., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Trustee's failure to so designate any payment or issue any replacement Series 2006A Bond shall have no effect on the amount of principal or the interest payable by the City on any Series 2006A Bond or the subrogation rights of the Series 2006A Bond Insurer.

(3) The Trustee shall keep a complete and accurate record of all funds deposited by the Series 2006A Bond Insurer into the Policy Payments Account (referred to below) and the allocation of such funds to payment of interest on and principal paid in respect of any Series 2006A Bond. The Series 2006A Bond Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Trustee.

(4) Upon payment of a claim under the Series 2006A Bond Insurance Policy, the Trustee shall establish a separate special purpose trust account for the benefit of the Owners of the Series 2006A Bonds referred to herein as the "Policy Payments Account" and over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall receive any amount paid under the Series 2006A Bond Insurance Policy in trust on behalf of the Owners of the Series 2006A Bonds and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Trustee to the Owners of the Series 2006A Bonds in the same manner as principal and interest payments are to be made with respect to the Series 2006A Bonds under the sections hereof regarding payment of Series 2006A Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments. Notwithstanding anything to the contrary otherwise set forth in the Indenture, the City agrees to pay to the Series 2006A Bond Insurer (i) a sum equal to the total of all amounts paid by the Series 2006A Bond Insurer under the Series 2006A Bond Insurance Policy ("Insurer Advances"); and (ii) interest on such Insurer Advances from the date paid by the Series 2006A Bond Insurer until payment thereof in full, payable to the Series 2006A Bond Insurer at the Late Payment Rate per annum (collectively, "Insurer Reimbursement Amounts"). "Late Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank or its successor at its principal office in the City of New York, as its prime or base lending rate plus 3%, and (ii) the then applicable rate of interest on the Series 2006A Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of actual number of days elapsed over a year of 360 days. The City hereby covenants and agree

that the Insurer Reimbursement Amounts are secured by a lien on and pledge of the Net Revenues and payable from such Net Revenue on a parity with debt service due on the Series 2006A Bonds.

(5) Funds held in the Policy Payments Account shall not be invested by the Trustee and may not be applied to satisfy any costs, expenses or liabilities of the Trustee.

(6) Any funds remaining in the Policy Payments Account following a Series 2006A Bond payment date shall promptly be remitted to the Series 2006A Bond Insurer.

(7) The Series 2006A Bond Insurer shall, to the extent it makes any payment of principal of or interest on the Series 2006A Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Series 2006A Bond Insurance Policy.

(8) The City shall pay or reimburse the Series 2006A Bond Insurer any and all changes, fees, costs and expenses which the Series 2006A Bond Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights or security in the Indenture; (ii) the pursuit of any remedies under the Indenture or otherwise afforded by law or equity; (iii) any amendment, waiver or other action with respect to, or related to, the Indenture whether or not executed or completed, (iv) the violation by the City of any law, rule or regulation, or any judgment, order or decree applicable to it; or (v) any litigation or other dispute in connection with the Indenture or the transaction contemplated thereby, other than amounts resulting from the failure of the Series 2006A Bond Insurer to honor its obligations under the Series 2006A Bond Insurance Policy. The Series 2006A Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Indenture.

(9) The Series 2006A Bond Insurer shall be entitled to pay principal or interest on the Series 2006A Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment (as such terms are defined in the Series 2006A Bond Insurance Policy) by the City and any amounts due on the Series 2006A Bonds as a result of the acceleration of the maturity thereof in accordance with the Indenture, whether or not the Series 2006A Bond Insurer has received a Notice of Nonpayment (as such term is defined in the Series 2006A Bond Insurance Policy) or a claim upon the Series 2006A Bond Insurance Policy.

(10) The notice address of the Series 2006A Bond Insurer is: Financial Security Assurance Inc., 31 West 52<sup>nd</sup> Street, New York, New York 10019, Attention: Managing Director – Surveillance; Re: Policy No. 207694-N; Telephone: (212) 826-0100; Telecopier: (212) 339-3556. In each case in which notice or other communication refers to an Event of Default, then a copy of such notice or other communication shall also be sent to the attention of General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

**SECTION 14.16. Terms of Series 2006A Bonds Subject to the Indenture.** Except as in this Third Supplement expressly provided, every term and condition contained in the Indenture shall apply to the Third Supplement and to the Series 2006A Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to the Third Supplement.

The Third Supplement and all the terms and provisions herein contained shall form part of the Indenture as fully and with the same effect as if all such terms and provisions had been set forth in the Indenture. The Indenture is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby, subject to the next sentence.

**SECTION 14.17. Effective Date of Third Supplement.** The Third Supplement shall take effect upon its execution and delivery.

**SECTION 14.18. Execution in Counterparts.** The Third Supplement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed the Third Supplement by their officers thereunto duly authorized as of the day and year first written above.

CITY OF MODESTO, CALIFORNIA

By:   
Director of Finance

(Seal)

ATTEST:

By:   
City Clerk

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

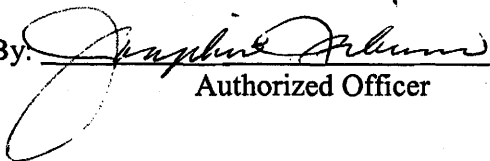
By:   
Authorized Officer

EXHIBIT A

(FORM OF SERIES 2006A BOND)

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

No. \_\_\_\_\_ \$ \_\_\_\_\_

CITY OF MODESTO, CALIFORNIA  
WASTEWATER REVENUE BONDS,  
SERIES 2006

<u>Maturity Date</u>	<u>Interest Rate Per Annum</u>	<u>Dated Date</u>	<u>CUSIP</u>
November 1, _____	%	_____, 2006	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The CITY OF MODESTO, CALIFORNIA a municipal corporation and chartered city duly organized and existing under the Constitution and the laws of the State of California (the "City"), for value received, hereby promises to pay (but only out of the Net Revenues of the City's wastewater Enterprise and other funds hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above (subject to any right of prior redemption or payment as provided in the hereinafter mentioned Indenture), the principal sum specified above together with interest thereon from the dated date specified above until the principal hereof shall have been paid, at the interest rate per annum specified above, payable on May 1, 2007, and semiannually thereafter on November 1 and May 1 in each year. Interest hereon is payable in lawful money of the United States of America by (except as otherwise provided in the hereinafter mentioned Indenture) check mailed by first-class mail on each interest payment date to the registered owner as of the close of business on the 15th day of the calendar month immediately preceding such interest payment date. The principal hereof and premium, if any, hereon are payable when due upon presentation hereof at the Corporate Trust Office (as defined in the Indenture) of The Bank of New York Trust Company, N.A., as trustee

(together with any successor as trustee under said Indenture, the "Trustee"), in lawful money of the United States of America.

This bond is one of a duly authorized issue of City of Modesto, California Wastewater Revenue Bonds (the "Bonds") of the series and designation indicated on the face hereof. Said authorized issue of Bonds is not limited in aggregate principal amount, except as otherwise provided in said Indenture, and consists or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Indenture provided, all issued and to be issued pursuant to the provisions of Section 200 of the Charter of the City and the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code. This Bond is issued pursuant to a Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City and the Trustee, providing for the issuance of the Bonds, and a Third Supplemental Wastewater Revenue Bond Indenture, dated as of December 1, 2006 (the "Third Supplement"), by and between the City and the Trustee, authorizing the issuance of a series of bonds (the "Series 2006A Bonds") of which this Bond is one (said indenture as amended and supplemented, including as supplemented by the Third Supplement collectively, the "Indenture"). Reference is hereby made to the Indenture for a description of the terms under which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Net Revenues of the Enterprise (as those terms are defined in the Indenture), and the rights of the registered owners of the Bonds; and all the terms of the Indenture are hereby incorporated herein and constitute a contract between the City and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued, and indebtedness may be incurred, on a parity with the Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Indenture.

The Bonds and the Parity Debt (as defined in the Indenture) hereafter issued by the City are payable from, and are secured by a pledge of and lien on, the Net Revenues of the City's wastewater Enterprise and all amounts held by the Trustee under the Indenture (except for amounts held in the Rebate Fund), subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions provided in the Indenture.

The Bonds are revenue obligations of the City and are payable as to both principal and interest, and any premium upon redemption thereof, exclusively from Net Revenues of the City's wastewater Enterprise and certain other funds pledged under the Indenture. The Bonds are special, limited obligations of the City. The Bonds shall not be deemed to constitute a debt or liability of the City, the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory provision, or a pledge of the faith and credit of the City, the State of California or of any political subdivision thereof, but shall be payable, except to the extent of certain amounts held under the Indenture pledged therefor, solely from Net Revenues. Neither the faith and credit nor the taxing power of the City, the State of California or of any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Bonds. The issuance of the Bonds shall not directly or indirectly or contingently obligate the City, the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment.

The Series 2006A Bonds maturing on November 1, 2023 and November 1, 2024 shall be subject to redemption prior to their respective stated maturities, at the option of the City, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the City and by lot within a maturity), on or after November 1, 2011, at a Redemption Price equal to 100% of the principal amount of such Series 2006A Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

The Series 2006A Bonds maturing on and after November 1, 2025 shall be subject to redemption prior to their respective stated maturities, at the option of the City, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the City and by lot within a maturity), on or after November 1, 2016, at a Redemption Price equal to 100% of the principal amount of such Series 2006A Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

The Series 2006A Bonds maturing on November 1, 2031 and November 1, 2036 shall also be subject to mandatory redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in the Indenture, commencing on November 1, 2027 for the Series 2006A Bonds maturing on November 1, 2031, and commencing on November 1, 2032 for the Series 2006A Bonds maturing on November 1, 2036, at a redemption price equal to the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.

The Series 2006A Bonds shall be subject to redemption as a whole or in part on any date, among such maturities as designated by the City and by lot within a maturity, to the extent of hazard insurance proceeds not used to repair or rebuild the Enterprise or condemnation proceeds received with respect to the Enterprise to be used for such purpose pursuant to the Indenture, at a redemption price equal to the principal amount of the Series 2006A Bonds plus interest accrued thereon to the date fixed for redemption, without premium.

This Bond is transferable or exchangeable for other authorized denominations by the registered owner hereof, in person or by its duly authorized attorney, at the Corporate Trust Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer or exchange a new fully registered Bond or Bonds, of authorized denomination or denominations, of the same series, tenor, maturity and interest rate for the same aggregate principal amount will be issued to the registered owner in exchange herefor.

The City, the Trustee and any paying agent may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the City, the Trustee and any paying agent shall not be affected by any notice to the contrary.

The rights and obligations of the City and of the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Indenture, which provide, in certain circumstances, for modifications and amendments without the consent of or notice to the registered owners of the Bonds.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this Bond, together with all other indebtedness of the City pertaining to the Net Revenues, is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture or otherwise.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

Capitalized terms used but not defined herein shall have the meanings assigned to them in the Indenture.

IN WITNESS WHEREOF, THE CITY OF MODESTO, CALIFORNIA has caused this Bond to be executed in its name and on its behalf by the Mayor of the City and countersigned by the City Clerk by their facsimile signatures and the seal of the City to be reproduced hereon, and this Bond to be dated the \_\_\_\_ day of \_\_\_\_\_, 2006.

CITY OF MODESTO, CALIFORNIA

By: \_\_\_\_\_  
Mayor

(SEAL)

Attested:

By: \_\_\_\_\_  
City Clerk

[FORM OF CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION]

This is one of the Bonds described in the within mentioned Indenture and registered on the date set forth below.

Dated:

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

By: \_\_\_\_\_  
Authorized Officer

## STATEMENT OF INSURANCE

Financial Security Assurance Inc. ("Financial Security"), New York, New York, has delivered its municipal bond insurance policy with respect to the scheduled payments due of principal of and interest on this Bond to The Bank of New York Trust Company, N.A., San Francisco, California (the "Trustee"), or its successor, as trustee for the Bonds. Said policy is on file and available for inspection at the corporate trust office of the Trustee and a copy thereof may be obtained from Financial Security or the Trustee.

[FORM OF ASSIGNMENT]

For value received \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_ the within Bond and hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer the same on the books of the City at the office of the Trustee, with full power of substitution in the premises.

\_\_\_\_\_  
NOTE: The signature to this Assignment must correspond with the name on the face of the within registered bond in every particular, without alteration or enlargement or any change whatsoever.

Dated: \_\_\_\_\_

Signature Guaranteed by:

\_\_\_\_\_  
NOTE: Signature must be guaranteed by an eligible guarantor institution.

**DIRECTION TO TRUSTEE REGARDING REDEMPTION OF:**

**CITY OF MODESTO, CALIFORNIA  
WASTEWATER REVENUE REFUNDING BONDS  
SERIES 2005A**

**CITY OF MODESTO, CALIFORNIA  
WASTEWATER REVENUE BONDS  
SERIES 2006A**

To: The Bank of New York Mellon Trust Company, N.A., as successor Trustee  
400 South Hope Street, 4<sup>th</sup> Floor  
Los Angeles, California 90071

The City of Modesto (the "City") hereby directs you to call for redemption on November 1, 2015, all of the City of Modesto, California Wastewater Revenue Refunding Bonds Series 2005A (the "Series 2005A Bonds"), currently outstanding in the aggregate principal amount of \$19,460,000, which Series 2005A Bonds were issued pursuant to the Wastewater Revenue bond Indenture, dated as of April 1, 2005 (the "Original Indenture"), by and between the City and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as supplemented by the First Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005 (the "First Supplemental Indenture"), by and between the City and the Trustee. Pursuant to Section 4.01 of the Original Indenture and Section 12.05 of the First Supplemental Indenture, notice of redemption of any Series 2005A Bonds shall be mailed by the Trustee, not less than thirty (30) nor more than sixty (60) days prior to the redemption date. Attached hereto as Exhibit A is a form of Conditional Notice of Optional Redemption for the Series 2005A Bonds.


The City further hereby directs you to call for redemption on November 1, 2015, all of the City of Modesto, California Wastewater Revenue Bonds, Series 2006A (the "Series 2006A Bonds") maturing on November 1, 2023 and 2024, currently outstanding in the aggregate principal amount of \$1,800,000, which Series 2006A Bonds were issued pursuant to the Original Indenture, as supplemented by the Third Supplemental Wastewater Revenue Bond Indenture, dated as of December 1, 2006 (the "Third Supplemental Indenture" and together with the Original Indenture and the First Supplemental Indenture, the "Indenture"), by and between the City and the Trustee. Pursuant to Section 4.01 of the Original Indenture and Section 14.05 of the Third Supplemental Indenture, notice of redemption of any Series 2006A Bonds shall be sent by the Trustee, by approved means, not less than thirty (30) nor more than sixty (60) days prior to the redemption date. Attached hereto as Exhibit B is a form of conditional notice of optional redemption for the Series 2006A Bonds.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

All capitalized terms not defined herein shall have the meanings specified in the Indenture.

Dated: September 15, 2015

CITY OF MODESTO

By:   
Gloriette Genereux  
Director of Finance

**EXHIBIT A**

**FORM OF CONDITIONAL NOTICE OF OPTIONAL REDEMPTION  
RELATING TO THE REDEMPTION OF**

**CITY OF MODESTO, CALIFORNIA  
WASTEWATER REVENUE REFUNDING BONDS  
SERIES 2005A**

CONDITIONAL NOTICE IS HEREBY GIVEN to the Owners of the City of Modesto, California Wastewater Revenue Refunding Bonds Series 2005A (the "Series 2005A Bonds"), issued pursuant to a Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City of Modesto (the "City") and The Bank of New York Mellon Trust Company, N.A. as successor Trustee to U.S. Bank National Association (the "Trustee"), as amended and supplemented by a First Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City and the Trustee, that the City has directed the Trustee to call for redemption, on November 1, 2015 (the "Redemption Date"), all of the Series 2005A Bonds at a redemption price of 100% of the principal amount thereof (the "Redemption Price"), plus accrued interest to the Redemption Date, without premium.

On the Redemption Date, there will become due the Redemption Price of the Series 2005A Bonds, together with interest accrued thereon to the Redemption Date and from and after the Redemption Date, interest on the Series 2005A Bonds shall cease to accrue. Such redemption shall be conditional upon the receipt by the Trustee on or prior to the Redemption Date of moneys sufficient to pay the principal, premium, if any, and interest on such Series 2005A Bonds and that if such moneys shall not have been so received said notice shall be of no force and effect and the Trustee shall not be required to redeem such Series 2005A Bonds.

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The Series 2005A Bonds were issued on April 13, 2005. The stated CUSIP numbers, interest rates, maturity dates and principal amounts of the Series 2005A Bonds to be redeemed on November 1, 2015 are as follows:

Maturity Date (November 1)	Interest Rate	Original CUSIP	Principal Amount of Series 2005A Bonds being Redeemed
2016	4.000%	607802AM7	\$ 2,385,000.00
2017	5.250%	607802AN5	2,485,000.00
2018	5.250%	607802AP0	2,625,000.00
2019	5.000%	607802AQ8	2,765,000.00
2020	5.250%	607802AR6	2,905,000.00
2021	5.250%	607802AS4	3,065,000.00
2022	5.250%	607802AT2	3,230,000.00
			<u>\$19,460,000.00</u>

The Series 2005A Bonds called for redemption shall be redeemed at the following principal payment office of The Bank of New York Mellon Trust Company, N.A., as Trustee upon surrender of these Series 2005A Bonds:

<b>Hand Delivery Only:</b>	<b>Registered, Certified or First Class Mail:</b>	<b>Express Delivery Only:</b>
The Bank of New York Mellon Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1 <sup>st</sup> Floor East New York, New York 10286	The Bank of New York Mellon Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Global Corporate Trust 111 Sanders Creek Parkway East Syracuse, NY 13057

Additional information regarding the foregoing actions may be obtained from The Bank of New York Mellon Trust Company, N.A., Bondholder Communications, telephone number (800) 254-2826.

Presentation of a Series 2005A Bond called for redemption may be by first class mail, registered mail, express mail, or delivered in person. The method of presentation and delivery of a Series 2005A Bond called for redemption is at the option and risk of the Owner thereof. If mail is used, insured registered mail, return receipt requested is suggested.

A form W-9 must be submitted with the Series 2005A Bonds. Failure to provide a completed form W-9 will result in 31% backup withholding pursuant to the Interest and Dividend Tax Compliance Act of 1983. Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if the tax identification number is not properly certified. An Owner who wishes to avoid the application of these provisions should submit a completed IRS Form W-9 when presenting a Series 2005A Bond for redemption.

Neither the City nor the Trustee shall be responsible for the selection or use of the CUSIP numbers selected, nor is any representation made as to their correctness indicated in the notice or as printed on any Series 2005A Bond. They are included solely for the convenience of the Owners.

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

Date: October 1, 2015

copy to: The Depository Trust Company, New York, New York

**EXHIBIT B**

**FORM OF CONDITIONAL NOTICE OF OPTIONAL REDEMPTION  
RELATING TO THE REDEMPTION OF**

**CITY OF MODESTO, CALIFORNIA  
WASTEWATER REVENUE BONDS  
SERIES 2006A**

CONDITIONAL NOTICE IS HEREBY GIVEN to the Owners of the City of Modesto, California Wastewater Revenue Bonds, Series 2006A (the "Series 2006A Bonds"), issued pursuant to a Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City of Modesto (the "City") and The Bank of New York Mellon Trust Company, N.A., as successor Trustee (the "Trustee"), as amended and supplemented by a First Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, a Second Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, and a Third Supplemental Wastewater Revenue Bond Indenture, dated as of December 1, 2006, by and between the City and the Trustee, that the City has directed the Trustee to call for redemption, on November 1, 2015 (the "Redemption Date"), all of the Series 2006A Bonds at a redemption price of 100% of the principal amount thereof (the "Redemption Price"), plus accrued interest to the Redemption Date, without premium.

On the Redemption Date, there will become due the Redemption Price of the Series 2006A Bonds, together with interest accrued thereon to the Redemption Date and from and after the Redemption Date, interest on the Series 2006A Bonds shall cease to accrue. Such redemption shall be conditional upon the receipt by the Trustee on or prior to the Redemption Date of moneys sufficient to pay the principal, premium, if any, and interest on such Series 2006A Bonds and that if such moneys shall not have been so received said notice shall be of no force and effect and the Trustee shall not be required to redeem such Series 2006A Bonds.

The Series 2006A Bonds were issued on December 14, 2006. The stated CUSIP numbers, interest rates, maturity dates and principal amounts of the Series 2006A Bonds to be redeemed on November 1, 2015 are as follows:

<u>Maturity Date (November 1)</u>	<u>Interest Rate</u>	<u>Original CUSIP</u>	<u>Principal Amount of Series 2006A Bonds being Redeemed</u>
2023	4.500%	607802AX3	\$880,000.00
2024	4.500%	607802AY1	920,000.00
			<u>\$1,800,000.00</u>

The Series 2006A Bonds called for redemption shall be redeemed at the following principal payment office of The Bank of New York Mellon Trust Company, N.A., as Trustee, upon surrender of these Series 2006A Bonds:

<b>Hand Delivery Only:</b>	<b>Registered, Certified or First Class Mail:</b>	<b>Express Delivery Only:</b>
The Bank of New York Mellon Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1 <sup>st</sup> Floor East New York, New York 10286	The Bank of New York Mellon Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Global Corporate Trust 111 Sanders Creek Parkway East Syracuse, NY 13057

Additional information regarding the foregoing actions may be obtained from The Bank of New York Mellon Trust Company, N.A., Bondholder Communications, telephone number (800) 254-2826.

Presentation of a Series 2006A Bond called for redemption may be by first class mail, registered mail, express mail, or delivered in person. The method of presentation and delivery of a Series 2006A Bond called for redemption is at the option and risk of the Owner thereof. If mail is used, insured registered mail, return receipt requested is suggested.

A form W-9 must be submitted with the Series 2006A Bonds. Failure to provide a completed form W-9 will result in 31% backup withholding pursuant to the Interest and Dividend Tax Compliance Act of 1983. Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if the tax identification number is not properly certified. An Owner who wishes to avoid the application of these provisions should submit a completed IRS Form W-9 when presenting a Series 2006A Bond for redemption.

Neither the City nor the Trustee shall be responsible for the selection or use of the CUSIP numbers selected, nor is any representation made as to their correctness indicated in the notice or as printed on any Series 2006A Bond. They are included solely for the convenience of the Owners.

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

Date: October 1, 2015

copy to: The Depository Trust Company, New York, New York

**EXHIBIT A**

**FORM OF CONDITIONAL NOTICE OF OPTIONAL REDEMPTION  
RELATING TO THE REDEMPTION OF**

**CITY OF MODESTO, CALIFORNIA  
WASTEWATER REVENUE REFUNDING BONDS  
SERIES 2005A**

CONDITIONAL NOTICE IS HEREBY GIVEN to the Owners of the City of Modesto, California Wastewater Revenue Refunding Bonds Series 2005A (the "Series 2005A Bonds"), issued pursuant to a Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City of Modesto (the "City") and The Bank of New York Mellon Trust Company, N.A. as successor Trustee to U.S. Bank National Association (the "Trustee"), as amended and supplemented by a First Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City and the Trustee, that the City has directed the Trustee to call for redemption, on November 1, 2015 (the "Redemption Date"), all of the Series 2005A Bonds at a redemption price of 100% of the principal amount thereof (the "Redemption Price"), plus accrued interest to the Redemption Date, without premium.

On the Redemption Date, there will become due the Redemption Price of the Series 2005A Bonds, together with interest accrued thereon to the Redemption Date and from and after the Redemption Date, interest on the Series 2005A Bonds shall cease to accrue. Such redemption shall be conditional upon the receipt by the Trustee on or prior to the Redemption Date of moneys sufficient to pay the principal, premium, if any, and interest on such Series 2005A Bonds and that if such moneys shall not have been so received said notice shall be of no force and effect and the Trustee shall not be required to redeem such Series 2005A Bonds.

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The Series 2005A Bonds were issued on April 13, 2005. The stated CUSIP numbers, interest rates, maturity dates and principal amounts of the Series 2005A Bonds to be redeemed on November 1, 2015 are as follows:

Maturity Date (November 1)	Interest Rate	Original CUSIP	Principal Amount of Series 2005A Bonds being Redeemed
2016	4.000%	607802AM7	\$ 2,385,000.00
2017	5.250%	607802AN5	2,485,000.00
2018	5.250%	607802AP0	2,625,000.00
2019	5.000%	607802AQ8	2,765,000.00
2020	5.250%	607802AR6	2,905,000.00
2021	5.250%	607802AS4	3,065,000.00
2022	5.250%	607802AT2	3,230,000.00
			\$19,460,000.00

The Series 2005A Bonds called for redemption shall be redeemed at the following principal payment office of The Bank of New York Mellon Trust Company, N.A., as Trustee upon surrender of these Series 2005A Bonds:

<b>Hand Delivery Only:</b>	<b>Registered, Certified or First Class Mail:</b>	<b>Express Delivery Only:</b>
The Bank of New York Mellon Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1 <sup>st</sup> Floor East New York, New York 10286	The Bank of New York Mellon Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Global Corporate Trust 111 Sanders Creek Parkway East Syracuse, NY 13057

Additional information regarding the foregoing actions may be obtained from The Bank of New York Mellon Trust Company, N.A., Bondholder Communications, telephone number (800) 254-2826.

Presentation of a Series 2005A Bond called for redemption may be by first class mail, registered mail, express mail, or delivered in person. The method of presentation and delivery of a Series 2005A Bond called for redemption is at the option and risk of the Owner thereof. If mail is used, insured registered mail, return receipt requested is suggested.

A form W-9 must be submitted with the Series 2005A Bonds. Failure to provide a completed form W-9 will result in 31% backup withholding pursuant to the Interest and Dividend Tax Compliance Act of 1983. Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if the tax identification number is not properly certified. An Owner who wishes to avoid the application of these provisions should submit a completed IRS Form W-9 when presenting a Series 2005A Bond for redemption.

Neither the City nor the Trustee shall be responsible for the selection or use of the CUSIP numbers selected, nor is any representation made as to their correctness indicated in the notice or as printed on any Series 2005A Bond. They are included solely for the convenience of the Owners.

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

Date: October 1, 2015

copy to: The Depository Trust Company, New York, New York

**EXHIBIT B**

**FORM OF CONDITIONAL NOTICE OF OPTIONAL REDEMPTION  
RELATING TO THE REDEMPTION OF**

**CITY OF MODESTO, CALIFORNIA  
WASTEWATER REVENUE BONDS  
SERIES 2006A**

CONDITIONAL NOTICE IS HEREBY GIVEN to the Owners of the City of Modesto, California Wastewater Revenue Bonds, Series 2006A (the "Series 2006A Bonds"), issued pursuant to a Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City of Modesto (the "City") and The Bank of New York Mellon Trust Company, N.A., as successor Trustee (the "Trustee"), as amended and supplemented by a First Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, a Second Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, and a Third Supplemental Wastewater Revenue Bond Indenture, dated as of December 1, 2006, by and between the City and the Trustee, that the City has directed the Trustee to call for redemption, on November 1, 2015 (the "Redemption Date"), all of the Series 2006A Bonds at a redemption price of 100% of the principal amount thereof (the "Redemption Price"), plus accrued interest to the Redemption Date, without premium.

On the Redemption Date, there will become due the Redemption Price of the Series 2006A Bonds, together with interest accrued thereon to the Redemption Date and from and after the Redemption Date, interest on the Series 2006A Bonds shall cease to accrue. Such redemption shall be conditional upon the receipt by the Trustee on or prior to the Redemption Date of moneys sufficient to pay the principal, premium, if any, and interest on such Series 2006A Bonds and that if such moneys shall not have been so received said notice shall be of no force and effect and the Trustee shall not be required to redeem such Series 2006A Bonds.

The Series 2006A Bonds were issued on December 14, 2006. The stated CUSIP numbers, interest rates, maturity dates and principal amounts of the Series 2006A Bonds to be redeemed on November 1, 2015 are as follows:

<u>Maturity Date (November 1)</u>	<u>Interest Rate</u>	<u>Original CUSIP</u>	<u>Principal Amount of Series 2006A Bonds being Redeemed</u>
2023	4.500%	607802AX3	\$880,000.00
2024	4.500%	607802AY1	920,000.00
			<u>\$1,800,000.00</u>

The Series 2006A Bonds called for redemption shall be redeemed at the following principal payment office of The Bank of New York Mellon Trust Company, N.A., as Trustee, upon surrender of these Series 2006A Bonds:

<b>Hand Delivery Only:</b>	<b>Registered, Certified or First Class Mail:</b>	<b>Express Delivery Only:</b>
The Bank of New York Mellon Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1 <sup>st</sup> Floor East New York, New York 10286	The Bank of New York Mellon Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Global Corporate Trust 111 Sanders Creek Parkway East Syracuse, NY 13057

Additional information regarding the foregoing actions may be obtained from The Bank of New York Mellon Trust Company, N.A., Bondholder Communications, telephone number (800) 254-2826.

Presentation of a Series 2006A Bond called for redemption may be by first class mail, registered mail, express mail, or delivered in person. The method of presentation and delivery of a Series 2006A Bond called for redemption is at the option and risk of the Owner thereof. If mail is used, insured registered mail, return receipt requested is suggested.

A form W-9 must be submitted with the Series 2006A Bonds. Failure to provide a completed form W-9 will result in 31% backup withholding pursuant to the Interest and Dividend Tax Compliance Act of 1983. Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if the tax identification number is not properly certified. An Owner who wishes to avoid the application of these provisions should submit a completed IRS Form W-9 when presenting a Series 2006A Bond for redemption.

Neither the City nor the Trustee shall be responsible for the selection or use of the CUSIP numbers selected, nor is any representation made as to their correctness indicated in the notice or as printed on any Series 2006A Bond. They are included solely for the convenience of the Owners.

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

Date: October 1, 2015

copy to: The Depository Trust Company, New York, New York

\$36,495,000  
City of Modesto, California  
Wastewater Revenue Refunding Bonds  
Series 2005A

\$16,535,000  
City of Modesto, California  
Wastewater Revenue Bonds  
Series 2006A

October 30, 2015

DIRECTION TO TRUSTEE AND SUFFICIENCY ACKNOWLEDGMENT

The City has today delivered to you \$21,262,960.90 for deposit into the Redemption Fund established under the Wastewater Revenue Bond Indenture, dated as of April 1, 2005, the First Supplemental Indenture, dated as of April 1, 2005, the Second Supplemental Indenture, dated as of April 1, 2005, and the Third Supplemental Indenture, dated as of December 1, 2006 (collectively the "Indenture"), each between the City and The Bank of New York Mellon Trust Company, N.A., as successor trustee relating to the above-captioned Bonds (the "Bonds"). The City also has deposited with the Trustee \$902,591.25 for deposit in the Interest Fund and \$2,270,000 for deposit in the Principal Fund established under the Indenture.

The City hereby irrevocably instructs the Trustee to apply such amounts to pay on November 2, 2015, in accordance with provisions of the Indenture, (i) all interest due on the Bonds to November 1, 2015 (ii) the principal or mandatory sinking fund payment due on the Bonds maturing or subject to mandatory sinking fund redemption on November 1, 2015 and (iii) the redemption price (par) of the Bonds identified on the conditional optional redemption notices (attached as Exhibit A and Exhibit B hereto) on November 1, 2015. The conditional optional redemption notices were delivered by the Trustee to bondholders on or about October 1, 2015 at the direction of the City.

CITY OF MODESTO, CALIFORNIA

By: *Gloriette Genereux*  
Gloriette Genereux  
Director of Finance

The Trustee hereby acknowledges the receipt of such funds, the delivery of the conditional optional redemption notices, the directions contained herein and the adequacy of such funds for such purposes.

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

By:  \_\_\_\_\_  
Authorized Officer

Exhibit A

Redemption Notice for Series 2005A Bonds

**EXHIBIT A**

**FORM OF CONDITIONAL NOTICE OF OPTIONAL REDEMPTION  
RELATING TO THE REDEMPTION OF  
CITY OF MODESTO, CALIFORNIA  
WASTEWATER REVENUE REFUNDING BONDS  
SERIES 2005A**

CONDITIONAL NOTICE IS HEREBY GIVEN to the Owners of the City of Modesto, California Wastewater Revenue Refunding Bonds Series 2005A (the "Series 2005A Bonds"), issued pursuant to a Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City of Modesto (the "City") and The Bank of New York Mellon Trust Company, N.A. as successor Trustee to U.S. Bank National Association (the "Trustee"), as amended and supplemented by a First Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City and the Trustee, that the City has directed the Trustee to call for redemption, on November 1, 2015 (the "Redemption Date"), all of the Series 2005A Bonds at a redemption price of 100% of the principal amount thereof (the "Redemption Price"), plus accrued interest to the Redemption Date, without premium.

On the Redemption Date, there will become due the Redemption Price of the Series 2005A Bonds, together with interest accrued thereon to the Redemption Date and from and after the Redemption Date, interest on the Series 2005A Bonds shall cease to accrue. Such redemption shall be conditional upon the receipt by the Trustee on or prior to the Redemption Date of moneys sufficient to pay the principal, premium, if any, and interest on such Series 2005A Bonds and that if such moneys shall not have been so received said notice shall be of no force and effect and the Trustee shall not be required to redeem such Series 2005A Bonds.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The Series 2005A Bonds were issued on April 13, 2005. The stated CUSIP numbers, interest rates, maturity dates and principal amounts of the Series 2005A Bonds to be redeemed on November 1, 2015 are as follows:

Maturity Date (November 1)	Interest Rate	Original CUSIP	Principal Amount of Series 2005A Bonds being Redeemed
2016	4.000%	607802AM7	\$ 2,385,000.00
2017	5.250%	607802AN5	2,485,000.00
2018	5.250%	607802AP0	2,625,000.00
2019	5.000%	607802AQ8	2,765,000.00
2020	5.250%	607802AR6	2,905,000.00
2021	5.250%	607802AS4	3,065,000.00
2022	5.250%	607802AT2	3,230,000.00
			<u>\$19,460,000.00</u>

The Series 2005A Bonds called for redemption shall be redeemed at the following principal payment office of The Bank of New York Mellon Trust Company, N.A., as Trustee upon surrender of these Series 2005A Bonds:

<b>Hand Delivery Only:</b>	<b>Registered, Certified or First Class Mail:</b>	<b>Express Delivery Only:</b>
The Bank of New York Mellon Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1 <sup>st</sup> Floor East New York, New York 10286	The Bank of New York Mellon Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Global Corporate Trust 111 Sanders Creek Parkway East Syracuse, NY 13057

Additional information regarding the foregoing actions may be obtained from The Bank of New York Mellon Trust Company, N.A., Bondholder Communications, telephone number (800) 254-2826.

Presentation of a Series 2005A Bond called for redemption may be by first class mail, registered mail, express mail, or delivered in person. The method of presentation and delivery of a Series 2005A Bond called for redemption is at the option and risk of the Owner thereof. If mail is used, insured registered mail, return receipt requested is suggested.

A form W-9 must be submitted with the Series 2005A Bonds. Failure to provide a completed form W-9 will result in 31% backup withholding pursuant to the Interest and Dividend Tax Compliance Act of 1983. Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if the tax identification number is not properly certified. An Owner who wishes to avoid the application of these provisions should submit a completed IRS Form W-9 when presenting a Series 2005A Bond for redemption.

Neither the City nor the Trustee shall be responsible for the selection or use of the CUSIP numbers selected, nor is any representation made as to their correctness indicated in the notice or as printed on any Series 2005A Bond. They are included solely for the convenience of the Owners.

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

Date: October 1, 2015

copy to: The Depository Trust Company, New York, New York

Exhibit B

Redemption Notice for Series 2006A Bonds

**EXHIBIT B**

**FORM OF CONDITIONAL NOTICE OF OPTIONAL REDEMPTION  
RELATING TO THE REDEMPTION OF**

**CITY OF MODESTO, CALIFORNIA  
WASTEWATER REVENUE BONDS  
SERIES 2006A**

CONDITIONAL NOTICE IS HEREBY GIVEN to the Owners of the City of Modesto, California Wastewater Revenue Bonds, Series 2006A (the "Series 2006A Bonds"), issued pursuant to a Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City of Modesto (the "City") and The Bank of New York Mellon Trust Company, N.A., as successor Trustee (the "Trustee"), as amended and supplemented by a First Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, a Second Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, and a Third Supplemental Wastewater Revenue Bond Indenture, dated as of December 1, 2006, by and between the City and the Trustee, that the City has directed the Trustee to call for redemption, on November 1, 2015 (the "Redemption Date"), all of the Series 2006A Bonds at a redemption price of 100% of the principal amount thereof (the "Redemption Price"), plus accrued interest to the Redemption Date, without premium.

On the Redemption Date, there will become due the Redemption Price of the Series 2006A Bonds, together with interest accrued thereon to the Redemption Date and from and after the Redemption Date, interest on the Series 2006A Bonds shall cease to accrue. Such redemption shall be conditional upon the receipt by the Trustee on or prior to the Redemption Date of moneys sufficient to pay the principal, premium, if any, and interest on such Series 2006A Bonds and that if such moneys shall not have been so received said notice shall be of no force and effect and the Trustee shall not be required to redeem such Series 2006A Bonds.

The Series 2006A Bonds were issued on December 14, 2006. The stated CUSIP numbers, interest rates, maturity dates and principal amounts of the Series 2006A Bonds to be redeemed on November 1, 2015 are as follows:

<u>Maturity Date (November 1)</u>	<u>Interest Rate</u>	<u>Original CUSIP</u>	<u>Principal Amount of Series 2006A Bonds being Redeemed</u>
2023	4.500%	607802AX3	\$880,000.00
2024	4.500%	607802AY1	920,000.00
			<u>\$1,800,000.00</u>

The Series 2006A Bonds called for redemption shall be redeemed at the following principal payment office of The Bank of New York Mellon Trust Company, N.A., as Trustee, upon surrender of these Series 2006A Bonds:

<b>Hand Delivery Only:</b>	<b>Registered, Certified or First Class Mail:</b>	<b>Express Delivery Only:</b>
The Bank of New York Mellon Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1 <sup>st</sup> Floor East New York, New York 10286	The Bank of New York Mellon Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Global Corporate Trust 111 Sanders Creek Parkway East Syracuse, NY 13057

Additional information regarding the foregoing actions may be obtained from The Bank of New York Mellon Trust Company, N.A., Bondholder Communications, telephone number (800) 254-2826.

Presentation of a Series 2006A Bond called for redemption may be by first class mail, registered mail, express mail, or delivered in person. The method of presentation and delivery of a Series 2006A Bond called for redemption is at the option and risk of the Owner thereof. If mail is used, insured registered mail, return receipt requested is suggested.

A form W-9 must be submitted with the Series 2006A Bonds. Failure to provide a completed form W-9 will result in 31% backup withholding pursuant to the Interest and Dividend Tax Compliance Act of 1983. Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if the tax identification number is not properly certified. An Owner who wishes to avoid the application of these provisions should submit a completed IRS Form W-9 when presenting a Series 2006A Bond for redemption.

Neither the City nor the Trustee shall be responsible for the selection or use of the CUSIP numbers selected, nor is any representation made as to their correctness indicated in the notice or as printed on any Series 2006A Bond. They are included solely for the convenience of the Owners.

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

Date: October 1, 2015

copy to: The Depository Trust Company, New York, New York

**NOTICE OF TERMINATION**

Bank of America, N.A.  
NC-021-12-01  
214 North Tryon Street  
14<sup>th</sup> Floor  
Charlotte, NC 28255  
Attention: Reinvestment and Risk Management Group

Bank of America, N.A.  
U.S. Structured Rates Trading  
233 South Wacker Drive, Suite 2800  
Chicago, IL 60606  
Attention: Mike O'Neill


Ladies and Gentlemen:

Reference is made to the Debt Service Forward Delivery Agreement, dated as of April 18, 2005 (the "Forward Delivery Agreement"), by and among the City of Modesto, California (the "City"), The Bank of New York Mellon Trust Company, N.A., as successor trustee, and you (the terms defined therein being used herein as defined therein).

The City hereby informs you that pursuant to Section 7.9 of the Forward Delivery Agreement, notice is being provided that the Series 2005A Bonds are being refunded on or about November 1, 2015 and the Agreement should therefore be terminated upon such date.

IN WITNESS WHEREOF, the City has executed and delivered this Notice this 30th day of October, 2015.

CITY OF MODESTO

By:   
Name: Gloriette Genereux  
Title: Director of Finance

**Termination of Debt Service Reserve  
Forward Delivery Agreement**

October 28, 2015

Re: Termination of Debt Service Reserve Forward Delivery Agreement dated as of April 18, 2005 among THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. (the "Trustee"), as successor trustee to U.S. Bank National Association, CITY OF MODESTO, CALIFORNIA (the "Issuer"), and BANK OF AMERICA, N.A. (the "Provider").

Ladies and Gentlemen:

This is to confirm our mutual agreement to terminate the above referenced Agreement (the "Agreement") among us, effective October 30, 2015. The Agreement relates to the \$36,495,000 original principal amount City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005A (the "Series 2005A Bonds") and the \$2,740,000 original principal amount City of Modesto, California Wastewater Revenue Bonds, Series 2005B (Taxable) (the "Series 2005B Bonds" and, together with the Series 2005A Bonds, the "Bonds"). Capitalized terms used but not herein defined shall have the meanings given to such terms in the Agreement.

**WHEREAS**, the Series 2005B Bonds are no longer outstanding; and

**WHEREAS**, in accordance with Section 7.9 of the Agreement the Issuer has provided notice that it is exercising its right to terminate the Agreement; and

**WHEREAS**, the parties hereby desire to enter into this agreement (the "Termination Agreement") to reflect their agreement with respect to the termination of the Agreement;

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

1. The Agreement shall terminate effective as of the 30th day of October, 2015 (the "Termination Date"), and no party to the Agreement shall have any further duties or obligations under the Agreement after such Termination Date.

2. Pursuant to Section 7.9 of the Agreement, a Termination Amount shall be due and owing from the Provider to the Issuer on the Termination Date. Accordingly, the Provider shall, on or before October 30, 2015, remit to the Issuer the sum of \$600,000 in immediately available funds, via wire transfer to the account below, as follows:

Bank of New York Mellon  
ABA #021 000 018  
Account Number: 8072458400  
RE: Attn: Frank Strunk at 213-553-4381

3. In connection with the termination of the Agreement, the Issuer and the Trustee agree that (i) the Provider is acting and has acted solely as a principal, in the Provider's own best interests, and not as an agent, advisor or fiduciary of the Issuer or the Trustee, (ii) the Provider has not assumed a fiduciary responsibility in favor of the Issuer or the Trustee with respect to the termination of the Agreement and (iii) nothing in this Termination Agreement or in any prior relationship between the Provider and the Issuer or the Trustee will be deemed to create an advisory, fiduciary or agency relationship between the Provider and the Issuer or the Trustee in respect of this Termination Agreement (whether or not the Provider, or any affiliate of the Provider, has provided or is currently providing other services to the Issuer or the Trustee on related or other matters). In addition, the Issuer acknowledges that it has (i) determined, without reliance upon the Provider or any of its affiliates, the financial and economic risks and merits, as well as the legal, tax and accounting characterizations and consequences, of this Termination Agreement and it is capable of assuming such risks, and (ii) consulted with its own legal, tax, accounting and financial advisors to determine whether this Termination Agreement is in its best interest and made an independent analysis and decision to enter into this Termination Agreement based on such advice.

4. The parties hereto acknowledge that no broker or other third party fee will be paid in connection with this Termination Agreement.

5. This Termination Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of law principles; provided, however, that the power, authority and capacity of the Issuer to enter into this Termination Agreement shall be governed and construed in accordance with the laws of the State of California without reference to its choice of law doctrine.

6. This Termination Agreement may be executed on multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

7. The Trustee is executing this Termination Agreement solely in its capacity as trustee under that certain Waste Revenue Bond Indenture dated as of April 1, 2005, between the Issuer and U.S. Bank, as predecessor trustee to the Trustee, and shall be afforded the same rights and protections hereunder afforded to it thereunder. By its execution of this Termination Agreement below, the Issuer hereby authorizes and directs the Trustee to execute this Termination Agreement.

**IN WITNESS WHEREOF**, the Trustee, Issuer and the Provider have caused this Termination Agreement to be executed by their respective duly authorized officers, all as of the date and year first above written.

BANK OF AMERICA, N.A.



\_\_\_\_\_  
**Lisa Palmieri**  
**Director**

By: \_\_\_\_\_  
Name:  
Title:

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

By: \_\_\_\_\_  
Name:  
Title:

CITY OF MODESTO, CALIFORNIA

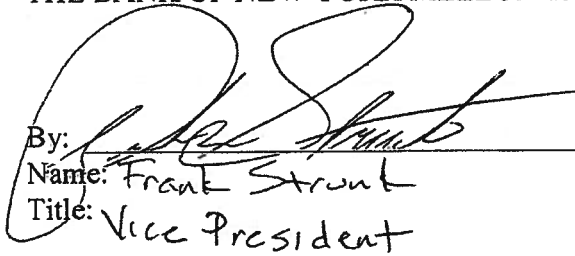
By: \_\_\_\_\_  
Name:  
Title:

**IN WITNESS WHEREOF**, the Trustee, Issuer and the Provider have caused this Termination Agreement to be executed by their respective duly authorized officers, all as of the date and year first above written.

BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name:  
Title:

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

By:   
Name: Frank Strunk  
Title: Vice President

CITY OF MODESTO, CALIFORNIA

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Trustee, Issuer and the Provider have caused this Termination Agreement to be executed by their respective duly authorized officers, all as of the date and year first above written.

BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name:  
Title:

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

By: \_\_\_\_\_  
Name:  
Title:

CITY OF MODESTO, CALIFORNIA

By: *Monette Genereux*  
Name: *GIORJETTE GENEREUX*  
Title: *DIRECTOR OF FINANCE*



**City of Modesto**  
**Finance Department**  
1010 Tenth Street, Suite XXXX  
Modesto, CA 95354

October 29, 2015

Financial Security Assurance Inc.  
350 Park Avenue  
New York, New York 10022-6022  
Attention: Managing Director – Surveillance  
Re: Policy No. 204583-N  
Telephone: (212) 826-0100  
Telecopier: (212) 339-3556

Re: \$36,495,000 City of Modesto, California Wastewater Revenue Refunding Bonds,  
Series 2005A

Pursuant to Section 12.13(F)(4) of the First Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City of Modesto, California and The Bank of New York Mellon Trust Company, N.A., as successor trustee to U.S. Bank National Association, we are notifying you, as insurer of the above-captioned Bonds, of our intent to redeem such Bonds on November 1, 2015. Attached hereto as Exhibit A please find the Notice of Redemption for the Bonds, which includes the principal amount, maturities and CUSIP numbers of the Bonds being redeemed.

Sincerely,

THE CITY OF MODESTO, CALIFORNIA

By: *Gloriette Gencoux*  
Name: Gloriette Gencoux  
Title: Director of Finance

cc: Sidley Austin LLP

EXHIBIT A  
REDEMPTION NOTICES

**EXHIBIT A**

**FORM OF CONDITIONAL NOTICE OF OPTIONAL REDEMPTION  
RELATING TO THE REDEMPTION OF**

**CITY OF MODESTO, CALIFORNIA  
WASTEWATER REVENUE REFUNDING BONDS  
SERIES 2005A**

CONDITIONAL NOTICE IS HEREBY GIVEN to the Owners of the City of Modesto, California Wastewater Revenue Refunding Bonds Series 2005A (the "Series 2005A Bonds"), issued pursuant to a Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City of Modesto (the "City") and The Bank of New York Mellon Trust Company, N.A. as successor Trustee to U.S. Bank National Association (the "Trustee"), as amended and supplemented by a First Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City and the Trustee, that the City has directed the Trustee to call for redemption, on November 1, 2015 (the "Redemption Date"), all of the Series 2005A Bonds at a redemption price of 100% of the principal amount thereof (the "Redemption Price"), plus accrued interest to the Redemption Date, without premium.

On the Redemption Date, there will become due the Redemption Price of the Series 2005A Bonds, together with interest accrued thereon to the Redemption Date and from and after the Redemption Date, interest on the Series 2005A Bonds shall cease to accrue. Such redemption shall be conditional upon the receipt by the Trustee on or prior to the Redemption Date of moneys sufficient to pay the principal, premium, if any, and interest on such Series 2005A Bonds and that if such moneys shall not have been so received said notice shall be of no force and effect and the Trustee shall not be required to redeem such Series 2005A Bonds.

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The Series 2005A Bonds were issued on April 13, 2005. The stated CUSIP numbers, interest rates, maturity dates and principal amounts of the Series 2005A Bonds to be redeemed on November 1, 2015 are as follows:

<u>Maturity Date (November 1)</u>	<u>Interest Rate</u>	<u>Original CUSIP</u>	<u>Principal Amount of Series 2005A Bonds being Redeemed</u>
2016	4.000%	607802AM7	\$ 2,385,000.00
2017	5.250%	607802AN5	2,485,000.00
2018	5.250%	607802AP0	2,625,000.00
2019	5.000%	607802AQ8	2,765,000.00
2020	5.250%	607802AR6	2,905,000.00
2021	5.250%	607802AS4	3,065,000.00
2022	5.250%	607802AT2	3,230,000.00
			<u>\$19,460,000.00</u>

The Series 2005A Bonds called for redemption shall be redeemed at the following principal payment office of The Bank of New York Mellon Trust Company, N.A., as Trustee upon surrender of these Series 2005A Bonds:

<b>Hand Delivery Only:</b>	<b>Registered, Certified or First Class Mail:</b>	<b>Express Delivery Only:</b>
The Bank of New York Mellon Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1 <sup>st</sup> Floor East New York, New York 10286	The Bank of New York Mellon Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Global Corporate Trust 111 Sanders Creek Parkway East Syracuse, NY 13057

Additional information regarding the foregoing actions may be obtained from The Bank of New York Mellon Trust Company, N.A., Bondholder Communications, telephone number (800) 254-2826.

Presentation of a Series 2005A Bond called for redemption may be by first class mail, registered mail, express mail, or delivered in person. The method of presentation and delivery of a Series 2005A Bond called for redemption is at the option and risk of the Owner thereof. If mail is used, insured registered mail, return receipt requested is suggested.

A form W-9 must be submitted with the Series 2005A Bonds. Failure to provide a completed form W-9 will result in 31% backup withholding pursuant to the Interest and Dividend Tax Compliance Act of 1983. Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if the tax identification number is not properly certified. An Owner who wishes to avoid the application of these provisions should submit a completed IRS Form W-9 when presenting a Series 2005A Bond for redemption.

Neither the City nor the Trustee shall be responsible for the selection or use of the CUSIP numbers selected, nor is any representation made as to their correctness indicated in the notice or as printed on any Series 2005A Bond. They are included solely for the convenience of the Owners.

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

Date: October 1, 2015

copy to: The Depository Trust Company, New York, New York

**EXHIBIT B**

**FORM OF CONDITIONAL NOTICE OF OPTIONAL REDEMPTION  
RELATING TO THE REDEMPTION OF**

**CITY OF MODESTO, CALIFORNIA  
WASTEWATER REVENUE BONDS  
SERIES 2006A**

CONDITIONAL NOTICE IS HEREBY GIVEN to the Owners of the City of Modesto, California Wastewater Revenue Bonds, Series 2006A (the "Series 2006A Bonds"), issued pursuant to a Wastewater Revenue Bond Indenture, dated as of April 1, 2005, by and between the City of Modesto (the "City") and The Bank of New York Mellon Trust Company, N.A., as successor Trustee (the "Trustee"), as amended and supplemented by a First Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, a Second Supplemental Wastewater Revenue Bond Indenture, dated as of April 1, 2005, and a Third Supplemental Wastewater Revenue Bond Indenture, dated as of December 1, 2006, by and between the City and the Trustee, that the City has directed the Trustee to call for redemption, on November 1, 2015 (the "Redemption Date"), all of the Series 2006A Bonds at a redemption price of 100% of the principal amount thereof (the "Redemption Price"), plus accrued interest to the Redemption Date, without premium.

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The Series 2006A Bonds were issued on December 14, 2006. The stated CUSIP numbers, interest rates, maturity dates and principal amounts of the Series 2006A Bonds to be redeemed on November 1, 2015 are as follows:

<u>Maturity Date (November 1)</u>	<u>Interest Rate</u>	<u>Original CUSIP</u>	<u>Principal Amount of Series 2006A Bonds being Redeemed</u>
2023	4.500%	607802AX3	\$880,000.00
2024	4.500%	607802AY1	920,000.00
			<u>\$1,800,000.00</u>

The Series 2006A Bonds called for redemption shall be redeemed at the following principal payment office of The Bank of New York Mellon Trust Company, N.A., as Trustee, upon surrender of these Series 2006A Bonds:

<b>Hand Delivery Only:</b>	<b>Registered, Certified or First Class Mail:</b>	<b>Express Delivery Only:</b>
The Bank of New York Mellon Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1 <sup>st</sup> Floor East New York, New York 10286	The Bank of New York Mellon Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Global Corporate Trust 111 Sanders Creek Parkway East Syracuse, NY 13057

Additional information regarding the foregoing actions may be obtained from The Bank of New York Mellon Trust Company, N.A., Bondholder Communications, telephone number (800) 254-2826.

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Neither the City nor the Trustee shall be responsible for the selection or use of the CUSIP numbers selected, nor is any representation made as to their correctness indicated in the notice or as printed on any Series 2006A Bond. They are included solely for the convenience of the Owners.


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

Date: October 1, 2015




copy to: The Depository Trust Company, New York, New York

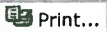


## Web Client



**Sent Items**



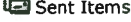
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Email:  ▼


Messages to:  ▼ For:  ▼

**Messages**

-  Inbox
-  Outbox
-  Sent Items

**Preferences**   466896  2123393556

**Help**

	Job ID /	Sent To	Completed	Status	Pages	Billing Code	Subject
<input type="checkbox"/>	466896	 2123393556	10/30/2015 12:12PM	Delivery - Successful	8		City of Modesto Wastewater Revenue Refunding Bonds, Series 2005A

1 Message

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 555 CALIFORNIA STREET  
 SUITE 2000  
 SAN FRANCISCO, CA 94104  
 +1 415 772 1200  
 +1 415 772 7400 FAX

pswapp@sidley.com

BEIJING	HONG KONG	SHANGHAI
BOSTON	HOUSTON	SINGAPORE
BRUSSELS	LONDON	SYDNEY
CENTURY CITY	LOS ANGELES	TOKYO
CHICAGO	NEW YORK	WASHINGTON, D.C.
DALLAS	PALO ALTO	
GENEVA	SAN FRANCISCO	

FOUNDED 1866

**FACSIMILE TRANSMISSION FORM**

Date: <b>October 30, 2015</b>	No. of pages including cover sheet: <b>8</b>
To: <b>Attn: Managing Director - Surveillance</b>	Company: <b>Financial Security Assurance Inc.</b>
Telephone #: <b>212-826-0100</b>	Fax No #: <b>212-339-3556</b>
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From: <b>Preston T. Swapp</b>	

COMMENTS **Re: \$36,495,000 City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005A**

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\$19,429,912.56  
City of Modesto, California  
Wastewater Revenue Refunding Bond  
Series 2015

**TAX CERTIFICATE**

**THIS TAX CERTIFICATE** (the “**Tax Certificate**”) is being executed by the City of Modesto (the “**City**”), a charter city and a municipal corporation organized and existing under the laws of the State of California, in connection with the issuance of its 2015 Wastewater Revenue Refunding Bond (the “**Bond**”).

**WHEREAS**, the City, on September 16, 1993, issued its \$8,555,000 principal amount of Wastewater Revenue Bonds, Series 1993 (the “**1993 Bonds**”), the proceeds of which, net of issuance costs and the funding of a parity debt service reserve fund (the “**Parity Reserve Fund**”), were used to finance the cost of the construction of transmission and discharge improvements for the City’s wastewater treatment system (the “**1993 Project**”); and

**WHEREAS**, the City, on May 7, 1997, issued its \$32,400,000 principal amount of Wastewater Treatment Facility Revenue Bonds, Series 1997, the proceeds of which, net of issuance costs, a premium for a bond insurance policy and the funding of a the Parity Reserve Fund, were used to finance various capital improvements to the City’s wastewater treatment facilities (the “**1997 Project**”); and

**WHEREAS**, the City, on April 13, 2005, issued its \$36,495,000 principal amount of Wastewater Revenue Refunding Bonds, Series 2005A (the “**2005 Bonds**”), the proceeds of which, net of issuance costs, a premium for a bond insurance policy and the funding of the Parity Reserve Fund, were used (i) to current refund the 1993 Bonds, and (ii) to advance refund the 1997 Bonds; and

**WHEREAS**, the City, on December 14, 2006, issued its \$16,535,000 principal amount of Wastewater Revenue Bonds, Series 2006A (the “**2006 Bonds**” and, together with the 1993 Bonds, the 1997 Bonds and the 2005 Bonds, the “**Prior Bonds**”), the proceeds of which, net of issuance costs, a premium for a bond insurance policy and the funding of a the Parity Reserve Fund, were used to finance certain costs of planning, design, acquisition, construction and improvement of the City’s wastewater treatment and conveyance facilities (collectively, the “**2006 Project**” and, together with the 1993 Project and the 1997 Project, the “**Project**”); and

**WHEREAS**, the City has determined to current refund all outstanding maturities of the 2005 Bonds other than the maturity of the 2005 Bonds due on November 1, 2015 (the “**Refunded 2005 Bonds**”), and certain maturities of the 2006 Bonds (the “**Refunded 2006 Bonds**” and, together with the Refunded 2005 Bonds, the “**Refunded Bonds**”), as set forth in Exhibit C hereto, through the retirement thereof on November 1, 2015; and

**WHEREAS**, the City has determined to issue the Bond as Parity Debt pursuant to Section 3.15(c) of the Indenture, in order to current refund the Refunded Bonds; and

**WHEREAS**, the City has determined to provide funds, through the issuance of the Bond, as Parity Debt pursuant to Section 3.15(c) of the Indenture, (a) to current refund the Refunded Bonds, and (b) to pay certain legal, accounting and financing expenses incurred in connection with the issuance of the Bond (the “**Costs of Issuance**”); and

**WHEREAS**, the Internal Revenue Code of 1986, as amended (the “**Code**”), the Treasury Regulations (including final, temporary and proposed regulations) promulgated thereunder and the rulings with respect thereto impose certain conditions and limitations on the use and investment of proceeds of the Bond and certain other moneys relating to the Bond; and

**WHEREAS**, compliance with such conditions and limitations is necessary in order for the interest paid and to be paid on the Bond to be excluded from gross income for federal income tax purposes; and

**WHEREAS**, the City has determined to execute this Tax Certificate in order to set forth certain terms and conditions relating to the use and investment of proceeds of the Bond and of certain other moneys relating to the Bond in order to assure that interest on the Bond will be excluded from gross income for federal income tax purposes;

**NOW, THEREFORE**, pursuant to Section 1.148-2(b)(2) of the Treasury Regulations, the City hereby certifies, covenants and agrees as follows:

#### **PART A. IN GENERAL**

Section 1. Purpose of Tax Certificate. The City is executing this Tax Certificate with the understanding and acknowledgement that (a) Sidley Austin LLP (“**Bond Counsel**”) will rely on the representations and certifications made herein in rendering its opinion that interest on the Bond is excluded from gross income for federal income tax purposes, and (b) the execution of this Tax Certificate is necessary to ensure that interest on the Bond is excluded from gross income for federal income tax purposes.

Section 2. Issuance and Delivery of Bond. The Bond, in the principal amount of \$19,429,912.56, is being issued delivered on the date hereof to Capital One Public Funding, LLC (“the **Purchaser**”), pursuant to a Bond Purchase Agreement, dated as of November 1, 2015 (the “**Bond Purchase Agreement**”), among the City, the Purchaser and The Bank of New York Mellon Trust Company, N.A., as paying agent. The amount advanced by the Purchaser for the Bond is equal to \$19,429,912.56 (equal to the principal amount thereof). The Bond is being purchased by the Purchaser in a direct, private placement transaction. The Purchaser, in its certificate attached hereto as Exhibit A, has represented that (a) it has entered into the Bond Purchase Agreement to acquire the Bond for its own account and not for the purpose of reselling it to the general public or otherwise, and (b) the purchase price of the Bond reflects the fair market value of the Bond.

Section 3. Purpose of Financing. The Bond is being issued pursuant to pursuant to Section 200 of the Charter of the City of Modesto and the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the “**Bond Law**”), (a) Resolution No. 2015-411, adopted by the City Council

of the City on October 27, 2015, approving the issuance of the Bond, and (b) the Bond Purchase Agreement. The proceeds of the Bond will be used for the following purposes:

- (a) to current refund the Refunded Bonds; and
- (b) to pay Costs of Issuance.

The City covenants to use the proceeds of the Bond solely for the above-described purposes unless the City receives an opinion of Bond Counsel to the effect that a use other than those described above will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bond.

Section 4. City Reliance on Other Parties. The expectations of the City concerning certain uses of proceeds derived from the issuance of the Bond and certain other moneys described herein and other matters are based, in whole or in part, on the certifications and representations of certain other parties, including the Purchaser (including the issue price of the Bond defined in Section 7(b) of Part C below) and the Financial Advisor, set forth in the exhibits hereto, and on the set of final numbers prepared by the Financial Advisor with respect to the Bonds (the “**Final Numbers**”). The City places good faith reliance on such representations and certifications and the Final Numbers. The City is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in this Tax Agreement, including the exhibits hereto.

Section 5. No Other Debt Obligations. The Bond Purchase Agreement constitutes a binding agreement for the sale and issuance of the Bond. The Bond Purchase Agreement has been executed on October 30, 2015 (the “**Sale Date**”). There are no other governmental obligations that have been, or will be, sold within 15 days of the Sale Date, pursuant to the same plan of financing as the Bond and that are reasonably expected to be paid from substantially the same source of funds (determined without regard to guarantees from unrelated parties) as the Bond.

Section 6. Definitions; Capitalized Terms. All capitalized terms used in this Tax Certificate and not specifically defined herein will have the meanings ascribed to such terms in the Bond Purchase Agreement.

## **PART B. USE OF BOND PROCEEDS AND THE PROJECTS**

Section 1. Governmental Use of Proceeds. The City makes the representations below with respect to the use of proceeds of the Bond:

- (a) In General. No more than the lesser of 10% of the proceeds of the Bond or \$15,000,000 has been, since the dates of issuance of each issue of Prior Bonds, or will be, used in the aggregate for any activities that constitute a “**Private Use**” (as such term is defined below in subsection (d) below). No more than the lesser of 10% of the principal of or interest on the Bond or \$15,000,000, under the terms thereof or any underlying arrangement, will be secured by any interest in property used or to be used for a Private Use or in payments in respect of property used or to be used for a Private Use,

or will be derived from payments in respect of property used or to be used for a Private Use.

(b) No Private Loan Financing. No more than the lesser of 5% of the proceeds of the Bond or \$5,000,000 will be used to make or finance loans to any person other than to a state or local governmental unit (other than loans to finance any governmental tax or assessment of general application for a specific essential governmental function or loans that are used to acquire or carry Nonpurpose Investments (as such term is defined in Part D of this Tax Certificate)).

(c) No Disproportionate or Unrelated Use. No more than the lesser of 5% of the proceeds of the Bond or \$15,000,000 has been, since the dates of issuance of each issue of Prior Bonds, or will be, used for a Private Use that is unrelated or disproportionate (within the meaning of Section 141(b)(3)(B) of the Code) to the governmental use of the proceeds of the Bond (an “**Unrelated or Disproportionate Use**”). No more than the lesser of 5% of the principal of or interest on the Bond or \$15,000,000, under the terms thereof or any underlying arrangement, will be secured by any interest in property used or to be used for a Private Use that is an Unrelated or Disproportionate Use or in payments in respect of property used or to be used for a Private Use, or will be derived from payments in respect of property used or to be used for a Private Use that is an Unrelated or Disproportionate Use.

(d) Definition of Private Use. For purposes of this Tax Certificate, the term “**Private Use**” means any activity that constitutes a trade or business that is carried on by persons or entities other than governmental entities. The leasing of property financed with proceeds of the Bond or the access of a person or entity other than a governmental unit to property or services on a basis other than as a member of the general public (“**General Public Use**”) shall constitute a Private Use unless the City obtains an opinion of Bond Counsel to the contrary. Use of property financed with proceeds of the Bond in a trade or business constitutes General Public Use only if the property is intended to be available and is in fact reasonably available for use on the same basis by natural persons not engaged in a trade or business.

(e) Management and Service Contracts. With respect to management and service contracts, the determination of whether a particular use constitutes a Private Use under this Tax Certificate will be determined pursuant to Revenue Procedure 97-13, 1997-1 C.B. 632, as amended by Revenue Procedure 2001-39, 2001-2 C.B. 38, and as amended by Notice 2014-67, 2014-46 I.R.B. 822.

## PART C. ARBITRAGE

### Section 1. Bond Proceeds and Other Moneys.

(a) Bond Proceeds. The total proceeds of the Bond, in the amount of \$19,429,912.56 (representing the principal amount of the Bond), will be applied as follows:

(i) \$140,460.90 of said proceeds will be used to pay Costs of Issuance within 90 days of the date hereof; and

(ii) \$19,289,451.66 of said proceeds, together with \$1,970,548.34 on deposit in Parity Reserve Fund, or a total of \$21,260,000.00, will be held uninvested and used on November 1, 2015, to redeem and retire the Refunded Bonds and to pay interest accrued thereon through such date.

(b) Funds Relating to the Prior Bonds. The following amounts on deposit in funds and accounts relating to the Prior Bonds will be applied as follows:

(i) 2005 Debt Service Fund. The City has deposited into the Debt Service Fund for the 2005 Bonds (the "**2005 Debt Service Fund**") the sum of \$2,819,212.50. Such amount will be used on November 1, 2015, to pay the principal of the 2005 Bonds maturing on November 1, 2015, and to pay the interest accrued on all of the 2005 Bonds currently outstanding, including the Refunded 2005 Bonds, through November 1, 2015.

(ii) 2006 Debt Service Fund. The City has deposited into the Debt Service Fund for the 2006 Bonds (the "**2006 Debt Service Fund**") the sum of \$353,378.75. Such amount will be used on November 1, 2015, to pay the principal of the 2006 Bonds maturing on November 1, 2015, and to pay the interest accrued on all of the 2006 Bonds currently outstanding, including the Refunded 2006 Bonds, through November 1, 2015.

(iii) Parity Reserve Fund. There is currently on deposit in the Parity Reserve Fund the sum of \$3,472,987.15, exclusive of amounts reasonably expected by the City and the Financial Advisor to approximate the amount of arbitrage rebate liability due and owing to the United States, pursuant to Section 148(f) of the Code and Section 1.148-3 of the Treasury Regulations, with respect to the 2005 Bonds upon their retirement. The Financial Advisor, in its calculations for the benefit of the City, has determined that the sum of \$1,502,438.81 is required to be retained in the Parity Reserve Fund to continue to secure those Prior Bonds that are not being current refunded with proceeds of the Bond. The balance of the above \$3,472,987.15, or \$1,970,548.34, will be used, together with proceeds of the Bond, to redeem and retire the Refunded Bonds on November 1, 2015, as described in subsection (a)(ii) above.

Section 2. The Prior Bonds.

(a) Purposes of Each Issue.

(i) 2005 Bonds. The 2005 Bonds were issued primarily to current refund the 1993 Bonds and to advance refund the 1997 Bonds. Other than amounts on deposit in the Parity Reserve Fund, there are no unexpended proceeds of the 2005 Bonds. Other than amounts on deposit in the 2005 Debt Service Fund, there are no amounts on deposit in any fund or account that have been reasonably expected to be used to pay debt service on the 2005 Bonds.

(ii) 2006 Bonds. The 2006 Bonds were issued primarily to finance capital expenditures relating to the City's wastewater system. Other than amounts on deposit in the Parity Reserve Fund, there are no unexpended proceeds of the 2006 Bonds. Other than amounts on deposit in the 2006 Debt Service Fund, there are no amounts on deposit in any fund or account that have been reasonably expected to be used to pay debt service on the 2006 Bonds.

(b) Transferred Proceeds of the Bond. For purposes of this Tax Agreement, on November 1, 2015, which is the date on which proceeds derived from the issuance of the Bond, and investment earnings thereon, will be used to pay the outstanding principal of the Refunded Bonds (the "**Transfer Date**"), proceeds of the Prior Bonds and investment earnings thereon that are unexpended on such date will cease to be proceeds of the Prior Bonds and will become transferred proceeds of the Bond ("**Transferred Proceeds**"). Transferred Proceeds is determined separately by issue – the 2005 Bonds and the 2006 Bonds. In the case of each such issue, the amount that will become Transferred Proceeds will be equal to the unexpended proceeds of the issue of Prior Bonds (including investment earnings thereon) multiplied by a fraction (i) the numerator of which is equal to the principal amount of discharged with proceeds of the Bond on the Transfer Date, and (ii) the denominator of which is equal to the total outstanding principal amount immediately prior to such discharge on the Transfer Date. Depending on the type and source of proceeds that become Transferred Proceeds, such amounts may be required to be invested at a yield not in excess of the yield on the Bond and/or may become subject to the arbitrage rebate requirements as applied to the Bond.

(c) Current Refunding Not Subject to Advance Refunding Limitations. As the Refunded 2005 Bonds and the Refunded 2006 Bonds will be redeemed on November 1, 2015, which is within 90 days of the issuance of the Bond, the refunding of the Refunded 2005 Bonds and the Refunded 2006 Bonds by the Bond constitutes a current refunding. As such, the Bond is not subject to the advance refunding restrictions of Section 149(d) of the Code and the Treasury Regulations thereunder.

Section 3. No Overburdening. The total proceeds derived by the City from the sale of the Bond and investment earnings thereon, together with other funds described above and investment earnings thereon, do not exceed the total of the amounts necessary for the governmental purposes described above.

Section 4. Funds and Accounts. The following represents the flow of funds under the Bond Purchase Agreement.

(a) In General. The Bond Purchase Agreement creates and establishes the following funds and accounts with respect to the Bond:

(i) the Costs of Issuance Account; and

(ii) the Bond Payment Account.

(b) Payment of Debt Service. Net Revenues are required under the Bond Purchase Agreement to be deposited in the Bond Payment Account and used to pay the principal of and interest on the Bond (the Bond Payment Account may also be referred to herein as the “**Bona Fide Debt Service Fund**”). The Bona Fide Debt Service Fund will be used primarily to achieve a proper matching of Pledged Net Revenues of the City and payments of principal and interest due on the Bond, within each year (a “**Bond Year**”) in which any Bond are outstanding. Amounts deposited to the Bona Fide Debt Service Fund will be depleted during each Bond Year, except for a reasonable carryover amount, if any, not to exceed the greater of (i) the earnings on the Bona Fide Debt Service Fund for the immediately preceding Bond Year, or (ii) 1/12th of the principal and interest payable on the Bond for the immediately preceding Bond Year.

(c) No Other Funds as Security. Other than the Bona Fide Debt Service Fund, there are no funds or accounts established pursuant to the Bond Purchase Agreement, or otherwise, that are reasonably expected to be used to pay debt service on the Bond or that are pledged as collateral for the Bond and for which there is a reasonable assurance that amounts on deposit therein will be available to pay debt service on the Bond if the City encounters financial difficulties.

(d) No Negative Pledges. There are no amounts held under any agreement to maintain amounts at a particular level for the direct or indirect benefit of the holders of the Bond or guarantor of the Bond, if any, excluding for this purpose amounts in which the City (or a substantial beneficiary) may grant rights that are superior to the rights of the holders of the Bond or guarantor of the Bond, if any, and amounts that do not exceed reasonable needs for which they are maintained and as to which the required level is tested no more frequently than every six months and that may be spent without any substantial restriction other than a requirement to replenish the amount by the next testing date.

(e) No Rebate Fund. There is no rebate or similar fund established under the Installment Sale Agreement or the Bond Purchase Agreement. The City nonetheless recognizes its obligation to satisfy the requirement of Section 148(f) of the Code and Sections 1.148-0 through 1.148-10 and 1.150-1 and 1.150-2 of the Treasury Regulations promulgated thereunder, to pay a portion of the investment earnings on proceeds derived from the Bond, the investment earnings thereon and other amounts considered to be “gross proceeds” of the Bond, to the United States (the “**Rebate Requirement**”), and

hereby covenants to do so. Detailed guidelines regarding satisfaction of the Rebate Requirement are set forth in Part D below.

Section 5. Investment of Proceeds. The proceeds derived from the sale of the Bond and other amounts described in this Tax Certificate will be invested as follows:

(a) Costs of Issuance. Proceeds derived from the sale of the Bond to pay Costs of Issuance may be invested at an unrestricted yield until expended, for a period not to exceed one year from the date hereof. Investment earnings on such amounts may be invested at an unrestricted yield for a period not to exceed one year from the date of receipt of the amount earned.

(b) Proceeds Used to Retire Refunded Bonds. Proceeds derived from the sale of the Bond to be used on November 1, 2015, to redeem and retire the Refunded bonds may be invested at an unrestricted yield until expended on such date.

(c) Payment of Debt Service. Amounts deposited in the Bona Fide Debt Service Fund may be invested at an unrestricted yield for a period not to exceed 13 months from the date of deposit of such amounts to such accounts. Earnings on such amounts that are retained in such accounts may be invested at an unrestricted yield for a period not to exceed one year from the date of receipt of the amount earned.

(d) Minor Portion. Amounts described in this Section 5 that may not be invested at an unrestricted yield as described above may be invested at an unrestricted yield to the extent such amounts do not exceed the lesser of 5% of the sale proceeds of the Bond or \$100,000 (the “**Minor Portion**”).

(e) Yield Restricted Moneys. Proceeds derived from the sale of the Bond and investment earnings thereon, that may not be invested at an unrestricted yield pursuant to this Section 5 will either (i) be invested at a yield not in excess of the yield on the Bond, or (ii) be invested in Tax-Exempt Obligations (as such term is defined in Part D of this Tax Certificate). Amounts other than proceeds derived from the sale of the Bond and investment earnings that may not be invested at an unrestricted yield pursuant to this Section 5 will either (i) be invested at a yield not in excess of the yield on the Bond, or (ii) be invested in Tax-Exempt Obligations (as such term is defined in Part D of this Tax Certificate).

(f) Replacement Proceeds. Replacement proceeds (as such term is defined in Section 1.148-1(c) of the Treasury Regulations) may be invested at an unrestricted yield for a period of 30 days beginning on the date that the amounts are first treated as replacement proceeds and, thereafter, shall be invested at a yield not in excess of the yield on the Bond.

(g) Applicable Definition of Materially Higher Yield for All Yield Restricted Nonpurpose Investments when Replacement Proceeds are Present. Except for the Minor Portion, in the event that replacement proceeds (as defined in Section 1.148-1(c) of the Treasury Regulations) arise during the term of the Bond and remain unexpended after the 30-day temporary period applicable to replacement proceeds, then, after expiration of the

applicable periods during which amounts described in this Section 5 may be invested at an unrestricted yield, all amounts described in this Section 5 shall be invested at a yield not in excess of the yield of the Bond.

Section 6. Yield Reduction Payments. Notwithstanding the provisions of Section 5 above, that require the City to invest proceeds derived from the sale of the Bond and investment earnings thereon at a yield not in excess of the yield on the Bond, the yield on certain nonpurpose investments (described below) acquired with proceeds of the Bond will not be considered to be higher than the applicable yield limitation described in Section 5 above if the City makes or causes to be made "yield reduction payments" to the United States at the time and in the amounts described in Section 1.148-5(c) of the Treasury Regulations.

(a) In General. The Treasury Regulations provide seven situations in which amounts paid to the United States (including payments of rebatable arbitrage) are treated as payments for a nonpurpose investment that reduces the yield on that investment, as follows:

(i) nonpurpose investments during one of the temporary periods available for capital projects, restricted working capital expenditures, pooled financings, or investment proceeds;

(ii) nonpurpose investments for variable yield bond issues for any computation period during which at least 5% of the value of the issue is represented by variable yield bonds;

(iii) nonpurpose investments allocable to transferred proceeds of a current refunding issue to the extent necessary to reduce the yield on such investments to the yield required by Section 148(a) of the Code;

(iv) nonpurpose investments allocable to transferred proceeds of an advance refunding issue to the extent the investment of the refunding escrow allocable to other proceeds of the issue cannot, with zero-yielding investments, meet the yield required by Section 148(a) of the Code;

(v) nonpurpose investments allocable to a reserve or replacement fund or a fund that is in excess of the sizing limits for a reasonably required reserve account, but only to the extent that such amounts do not exceed 15% of the issue size or are not expected to pay debt service on the issue;

(vi) nonpurpose investments allocable to replacement proceeds of a refunded issue as a result of the application of the universal cap to amounts in a refunding escrow; and

(vii) nonpurpose investments allocable to certain permanent funds not treated as replacement proceeds by operation of the effective date rule of Section 1.148-11(f) of the Treasury Regulations.

(b) Non-Applicability to Advance Refunding Proceeds. Yield reduction payments may not be used to reduce the yield on investments in the case of an advance refunding issue, except with respect to any transferred proceeds (within the meaning of Section 1.148-9(c)(1)(ii) of Treasury Regulations) and any amounts allocated to replacement proceeds of the refunded issue as a result of the application of the “universal cap” (described in Section 8 below) as applied to amounts in a refunding escrow.

(c) Consultation with Bond Counsel. The City covenants to retain and consult with nationally recognized bond counsel prior to making any “yield reduction payments” pursuant to Section 1.148-5(c) of the Treasury Regulations.

Section 7. Yield. For purposes of this Tax Certificate, the term “yield” means as follows:

(a) Definition of Yield. For purposes of this Tax Agreement, the term “yield” means, (i) with respect to the Bond, that discount rate that, when used in computing the present value as of the issue date of all unconditionally payable payments of principal and interest on the Bond, and all of the payments for a “qualified guarantee,” if any, produces an amount equal to the present value, using the same discount rate, of the aggregate issue price of the Bond as of the date hereof, and (ii) with respect to investments acquired with amounts described in Section 5 above, that discount rate which, when used in computing the present value as of the date the investment is first allocated to Gross Proceeds (as defined in Section 4 of Part D below) of all unconditionally payable receipts from the investment produces an amount equal to the present value using the same discount factor, as the amounts actually or constructively paid for such investment. The yield on investments acquired with amounts described in Section 5 above will be calculated by the use of the same frequency interval of compounding interest.

(b) Issue Price. For purposes of calculating the yield on the Bond, the issue price of the Bond (as defined in Section 1273 of the Code) is equal to the price paid for the Bond by the initial purchaser, which is the Purchaser. Thus, the issue price of the Bond is \$19,429,912.56 (representing the principal amount thereof), as certified to in the certificate of the Purchaser attached hereto as Exhibit A.

(c) Bond Subject to Optional Redemption Within Five Years; No Stepped-Coupon. The Bond is subject to optional redemption beginning on May 1, 2020, which is within five years from the date hereof. The Financial Advisor has represented, in its certificate attached hereto as Exhibit C, that the yield on the Bond, computed as if the Bond were paid in full on its final maturity date, is not more than 0.125% greater than the yield on the Bond, computed assuming that the Bond is optionally redeemed on its earliest optional redemption date of May 1, 2020. The Bond does not bear interest at increasing interest rates (i.e., a stepped-coupon bond).

(d) Reduction or Credit of Prior Qualified Guarantee Payments. There are no reductions or credits as a result of any prior qualified guarantees.

(e) Investments to be Acquired at Market Price. Any investments acquired with amounts that may not be invested at an unrestricted yield pursuant to Section 5 above shall be purchased at prevailing market prices and shall be limited to securities or obligations for which there is an established market or shall be United States Treasury Securities – State and Local Government Series (“SLGs”) or “Tax-Exempt Obligations” (defined in Part D of this Tax Certificate).

(f) Guaranteed Investment Contract. The City has not invested any proceeds of the Bond pursuant to a “guaranteed investment contract” (within the meaning of Section 1.148-1(b) of the Treasury Regulations). In the event the City acquires a guaranteed investment contract with any of the proceeds of the Bond, the City, the broker, and the provider of the investment contract will comply with, and will make certain representations in accordance with, Section 1.148-5(d) of the Treasury Regulations.

(g) Termination of Existing Guaranteed Investment Contract. The Parity Reserve Fund has held as one of its investments a Forward Delivery Agreement the “FDA”), which is a guaranteed investment contract for federal income tax purposes. The City, on October 27, 2015, gave notice to the counterparty on the FDA to terminate the FDA pursuant to its terms, with a settlement payment to be received on the date hereof (the “Settlement Payment”). The Financial Advisor has performed its own calculations to attempt to replicate the amount of the Settlement Payment and, based on such calculations, has advised the City as to the fairness of the Settlement Payment.

(h) Yield on Bond. In accordance with the above, the yield on the Bond has been determined by the Financial Advisor, as set forth in its certificate attached hereto as Exhibit B, to be no less than 2.41999%.

Section 8. Universal Cap. Notwithstanding any restrictions on the investment of proceeds of the Bond and other amounts set forth in Section 5 above, proceeds of the Bond are allocated and remain allocated to the Bond, and are thereby subject to the restrictions contained in this Tax Certificate, only to the extent that the value of such proceeds does not exceed the value of the Bond. This section shall not apply to amounts on deposit in the any bona fide debt service funds (as such term is defined in Section 148 of the Code and Section 1.148-1 of the Treasury Regulations).

Section 9. No Replacement.

(a) In General. No portion of the proceeds of the Bond will be used as a substitute for other funds that were otherwise to be used to refund the Refunded Bonds and that have been or will be used to acquire directly or indirectly securities or obligations or other investment property producing a yield in excess of the yield on the Bond.

(b) Safe Harbor Against Back-End Replacement Proceeds. In accordance with Section 1.148-1(c)(4)(i)(B) of the Treasury Regulations regarding the safe harbor against the creation of “replacement proceeds,” the weighted average maturity of the

Bond does not exceed 120% of the remaining average reasonably expected economic life of the property refinanced with the proceeds of the Bond.

Section 10. No Abusive Arbitrage Device. The City has not engaged and will not engage in any action that has the effect of (a) enabling the City to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage, and (b) overburdening the tax-exempt bond market in that the City is not issuing more bonds, issuing bonds earlier, or allowing bonds to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes of the Bond, as provided in Section 1.148-10 of the Treasury Regulations.

Section 11. Covenants in Bond Purchase Agreement. The City has covenanted in the Bond Purchase Agreement that it shall make no use of the proceeds derived from the sale of the Bond or any other moneys that would cause the Bond to be “arbitrage bonds” within the meaning of Section 148 of the Code.

#### **PART D. REBATE REQUIREMENT**

Section 1. In General. The City recognizes that Section 148(f) of the Code, which sets forth the Rebate Requirement, requires that an amount equal to the sum of (i) the excess of the aggregate amount earned on all Nonpurpose Investments (defined below) over the amount that would have been earned if such Nonpurpose Investments had a yield equal to the yield on the Bond, plus (ii) any income attributable to the excess described in clause (i), be paid to the United States. The City covenants herein to comply with the Rebate Requirement, as set forth in Section 148(f) of the Code and the Treasury Regulations.

Section 2. Bond Year. The City may select any date that is within one year of the date hereof as the day on which each Bond Year ends. If the City does not select such a date before the earlier of (a) the final maturity date of the Bond, or (b) October 30, 2020, then for purposes of this Tax Certificate the term “Bond Year” will mean each one-year (or shorter) period ending on each October 30 until the Bond is no longer outstanding.

Section 3. Nonpurpose Investments. The rules contained in this Part D relate to the requirement to comply with the provisions of Section 148(f) of the Code and the Treasury Regulations promulgated thereunder. The rules contained in this Part D will apply to the investment of Gross Proceeds (as defined below) in any security, obligation, annuity contract or any other investment-type property (as such term is defined in Section 1.148-1(b) of the Treasury Regulations) that is not acquired to carry out the governmental purpose of the Bond (“**Nonpurpose Investments**”). Nonpurpose Investments shall not include:

- (a) United States Treasury Demand Deposit Securities — State and Local Government Series; and
- (b) Tax-Exempt Obligations.

For purposes of this Tax Agreement, the term “**Tax-Exempt Obligations**” shall include only obligations the interest on which is (i) excludable from gross income for federal income tax purposes, and (ii) not treated as an item of tax preference under Section 57(a)(5) of the Code.

The term “**Tax-Exempt Obligation**” shall, however, include stock in a “**qualified regulated investment company**,” which is a corporation that (i) is a regulated investment company within the meaning of Section 851(a) of the Code and meets the requirements of Section 852(a) of the Code for the taxable year; and (ii) has at least 95% of its gross income derived from interest that is excludable from gross income under Section 103(a) of the Code and are not treated as an item of tax preference under Section 57(a)(5) of the Code.

Section 4. Gross Proceeds. For purposes of this Tax Certificate, the term “**Gross Proceeds**” means:

- (a) proceeds derived from the sale of the Bond (other than pre-issuance accrued interest, if any);
- (b) amounts that are reasonably expected to be or are in fact used to pay debt service on the Bond, including amounts on deposit in the Bona Fide Debt Service Fund (other than pre-issuance accrued interest, if any);
- (c) amounts pledged as security for the payment of debt service on the Bond;
- (d) amounts treated as “transferred proceeds” of the Bond, within the meaning of Section 1.148-1(b) of the Treasury Regulations, if any;
- (e) amounts treated as “replacement proceeds” of the Bond, within the meaning of Section 1.148-1(c) of the Treasury Regulations, if any; and
- (f) investment earnings on amounts described in subsections (a)-(e) above.

Section 5. Yield. The term “yield,” for purposes of complying with the Rebate Requirement, is to be calculated pursuant to Section 7 of Part C of this Tax Certificate. For purposes of calculating the yield on a Nonpurpose Investment, the purchase price will be the amount paid for such investment or, if different, the fair market value of such investment on the date it becomes Gross Proceeds.

Section 6. Market Price. For purposes of this Tax Certificate, the purchase price and disposition price of a Nonpurpose Investment will be the fair market value of the investment on an established market. Accordingly, a premium may not be paid to adjust the yield on an investment, a lower interest rate than is usually paid may not adjust the yield on an investment and no transaction may result in a smaller profit or larger loss than would have resulted if the transaction had been at arm’s-length and had the yield on the Bond not been relevant to either party. In no event will the purchase price be increased by, or the disposition price be reduced by, brokerage or sales commissions, administrative expenses or similar expenses. However, pursuant to Section 1.148-5(e)(2) of the Treasury Regulations, certain “qualified administrative costs” may be taken into account in determining the yield on investments. Thus, such “qualified administrative costs” will be deemed to increase the payments for, or decrease the receipts from, the investments. “Qualified administrative costs” are reasonable, direct, administrative costs, other than carrying costs, such as separately stated brokerage or selling commissions, but not legal and accounting fees, record keeping, custody and similar costs. General overhead costs and

similar indirect costs of the City such as employee salaries and office expenses and costs associated with computing arbitrage rebate are not qualified administrative costs.

(a) Certificate of Deposit. A certificate of deposit with a fixed interest rate, fixed principal payment schedule and a substantial penalty for early withdrawal will be deemed purchased for fair market value if the yield on the certificate of deposit is (i) not less than the yield on reasonably comparable direct obligations of the United States and (ii) not less than the highest yield published or posted by the provider on comparable certificates offered to the public.

(b) Guaranteed Investment Contract. A guaranteed investment contract will be regarded as being acquired at fair market value if:

(i) the City makes a bona fide solicitation for a guaranteed investment contract that satisfies all of the following requirements:

(A) the bid specifications are in writing and are timely forwarded to potential providers;

(B) the bid specifications include all material terms that may directly or indirectly affect the yield or the cost of the guaranteed investment contract;

(C) the bid specifications include a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the City or any other person (whether or not in connection with the execution and delivery of the Bond), and that the bid is not being submitted solely as a courtesy to the City or any other person for purposes of satisfying the requirements contained in Section 1.148-5(d)(6)(iii)(B)(1) or (2) of the Treasury Regulations;

(D) the terms of the bid specifications are commercially reasonable in that there is a legitimate business purpose for each term other than to increase the purchase price or reduce the yield of the guaranteed investment contracts;

(E) the terms of the solicitation take into account the City's reasonably expected deposit and drawdown schedule for the amounts to be invested;

(F) all potential providers have an equal opportunity to bid and no potential provider is given the opportunity to review other bids (i.e., a "last look") before providing a bid; and

(G) at least three reasonably competitive providers are solicited for bids. A "reasonably competitive provider" is a provider that has an established industry reputation as a competitive provider of the type of guaranteed investment contracts being acquired;

(ii) The City receives at least three bona fide bids on the guaranteed investment contract from providers that have no material financial interest in the issuance of the Bond. The following are deemed to have a material financial interest in the issuance of the Bond:

(A) the lead underwriter in a negotiated underwriting transaction until 15 days after the issue date of the issue;

(B) any entity acting as a financial advisor with respect to the purchase of the guaranteed investment contract at the time the bid specifications are forwarded to potential providers; and

(C) a provider that is a related party to a provider that has a material financial interest in the issuance of the Bond;

(iii) At least one of the three bids received by the City is from a reasonably competitive provider;

(iv) The winning bidder provides a certificate that lists all administrative costs that it is paying (or expects to pay) to third parties in connection with supplying the guaranteed investment contract;

(v) The City purchases the highest yielding guaranteed investment contract for which a bona fide bid was made (determined net of broker's fees, if any); and

(vi) The City retains the following records with the Bond documents until three years after the last outstanding Bond is redeemed:

(A) a copy of the guaranteed investment contract;

(B) the receipt or other record amount actually paid by the City for the guaranteed investment contract, including a record of any administrative costs paid by the City, and the certification under subparagraph (iv) above;

(C) a copy of each bid that is submitted, (including the name of the person and entity submitting the bid), the time and date of the bid, and the bid results; and

(D) the bid solicitation form and, if the terms of the guaranteed investment contract deviated from the bid solicitation form or a submitted

bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

(c) Investments Traded on Established Market. For other investments traded on an established market, the fair market value of the investment will be the actual price at which the investments are sold by a willing seller to a willing buyer. When an actual transaction does not occur, the fair market price will be the mean between the bid and asked prices for such obligations on the date the investment is deemed to become, or ceases to be, proceeds of the Bond.

(d) Yield Restricted Amounts. Where amounts must be restricted to a certain yield and investments cannot be purchased on an established market or a bona fide fair market price cannot be established at a yield that does not exceed the maximum permissible yield, the City may acquire or hold Tax-Exempt Obligations, currency, or SLGs that yield no more than the maximum permissible yield. The City recognizes that SLGs are available at the Division of Special Investments, Bureau of the Public Debt of the United States Treasury (the “**Division of Special Investments**”), and that, under current Treasury Department Regulations governing SLGs, SLGs may not be purchased until seven calendar days after a subscription for them is tendered and received by the Division of Special Investments, Bureau of the Public Debt (five calendar days in the case of subscriptions not in excess of \$10 million). Accordingly, the City will act promptly in subscribing for SLGs in the event it is determined that such restricted investments are necessary.

Section 7. Record Keeping. With respect to all Nonpurpose Investments acquired in any fund or account, the City will record or cause to be recorded the following information: (a) purchase date, (b) purchase price, (c) information establishing that the purchase price is the fair market value as of such date (e.g., the published quoted bid by a dealer in such an investment on the date of purchase), (d) any accrued interest paid, (e) face amount, (f) coupon rate, (g) periodicity of interest payments, (h) disposition price, (i) any accrued interest received, and (j) disposition date. To the extent any investment becomes a Nonpurpose Investment by becoming Gross Proceeds after it was originally purchased, it will be treated as if it were acquired at its fair market value at the time it becomes a Nonpurpose Investment.

Section 8. Retention of Records. Amounts determined to be required to be paid to the United States in compliance with the Rebate Requirement will be paid to the United States in accordance with the rules set forth in the Treasury Regulations. Records of all determinations made hereunder will be retained by the City until six years after the complete retirement of the Bond.

Section 9. Bona Fide Debt Service Funds Exception. Because the Bond has an average maturity of 4.5015, which is less than 5 years, amounts earned on moneys in the Bona Fide Debt Service Fund shall not be taken into account for a Bond Year for purposes of complying with the Rebate Requirement if, in such Bond Year, investment earnings on amounts held in the Bona Fide Debt Service Fund is less than \$100,000.

Section 10. Expenditure Exceptions. The Rebate Requirement will be considered satisfied if the Six-Month Exception set forth in subsection (a) below) is satisfied.

(a) Six-Month Exception. The Rebate Requirement will be considered satisfied with respect to the Bond if the following rule is met:

(i) In General. The Six-Month Exception will be treated as having been satisfied if (A) all Gross Proceeds of the Bond are allocated to expenditures for the governmental purposes of such portion of the Bond no later than the date that is six months after the date of issuance of the Bond, and (B) the Rebate Requirement is satisfied with respect to (1) amounts on deposit in the Bona Fide Debt Service Fund, (2) other Gross Proceeds of the Bond that arise after six months from the date hereof but that are not reasonably anticipated to arise as of the date hereof, (3) repayment of any grants made with proceeds of the Bond, and (4) sale or investment proceeds on payments under a purpose investment.

(ii) Gross Proceeds. For purposes of satisfying paragraph (i)(A) above, the term Gross Proceeds excludes (A) amounts on deposit in debt service reserve funds, if any, (B) amounts on deposit in the Bona Fide Debt Service Fund, (C) Gross Proceeds that arise after six months from the date hereof but that are not reasonably anticipated to arise as of the date hereof, (D) repayment of any grants made with proceeds of the Bond, and (E) sale or investment proceeds on payments under any purpose investment.

(iii) Additional Six Months for Qualified 501(c)(3) Bond. The Six-Month Exception will be treated as satisfied if, in addition to satisfying paragraph (i)(B) of this subsection (a), all Gross Proceeds of the Bond are expended as provided in paragraph (i)(A) of this subsection (a) except for an amount of Gross Proceeds that does not exceed 5% of the proceeds of the Bond and such unexpended amount of Gross Proceeds is expended within one year from the date of issuance of the Bond.

Section 11. Engagement of Experts. The City covenants that it will, at least one month prior to the end of each Bond Year, engage a firm competent to perform the calculations necessary to comply with the Rebate Requirement, as set forth in Section 148(f) of the Code and the Treasury Regulations.

Section 12. Survival of Defeasance. Notwithstanding anything in this Tax Certificate to the contrary, the Rebate Requirement will survive the defeasance or payment in full of the Bond.

## **PART E. OTHER MATTERS**

Section 1. Qualified Hedging Transaction. The City has not engaged, and will not engage, in any qualified hedging transaction (as such term is defined in Section 1.148-4(h)(2) of the Treasury Regulations) with respect to the Bond.

Section 2. No Pooled Financing Bond. No portion of the proceeds derived from the sale of the Bond will be used, directly or indirectly, to make or finance loans to two or more ultimate

borrowers. None of the Costs of Issuance are contingent upon the occurrence of events subsequent to the date of execution and delivery of the Bond, and 95% of the Costs of Issuance will be paid within six months of the date hereof.

Section 3. No Hedge Bond. The Bond satisfies the requirements of Section 149(g) of the Code based on the fact that each issue of Prior Bonds satisfied the rules of Section 149(g) of the Code in that (i) each such issue qualified for the three-year temporary period set forth in Section 1.148-2(e) of the Treasury Regulations, and (ii) no more than 50% of the proceeds of each such issue was invested in Nonpurpose Investments at a substantially guaranteed yield for four years or more.

Section 4. No Federal Guarantee. The City will not directly or indirectly use or permit the use of any proceeds of the Bond or any other funds of the City, or take or omit to take any action, that would cause the Bond to be considered “federally guaranteed” within the meaning of Section 149(b) of the Code. The City has not entered into, nor will the City enter into, any (i) long-term service contracts with any federal governmental agency or instrumentality, (ii) service contracts with any federal governmental agency or instrumentality under terms that are materially different from the terms of any contracts with any persons other than federal government agencies, and (iii) leases of property to any federal government agency or instrumentality, that would cause the Bond to be considered “federally guaranteed” within the meaning of Section 149(b) of the Code.

Section 5. Change in Use. The City represents, warrants and covenants that the property refinanced with the proceeds of the Bond will be used for governmental purposes of the City during the period the Bond is outstanding, unless an opinion of Bond Counsel is received permitting any proposed change in use of the property refinanced with the proceeds of the Bond.

Section 6. Information Reporting. The City certifies that the information required by Section 149(e) of the Code and set forth in Internal Revenue Service Form 8038-G relating to the Bond reflects its reasonable expectations with respect to the Bond and the proceeds thereof as of the date of this Tax Certificate. The Form 8038-G will be filed at the Internal Revenue Service Center, Ogden, Utah 84201 no later than the 15<sup>th</sup> day of the second calendar month following the close of the calendar year quarter in which the Bond is issued. A copy of the Form 8038-G filed by the City with the Internal Revenue Service is attached hereto as Exhibit D.

Section 7. Retention of Records. The City covenants to use its best efforts to maintain all records relating to the Bond and the use and expenditure of the proceeds of the Bond, as more specifically set forth below.

(a) Types of Records Required to be Retained. The records that must be retained include, but are not limited to, the following:

(i) General. All legal and closing documents relating to the Bond, including indentures, trust agreements, resolutions, public notices, tax certificates, opinions of counsel (issued at the time of closing or subsequently), amendments to the foregoing documents and any and all documents included in the transcript with respect to the Bond.

(ii) Expenditure of Gross Proceeds.

(A) Documents evidencing the expenditure of proceeds from the execution and delivery of the Bond and investment earnings thereon and the specific assets financed with such proceeds, including any declarations of official intent to reimburse expenditures, feasibility studies, projected draw schedules, requisitions and closing flow of funds memoranda;

(B) Documents setting forth all funds and accounts relating to the Bond, including debt service funds, reserve funds, sinking funds and pledged funds, and any agreements with respect thereto;

(C) Documents pertaining to the investment of the Gross Proceeds of the Bond, including the purchase and sale of securities, Time Deposit SLGs subscriptions, yield calculations for each class of investments, actual investment income received from the investment of proceeds, projected investment income calculations expected to be received from the investment of proceeds, guaranteed investment contracts, rebate calculations, credit enhancement, swap transactions and verification reports;

(iii) Disposition Proceeds. Documents, if any, evidencing the sale or other disposition of the financed property;

(iv) Economic Life Data. Documents supporting the economic life of the assets financed and refinanced with proceeds of the Bond;

(v) Allocations. Documents evidencing any allocations with respect to the Gross Proceeds of the Bond;

(vi) Use of Financed Assets; Private Security or Payment.

(A) Documents evidencing the use and ownership of the property financed and refinanced with proceeds of the Bond, including contracts (leases, management contracts, service contracts and otherwise) for the use and ownership of such property; and

(B) Documents evidencing sources of payment or security for the Bond, including liquidity covenants and negative covenants, and any agreements with respect thereto;

(vii) Tax Returns and Related Information. IRS Form 8038-G, 8038-T and 8038-R, as applicable, and information relating to the pricing of the Bond, yield calculations, weighted average maturity calculations, other information included in the 8038 statistics report, verification reports and arbitrage rebate reports; and

(viii) Required Retention Periods. The City covenants to retain the above described records for the following applicable periods until the date that is six years after the complete retirement of the Bond and any bonds (or series of bonds) to refinance the Bond.

(b) Nonpurpose Investments. With respect to all Nonpurpose Investments acquired in any fund or account in connection with the Bond, the following information will be recorded and retained: (i) purchase date, (ii) purchase price, (iii) information establishing that the purchase price is the fair market value as of such date (e.g., the published quoted bid by a dealer in such an investment on the date of purchase), (iv) any accrued interest paid, (v) face amount, (vi) coupon rate, (vii) periodicity of interest payments, (viii) disposition price, (ix) any accrued interest received, and (x) disposition date.

(c) Form of Records. The City covenants that all records will be kept in a manner that ensures complete access thereto for the applicable above described period either in hard copy or electronic format. If the records are kept in electronic format, compliance is necessary with the requirements of Revenue Procedure 97-22, 1997-1 C.B. 652, which provides guidance for maintaining books and records by using an electronic storage system that either images their hardcopy books and records or transfers their computerized books and records to an electronic storage media (e.g., an electronic data compression system).

(d) Failure to Retain Records. The City acknowledges that a failure to maintain material records required to be retained by this Section may result in the loss of the exclusion of interest on the Bond from gross income for federal tax purposes, could cause additional arbitrage rebate to be owed and could impact a conduit borrower's entitlement to take certain deductions.

Section 8. Authorization to Execute Tax Certificate. The undersigned is an authorized representative of the City and is executing this Tax Certificate for and on behalf of the City. To the best of the knowledge and belief of the undersigned, there are no other facts, estimates or circumstances that would materially change the expectations as set forth herein, and said expectations are reasonable.

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Section 9. Amendment. Notwithstanding any provision of this Tax Certificate, the City may amend this Tax Certificate and thereby alter any actions allowed or required by this Tax Certificate if such amendment is based on a written opinion of a nationally recognized bond counsel.

Dated: October 30, 2015

**CITY OF MODESTO**

By:   
Authorized Officer

**LIST OF ATTACHMENTS**

- |           |                                  |
|-----------|----------------------------------|
| Exhibit A | Certificate of Purchaser         |
| Exhibit B | Certificate of Financial Advisor |
| Exhibit C | Refunded Bonds                   |
| Exhibit D | IRS Form 8038-G                  |

**\$19,429,912.56**  
**City of Modesto, California**  
**Wastewater Revenue Refunding Bond**  
**Series 2015**

**CERTIFICATE OF PURCHASER**

This Certificate is furnished by Capital One Public Funding, LLC (the “**Purchaser**”), as purchaser of the above-captioned bond (the “**Bond**”), for purposes of determining the “issue price” of the Bond within the meaning of Section 1273 of the Internal Revenue Code of 1986, as amended (the “**Code**”). Capitalized terms used and not defined herein are as defined in the Tax Certificate to which this certificate is attached (the “**Tax Certificate**”).

The undersigned DOES HEREBY CERTIFY as of the date of the Tax Certificate, as follows:

1. On October 30, 2015, pursuant to a Bond Purchase Agreement, dated as of October 30, 2015, among the City, the Purchaser and U.S. Bank National Association, as paying agent, the Purchaser agreed to purchase the Bond for cash, in an amount equal to \$19,429,912.56 (equal to the face amount of the Bond). The Purchaser is purchasing the Bond as a vehicle for making a commercial for its own loan account and without any present intention of distributing or selling any interest therein or portion thereof.

2. The interest rate on the Bond and the purchase price of the Bond were established through negotiations between the City and the Purchaser in an arm’s-length transaction. In our opinion, taking into consideration the private, direct-purchase nature of the transaction, the purchase price of the Bond reflects the fair market value of the Bond as of the date the interest rate was established.

The Purchaser understands that the foregoing information will be relied upon by the City with respect to certain of the representations set forth in the Tax Certificate (including the exhibits thereto) and by Sidley Austin LLP, Bond Counsel, in connection with its opinion as to the exclusion from gross income of the interest on the Bond for federal income tax purposes.

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IN WITNESS WHEREOF, I have hereunto set my hand this 30<sup>th</sup> day of October, 2015.

**CAPITAL ONE PUBLIC FUNDING, LLC**

By:   
Authorized Representative

**\$19,429,912.56**  
**City of Modesto, California**  
**Wastewater Revenue Refunding Bond**  
**Series 2015**

**CERTIFICATE OF FINANCIAL ADVISOR**

This certificate is furnished by Public Financial Management, Inc., as financial advisor (the “**Financial Advisor**”) to the City of Modesto, California (the “**City**”), in connection with the issuance of the above-captioned bond (the “**Bond**”), for purposes of determining the “average maturity” of the Bond Certificates within the meaning of Section 147(b) of the Internal Revenue Code of 1986, as amended (the “**Code**”), and the yield on the Bond under Section 1.148-4 of the Treasury Regulations. Capitalized terms used and not defined herein are as defined in the Tax Certificate of the City to which this certification is attached (the “**Tax Certificate**”).

The Financial Advisor DOES HEREBY CERTIFY as follows:

A. Average Maturity

1. The Financial Advisor is familiar with the calculation of the “average maturity” of the Bond, as such term is used in Section 147(b) of the Code.
2. The information contained in Schedule 1 attached hereto is true, accurate and complete.
3. Based on the information and calculations set forth in Schedule 1 attached hereto, the average maturity of the Bond does not exceed 4.5015 years.

B. Yield on the Bond

1. The undersigned recognizes that there are certain tests, and possible adjustments, to be made in calculating the yield on debt obligations that are optionally redeemable within five years of their issue date. The yield on the Bond, computed as if the Bond were paid in full on its final maturity date, is not more than 0.125% greater than the yield on the Bond, computed assuming that the Bond is optionally redeemed on its earliest optional redemption date of May 1, 2020.
2. The Financial Advisor has determined the yield on the Bond to be no less than 2.419990%.

The undersigned recognizes that the representations set forth above will be relied upon by the City in making certain of the representations set forth in the Tax Certificate and by Sidley

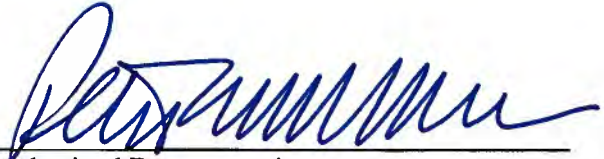
Austin LLP, Bond Counsel, in rendering its opinion that the interest on the Bond is not includable in the gross income of the owners thereof for federal income tax purposes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, I have hereunto set my hand this 30<sup>th</sup> day of October, 2015.

**PUBLIC FINANCIAL MANAGEMENT, INC.**

By:

  
\_\_\_\_\_  
Authorized Representative

**SCHEDULE 1  
TO EXHIBIT B**

**Average Maturity of the Bond**

19,429,912.56  
City of Modesto, California  
Wastewater Revenue Refunding Bond  
Series 2015

Delivery Date	10/30/15		First Prin Pmt Date	11/01/16	
Month	10		Month	11	
Day	30		Day	1	
Year	2015		Year	2016	
<i>Year</i>	<i>Principal</i>	<i>Price (%)</i>	<i>Price (\$)</i>	<i>Term</i>	<i>Dollar-Years</i>
2016	\$2,350,026.76	100.000%	\$2,350,026.76	1.002778	\$2,356,554.61
2017	\$2,394,504.33	100.000%	\$2,394,504.33	2.002778	\$4,795,660.06
2018	\$2,459,095.38	100.000%	\$2,459,095.38	3.002778	\$7,384,116.96
2019	\$2,521,327.25	100.000%	\$2,521,327.25	4.002778	\$10,092,312.69
2020	\$2,577,643.55	100.000%	\$2,577,643.55	5.002778	\$12,895,377.87
2021	\$2,644,114.31	100.000%	\$2,644,114.31	6.002778	\$15,872,030.62
2022	\$2,708,638.88	100.000%	\$2,708,638.88	7.002778	\$18,967,996.16
2023	\$876,794.95	100.000%	\$876,794.95	8.002778	\$7,016,795.14
2024	\$897,767.15	100.000%	\$897,767.15	9.002778	\$8,082,398.15
	\$19,429,912.56		\$19,429,912.56		\$87,463,242.26
Weighted Average Maturity	4.5015	years			

**SCHEDULE 2  
TO EXHIBIT B**

**Yield Calculation**

**(See attached.)**

PROOF OF ARBITRAGE YIELD

City of Modesto  
 Wastewater Private Placement  
 \*\* FINAL NUMBERS \*\*

Date	Debt Service	Total	Present Value to 10/30/2015 @ 2.4199903599%
05/01/2016	236,408.07	236,408.07	233,566.14
11/01/2016	2,585,128.71	2,585,128.71	2,523,517.63
05/01/2017	206,666.62	206,666.62	199,329.28
11/01/2017	2,601,170.95	2,601,170.95	2,478,827.24
05/01/2018	177,693.11	177,693.11	167,311.02
11/01/2018	2,636,788.49	2,636,788.49	2,453,046.89
05/01/2019	147,938.06	147,938.06	135,983.77
11/01/2019	2,669,265.31	2,669,265.31	2,424,239.31
05/01/2020	117,430.00	117,430.00	105,375.44
11/01/2020	2,695,073.55	2,695,073.55	2,389,502.90
05/01/2021	86,240.51	86,240.51	75,548.33
11/01/2021	2,730,354.82	2,730,354.82	2,363,247.57
05/01/2022	54,246.73	54,246.73	46,391.70
11/01/2022	2,762,885.61	2,762,885.61	2,334,566.38
05/01/2023	21,472.20	21,472.20	17,926.54
11/01/2023	898,267.15	898,267.15	740,972.40
05/01/2024	10,862.98	10,862.98	8,853.64
11/01/2024	908,630.13	908,630.13	731,706.38
	<b>21,546,523.00</b>	<b>21,546,523.00</b>	<b>19,429,912.56</b>

Proceeds Summary

Delivery date	10/30/2015
Par Value	19,429,912.56
Target for yield calculation	19,429,912.56

**REFUNDED BONDS**

**2005 Bonds**

<b><u>Maturity Date (November 1)</u></b>	<b><u>Rate</u></b>	<b><u>Principal Amount</u></b>
2016	4.00%	\$2,385,000
2017	5.25	2,485,000
2018	5.25	2,625,000
2019	5.00	2,765,000
2020	5.25	2,905,000
2021	5.25	3,065,000
2022	5.25	3,230,000

**2006 Bonds**

<b><u>Maturity Date (November 1)</u></b>	<b><u>Rate</u></b>	<b><u>Principal Amount</u></b>
2023	4.50%	\$880,000
2024	4.50	920,000

**EXHIBIT D**

**FORM 8038-G**

(Please see item number 15 of the transcript)

\$21,300,000  
City of Modesto, California  
Wastewater Revenue Refunding Bond  
Series 2015

October 30, 2015

CITY INCUMBENCY AND SIGNATURE CERTIFICATE




The undersigned hereby state and certify that:

(i) we are, respectively the City Manager, Director of Finance and the City Clerk of the City of Modesto, California (the "City"), a municipal corporation and chartered city duly organized and existing under the Constitution and the laws of the State of California, and, as such, we are familiar with the facts herein certified and are authorized to certify the same;

(ii) the following persons are the current members of the City Council:

<u>Office</u>	<u>Name</u>
Mayor	Garrad Marsh
Councilmember	John Gunderson
Councilmember	Tony Madrigal
Councilmember	Dave Lopez
Councilmember	Bill Zoslocki
Councilmember	Jenny Kenoyer
Councilmember	Dave Cogdill

(iii) each of the undersigned by his or her signature confirms that the other signatures (including the signature of the City Clerk) set forth below are true and correct specimens of their genuine signatures:

<u>Name</u>	<u>Signature</u>
James Holgersson, City Manager	
Gloriette Genereux, Director of Finance	
Stephanie Lopez, City Clerk	

(iv) the following documents and instruments relating to the City of Modesto, California Wastewater Revenue Refunding Bond, Series 2015 bear the signatures of certain officers of the City named herein:

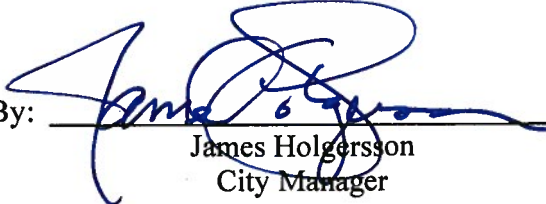
(a) the Bond Purchase Agreement, dated as of October 30, 2015, by and among the City, Capital One Public Funding, LLC, (the "Purchaser") and The Bank of New York Mellon Trust Company, N.A. (the "Paying Agent" and "Escrow Agent"); and


(b) the Tax Certificate dated October 30, 2015.

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IN WITNESS WHEREOF, the undersigned has executed this City Incumbency and Signature Certificate.

CITY OF MODESTO, CALIFORNIA

By:   
James Holgersson  
City Manager

By:   
Gloriette Genereux  
Director of Finance

\$19,429,912.56  
City of Modesto, California  
Wastewater Revenue Refunding Bond  
Series 2015

October 30, 2015

CLOSING CERTIFICATE OF THE CITY

I, Gloriette Genereux, hereby certify that I am the Director of Finance of the City of Modesto, California (the "City"), a municipal corporation and chartered city duly organized and existing under the Constitution and the laws of the State of California (the "City"), and that, as such, I am familiar with the facts herein certified and am authorized to execute this document on behalf of the City.

Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Bond Purchase Agreement, dated as of October 30, 2015 (the "Bond Purchase Agreement"), by and among the City, Capital One Public Funding, LLC, (the "Purchaser") and The Bank of New York Mellon Trust Company, N.A. (the "Paying Agent").

I hereby certify:

1. The City is a municipal corporation and chartered city duly organized and existing under the Constitution and the laws of the State of California.
2. The City has full power and authority to carry out and consummate all transactions contemplated by this Bond Purchase Agreement.
3. The City has duly authorized: (A) the execution, delivery and due performance of this Bond Purchase Agreement; and (B) the taking of any and all action as may be required on the part of the City to carry out, give effect to and consummate the transactions contemplated in the Bond Purchase Agreement. The fully executed counterparts of the Bond Purchase Agreement and certified copies of the resolution of the City authorizing the City's undertakings contemplated by the Bond Purchase Agreement shall be delivered to the Purchaser by the City at the Closing Time, and they shall be in the respective forms theretofore submitted to the Purchaser and approved by the Purchaser, with only such changes or modifications thereof as the Purchaser and the City shall agree upon.
4. So long as the Bond is outstanding, the City will not authorize, issue or sell any Bonds or obligations (other than the Bond), the interest, premium or principal of which shall be payable in whole or in part from the Net Revenues except as provided in the Indenture, as the same may be amended in accordance with the Bond Purchase Agreement.
5. There is no action, suit, proceeding or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the City, threatened against or affecting the City, nor to the knowledge of the City is there any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated

by the Bond Purchase Agreement, or which, in any way, would adversely affect the validity of the Bond Purchase Agreement or any other agreement or instrument to which the City is a party and which is used or contemplated for use in the consummation of the transactions contemplated by the Bond Purchase Agreement.

6. The execution, delivery and due performance by the City of the Bond Purchase Agreement, the Bond and the other agreements contemplated by the Bond Purchase Agreement and compliance with the provisions thereof will not conflict with, or constitute on the part of the City a breach of, or a default under, any existing law, administrative regulation, decree or court order or any provision of any legislative act, constitutional or other proceeding applicable to or establishing or relating to the establishment of the City or its affairs or resolutions, or any agreement, indenture, mortgage, lease or other instrument to which the City is subject or by which it is or may be bound.

7. No consent, approval, permit, authorization or order of, or registration or filing with, any court or government agency, authority or other instrumentality not already obtained, given or made is required on the part of the City for the execution, delivery and performance by the City of the Bond Purchase Agreement. All consents, approvals, permits, authorizations and orders of, and registrations and filings with, any court or governmental or public agency, authority or other instrumentality required for the issuance, sale, execution, delivery and performance of the Bond Purchase Agreement have been or will be obtained prior to the delivery thereof.

8. The audited financial statements of the City, as at and for the period ended June 30, 2014 (the "2014 Audited Financial Statements"), and all other audited financial statements of the City furnished to the Purchaser were prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and are subject to certification by independent certified public accountants of nationally recognized standing or by independent certified public accountants otherwise acceptable to the Paying Agent. The 2014 Audited Financial Statements were prepared by the City's Department of Finance. The 2014 Audited Financial Statements present fairly the financial position of the City as of the date they purport to represent and the revenues, expenses and changes in fund balances and in financial position for the periods then ended. Since June 30, 2014, no material adverse change has occurred in the business, operations or condition (financial or otherwise) of the City (affecting the Enterprise).

9. No Event of Default under the Indenture or the Bond Purchase Agreement has occurred and is continuing that is or would, with the passage of time or the giving of notice, or both, constitute a default by the City in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in the Indenture or the Bond Purchase Agreement.

10. As shown in Exhibit A hereto, Maximum Annual Debt Service (as defined in the Indenture) on the Series 2015 Bond does not exceed 1.10 times the Maximum Annual Debt Service with respect to the Series 2005A Bonds and Series 2006A Bonds being refunded with the proceeds of the Series 2015 Bond.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed this Closing Certificate of the City.

CITY OF MODESTO, CALIFORNIA

By: *Gloriette Genereux*  
Gloriette Genereux  
Director of Finance

EXHIBIT A  
MAXIMUM ANNUAL DEBT SERVICE

Fiscal Year Ending 6/30	2005A	2006A	SRF	Year of Incurrence Net Revenue	Year of Incurrence MADS Coverage	Past Completed (FY15) Net Revenue	Past Completed (FY15) MADS Coverage
2012	\$ 3,308,050	706,758					
2013	\$ 3,312,800	706,758					
2014	\$ 3,307,675	706,758					
2015	\$ 3,312,425	706,758					
2016	\$ 3,311,675	706,758					
2017	\$ 3,322,225	706,758	\$ 8,204,373	\$ 12,233,356		\$ 25,646,343	2.10x
2018	\$ 3,309,294	706,758	\$ 8,204,373	\$ 12,220,425			
2019	\$ 3,315,156	706,758	\$ 8,204,373	\$ 12,226,287			
2020	\$ 3,317,125	706,758	\$ 8,204,373	\$ 12,228,256			
2021	\$ 3,311,744	706,758	\$ 8,204,373	\$ 12,222,875			
2022	\$ 3,315,031	706,758	\$ 8,204,373	\$ 12,226,162			
2023	\$ 3,314,788	706,758	\$ 8,204,373	\$ 12,225,918			
2024		1,566,958	\$ 8,204,373	\$ 9,771,331			
2025		1,566,458	\$ 8,204,373	\$ 9,770,831			
2026		1,565,598	\$ 8,204,373	\$ 9,769,971			
2027		1,569,081	\$ 8,204,373	\$ 9,773,455			
2028		1,565,519	\$ 8,204,373	\$ 9,769,892			
2029		1,570,044	\$ 8,204,373	\$ 9,774,417			
2030		1,567,550	\$ 8,204,373	\$ 9,771,923			
2031		1,568,038	\$ 8,204,373	\$ 9,772,411			
2032		1,566,400	\$ 8,204,373	\$ 9,770,773			
2033		1,567,531	\$ 8,204,373	\$ 9,771,905			
2034		1,566,325	\$ 8,204,373	\$ 9,770,698			
2035		1,567,675	\$ 8,204,373	\$ 9,772,048			
2036		1,566,475	\$ 8,204,373	\$ 9,770,848			
2037		1,567,619		\$ 1,567,619			

**MADS: \$ 12,233,356**



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 SUITE 2000  
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 +1 415 772 1200  
 +1 415 772 7400 FAX

[tmendez@sidley.com](mailto:tmendez@sidley.com)  
 (415-772-7498)

BEIJING  
 BOSTON  
 BRUSSELS  
 CENTURY CITY  
 CHICAGO  
 DALLAS  
 GENEVA

HONG KONG  
 HOUSTON  
 LONDON  
 LOS ANGELES  
 NEW YORK  
 PALO ALTO  
 SAN FRANCISCO

SHANGHAI  
 SINGAPORE  
 SYDNEY  
 TOKYO  
 WASHINGTON, D.C.

FOUNDED 1886

December 9, 2015

**SENT VIA CERTIFIED MAIL**

**Article Number: 7012 2920 0000 7087 2197**  
 Internal Revenue Service Center  
 Ogden, Utah 84201

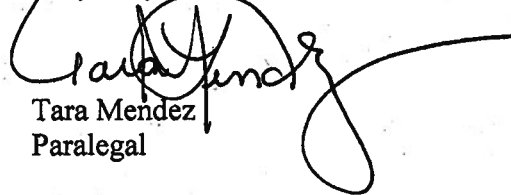
**\$19,429,912.56**  
**City of Modesto, California**  
**Wastewater Revenue Refunding Bond**  
**Series 2015**

Ladies and Gentlemen:

Enclosed please find Internal Revenue Service Form 8038-G, "Information Return for Tax-Exempt Governmental Obligations," to be filed in connection with the above-referenced financing.

If you have any questions regarding this matter, please do not hesitate to call.

Very truly yours,



Tara Mendez  
 Paralegal

Enclosure

**Information Return for Tax-Exempt Governmental Obligations**

► Under Internal Revenue Code section 149(e)  
 ► See separate instructions.  
 Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name <b>City of Modesto</b>		2 Issuer's employer identification number (EIN) <b>94-6000374</b>	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address) <b>1010 Tenth Street</b>		Room/suite	5 Report number (For IRS Use Only) <b>3</b>
6 City, town, or post office, state, and ZIP code <b>Modesto, California 95354</b>		7 Date of issue <b>10/30/15</b>	
8 Name of issue <b>Wastewater Revenue Refunding Bonds, Series 2015</b>		9 CUSIP number <b>N/A</b>	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) <b>Gloriette Genereux, Director of Finance</b>		10b Telephone number of officer or other employee shown on 10a <b>209-577-5371</b>	

<b>Part II Type of Issue (enter the issue price). See the instructions and attach schedule.</b>			
11 Education . . . . .		11	
12 Health and hospital . . . . .		12	
13 Transportation . . . . .		13	
14 Public safety . . . . .		14	
15 Environment (including sewage bonds) . . . . .		15	\$19,429,912 56
16 Housing . . . . .		16	
17 Utilities . . . . .		17	
18 Other. Describe ►		18	
19 If obligations are TANs or RANs, check only box 19a . . . . .	<input type="checkbox"/>		
If obligations are BANs, check only box 19b . . . . .	<input type="checkbox"/>		
20 If obligations are in the form of a lease or installment sale, check box . . . . .	<input type="checkbox"/>		

<b>Part III Description of Obligations. Complete for the entire issue for which this form is being filed.</b>					
	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	11/01/2024	\$ 19,429,912.56	\$ 19,429,912.56	4.5015 years	2.4200 %

<b>Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)</b>					
22	Proceeds used for accrued interest . . . . .			22	
23	Issue price of entire issue (enter amount from line 21, column (b)) . . . . .			23	\$19,429,912 56
24	Proceeds used for bond issuance costs (including underwriters' discount) . . . . .	24	140,460 90		
25	Proceeds used for credit enhancement . . . . .	25			
26	Proceeds allocated to reasonably required reserve or replacement fund . . . . .	26			
27	Proceeds used to currently refund prior issues . . . . .	27	19,289,451 66		
28	Proceeds used to advance refund prior issues . . . . .	28			
29	Total (add lines 24 through 28) . . . . .	29			\$19,429,912 56
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) . . . . .	30			0 00

<b>Part V Description of Refunded Bonds. Complete this part only for refunding bonds.</b>		
31	Enter the remaining weighted average maturity of the bonds to be currently refunded . . . . .	4.5782 years
32	Enter the remaining weighted average maturity of the bonds to be advance refunded . . . . .	years
33	Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) . . . . .	11/09/2015
34	Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)	4/13/2005; 12/14/2006

**Part VI Miscellaneous**

<b>35</b>	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .	<b>35</b>		
<b>36a</b>	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . .	<b>36a</b>		
<b>b</b>	Enter the final maturity date of the GIC ▶ _____			
<b>c</b>	Enter the name of the GIC provider ▶ _____			
<b>37</b>	Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .	<b>37</b>		
<b>38a</b>	If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:			
<b>b</b>	Enter the date of the master pool obligation ▶ _____			
<b>c</b>	Enter the EIN of the issuer of the master pool obligation ▶ _____			
<b>d</b>	Enter the name of the issuer of the master pool obligation ▶ _____			
<b>39</b>	If the issuer has designated the issue under section 265(b)(3)(B)(i)(iii) (small issuer exception), check box . . . . .			<input type="checkbox"/>
<b>40</b>	If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . .			<input type="checkbox"/>
<b>41a</b>	If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:			
<b>b</b>	Name of hedge provider ▶ _____			
<b>c</b>	Type of hedge ▶ _____			
<b>d</b>	Term of hedge ▶ _____			
<b>42</b>	If the issuer has superintegrated the hedge, check box . . . . .			<input type="checkbox"/>
<b>43</b>	If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . .			<input checked="" type="checkbox"/>
<b>44</b>	If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . .			<input checked="" type="checkbox"/>
<b>45a</b>	If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement . . . . .			
<b>b</b>	Enter the date the official intent was adopted ▶ _____			

<b>Signature and Consent</b>	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.				
	Signature of issuer's authorized representative: <u>Gloriette Genereux</u> Date: <u>10/27/15</u>		Type or print name and title: <u>Gloriette Genereux, Director of Finance</u>		
<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Clifford M. Gerber	<u>[Signature]</u>	<u>1/19/16</u>		P01074464
	Firm's name ▶ Sidley Austin LLP	Firm's EIN ▶	45-3829869		
Firm's address ▶ 555 California Street, Suite 2000, San Francisco, California 94104	Phone no.	415-772-1200			

CAPITAL ONE PUBLIC FUNDING, LLC

RECEIPT OF BOND BY PURCHASER

Relating to

\$19,429,912.56

City of Modesto, California  
Wastewater Revenue Refunding Bond  
Series 2015

October 30, 2015

The undersigned, an authorized representative of Capital One Public Funding, LLC (the "Purchaser"), hereby acknowledges receipt from the City of Modesto, California (the "City") of the above-captioned bond in the aggregate principal amount of \$19,429,912.56 (the "Bond"), numbered R-1, and the receipt of all documents and opinions required to be delivered to the Purchaser, and the satisfaction of all other conditions to the Purchaser of the Bond pursuant to the Bond Purchase Agreement, dated as of October 30, 2015, by and among the City, the Purchaser, and The Bank of New York Mellon Trust Company, N.A., as paying agent.

CAPITAL ONE PUBLIC FUNDING, LLC

By:   
Authorized Representative

## Attachment

### LENDER CERTIFICATE

Dated: October 30, 2015

I, Catherine DeLuna Vice Pres of Capital One Public Funding, LLC, Melville, New York ("COPF") do hereby certify as follows with regard to the \$\$19,429,912.56 City of Modesto, California, Wastewater Revenue Refunding Bond, Series 2015 (the "Loan Obligation"), dated October 3, 2015, issued by the City of Modesto (the "Borrower"):

1. COPF has full power and authority to carry on its business as now conducted, deliver this Certificate and make the representations and certifications contained herein.

2. COPF is a lender that regularly extends credit by purchasing loans in the form of state and local government obligations such as the Loan Obligation; has knowledge and experience in financial and business matters that make it capable of evaluating the Borrower, the Loan Obligation and the risks associated with the purchase of the Loan Obligation; has the ability to bear the economic risk of extending the credit evidenced by the Loan Obligation; and is a limited liability company engaged in the primary business of extending credit and making loans to state and local governments and non-profit entities and has total assets in excess of \$1 billion. COPF is not acting as a broker, dealer, municipal securities underwriter, municipal advisor or fiduciary in connection with its purchase of the Loan Obligation.

3. COPF has conducted its own investigation of the financial condition of the Borrower, the purpose for which the Loan Obligation is being executed and delivered and of the security for the payment of the principal of and interest on the Loan Obligation, and has obtained such information regarding the Loan Obligation and the Borrower and its operations, financial condition and financial prospects as COPF deems necessary to make an informed investment decision with respect to the purchase of the Loan Obligation.

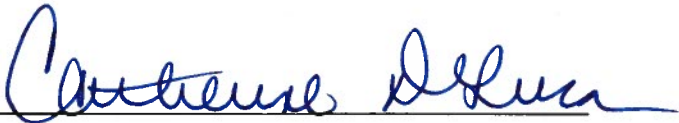
4. COPF is purchasing the Loan Obligation represented by the Bonds as a vehicle for making a commercial loan for its own loan account and without any present intention of distributing or selling any interest therein or portion thereof, provided that COPF retains the right at any time to dispose of the Loan Obligation or any interest therein or portion thereof, but agrees that any such sale, transfer or distribution by COPF shall be made in accordance with applicable law and the provisions of the Loan Obligation and related documents to an affiliate of COPF or one or more banks, insurance companies or other financial institutions.

5. COPF acknowledges that (a) the Loan Obligation (i) has not been registered under the Securities Act of 1933, as amended, (ii) has not been registered or otherwise qualified for sale under the securities laws of any state, and (iii) will not be listed on any securities exchange and (b) there is no established market for the Loan Obligation and none is likely to develop. COPF understands and acknowledges that (a) its purchase of the Loan Obligation is not intended to be subject to the requirements of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended, and (b) in connection with COPF's purchase of the Loan Obligation, the Borrower has not prepared or caused to be prepared, any official statement, private placement memorandum or other offering document.

6. COPF is acting solely for its own loan account and not as a fiduciary for the Borrower or in the capacity of broker, dealer, placement agent, municipal securities underwriter, municipal advisor, or fiduciary. COPF has not provided, and will not provide, financial, legal (including securities law), tax, accounting, or other advice to or on behalf of the Borrower (including to any financial advisor or any placement agent engaged by the Borrower) with respect to the structuring, issuance, sale, or delivery of the Loan Obligation. COPF has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934, as amended, to the Borrower with respect to the transactions relating to the structuring, issuance, sale, or delivery of the Loan Obligation and the discussions, undertakings, and procedures leading thereto. Each of the Borrower, its financial advisor (if any), and its placement agent has sought and shall seek and obtain financial, legal (including securities law), tax, accounting, and other advice (including as it relates to structure, timing, terms, and similar matters and compliance with legal requirements applicable to such parties) with respect to the Loan Obligation from its own financial, legal, tax, and other advisors (and not from the undersigned or its affiliates) to the extent that the Borrower, its financial advisor (if any), or its placement agent desires to, should, or needs to obtain such advice. COPF expresses no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to the Borrower's financial advisor (if any) or placement agent, or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to the Borrower's financial advisor (if any) or placement agent, with respect to any such matters. The transactions between the Borrower and COPF are arm's-length, commercial transactions in which COPF is acting and has acted solely as a principal and for its own interest, and COPF has not made recommendations to the Borrower with respect to the transactions relating to the Loan Obligation.

IN WITNESS WHEREOF, Capital One Public Funding, LLC, has caused this Lender Certificate to be executed by its officer thereunto duly authorized, all as of the day and year first above written.

CAPITAL ONE PUBLIC FUNDING, LLC

By: 

\$19,429,912.56  
City of Modesto, California  
Wastewater Revenue Refunding Bond  
Series 2015

October 30, 2015

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

CERTIFICATE OF THE PAYING AGENT

The undersigned, an authorized officer of THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized and existing under and by virtue of the laws of the United States of America, as paying agent (the "Paying Agent"), under that certain Bond Purchase Agreement, dated as of October 30, 2015 (the "Bond Purchase Agreement"), by and among the City of Modesto (the "City"), Capital One Public Funding, LLC and the Paying Agent, hereby certifies, as follows:

1. The undersigned is an authorized officer of the Paying Agent and authorized to execute and deliver this Certificate of the Paying Agent.

2. The Paying Agent is a national banking association organized and existing under the laws of the United States of America and has full power and is qualified to accept and comply with the terms of the Bond Purchase Agreement and perform its obligations under the Bond Purchase Agreement. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Bond Purchase Agreement.

3. The Paying Agent by its duly authorized officers has executed and delivered the Bond Purchase Agreement and has duly accepted and assumed the duties of Paying Agent under the Bond Purchase Agreement.

4. Attached hereto as Exhibit A is a certified copy of an extract from the bylaws of the Paying Agent, duly adopted by its Board of Directors, which on the date hereof are in full force and effect, authorizing the officer of the Paying Agent who executed and delivered the Bond Purchase Agreement to do so, and an incumbency certificate of the Paying Agent demonstrating that such officer is a duly appointed officer of the Paying Agent holding the office set forth therein on the date of the acts above mentioned and on the date hereof, and the signature appearing therewith is hereby certified to be the genuine signature of such person.

5. The duties and obligations of the Paying Agent under the Bond Purchase Agreement have been duly acknowledged and accepted by the Paying Agent and assuming due, valid and binding authorization, execution and delivery by the City, the Bond Purchase Agreement constitutes the legal, valid and binding obligation of the Paying Agent, enforceable against the Paying Agent in accordance with its terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought.

6. To the best of the Paying Agent's knowledge, the acceptance by the Paying Agent of the duties and obligations of the Paying Agent under the Bond Purchase Agreement and compliance with the provisions thereof will not conflict with or constitute a breach of or default under any law, administrative regulation, consent decree or any agreement or other instrument to which the Paying Agent is subject.

7. To the best knowledge of the undersigned the execution and delivery of the Bond Purchase Agreement, and compliance with the provisions on the part of the Paying Agent contained therein, will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Paying Agent is a party or is otherwise subject (except that no representation, warranty or agreement is made with respect to any federal or state securities or Blue Sky Laws or regulations), nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets held by the Paying Agent pursuant to the lien created by the Bond Purchase Agreement under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided by the Bond Purchase Agreement; and


8. The Paying Agent has not been served with any action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, or is any such action, to the best knowledge of the undersigned after reasonable investigation, threatened against the Paying Agent, affecting the existence of the Paying Agent, or in any way contesting or affecting the validity or enforceability of the Bond Purchase Agreement, or contesting the powers of the Paying Agent or its authority to enter into, adopt or perform its obligations under the foregoing, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Bond Purchase Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of the Paying Agent, by its duly authorized officer.

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

By: \_\_\_\_\_

  
Authorized Officer



555 Capitol Mall, Suite 1200  
Sacramento, California 95814  
tel (916) 556-1531  
fax (916) 556-1516  
www.meyersnave.com

Adam U. Lindgren  
Attorney at Law  
Direct Dial: (916) 556-1531  
alindgren@meyersnave.com

October 29, 2015

City of Modesto  
1010 10<sup>th</sup> Street  
Modesto, CA

Capital One Public Funding, LLC  
Melville, New York

**Re: Opinion of City Attorney  
with Reference to \$19,429,912.56  
City of Modesto, California  
Wastewater Revenue Refunding Bond  
Series 2015**

Ladies and Gentlemen:

I am the City Attorney of the City of Modesto (the “City”). In such capacity, in connection with the issuance of the above-captioned bond (the “Series 2015 Bond”) by the City, I have examined the original, certified copies, or copies otherwise identified to my satisfaction as being true copies of such resolutions, documents, certificates, and records as I have deemed relevant and necessary (except as I have specifically limited the scope of my investigation herein) as the basis for the opinions set forth herein relying on such examination and pertinent law and subject to the limitations and qualifications hereinafter set forth. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bond Purchase Agreement, dated as of October 30, 2015 (the “Bond Purchase Agreement”), among the City, Capital One Public Funding, LLC (the “Purchaser”) and The Bank of New York Mellon Trust Company, N.A. (the “Paying Agent”), relating to the Series 2015 Bond. Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Bond Purchase Agreement.

Relying on such examination and pertinent law and subject to the limitations and qualifications hereinafter set forth, I am of the opinion that:

1. The City is a charter city and municipal corporation, duly organized and validly existing under the State of California;

2. Resolution No. 2015-411 of the City Council of the City relating to the Series 2015 Bond, was duly adopted at a meeting of the City Council held on October 27, 2015, which meeting was called and held pursuant to law, with all public notice required by law and at which a quorum was present and acting throughout, and such Resolution has not been amended since its date of adoption and is now in full force and effect; and

3. To the best of my knowledge, there is no action, suit or proceeding before or by any court, public board or body pending or threatened wherein an unfavorable decision, ruling or finding would (a) affect the creation, organization, existence or powers of the City or the titles of its officers to their respective offices, (b) in any way question or affect the validity or enforceability of the Bond Purchase Agreement or the Indenture, or (c) find illegal, invalid or unenforceable, or materially impair the City's ability to perform under, such agreements or the transactions contemplated thereby, or any other agreement or instrument related to the issuance of the Series 2015 Bond to which the City is a party.

This opinion is only good as of its date and may only be relied upon by the addressees.

Very truly yours,

  
for Adam U. Lindgren  
Attorney at Law

AUL:bhs



SIDLEY AUSTIN LLP  
 555 CALIFORNIA STREET  
 SAN FRANCISCO, CA 94104  
 (415) 772 1200  
 (415) 772 7400 FAX

BEIJING	HONG KONG	SAN FRANCISCO
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CHICAGO	LOS ANGELES	SYDNEY
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FOUNDED 1866

October 30, 2015

City of Modesto  
 Modesto, California

Capital One Public Funding, LLC  
 Melville, New York

The Bank of New York Mellon Trust Company, N.A.  
 Los Angeles, California

\$19,429,912.56  
 City of Modesto, California  
 Wastewater Revenue Refunding Bond  
 Series 2015

Ladies and Gentlemen:

In our capacity as bond counsel to the City of Modesto, California, a charter city and municipal corporation existing under the laws of the State of California (the "City"), we have examined (i) a record of proceedings relating to the issuance of the above-captioned bond (the "Bond") of the City, (ii) the Bond Purchase Agreement, dated as of October 30, 2015 (the "Bond Purchase Agreement"), among the City of Modesto, California (the "City"), Capital One Public Funding, LLC (the "Purchaser"), and The Bank of New York Mellon Trust Company, N.A., as paying agent (the "Paying Agent"), (iii) the Wastewater Revenue Bond Indenture, dated as of April 1, 2005 (the "Master Indenture"), between the City and The Bank of New York Trust Company, N.A., successor trustee (the "Trustee") to U.S. Bank National Association, as supplemented by a First Supplemental Indenture, dated as of April 1, 2005 (the "First Supplemental Indenture"), a Second Supplemental Indenture, dated as of April 1, 2005 (the "Second Supplemental Indenture"), and a Third Supplemental Indenture, dated as of December 1, 2006 (the "Third Supplemental Indenture," and together with the Master Indenture, the First Supplemental Indenture and the Second Supplemental Indenture, the "Indenture"), each by and between the City and the Trustee, (iv) the Project Finance Agreement, dated as of August 26, 2011, as amended on October 4, 2011 and May 11, 2012 (the "Project Finance Agreement"), by and between by and between the State Water Resources Control Board, an administrative and

regulatory agency of the State of California and the City; (v) the Tax Certificate and Agreement executed and delivered by the City in connection with the issuance of the Series 2015 Bond (the "Tax Agreement"), (vi) resolutions of the City, and (vii) such other documents, certificates, opinions and matters of law as we have deemed necessary to enable us to render the opinions expressed herein. As to questions of fact material to this opinion, we have relied upon such certificates and documents without undertaking to verify the same by independent investigation. All capitalized terms used but not defined herein have the meanings ascribed to them in the Bond Purchase Agreement.

The Series 2015 Bond is issued under and pursuant to Section 200 of the Charter of the City of Modesto and the City of Modesto Wastewater Treatment Facilities Revenue Bond Law, constituting Chapter 6 of Title VIII of the Modesto Municipal Code (the "Bond Law"). The Series 2015 Bond is issued to provide funds to finance the 2015 Projects, to current refund all of the City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2005A and a portion of the City of Modesto, California Wastewater Revenue Refunding Bonds, Series 2006A.

We are of the opinion that, under existing law:

1. The Bond Purchase Agreement has been duly and lawfully authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by the Purchaser, is in full force and effect in accordance with its terms and is valid and binding upon the City and enforceable in accordance with its terms, and no other authorization for the Bond Purchase Agreement is required. The Bond Purchase Agreement creates the valid pledge which it purports to create of the Net Revenues for the purposes and on the terms and conditions set forth in the Bond Purchase Agreement.

2. The City is duly authorized and entitled to issue the Series 2015 Bond, and the Series 2015 Bond has been duly and validly authorized and issued by the City in accordance with the Constitution and laws of the State of California (the "State"), including the Charter and the Bond Law, the Indenture and the Project Finance Agreement, and in accordance with the Bond Purchase Agreement. The Series 2015 Bond constitutes the valid and binding special, limited obligation of the City as provided in the Bond Purchase Agreement, is enforceable in accordance with its terms and the terms of the Bond Purchase Agreement and is entitled to the benefits of the Bond Law and the Bond Purchase Agreement.

3. The Series 2015 Bond is not a debt, a liability or an obligation of the City, the State, or any subdivision of the State, and none of the City, the State, nor any other subdivision thereof shall be liable thereon, nor in any event shall the Series 2015 Bond be payable out of any funds or properties of the City other than the Net Revenues. None of the City, said County, said State; or any other public agency or instrumentality of the State, or the City shall be obligated to pay the Series 2015 Bond or the interest thereon except as provided in the Series 2015 Bond, and neither the faith and credit nor the taxing power of the State, the County, the City, any public agency or instrumentality of the State, or any member of the City, is pledged to the payment of the principal of or the interest on the Series 2015 Bond. The City has no taxing power.

4. The Series 2015 Bond constitutes “parity debt” under the Indenture and accordingly is payable from Net Revenues on a parity with Bonds issued under the Indenture and the obligations of the City under the Project Finance Agreement.

5. Assuming continuing compliance by the City with certain covenants in the Bond Purchase Agreement, the Tax Agreement and other documents pertaining to the Series 2015 Bond and requirements of the Internal Revenue Code of 1986, as amended (the “Code”), regarding the use, expenditure and investment of the proceeds of the Series 2015 Bond and the timely payment of certain investment earnings to the United States, interest on the Series 2015 Bond is not includable in gross income for federal income tax purposes. Failure to comply with such covenants and requirements may cause interest on the Series 2015 Bond to be included in federal gross income retroactive to the date of issuance of the Series 2015 Bond.

6. Interest on the Series 2015 Bond is not treated as an item of tax preference in calculating the federal alternative minimum taxable income of individuals and corporations. Interest on the Series 2015 Bond, however, is included as an adjustment in the calculation of federal corporate alternative minimum taxable income and may therefore affect a corporation’s alternative minimum tax liability.

7. Interest on the Series 2015 Bond is exempt from personal income taxes imposed by the State of California.

The Code contains other provisions that could result in tax consequences as a result of the ownership of, or receipt of interest on, the Series 2015 Bond, as to which we express no opinion. Further, certain requirements and procedures contained or referred to in the Bond Purchase Agreement, the Indenture, the Tax Agreement or other documents pertaining to the Series 2015 Bond may be changed, and certain actions may be taken or not taken, under the circumstances and subject to the terms and conditions set forth in such documents with the approval of counsel nationally recognized in the area of state and local obligations. No opinion is expressed herein as to the effect on the exclusion from gross income of interest on the Series 2015 Bond for federal income tax purposes of any change to the aforementioned requirements and procedures or of any action taken or not taken after the date of this opinion without our approval. Other than as described herein, we have not addressed and we are not opining on the tax consequences to any person of the investment in, or the accrual of or receipt of interest on, the Series 2015 Bond.

With respect to the opinions expressed herein, the rights of the owners of the Series 2015 Bond and the enforceability thereof are subject to bankruptcy, insolvency, reorganization, arrangement, moratorium and other laws affecting the enforcement of creditors’ rights, to the application of equitable principles (regardless of whether such enforceability is considered in equity or at law), to the exercise of judicial discretion in appropriate cases, and to the limitations on legal remedies against charter cities in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver provisions contained in the foregoing documents. We do not express any opinion with respect to the quality of title to, or interests in, any of the real or personal property described in or subject to the lien of the Indenture or with respect to the accuracy or sufficiency of the description of any such property contained therein and in the Bond Purchase Agreement.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of any such actions or events.

Respectfully submitted,

A handwritten signature in black ink that reads "Sidley Austin LLP". The signature is written in a cursive, flowing style.

**REPORT OF PROPOSED DEBT ISSUANCE**

California Debt and Investment Advisory Commission  
915 Capitol Mall, Room 400, Sacramento, CA 95814  
P.O. Box 942809, Sacramento, CA 94209-0001  
Tel.: (916) 653-3269 FAX: (916) 654-7440

CDIAC NO.: \_\_\_\_\_

Completion and timely submittal of this form to the California Debt and Investment Advisory Commission (CDIAC) at the above address will assure your compliance with existing California State law and will assist in the maintenance of a complete database of public debt in California. Thank you for your cooperation.<sup>1</sup>

ISSUER NAME: City of Modesto

ISSUE NAME: 2015 Wastewater Revenue Refunding Bond Series 2015

Please specify type/name of project: \_\_\_\_\_

PROPOSED SALE DATE: 11/01/2015 PRINCIPAL TO BE SOLD: \$ 21,300,000.00

WILL A VALIDATION ACTION BE PURSUED:  No  Yes  Unknown

IS ANY PORTION OF THE DEBT FOR REFUNDING?<sup>2</sup>

No  Yes, proposed amount for refunding \$ 21,300,000.00

**Issuer Contact:**

Name: First Gloriette Middle \_\_\_\_\_ Last Genereux Email: ggenereux@modestogov.com

Title: Director of Finance

Address: 1010 10th Street City: Modesto State: CA Zip Code: 95354

Phone: ( 209 ) 5775371 Extension: \_\_\_\_\_ Issuer Located In Stanislaus County

Filing Contact: Name of Individual (representing:  Bond Counsel,  Borrower Counsel (Loan),  Financial Advisor,  Issuer or,  Lead Underwriter) who completed this form and may be contacted for information:

Name: First Eric Middle \_\_\_\_\_ Last Tashman

Firm/Agency: Sidley Austin LLP

Address: 555 California Street, Suite 2000 City: San Francisco State: CA Zip Code: 94104

Phone: ( 415 ) 7721214 Extension: \_\_\_\_\_ E-mail: etashman@sidley.com

Send acknowledgement/copies to: Kimberly Westberry, Contract Lawyer E-mail: kwestberry@sidley.com

**FINANCING PARTICIPANTS:**

BOND COUNSEL: Sidley Austin LLP

BORROWER COUNSEL (LOAN): \_\_\_\_\_

FINANCIAL ADVISOR: Public Financial Management, Inc.

UNDERWRITER/PURCHASER: \_\_\_\_\_

**IS THE INTEREST ON THE DEBT TAXABLE?**

Under State law:  YES (taxable)  NO (tax-exempt)

Under Federal law:  YES (taxable)  NO (tax-exempt) If the issue is federally tax-exempt, is interest a specific preference item for the purpose of alternative minimum tax?

Yes, preference item  No, not a preference item

TYPE OF SALE:  Competitive  Negotiated

IS THIS FINANCING A PRIVATE PLACEMENT?  No  Yes

<sup>1</sup> Section 8855(g) of the California Government Code requires the issuer of any proposed new public debt issue to give written notice of the proposed sale to the CDIAC no later than 30 days prior to the sale. Under California Government Code Section 8855(i), "The issuer of any new public debt issue shall, not later than 21 days after the signing of the bond purchase contract in a negotiated or private financing, or after the acceptance of a bid in a competitive offering, submit a report of final sale and official statement to the commission. The Commission may require information to be submitted in the report of final sale that is considered appropriate."

<sup>2</sup> Section 53583(c)(2)(B) of the California Government Code requires that any local agency selling refunding bonds at private sale or on a negotiated basis shall send a written statement, within two weeks after the bonds are sold, to the CDIAC explaining the reasons why the local agency determined to sell the bonds at private sale or on a negotiated basis instead of at public sale.

**TYPE OF DEBT INSTRUMENT**

**NOTE**

- Bond anticipation (BAN)
- Grant anticipation (GAN)
- Loan from bank/other institution (LOAN)
- Other note (Please specify below.) (OTHN)
- Revenue anticipation (RAN)
- Tax allocation (TALN)
- Tax and revenue anticipation (TRAN)
- Tax anticipation (TAN)
  
- Commercial paper (CP)
- Certificates of participation/leases (COPL)
- Other (Please specify below.) (OTH)

**BOND**

- Conduit revenue (Private obligor) (CRB)
- General obligation (GOB)
- Limited tax obligation(LTOB)
- Other bond (Please specify below.) (OTHB)
- Pension Obligation (POB)
- Public lease revenue (PLRB)
- Rate Reduction (GC 6588.7) (RRB)
- Revenue (Pool) (RB)
- Revenue (Public enterprise) (PERB)
- Sales tax revenue (STRB)
- Special assessment (SAB)
- Tax allocation (TAB)

Please specify if "Other note/Other bond/Other" was checked: \_\_\_\_\_

**SOURCE(S) OF REPAYMENT**

- Bond proceeds (BDPR)
- General fund of issuing jurisdiction(GNFD)
- Grants (GRNT)
- Intergovernmental transfers other than grants (ITGV)
- Local obligations (LOB)
- Private obligor payments (POP)
- Other (Please specify below.) (OTH)

- Property tax revenues (PRTX)
- Public enterprise revenues (PER)
- Sales tax revenues (SATR)
- Special Assessments (SA)
- Special tax revenues (SPTR)
- Tax-increment (TI)
  
- Utility Project Charges (UPC)

**PURPOSE(S) OF FINANCING**

- Cash flow, interim financing (CFIF)
- Project, interim financing (PIF)
  
- College/university housing (CUH)
- Multifamily housing (MFH)
- Other Housing (OTHH)
- Single-family housing (SFH)
  
- Health care facilities (HCF)
- Hospital (HOSP)
- Medical Research/Institute(MRES)
- Other/multiple health care purposes (equipment; etc.)(OMHC)
  
- College/university facility (CUF)
- K-12 school facility (KSCH)
- Other/multiple educational uses (equipment, etc.) (OMED)
- Student Loans (SLC)
  
- Redevelopment, multiple uses (RD)
- Commercial development (CMDV)
- Industrial development (INDV)
- Pollution control (PC)

- Airport (APRT)
- Bridges and highways (BRHI)
- Convention center (CCTR)
- Equipment (EQUF)
- Flood control/storm drainage (FLDS)
- Multiple capital improvements and public works (MCAP)
- Other capital improvements and public works (OCAP)
- Parking (PRKG)
- Parks/Open space (PRKO)
- Ports and marinas (PRTS)
- Power generations/transmission (PWR)
- Prisons/jails/correctional facilities (PRSN)
- Public building (PB)
- Public transit (PTR)
- Recreation and sports facilities (RCSP)
- Seismic safety improvments/repair (SSI)
- Solid waste recovery facilities (SWST)
- Street construction and improvements (SCI)
- Theater/Arts/Museums (THAM)
- Wastewater collection and treatment (WSTW)
- Water supply/storage/distribution (WTR)
  
- Commercial Energy Conservation/Improvement (CECI)
- Human Resources (HR)
- Insurance/pension funds (IPF)
- Other than listed above(OTH)
- Residential Energy Conservation/Imporvement (RECI)

Please Specify type/name of project: \_\_\_\_\_

STATE OF CALIFORNIA

John Chiang  
State Treasurer and Chair



**CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION**

915 CAPITOL MALL ROOM 400  
PO BOX 942809  
SACRAMENTO, CA 94209-0001  
TELEPHONE: (916) 653-3269  
FAX: (916) 654-7440

October 13, 2015

**TO:** Kimberly Westberry  
Sidley Austin LLP  
555 California, Suite 2000  
San Francisco, CA 94104

**FROM:** Mark Campbell, Executive Director

**RE: ACKNOWLEDGEMENT OF REPORT OF PROPOSED DEBT ISSUANCE**

California Government Code Section 8855(j) requires written notice to be given to the California Debt and Investment Advisory Commission (CDIAC) no later than 30 days prior to the proposed sale of any debt issue.

CDIAC acknowledges receipt of your notice of the following proposed debt issuance:

**CDIAC Number:** 2015-2359  
**Issuer:** Modesto  
**Project:** Wastewater Collection, Treatment  
**Proposed Amount:** \$21,300,000  
**Proposed Sale Date:** November 01, 2015  
**Date Notice Received:** October 09, 2015

Issuers may electronically file the Report of Final Sale (RFS) through CDIAC's website, using the following CDIAC number and password, which are unique to this filing and must be used for any subsequent reporting under this CDIAC number.

**CDIAC Number:** 2015-2359  
**Password:** 47000

In accordance with Government Code Section 8855(j), the RFS for this issue must be submitted not later than 21 days after the sale of the debt. The RFS may be submitted electronically at <http://www.treasurer.ca.gov/cdiac/reporting.asp>. An official statement or other financing documents must accompany the RFS.

Any questions regarding reporting requirements may be directed to CDIAC's Data Unit by email at [CDIAC\\_Issuance@treasurer.ca.gov](mailto:CDIAC_Issuance@treasurer.ca.gov) or by telephone at (916) 653-3269.

**Cc:** Gloriette Genreux  
Director of Finance

**REPORT OF FINAL SALE**

California Debt and Investment Advisory Commission  
915 Capitol Mall, Room 400, Sacramento, CA 95814  
P.O. Box 942809, Sacramento, CA 94209-0001  
Tel.: (916) 653-3269 FAX: (916) 654-7440

CDIAC #: 2015-2359

Under California Government Code Section 8855(j), "The issuer of any new public debt issue shall, not later than 21 days after the sale of the debt, shall submit a report of final sale and official statement (or alternate bond documents) to the Commission. The Commission may require information to be submitted in the report of final sale that it considers appropriate."

ISSUER NAME: City of Modesto

(If pool bond, list participants)

ISSUE NAME: 2015 Wastewater Revenue Refunding Bond Series 2015

STATUTE ISSUANCE IS AUTHORIZED UNDER? \_\_\_\_\_

ACTUAL SALE DATE: 10/30/15 PRINCIPAL SOLD: \$ 19,429,912.56  
(Date Purchase Agreement Signed/Bid Acceptance)

DATED DATE: 10/30/15

IS ANY PORTION OF THE DEBT FOR REFUNDING?<sup>1</sup>  
 No  Yes, refunding amount (including costs) \$ 21,260,000.00

ISSUER CONTACT:  
Name: Gloriette Genereux Title: Director of Finance  
Address: 1010 10th Street City, State, Zip: Modesto, CA 95354  
Phone: (209) 577-5371 ISSUER LOCATED IN Stanislaus COUNTY  
E-Mail: ggenereux@modestogov.com

FILING CONTACT: Name of Individual (representing:  Bond Counsel,  Borrower Counsel (Loan),  Issuer,  Financial Advisor, or  Lead Underwriter) who completed this form and may be contacted for information:

Name: Eric Tashman Firm/Agency: Sidley Austin LLP  
Address: 555 California Street, Suite 2000 City, State, Zip: San Francisco, CA 94104  
Phone: (415) 772-1214 E-Mail: etashman@sidley.com  
Send acknowledgement/copies to: Tara Mendez, Paralegal E-Mail: tmendez@sidley.com

TYPE OF SALE:  Negotiated  Competitive IS THIS FINANCING A PRIVATE PLACEMENT?  No  Yes

NAME OF INDIVIDUAL TO WHOM AN INVOICE FOR THE CDIAC ISSUE FEE SHOULD BE SENT:<sup>2</sup>  
Name: Daniel Marroquin Firm: The Bank of New York Mellon Trust Company, N.A.  
Address: 400 S. Hope Street, 4th Floor City, State, Zip: Los Angeles, California 90071  
Phone: 213-630-6262 E-Mail: daniel.marroquin@bnymellon.com

<sup>1</sup> Section 53583(c)(2)(B) of the California Government Code requires that any local agency selling refunding bonds at private sale or on a negotiated basis shall send a written statement, within two weeks after the bonds are sold, to the CDIAC explaining the reasons why the local agency determined to sell the bonds at a private sale or on a negotiated basis instead of at public sale.  
<sup>2</sup> This fee is authorized by Section 8856 of the California Government Code and is charged to the lead underwriter or purchaser of the issue. The fee is administratively set by the Commission. The current fee schedule may be obtained from CDIAC.

**FINANCING PARTICIPANTS (Firm name)**

FINANCIAL ADVISOR: Public Financial Management Inc.  
 LEAD UNDERWRITER/PURCHASER: Capital One Public Funding, LLC  
 BORROWER COUNSEL (LOAN): N/A  
 BOND COUNSEL: Sidley Austin LLP  
 CO-BOND COUNSEL: N/A  
 TRUSTEE/PAYING AGENT: The Bank of New York Mellon Trust Co., N.A. (Fiscal Agent)  
 PLACEMENT AGENT: \_\_\_\_\_

**OFFICE LOCATION (City/State)**

San Francisco, CA  
 \_\_\_\_\_  
Corrales, NM  
 \_\_\_\_\_  
San Francisco, CA  
 \_\_\_\_\_  
Los Angeles, CA  
 \_\_\_\_\_

**MATURITY SCHEDULE**

Attached  Included in Official Statement

**MATURITY STRUCTURE**

Serial (S)  Term (T)  
 Serial and term bonds (B)

FINAL MATURITY DATE: 11/1/2024

FIRST OPTIONAL CALL DATE: 5/1/2020

SENIOR/SUBORDINATE STRUCTURE  Yes  No

**OFFICIAL STATEMENT/OFFERING MEMORANDUM:**

Enclosed  None prepared

**WAS THE ISSUE INSURED OR GUARANTEED?**

No  
 Bond Insurance (I)  
 Letter of Credit (L)  
 State Intercept Program (T)  
 Other (O)

GUARANTOR: N/A

ENHANCEMENT EXPIRATION DATE: N/A

**INDICATE CREDIT RATING:**

(For example, "AAA" or "Aaa")

Not Rated  
 Rated  
 Standard & Poor's: \_\_\_\_\_

Fitch: \_\_\_\_\_  
 Moody's: \_\_\_\_\_  
 Other: \_\_\_\_\_

**REASON FOR NEGOTIATED REFUNDINGS**

If the issue is a negotiated refunding, indicate the reason(s) why the bonds were issued at a private or negotiated versus a competitive sale.

(1) Timing of the sale provided more flexibility than a public sale  
 (2) More cost savings were expected to be realized than a public sale  
 (3) More flexibility in debt structure was available than a public sale  
 (4) Issuer able to work with participants familiar with issue/r than a public sale  
 (5) All of the above  
 (6) Other (please specify) \_\_\_\_\_

**IS THE INTEREST ON THE DEBT TAXABLE?**

Under State Law:  Yes (taxable)  No (tax-exempt)  
 Under Federal Law:  Yes (taxable)  No (tax-exempt)  
 If the issue is federally tax-exempt, is interest a specific preference item for the purpose of alternative minimum tax?  Yes  No

**INTEREST TYPE:**

NIC - Int. Cost: 2.420 %  
 TIC - Int. Cost: 2.420 %  
 Variable  Other \_\_\_\_\_ (Index/Rate)

CAPITAL APPRECIATION BOND:  Yes  No

RATE REDUCTION SAVINGS: \_\_\_\_\_  
(In accordance with Government Code Section 6588.7)

**ISSUANCE COSTS AND FEES:**

A) Management Fee	\$ _____
B) Total Takedown	\$ _____
C) Underwriter Expenses	\$ _____
Underwriter Spread or Discount	\$ <u>N/A</u>
D) Bond Counsel	\$ <u>80,000</u>
E) Borrower Counsel (Loan)	\$ <u>N/A</u>
F) Co-Bond Counsel	\$ <u>N/A</u>
G) Disclosure Counsel	\$ <u>N/A</u>
H) Financial Advisor	\$ <u>42,000</u>
I) Rating Agency	\$ <u>N/A</u>
J) Credit Enhancement	\$ <u>N/A</u>
K) Trustee Fee	\$ <u>2,500</u>
L) Placement Agent	\$ <u>N/A</u>
M) Other Expenses	\$ <u>15,960.90</u>
<b>Total Issuance Costs</b>	\$ <u>140,460.90</u>

ORIGINAL ISSUE PREMIUM \$ -

ORIGINAL ISSUE DISCOUNT \$ -

NET ORIGINAL ISSUE DISCOUNT/PREMIUM \$ 0.00

**\$19,429,912.56**  
**City of Modesto**  
**2015 Wastewater Private Placement**

**Closing Wire and Transfer Memorandum**

Pre-closing: Thursday, October 29<sup>th</sup>, 2015 2:00 PM (Pacific)  
Sidley Austin LLP  
555 California Street, Suite 2000  
San Francisco, CA 94104  
Phone: (415) 772-7427

Closing: Friday, October 30<sup>th</sup>, 2015 9:00 AM (Pacific)  
Via Conference Call / Passcode  
(877) 577-9567 / 310-216-5511#

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A summary of the 2015 Private Placement sources and uses are as follows:

Sources:	Full Refunding of 2005A	Partial Refunding of 2006A	Total
Par Amount	\$17,616,805.41	\$1,813,107.15	\$19,429,912.56
Parity DSRF Partial Release	1,970,548.34		1,970,548.34
<b>Total</b>	<b>\$19,587,405.41</b>	<b>\$1,813,107.15</b>	<b>\$21,400,460.90</b>

Uses:	Full Refunding of 2005A	Partial Refunding of 2006A	Total
Cash Deposit	\$19,460,000.00	\$1,800,000.00	\$21,260,000.00
Cost of Issuance	127,353.75	13,107.15	140,460.90
<b>Total</b>	<b>\$19,587,353.75</b>	<b>\$1,813,107.15</b>	<b>\$21,400,460.90</b>

**A. Transfer by Capital One Public Funding, LLC**

**Proceeds of the 2015 Private Placement**

Wire Transfer:	<b>Capital One Public Funding, LLC will coordinate the following \$19,429,912.56 wire transfer no later than 8:30AM (Pacific) on Friday, October 30<sup>th</sup>, 2015:</b>
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<i>Wire Transfer:</i>	Amount:	\$19,429,912.56
	Bank:	The Bank of New York Mellon
	ABA#:	021 000 018
	Account #:	8072468400
	Account Name:	MODESTO WSTWTR REF 2005 RDM FD
	Attn:	Daniel Marroquin, (213) 630-6262

**B. Application of the 2015 Private Placement Proceeds and Other Available Funds**

**1. Legally Defeas the Refunded Bonds**

The Fiscal Agent will transfer funds received by Capital One Public Funding, LLC along with the Parity DSRF Partial Release into the 2015 Private Placement Redemption Account to fund the defeasance of all outstanding Series 2005A Bonds and the 2023 and 2024 maturities of Series 2006A Bonds. The bonds will be redeemed on **November 1, 2015**. The required bond redemption payment and sources of funds are summarized below:

<b>Redemption Sources:</b>	
Funds Received	\$19,289,451.66
Parity DSRF Partial Release	<u>\$1,970,548.34</u>
<b>Total:</b>	<b>\$21,260,000.00</b>

<b>Redemption Uses:</b>	
Cash Deposit	<u>\$21,260,000.00</u>
<b>Required Redemption Payment:</b>	<b>\$21,260,000.00</b>

**2. Costs of Issuance Transfers**

The Fiscal Agent will apply the remaining **\$140,460.90** received from Capital One Public Funding, LLC to the Cost of Issuance Fund as follows based on wire instructions received from each respective firm:

<b>Name of Firm</b>	<b>Invoice Amount</b>
Bond Counsel - Sidley Austin (+\$5k expenses)	\$80,000
Issuer Counsel - Meyers Nave	2,000
Financial Advisor - PFM (+\$2k expenses)	42,000
Fiscal Agent - BNY Mellon	2,500
Fiscal Agent Counsel - Sam Waldman	2,000
CDIAC	3,000
Contingency	8,960.90
<b>Total Amount</b>	<b>\$140,460.90</b>

**SOURCES AND USES OF FUNDS**

**City of Modesto  
Wastewater Private Placement  
\*\* FINAL NUMBERS \*\***

**Dated Date** 10/30/2015  
**Delivery Date** 10/30/2015

<b>Sources:</b>	<b>Full Refunding of 2005A</b>	<b>Partial Refunding of 2006A</b>	<b>Total</b>
<b>Bond Proceeds:</b>			
<b>Par Amount</b>	17,616,805.41	1,813,107.15	19,429,912.56
<b>Other Sources of Funds:</b>			
<b>Parity DSRF Partial Release</b>	1,970,548.34		1,970,548.34
	<b>19,587,353.75</b>	<b>1,813,107.15</b>	<b>21,400,460.90</b>
<b>Uses:</b>	<b>Full Refunding of 2005A</b>	<b>Partial Refunding of 2006A</b>	<b>Total</b>
<b>Refunding Escrow Deposits:</b>			
<b>Cash Deposit</b>	19,460,000.00	1,800,000.00	21,260,000.00
<b>Delivery Date Expenses:</b>			
<b>Cost of Issuance</b>	127,353.75	13,107.15	140,460.90
	<b>19,587,353.75</b>	<b>1,813,107.15</b>	<b>21,400,460.90</b>

**COST OF ISSUANCE**  
 City of Modesto  
 Wastewater Private Placement  
 \*\* FINAL NUMBERS \*\*

Cost of Issuance	\$/1000	Amount
Bond Counsel - Sidley Austin (+\$5k expenses)	4.11736	80,000.00
Issuer Counsel - Meyers Nave	0.10293	2,000.00
Financial Advisor - PFM (+\$2k expenses)	2.16162	42,000.00
Fiscal Agent - BNY Mellon	0.12867	2,500.00
Fiscal Agent Counsel - Sam Waldman	0.10293	2,000.00
CDIAC	0.15440	3,000.00
Contingency	0.46119	8,960.90
	7.22911	140,460.90

**BOND SUMMARY STATISTICS**

**City of Modesto  
Wastewater Private Placement  
\*\* FINAL NUMBERS \*\***

Dated Date	10/30/2015
Delivery Date	10/30/2015
Last Maturity	11/01/2024
Arbitrage Yield	2.419990%
True Interest Cost (TIC)	2.419990%
Net Interest Cost (NIC)	2.420000%
All-In TIC	2.593645%
Average Coupon	2.420000%
Average Life (years)	4.501
Duration of Issue (years)	4.235
Par Amount	19,429,912.56
Bond Proceeds	19,429,912.56
Total Interest	2,116,610.44
Net Interest	2,116,610.44
Total Debt Service	21,546,523.00
Maximum Annual Debt Service	2,791,795.33
Average Annual Debt Service	2,393,319.43
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	
<b>Total Underwriter's Discount</b>	
Bid Price	100.000000

Bond Component	Par Value	Price	Average Coupon	Average Life	PV of 1 bp change
Serial Bond	19,429,912.56	100.000	2.420%	4.501	8,010.91
	19,429,912.56			4.501	8,010.91

	TIC	All-In TIC	Arbitrage Yield
Par Value	19,429,912.56	19,429,912.56	19,429,912.56
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense		-140,460.90	
- Other Amounts			
<b>Target Value</b>	19,429,912.56	19,289,451.66	19,429,912.56
Target Date	10/30/2015	10/30/2015	10/30/2015
Yield	2.419990%	2.593645%	2.419990%

SUMMARY OF REFUNDING RESULTS

City of Modesto  
 Wastewater Private Placement  
 \*\* FINAL NUMBERS \*\*

	Full Refunding of 2005A	Partial Refunding of 2006A	Total
Dated Date	10/30/2015	10/30/2015	10/30/2015
Delivery Date	10/30/2015	10/30/2015	10/30/2015
Arbitrage Yield	2.419990%	2.419990%	2.419990%
Escrow Yield			
Value of Negative Arbitrage			
Bond Par Amount	17,616,805.41	1,813,107.15	19,429,912.56
True Interest Cost	2.419990%	2.419995%	2.419990%
Net Interest Cost	2.420000%	2.420000%	2.420000%
Average Coupon	2.420000%	2.420000%	2.420000%
Average Life	4.099	8.415	4.501
Par amount of refunded bonds	19,460,000.00	1,800,000.00	21,260,000.00
Average coupon of refunded bonds	5.173003%	4.497064%	5.066425%
Average life of refunded bonds	4.207	8.514	4.572
PV of prior debt	21,568,260.10	2,086,194.52	23,654,454.62
Net PV Savings	1,980,906.92	273,086.79	2,253,993.71
Percentage savings of refunded bonds	10.179378%	15.171488%	10.602040%

**SAVINGS**  
 City of Modesto  
 Wastewater Private Placement  
**\*\* FINAL NUMBERS \*\***

Date	Prior Debt Service	Refunding Debt Service	Savings	Present Value to 10/30/2015 @ 2.4199904%
06/30/2016	532,962.50	236,408.07	296,554.43	292,989.46
06/30/2017	3,403,225.00	2,791,795.33	611,429.67	593,606.22
06/30/2018	3,390,293.75	2,778,864.06	611,429.69	579,910.69
06/30/2019	3,396,156.25	2,784,726.55	611,429.70	566,563.03
06/30/2020	3,398,125.00	2,786,695.31	611,429.69	553,516.44
06/30/2021	3,392,743.75	2,781,314.06	611,429.69	540,838.35
06/30/2022	3,396,031.25	2,784,601.55	611,429.70	528,485.38
06/30/2023	3,395,787.50	2,784,357.81	611,429.69	516,449.95
06/30/2024	941,200.00	909,130.13	32,069.87	26,357.13
06/30/2025	940,700.00	908,630.13	32,069.87	25,825.39
	<b>26,187,225.00</b>	<b>21,546,523.00</b>	<b>4,640,702.00</b>	<b>4,224,542.06</b>

Savings Summary

PV of savings from cash flow	4,224,542.06
Less: Prior funds on hand	-1,970,548.34
<b>Net PV Savings</b>	<b>2,253,993.72</b>

**SAVINGS**  
**City of Modesto**  
**Full Refunding of 2005A**

Date	Prior Debt Service	Refunding Debt Service	Savings	Present Value to 10/30/2015 @ 2.4199904%
06/30/2016	492,462.50	214,347.59	278,114.91	274,771.60
06/30/2017	3,322,225.00	2,742,865.19	579,359.81	562,518.02
06/30/2018	3,309,293.75	2,729,933.93	579,359.82	549,562.10
06/30/2019	3,315,156.25	2,735,796.43	579,359.82	536,936.47
06/30/2020	3,317,125.00	2,737,765.19	579,359.81	524,594.75
06/30/2021	3,311,743.75	2,732,383.94	579,359.81	512,604.79
06/30/2022	3,315,031.25	2,735,671.43	579,359.82	500,923.59
06/30/2023	3,314,787.50	2,735,427.69	579,359.81	489,543.95
	<b>23,697,825.00</b>	<b>19,364,191.39</b>	<b>4,333,633.61</b>	<b>3,951,455.26</b>

Savings Summary

PV of savings from cash flow	3,951,455.26
Less: Prior funds on hand	-1,970,548.34
<b>Net PV Savings</b>	<b>1,980,906.92</b>

**SAVINGS**  
 City of Modesto  
 Partial Refunding of 2006A

Date	Prior Debt Service	Refunding Debt Service	Savings	Present Value to 10/30/2015 @ 2.4199904%
06/30/2016	40,500.00	22,060.48	18,439.52	18,217.85
06/30/2017	81,000.00	48,930.14	32,069.86	31,088.20
06/30/2018	81,000.00	48,930.13	32,069.87	30,348.60
06/30/2019	81,000.00	48,930.12	32,069.88	29,626.57
06/30/2020	81,000.00	48,930.12	32,069.88	28,921.69
06/30/2021	81,000.00	48,930.12	32,069.88	28,233.57
06/30/2022	81,000.00	48,930.12	32,069.88	27,561.80
06/30/2023	81,000.00	48,930.12	32,069.88	26,906.00
06/30/2024	941,200.00	909,130.13	32,069.87	26,357.13
06/30/2025	940,700.00	908,630.13	32,069.87	25,825.39
	<b>2,489,400.00</b>	<b>2,182,331.61</b>	<b>307,068.39</b>	<b>273,086.79</b>

Savings Summary

PV of savings from cash flow	273,086.79
Net PV Savings	273,086.79

SUMMARY OF BONDS REFUNDED

City of Modesto  
Wastewater Private Placement  
\*\* FINAL NUMBERS \*\*

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
<b>Series 2005 Wastewater Revenue Refunding Bonds, 2005:</b>					
SERIAL	11/01/2016	4.000%	2,385,000.00	11/01/2015	100.000
	11/01/2017	5.250%	2,485,000.00	11/01/2015	100.000
	11/01/2018	5.250%	2,625,000.00	11/01/2015	100.000
	11/01/2019	5.000%	2,765,000.00	11/01/2015	100.000
	11/01/2020	5.250%	2,905,000.00	11/01/2015	100.000
	11/01/2021	5.250%	3,065,000.00	11/01/2015	100.000
	11/01/2022	5.250%	3,230,000.00	11/01/2015	100.000
			19,460,000.00		
<b>Series 2006, Wastewater Revenue Bonds, 2006:</b>					
SERIAL_1	11/01/2023	4.500%	880,000.00	11/01/2015	100.000
	11/01/2024	4.500%	920,000.00	11/01/2015	100.000
			1,800,000.00		
			21,260,000.00		

**BOND PRICING**  
**City of Modesto**  
**Wastewater Private Placement**  
**\*\* FINAL NUMBERS \*\***

Bond Component	Maturity Date	Amount	Rate	Yield	Price
<b>Serial Bond:</b>					
	11/01/2016	2,350,026.76	2.420%	2.420%	100.000
	11/01/2017	2,394,504.33	2.420%	2.420%	100.000
	11/01/2018	2,459,095.38	2.420%	2.420%	100.000
	11/01/2019	2,521,327.25	2.420%	2.420%	100.000
	11/01/2020	2,577,643.55	2.420%	2.420%	100.000
	11/01/2021	2,644,114.31	2.420%	2.420%	100.000
	11/01/2022	2,708,638.88	2.420%	2.420%	100.000
	11/01/2023	876,794.95	2.420%	2.420%	100.000
	11/01/2024	897,767.15	2.420%	2.420%	100.000
		<b>19,429,912.56</b>			

Dated Date	10/30/2015	
Delivery Date	10/30/2015	
First Coupon	05/01/2016	
Par Amount	19,429,912.56	
Original Issue Discount		
Production	19,429,912.56	100.000000%
Underwriter's Discount		
Purchase Price	19,429,912.56	100.000000%
Accrued Interest		
Net Proceeds	19,429,912.56	

BOND DEBT SERVICE

City of Modesto  
Wastewater Private Placement  
\*\* FINAL NUMBERS \*\*

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
05/01/2016			236,408.07	236,408.07	
06/30/2016					236,408.07
11/01/2016	2,350,026.76	2.420%	235,101.95	2,585,128.71	
05/01/2017			206,666.62	206,666.62	
06/30/2017					2,791,795.33
11/01/2017	2,394,504.33	2.420%	206,666.62	2,601,170.95	
05/01/2018			177,693.11	177,693.11	
06/30/2018					2,778,864.06
11/01/2018	2,459,095.38	2.420%	177,693.11	2,636,788.49	
05/01/2019			147,938.06	147,938.06	
06/30/2019					2,784,726.55
11/01/2019	2,521,327.25	2.420%	147,938.06	2,669,265.31	
05/01/2020			117,430.00	117,430.00	
06/30/2020					2,786,695.31
11/01/2020	2,577,643.55	2.420%	117,430.00	2,695,073.55	
05/01/2021			86,240.51	86,240.51	
06/30/2021					2,781,314.06
11/01/2021	2,644,114.31	2.420%	86,240.51	2,730,354.82	
05/01/2022			54,246.73	54,246.73	
06/30/2022					2,784,601.55
11/01/2022	2,708,638.88	2.420%	54,246.73	2,762,885.61	
05/01/2023			21,472.20	21,472.20	
06/30/2023					2,784,357.81
11/01/2023	876,794.95	2.420%	21,472.20	898,267.15	
05/01/2024			10,862.98	10,862.98	
06/30/2024					909,130.13
11/01/2024	897,767.15	2.420%	10,862.98	908,630.13	
06/30/2025					908,630.13
	19,429,912.56		2,116,610.44	21,546,523.00	21,546,523.00

AGGREGATE DEBT SERVICE

City of Modesto  
 Wastewater Private Placement  
 \*\* FINAL NUMBERS \*\*

Period Ending	Full Refunding of 2005A	Partial Refunding of 2006A	Unrefunded Bonds	Aggregate Debt Service
06/30/2016	214,347.59	22,060.48	3,485,470.00	3,721,878.07
06/30/2017	2,742,865.19	48,930.14	625,757.50	3,417,552.83
06/30/2018	2,729,933.93	48,930.13	625,757.50	3,404,621.56
06/30/2019	2,735,796.43	48,930.12	625,757.50	3,410,484.05
06/30/2020	2,737,765.19	48,930.12	625,757.50	3,412,452.81
06/30/2021	2,732,383.94	48,930.12	625,757.50	3,407,071.56
06/30/2022	2,735,671.43	48,930.12	625,757.50	3,410,359.05
06/30/2023	2,735,427.69	48,930.12	625,757.50	3,410,115.31
06/30/2024		909,130.13	625,757.50	1,534,887.63
06/30/2025		908,630.13	625,757.50	1,534,387.63
06/30/2026			1,565,597.50	1,565,597.50
06/30/2027			1,569,081.25	1,569,081.25
06/30/2028			1,565,518.75	1,565,518.75
06/30/2029			1,570,043.75	1,570,043.75
06/30/2030			1,567,550.00	1,567,550.00
06/30/2031			1,568,037.50	1,568,037.50
06/30/2032			1,566,400.00	1,566,400.00
06/30/2033			1,567,531.25	1,567,531.25
06/30/2034			1,566,325.00	1,566,325.00
06/30/2035			1,567,675.00	1,567,675.00
06/30/2036			1,566,475.00	1,566,475.00
06/30/2037			1,567,618.75	1,567,618.75
	19,364,191.39	2,182,331.61	27,925,141.25	49,471,664.25

UNREFUNDED BOND DEBT SERVICE

City of Modesto  
Wastewater Private Placement  
\*\* FINAL NUMBERS \*\*

Period Ending	Principal	Coupon	Interest	Debt Service	Other Unrefunded D/S	Total
06/30/2016	2,270,000	5.000%	682,507.50	2,952,507.50	532,962.50	3,485,470.00
06/30/2017			625,757.50	625,757.50		625,757.50
06/30/2018			625,757.50	625,757.50		625,757.50
06/30/2019			625,757.50	625,757.50		625,757.50
06/30/2020			625,757.50	625,757.50		625,757.50
06/30/2021			625,757.50	625,757.50		625,757.50
06/30/2022			625,757.50	625,757.50		625,757.50
06/30/2023			625,757.50	625,757.50		625,757.50
06/30/2024			625,757.50	625,757.50		625,757.50
06/30/2025			625,757.50	625,757.50		625,757.50
06/30/2026	960,000	4.200%	605,597.50	1,565,597.50		1,565,597.50
06/30/2027	1,005,000	4.250%	564,081.25	1,569,081.25		1,569,081.25
06/30/2028	1,045,000	4.250%	520,518.75	1,565,518.75		1,565,518.75
06/30/2029	1,095,000	4.250%	475,043.75	1,570,043.75		1,570,043.75
06/30/2030	1,140,000	4.250%	427,550.00	1,567,550.00		1,567,550.00
06/30/2031	1,190,000	4.250%	378,037.50	1,568,037.50		1,568,037.50
06/30/2032	1,240,000	4.250%	326,400.00	1,566,400.00		1,566,400.00
06/30/2033	1,295,000	4.250%	272,531.25	1,567,531.25		1,567,531.25
06/30/2034	1,350,000	4.250%	216,325.00	1,566,325.00		1,566,325.00
06/30/2035	1,410,000	4.250%	157,675.00	1,567,675.00		1,567,675.00
06/30/2036	1,470,000	4.250%	96,475.00	1,566,475.00		1,566,475.00
06/30/2037	1,535,000	4.250%	32,618.75	1,567,618.75		1,567,618.75
	17,005,000		10,387,178.75	27,392,178.75	532,962.50	27,925,141.25

**ESCROW STATISTICS**

City of Modesto  
Wastewater Private Placement  
\*\* FINAL NUMBERS \*\*

Escrow	Total Escrow Cost	Modified Duration (years)	PV of 1 bp change	Yield to Receipt Date	Yield to Disbursement Date	Perfect Escrow Cost	Value of Negative Arbitrage	Cost of Dead Time
Full Refunding of 2005A, Global Proceeds Escrow:	19,460,000.00					19,458,699.76		1,300.24
Partial Refunding of 2006A, Global Proceeds Escrow:	1,800,000.00					1,799,879.73		120.27
	21,260,000.00		0.00			21,258,579.49	0.00	1,420.51

Delivery date 10/30/2015  
Arbitrage yield 2.419990%

ESCROW REQUIREMENTS

City of Modesto  
Full Refunding of 2005A

Period Ending	Principal Redeemed	Total
11/01/2015	19,460,000.00	19,460,000.00
	19,460,000.00	19,460,000.00

ESCROW REQUIREMENTS

City of Modesto  
Partial Refunding of 2006A

Period Ending	Principal Redeemed	Total
11/01/2015	1,800,000.00	1,800,000.00
	1,800,000.00	1,800,000.00

FORMULA VERIFICATION

City of Modesto  
Full Refunding of 2005A

Component	Formula	Value
DSRFREQ	Maximum annual Unrefunded Debt Service starting 7/1/2016	1,570,043.75
DSRFREQ	125% of average annual Unrefunded Debt Service starting 7/1/2016	1,502,438.81
DSRFREQ	DSRF Requirement (Unrefunded Bonds)	1,502,438.81
RELEASE	+ 3,472,987.15	3,472,987.15
RELEASE	- total Formula DSRFREQ	-1,502,438.81
RELEASE	DSRF Release	1,970,548.34

PROOF OF ARBITRAGE YIELD

City of Modesto  
Wastewater Private Placement  
\*\* FINAL NUMBERS \*\*

Date	Debt Service	Total	Present Value to 10/30/2015 @ 2.4199903599%
05/01/2016	236,408.07	236,408.07	233,566.14
11/01/2016	2,585,128.71	2,585,128.71	2,523,517.63
05/01/2017	206,666.62	206,666.62	199,329.28
11/01/2017	2,601,170.95	2,601,170.95	2,478,827.24
05/01/2018	177,693.11	177,693.11	167,311.02
11/01/2018	2,636,788.49	2,636,788.49	2,453,046.89
05/01/2019	147,938.06	147,938.06	135,983.77
11/01/2019	2,669,265.31	2,669,265.31	2,424,239.31
05/01/2020	117,430.00	117,430.00	105,375.44
11/01/2020	2,695,073.55	2,695,073.55	2,389,502.90
05/01/2021	86,240.51	86,240.51	75,548.33
11/01/2021	2,730,354.82	2,730,354.82	2,363,247.57
05/01/2022	54,246.73	54,246.73	46,391.70
11/01/2022	2,762,885.61	2,762,885.61	2,334,566.38
05/01/2023	21,472.20	21,472.20	17,926.54
11/01/2023	898,267.15	898,267.15	740,972.40
05/01/2024	10,862.98	10,862.98	8,853.64
11/01/2024	908,630.13	908,630.13	731,706.38
	21,546,523.00	21,546,523.00	19,429,912.56

Proceeds Summary

Delivery date	10/30/2015
Par Value	19,429,912.56
Target for yield calculation	19,429,912.56

FORM 8038 STATISTICS

City of Modesto  
Wastewater Private Placement  
\*\* FINAL NUMBERS \*\*

Dated Date 10/30/2015  
Delivery Date 10/30/2015

Bond Component	Date	Principal	Coupon	Price	Issue Price	Redemption at Maturity
Serial Bond:						
	11/01/2016	2,350,026.76	2.420%	100.000	2,350,026.76	2,350,026.76
	11/01/2017	2,394,504.33	2.420%	100.000	2,394,504.33	2,394,504.33
	11/01/2018	2,459,095.38	2.420%	100.000	2,459,095.38	2,459,095.38
	11/01/2019	2,521,327.25	2.420%	100.000	2,521,327.25	2,521,327.25
	11/01/2020	2,577,643.55	2.420%	100.000	2,577,643.55	2,577,643.55
	11/01/2021	2,644,114.31	2.420%	100.000	2,644,114.31	2,644,114.31
	11/01/2022	2,708,638.88	2.420%	100.000	2,708,638.88	2,708,638.88
	11/01/2023	876,794.95	2.420%	100.000	876,794.95	876,794.95
	11/01/2024	897,767.15	2.420%	100.000	897,767.15	897,767.15
		19,429,912.56			19,429,912.56	19,429,912.56

	Maturity Date	Interest Rate	Issue Price	Stated Redemption at Maturity	Weighted Average Maturity	Yield
Final Maturity	11/01/2024	2.420%	897,767.15	897,767.15		
Entire Issue			19,429,912.56	19,429,912.56	4.5015	2.4200%

Proceeds used for accrued interest	0.00
Proceeds used for bond issuance costs (including underwriters' discount)	140,460.90
Proceeds used for credit enhancement	0.00
Proceeds allocated to reasonably required reserve or replacement fund	0.00
Proceeds used to currently refund prior issues	21,260,000.00
Proceeds used to advance refund prior issues	0.00
Remaining weighted average maturity of the bonds to be currently refunded	4.5782
Remaining weighted average maturity of the bonds to be advance refunded	0.0000

FORM 8038 STATISTICS

City of Modesto  
 Wastewater Private Placement  
 \*\* FINAL NUMBERS \*\*

Refunded Bonds

Bond Component	Date	Principal	Coupon	Price	Issue Price
<b>Series 2005 Wastewater Revenue Refunding Bonds:</b>					
SERIAL	11/01/2016	2,385,000.00	4.000%	98.542	2,350,226.70
SERIAL	11/01/2017	2,485,000.00	5.250%	108.872	2,705,469.20
SERIAL	11/01/2018	2,625,000.00	5.250%	108.428	2,846,235.00
SERIAL	11/01/2019	2,765,000.00	5.000%	105.884	2,927,692.60
SERIAL	11/01/2020	2,905,000.00	5.250%	107.635	3,126,796.75
SERIAL	11/01/2021	3,065,000.00	5.250%	107.284	3,288,254.60
SERIAL	11/01/2022	3,230,000.00	5.250%	106.935	3,454,000.50
		<u>19,460,000.00</u>			<u>20,698,675.35</u>
<b>Series 2006, Wastewater Revenue Bonds:</b>					
SERIAL_1	11/01/2023	880,000.00	4.500%	101.087	889,565.60
SERIAL_1	11/01/2024	920,000.00	4.500%	100.911	928,381.20
		<u>1,800,000.00</u>			<u>1,817,946.80</u>
		<u>21,260,000.00</u>			<u>22,516,622.15</u>

	Last Call Date	Issue Date	Remaining Weighted Average Maturity
Series 2005 Wastewater Revenue Refunding Bonds	11/01/2015	04/13/2005	4.2326
Series 2006, Wastewater Revenue Bonds	11/01/2015	12/14/2006	8.5135
All Refunded Issues	11/01/2015		4.5782

**City of Modesto**  
2015 Wastewater Refunding Private Placement



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(As of October 16, 2015)

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**City of Modesto**  
2015 Wastewater Refunding Private Placement



**Distribution List**  
(As of October 16, 2015)

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**City of Modesto**  
2015 Wastewater Refunding Private Placement



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**City of Modesto**  
2015 Wastewater Refunding Private Placement



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(As of October 16, 2015)

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