

NOTE PURCHASE AGREEMENT

dated as of August 1, 2020

between

CITY OF NAPA, CALIFORNIA

and

U.S. BANK NATIONAL ASSOCIATION

Relating to

\$15,000,000

FISCAL YEAR 2020-21 TAX AND REVENUE ANTICIPATION NOTE

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**EXHIBITS**

EXHIBIT A	—	FORM OF COMPLIANCE CERTIFICATE
EXHIBIT B	—	REQUEST FOR ADVANCE
EXHIBIT C	—	FORM OF NOTICE OF REDUCTION OR TERMINATION
EXHIBIT D	—	FORM OF NOTE

**NOTE PURCHASE AGREEMENT**

THIS NOTE PURCHASE AGREEMENT, dated as of August 1, 2020 (as amended, restated, supplemented or otherwise modified from time to time, this “*Agreement*”), between CITY OF NAPA, CALIFORNIA (the “*Issuer*”), a California charter city and municipal corporation organized and existing under the constitution and laws of the State of California, and U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “*Purchaser*”).

**RECITALS**

WHEREAS, the Issuer has issued its hereinafter defined Note pursuant to the hereinafter defined Resolution; and

WHEREAS, the Purchaser has agreed to make Advances (as defined herein) against the Note in accordance with the terms hereof, and as a condition to such purchase and the making of such Advances, the Purchaser has required the Issuer to enter into this Agreement.

NOW, THEREFORE, to induce the Purchaser to make Advances, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Issuer and the Purchaser hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

*Section 1.01. Certain Defined Terms.* In addition to the terms defined in the recitals and elsewhere in this Agreement, the following terms shall have the following meanings:

“*Act*” Article 7.6 (commencing with section 53850) of Chapter 4 of Part 1 of Division 2 of Title 5 of the California Government Code.

“*Advance*” and “*Advances*” means, individually or collectively, as applicable, each Advance made by the Purchaser pursuant to the terms hereof.

“*Advance Date*” means each date on which an Advance occurs.

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

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

*“Anti-Corruption Laws”* means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder, and any other anti-corruption law applicable to the Issuer.

*“Applicable Spread”* means a rate per annum equal to one hundred twenty (120) basis points (1.20%).

*“Available Commitment”* means, on any date, an initial amount equal to \$15,000,000 and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to the principal amount of each Advance pursuant to the terms hereof; (b) downward in an amount equal to each optional or mandatory reduction of the Available Commitment in accordance with the terms hereof; and (c) downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof.

*“Bank Agreement”* means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to make or provide funds to make payment of, or to purchase or provide credit enhancement for bonds or notes of the Issuer.

*“Base Rate”* means, for any day, a fluctuating rate of interest per annum equal to the greatest of (i) the Prime Rate in effect at such time *plus* one and one-half percent (1.50%), (ii) the Federal Funds Rate in effect at such time *plus* three percent (3.00%) and (iii) seven and one half percent (7.50%).

*“Business Day”* means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in New York, New York or the states where the principal corporate office of the Issuer is located are authorized by law to close, (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed or (c) a day on which the principal office of the Purchaser is closed.

*“Change in Law”* means the adoption of or change in any law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) or in the interpretation, promulgation, implementation or administration thereof by any Governmental or quasi-Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, including, notwithstanding the foregoing, all requests, rules, guidelines or directives (x) in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act or (y) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States financial regulatory authorities, in each case of clauses (x) and (y), regardless of the date enacted, adopted, issued, promulgated or implemented, or compliance by the Purchaser with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency.

*“Code”* means the Internal Revenue Code of 1986, as amended, and, where appropriate any statutory predecessor or any successor thereto.

*“Commitment”* means the agreement of the Purchaser pursuant to Section 2.01 hereof to make Advances against the Note under the terms hereof for the account of the Issuer the proceeds of which shall be used for the purpose of (a) providing funds to finance operating and capital cash flow mismatches and (b) paying the costs and expenses of issuance of the Note, including fees for professional services.

*“Commitment Expiration Date”* means the earliest of (i) 2:00 p.m. San Francisco time on May 31, 2021, (ii) the date on which the Commitment and Available Commitment are otherwise terminated or reduced to zero in accordance with Section 2.06 (b) or (c) hereof, and (iii) the date the Commitment terminates by its terms in accordance with Section 7.02(iii) hereof.

*“Commitment Fee”* has the meaning set forth in Section 4.01(d) hereof.

*“Commitment Fee Rate”* means a rate per annum equal to thirty (30) basis points (0.30%).

*“Commitment Reduction Fee”* has the meaning set forth in Section 2.08 hereof.

*“Compliance Certificate”* means a certificate substantially in form of Exhibit A hereto.

*“Controlled Group”* means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Issuer, are treated as a single employer under Section 414 of the Code.

*“Daily Reset LIBOR Rate”* the greater of (a) one quarter percent (0.25%) and (b) the one-month LIBOR rate quoted by the Purchaser from Reuters Screen LIBOR01 Page or any successor thereto that may be designated by the Purchaser as provided in Section 4.09 hereof, which shall be that one-month LIBOR rate in effect and reset each New York Banking Day, adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation, such rate rounded up to the nearest one-sixteenth percent.. The term *“New York Banking Day”* means any day (other than a Saturday or Sunday) on which commercial banks are open for business in New York, New York. The Purchaser’s internal records of applicable interest rates shall be determinative in the absence of manifest error.

*“Debt”* of any Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all Debt of others secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person, (f) all Guarantees by such Person of Debt of other Persons and (g) all obligations of such Person under any Swap Agreement.

*“Default”* means any event or condition which, with notice, the passage of time or any combination of the foregoing, would constitute an Event of Default.

*“Default Rate”* means, for any day, a rate of interest per annum equal to the sum of the Base Rate in effect on such day plus three percent (3.00%).

*“DTC”* means The Depository Trust Company.

*“Effective Date”* means August 6, 2020 subject to the satisfaction or waiver by the Purchaser of the conditions precedent set forth in Article III hereof.

*“EMMA”* means Electronic Municipal Market Access as provided by the Municipal Securities Rulemaking Board.

*“Environmental Laws”* means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (a) the protection of the environment, (b) personal injury or property damage relating to the release or discharge of Hazardous Materials, (c) emissions, discharges or releases of pollutants, contaminants, hazardous substances or wastes into surface water, ground water or land, or (d) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous substances or wastes or the clean-up or other remediation thereof.

*“ERISA”* means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time. References to Sections of ERISA shall be construed also to refer to any successor Sections.

*“Event of Default”* with respect to this Agreement has the meaning set forth in Section 7.01 of this Agreement and, with respect to any Related Document, has the meaning assigned therein.

*“Excess Interest Amount”* has the meaning set forth in Section 4.04(b) hereof.

*“Excluded Taxes”* means, with respect to a Noteholder, Taxes imposed on or measured by its overall net income (however denominated), and franchise Taxes and branch profit Taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which it is incorporated or is organized or in which its principal executive office is located.

*“Federal Funds Rate”* means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided that*: (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one-hundredth of one percent) charged to the Purchaser on such day on such transactions as



determined by the Purchaser. Notwithstanding anything herein to the contrary, if the Federal Funds Rate as determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%).

*“Fiscal Year”* means the twelve month period from July 1 through the following June 30.

*“Fitch”* means Fitch Ratings, Inc., and any successor rating agency.

*“FRB”* means the Board of Governors of the Federal Reserve System of the United States, together with any successors thereof.

*“Generally Accepted Accounting Principles”* or *“GAAP”* means generally accepted accounting principles in effect from time to time in the United States and applicable to entities such as the Issuer.

*“Governmental Approval”* means an authorization, consent, approval, license, or exemption of, registration or filing with, or report to any Governmental Authority.

*“Governmental Authority”* means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervisory Practices or any successor or similar authority to any of the foregoing).

*“Guarantee”* means, as to any Person, any (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the *“primary obligor”*) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as

determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“*Hazardous Material*” means any explosive or radioactive substances or wastes, any hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and any other substances or wastes of any nature regulated pursuant to any Environmental Law.

“*Indemnified Taxes*” means Taxes imposed on or with respect to any payment made by or on account of any obligation of the Issuer under any Related Document, other than Excluded Taxes and Other Taxes.

“*Indemnitor*” has the meaning set forth in Section 8.01 hereof.

“*Index Rate*” means the LIBOR Index Rate or the Default Rate, as applicable.

“*Interest Payment Date*” means the first (1st) Business Day of each calendar month and the Maturity Date.

“*Issuer*” has the meaning set forth in the introductory paragraph hereof.

“*Issuer Rating*” has the meaning set forth in Section 6.21 hereof.

“*Issuer Representative*” means any person authorized from time to time in writing by the Issuer, or its successors and assigns, to perform a designated act or execute a designated document.

“*Laws*” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“*Liabilities*” has the meaning set forth in Section 8.01 hereof.

“*LIBOR Index Rate*” means a per annum rate of interest equal to the product of the sum of (i) the Applicable Spread plus (ii) the Daily Reset LIBOR Rate as determined on such date; *provided, however*, that immediately and upon the occurrence of an Event of Default (and without any notice given with respect thereto) and during the continuation of such Event of Default, “*LIBOR Index Rate*” shall mean the Default Rate.

“*Lien*” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever

(including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

*“Majority Noteholder”* means the Noteholders with a majority of the aggregate ownership interest in Advances evidenced by the Note from time to time. As of the Effective Date, U.S. Bank National Association, shall be the Majority Noteholder.

*“Margin Stock”* has the meaning ascribed to such term in Regulation U promulgated by the FRB, as now and hereafter from time to time in effect.

*“Material Adverse Effect”* means a material adverse effect on (a) the business, Property, liabilities (actual and contingent), operations or condition (financial or otherwise), results of operations, or prospects of the Issuer, (b) the ability of the Issuer to perform its obligations under any Related Documents to which it is a party, or (c) the legality, validity, binding effect or enforceability of any of the Related Documents or the rights or remedies of the Purchaser under the Related Documents. Any material adverse effects on any discrete enterprise-revenue fund of the Issuer shall not constitute a Material Adverse Effect.

*“Maturity Date”* means June 30, 2021, or the date on which the Note is otherwise accelerated as a result of the Purchaser giving notice to the Paying Agent and the Issuer of the occurrence and continuance of an Event of Default hereunder and directing the Paying Agent or the Issuer, as applicable, to cause a mandatory purchase pursuant to Section 7.02(ii) hereof.

*“Maximum Interest Rate”* means the lesser of (i) twelve percent (12%) and (ii) the maximum rate of interest on the relevant obligation permitted by applicable law.

*“Moody’s”* means Moody’s Investors Service, Inc. and any successor rating agency.

*“Non-Purchaser Transferee”* has the meaning set forth in Section 9.13(c) hereof.

*“Note”* means that certain Fiscal Year 2020-21 Tax and Revenue Anticipation Note issued pursuant to the Resolution, as the same may be amended, restated or otherwise modified from time to time, substantially in the form attached hereto as Exhibit D.

*“Note Counsel”* means Jones Hall, A Professional Law Corporation, or any other firm of attorneys nationally recognized on the subject of tax-exempt municipal finance selected by the Issuer.

*“Noteholder”* means the Purchaser and each Purchaser Transferee or Non-Purchaser Transferee pursuant to Section 9.13 hereof so long as such Purchaser Transferee or Non-Purchaser Transferee has an ownership interest in Advances evidenced by the Note.

*“Obligation Rating”* has the meaning set forth in Section 6.21 hereof.

*“Obligations”* means all amounts payable by the Issuer pursuant to this Agreement and the Related Documents.

*“OFAC”* means the U.S. Department of the Treasury’s Office of Foreign Assets Control, and any successor thereto.

*“Other Taxes”* means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Related Document.

*“Patriot Act”* means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended from time to time, and any successor statute.

*“Paying Agent”* means the City of Napa, California.

*“PBGC”* means the Pension Benefit Guaranty Corporation or any successor thereto.

*“Person”* means any individual, corporation, not for profit corporation, partnership, limited liability company, joint venture, association, professional association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

*“Plan”* means, with respect to the Issuer at any time, an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained, or has within the preceding five plan years been maintained, by a member of the Controlled Group for employees of a member of the Controlled Group of which the Issuer is a part, (ii) is maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which a member of the Controlled Group of which the Issuer is a part is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions.

*“Pledged Revenues”* has the meaning set forth in the Resolution.

*“Prime Rate”* means on any day, the rate of interest per annum then most recently established by the Purchaser as its “prime rate.” Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by the Purchaser to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that the Purchaser may make various business or other loans at rates of interest having no relationship to such rate. If the Purchaser ceases to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported. Notwithstanding

anything herein to the contrary, if the Prime Rate determined as provided above would be less than zero percent (0.0%), then the Prime Rate shall be deemed to be zero percent (0.0%).

*“Property”* means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed, and whether tangible or intangible, whether now owned or hereafter acquired.

*“Purchaser”* means, initially, U.S. Bank National Association, a national banking association, and its successors and assigns, and upon the receipt from time to time by the Issuer of a notice described in Section 9.13(a) from time to time means the Person designated in such notice as the Purchaser, as more fully provided in Section 9.13(a) hereof.

*“Purchaser Letter”* has the meaning set forth in Section 9.13(c) hereof.

*“Purchaser Transferee”* has the meaning set forth in Section 9.13(b) hereof.

*“Rating Agency”* means any of S&P, Moody’s and Fitch, as applicable.

*“Rating Documentation”* has the meaning set forth in Section 3.01(d)(iii) hereof.

*“Related Documents”* means this Agreement, the Resolution and the Note, and any other documents related to any of the foregoing or executed in connection therewith, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing.

*“Request for Advance”* means the request for an Advance against the Note by the Purchaser, in the form of Exhibit B hereto.

*“Resolution”* means that certain Resolution No. [\_\_-\_\_], adopted [August \_\_, 2020], as amended, supplemented or otherwise modified from time to time.

*“Revenues”* has the meaning set forth in the Resolution.

*“Risk-Based Capital Guidelines”* means (i) the risk-based capital guidelines in effect in the United States, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations adopted prior to the Effective Date.

*“S&P”* means S&P Global Ratings and its successors and assigns.

*“Sanctions”* means sanctions administered or enforced from time to time by the U.S. government, including those administered by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

*“State”* means the State of California.

“*Swap Agreement*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Taxes*” means any and all present or future taxes, duties, levies, imposts, fees, assessments, charges or withholdings, and any and all liabilities with respect to the foregoing, including interest, additions to tax and penalties applicable thereto.

“*Unutilized Amount*” means, as of any date, an amount equal to the difference between (i) the Available Commitment and (ii) the aggregate amount of Advances made by the Purchaser pursuant to the terms hereof.

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

*Section 1.03. Construction.* Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, to the singular include the plural and to the part include the whole. The word “including” shall be deemed to mean “including but not limited to,” and “or” has the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The Section headings contained in this Agreement and the table of contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection and exhibit references are to this Agreement unless otherwise specified.

*Section 1.04. Accounting Terms and Determinations.* Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP. If, after the Effective Date, there shall occur any change in GAAP from those used in the preparation of the financial statements referred to in Section 6.05 hereof and such change shall result in a change in the method of calculation of any financial covenant, standard or term found in this Agreement including, without limitation, a recharacterization of operating leases to the effect that certain operating leases are to be treated as capital leases, either the Issuer or the

Purchaser may by notice to the other party hereto, require that the Purchaser and the Issuer negotiate in good faith to amend such covenants, standards, and terms so as equitably to reflect such change in accounting principles, with the desired result being that the criteria for evaluating the financial condition of the Issuer shall be the same as if such change had not been made. No delay by the Issuer or the Purchaser in requiring such negotiation shall limit their right to so require such a negotiation at any time after such a change in accounting principles. Until any such covenant, standard, or term is amended in accordance with this Section 1.04, financial covenants shall be computed and determined in accordance with GAAP in effect prior to such change in accounting principles.

*Section 1.05. Relation to Other Documents; Acknowledgment of Different Provisions of Related Documents; Incorporation by Reference.* (a) Nothing in this Agreement shall be deemed to amend, or relieve the Issuer of its obligations under, any Related Document to which it is a party. Conversely, to the extent that the provisions of any Related Document allow the Issuer to take certain actions, or not to take certain actions, with regard for example to permitted liens, transfers of assets, maintenance of financial ratios and similar matters, the Issuer nevertheless shall be fully bound by the provisions of this Agreement.

(b) Except as provided in subsection (c) of this Section 1.05, all references to other documents shall be deemed to include all amendments, modifications and supplements thereto to the extent such amendment, modification or supplement is made in accordance with the provisions of such document and this Agreement.

(c) All provisions of this Agreement making reference to specific Sections of any Related Document shall be deemed to incorporate such Sections into this Agreement by reference as though specifically set forth herein (with such changes and modifications as may be herein provided) and shall continue in full force and effect with respect to this Agreement notwithstanding payment of all amounts due under or secured by the Related Documents, the termination or defeasance thereof or any amendment thereto or any waiver given in connection therewith, so long as this Agreement is in effect and until all Obligations are paid in full. No amendment, modification, consent, waiver or termination with respect to any of such Sections shall be effective as to this Agreement until specifically agreed to in writing by the parties hereto with specific reference to this Agreement.

## **ARTICLE II**

### **ISSUANCE OF NOTE AND ADVANCES**

*Section 2.01. Issuance of Note; Commitment to Make Advances.* (a) From the Effective Date to but excluding the Commitment Expiration Date, and upon and subject to the terms and conditions and on the basis of the representations and agreements contained herein, the Purchaser hereby agrees, when requested by the Issuer in accordance with this Agreement, to make Advances from time to time (but in no event more than two (2) per calendar month) in an aggregate principal amount not to exceed the Available Commitment in effect at such time, and the Issuer hereby agrees to issue the Note in an aggregate principal amount equal to \$15,000,000 or such lesser amount as is advanced thereunder, to the Purchaser, under the terms and conditions herein and in

the Resolution to evidence and secure the Advances. Amounts borrowed under an Advance may not be reborrowed. The Note is authorized pursuant to the Resolution, and is to be issued only for the purposes authorized under the Resolution. The Note is issued as “Fiscal Year 2020-21 Tax and Revenue Anticipation Note” under the Resolution and, pursuant to the Resolution, the principal of and interest on the Note is payable from and secured by a lien on and pledge of Pledged Revenues and from other moneys lawfully available therefor described in the Resolution, subject to the terms and conditions hereof and of the Resolution. The Note is authorized under the Act. The Note shall contain a schedule on which each Advance shall be recorded by the Purchaser (which may be done electronically rather than physically); *provided, however*, that the failure to do so or any other act or omission of the Purchaser shall not relieve the Issuer from its obligations as provided herein. Such schedule shall be conclusive as to such amounts absent manifest error.

(b) Each Advance shall (i) be evidenced and secured by the Note, which will be delivered to the Purchaser on the Effective Date, (ii) be secured by and payable from Pledged Revenues and from other moneys lawfully available therefor described in the Resolution, each as set forth in Section 5.17 hereof and in the Resolution, (iii) be subject to mandatory prepayment as provided herein; (iv) to the extent not required to be prepaid, mature on the Maturity Date, and (v) be in a minimum principal amount of \$250,000. Interest on each Advance shall be calculated on the basis of a year of 360 days and actual days elapsed from the Advance Date.

*Section 2.02. Closing.* At such date and time as shall have been mutually agreed upon by the Issuer and the Purchaser, the certificates, opinions and other documents required by Article III below shall be executed and delivered (all of the foregoing actions are herein referred to collectively as the “*Closing*”). Assuming the Closing is completed in accordance with the provisions of this Agreement then, subject to the provisions of this Agreement and the conditions set forth in Article III hereof, the Purchaser shall make Advances upon the request of the Issuer pursuant to Section 2.03 hereof and each Advance must be in a minimum principal amount of \$250,000 or such greater amount which is an integral multiple of \$100,000.

*Section 2.03. Method of Requesting Advances.* (a) Each Advance shall be made upon the Issuer’s irrevocable notice to the Purchaser in the form of a Request for Advance, with blanks appropriately completed. Each Request for Advance shall be signed by an Issuer Representative and shall specify: (1) the Advance Date, which shall be a Business Day and shall be at least *three* (3) Business Days after the date of the Request for Advance; and (2) the principal amount of the Advance, which shall not exceed the Available Commitment as of the proposed Advance Date. Each Request for Advance must be received by the Purchaser not later than 11:00 a.m. San Francisco time three Business Days immediately prior to the requested Advance Date.

(b) Upon receipt of a Request for Advance by the Purchaser, the Purchaser, subject to the terms and conditions of this Agreement, shall make such Advance by 1:00 p.m. San Francisco time on the proposed Advance Date for the account of the Issuer in an amount equal to the amount of the requested Advance. Notwithstanding the foregoing, in the event such Request for Advance is received by the Purchaser after 11:00 a.m. San Francisco time on the Business Day which is three (3) Business Days immediately prior to the proposed Advance Date, the Purchaser shall make the related Advance by 1:00 p.m. San Francisco time on the fourth Business Day after receipt of the related Request for Advance.



*Section 2.04. Interest Rate.* (a) Each Advance shall bear interest at a rate per annum equal to the lesser of (1) the Maximum Interest Rate and (2) the Index Rate. The Index Rate shall apply equally to all outstanding Advances, regardless of when made.

(b) Any principal of, and, to the extent permitted by applicable law, interest on, the Note and any other sum payable hereunder, which is not paid when due shall bear interest, from the date due and payable until paid, payable on demand, at a rate per annum equal to the lesser of (i) the Default Rate and (ii) the Maximum Interest Rate.

*Section 2.05. Payment.* (a) Accrued but unpaid interest on the Advances shall be due and payable on each Interest Payment Date. All outstanding principal of Advances not subject to earlier required prepayment shall be due and payable on the Maturity Date. Interest due and payable on the Advances shall be equal to the amount accrued to, but excluding the related payment date. If the payment date for the principal of or interest on the Advances is a day other than a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended period of time shall be included in the computation of interest; *provided, however*, the payment of interest on the Advances on such extended date shall have the same force and effect as if made on the original payment date. In the event that any principal of or interest on any Advance remains outstanding on the Maturity Date, the Issuer staff shall request the City Council of the Issuer approve a refinancing of the Note with a facility secured by the taxes, income, revenue, cash receipts and other moneys that are received by the Issuer for the General Fund for the fiscal year ending June 30, 2022 and that are generally available for the payment of current expenses and other obligations of the Issuer. Once repaid, Advances may not be reborrowed.

(b) The Issuer may prepay any Advance, in whole or in part, provided at least three (3) Business Days' prior written notice is given by the Issuer to the Purchaser. Each such notice shall specify the date and amount of such prepayment. Each such notice of optional prepayment shall be irrevocable and shall bind the Issuer to make such prepayment in accordance with such notice. Any prepayment of Advances shall be in a principal amount of \$1,000,000 or an integral multiple thereof or, if less, the entire principal amount thereof then outstanding. All prepayments of principal shall include accrued interest to the date of prepayment, and all other amounts due and payable at such time pursuant to this Agreement. The Issuer may not prepay any principal of or interest on Note, except as provided in this Section 2.05 and Section 2.06 hereof.

(c) The Issuer shall repay outstanding Advances under the Note such that the outstanding principal of the Note does not exceed the following amounts on the following dates:

<b>PRINCIPAL PAYMENT DATE</b>	<b>PRINCIPAL AMOUNT</b>
February 28, 2021	\$10,000,000
April 30, 2021	\$5,000,000
June 30, 2021	\$0

*Section 2.06. Reduction and Termination.* (a) The Available Commitment may be optionally reduced in part from time to time as requested by the Issuer within ten (10) days of the Issuer's written notice to the Purchaser requesting such reduction in the form of Exhibit C hereto;

*provided*, that (i) each such reduction amount shall be in an amount equal to \$1,000,000 or an integral multiple thereof, (ii) any reduction in the Available Commitment shall not be effective until the Purchaser delivers to the Issuer a notice in the form attached hereto as Exhibit C reflecting such reduction, (iii) after giving effect to such reduction the Available Commitment shall not be less than the aggregate principal amount of all Advances then outstanding, and (iv) the Issuer shall have paid any Commitment Reduction Fee Fee required pursuant to Section 2.08 hereof.

(b) The Issuer may at any time and at its sole option terminate the Available Commitment in whole upon three (3) Business Days' prior written notice to the Purchaser in the form of Exhibit C hereto. As a condition to any such termination, the Issuer shall pay or cause to be paid all Obligations owed to the Purchaser, including, without limitation, any Commitment Reduction Fee owed pursuant to Section 2.08 hereof.

(c) The Available Commitment shall be automatically and permanently reduced to the following amounts on the following dates:

DATE	AVAILABLE COMMITMENT
February 28, 2021	\$10,000,000
April 30, 2021	\$5,000,000
June 30, 2021	\$0

*Section 2.07. Determination Time.* Each Advance shall bear interest at the Index Rate, subject to adjustment as set forth herein. The Purchaser shall determine the LIBOR Index Rate on each day with respect to all Advances and interest at such rate shall accrue each day with respect to all Advances.

*Section 2.08. Commitment Reduction Fee.* (a) The Issuer shall be required, upon any reduction of the Available Commitment prior to its scheduled reduction in accordance with Section 2.06(c) hereof, to pay the Purchaser a Commitment reduction fee ("*Commitment Reduction Fee*") equal to the greater of zero, or that amount, calculated on any date of such reduction through the Maturity Date, which is derived by multiplying: (a) the amount of the reduction of the Available Commitment by (b) the Commitment Fee Rate; *provided*, however, that the Commitment Reduction Fee shall not in any event exceed the maximum prepayment fee permitted by applicable law.

(b) The Issuer hereby acknowledges that the Issuer shall be required to pay the Commitment Reduction Fee with respect to any reduction of the Available Commitment before its scheduled reduction in accordance with Section 2.06(c), whether voluntarily, involuntarily, or otherwise, including without limitation any principal payment made following default, demand for payment, acceleration, collection proceedings, foreclosure, sale or other disposition of collateral, bankruptcy or other insolvency proceedings, eminent domain, condemnation, application of insurance proceeds or otherwise. Such Commitment Reduction Fee shall at all times be an

Obligation as well as an undertaking by the Issuer to the Purchaser whether arising out of acceleration or a voluntary or mandated reduction.

**ARTICLE III**

**CONDITIONS PRECEDENT TO PURCHASE OF NOTE**

*Section 3.01. Documentary Requirements.* The obligation of the Purchaser to enter into this Agreement to purchase the Note is subject to the condition precedent that the Purchaser shall have received, on or before the Effective Date, the items listed below in this Section, each dated and in form and substance as is satisfactory to the Purchaser.

(a) The following Issuer documents:

(i) copies of the resolutions of the governing body of the Issuer approving the execution and delivery of the Related Documents to which the Issuer is a party, and the other matters contemplated hereby, certified by an Issuer Representative as being true and complete and in full force and effect on the Effective Date; and

(ii) a certificate dated the Effective Date and executed by an Issuer Representative certifying the names and signatures of the persons authorized to sign, on behalf of the Issuer, the Related Documents to which it is a party and the other documents to be delivered by it hereunder or thereunder.

(b) The following financing documents:

(i) an executed original or certified copy, as applicable, of each of the Related Documents;

(ii) an executed Request for Advance relating to the initial Advance to be made on the Effective Date;

(iii) one fully registered Note in certificated form, executed by the Issuer, in the principal amount equal to the Commitment, issued to and registered in the name of the Purchaser, or as otherwise directed by the Purchaser.

(c) From external counsel to the Issuer, opinions as to the due authorization, execution, delivery and enforceability of the Related Documents to which the Issuer is a party, and the validity and priority of the security for the Note, and such other customary matters as the Purchaser may reasonably request dated the Effective Date and addressed to the Purchaser;

(d) The following documents and other information:

(i) a certificate dated the Effective Date and executed by an Issuer Representative certifying (A) that there has been no event or circumstance since June 30, 2019 that has had or could be reasonably expected to have, either individually or in the

aggregate, a Material Adverse Effect, (B) that the representations and warranties contained in Article V hereof and the other Related Documents are true and correct in all material respects on the Effective Date, (C) no event has occurred and is continuing, or would result from entry into this Agreement, which would constitute a Default or Event of Default and (D) since the dated date of the Rating Documentation, if any, no Issuer Rating or Obligation Rating, if any, has been withdrawn, suspended or reduced;

(ii) true and correct copies of all Governmental Approvals, if any, necessary for the Issuer to execute, deliver and perform the Related Documents to which it is a party; and

(iii) Evidence that the Issuer Rating, if any, and each Obligation Rating, if any, is “A-” by Fitch, “A3” by Moody’s and “A-” by S&P (the “*Rating Documentation*”).

*Section 3.02. Litigation.* The Purchaser shall have received a written description of all actions, suits or proceedings pending or threatened against the Issuer in any court or before any arbitrator of any kind or before or by any governmental or non-governmental body which could reasonably be expected to result in a Material Adverse Effect, if any, and such other statements, certificates, agreements, documents and information with respect thereto as the Purchaser may reasonably request.

*Section 3.03. Other Matters.* All other legal matters pertaining to the execution and delivery of this Agreement and the Related Documents shall be satisfactory to the Purchaser and its counsel, and the Purchaser shall have received such other statements, certificates, agreements, documents and information with respect to the Issuer and the other parties to the Related Documents and matters contemplated by this Agreement as the Purchaser may reasonably request.

*Section 3.04. Payment of Fees and Expenses.* On or prior to the Effective Date, (i) the Purchaser shall have received reimbursement of the Purchaser’s fees and expenses and any other fees incurred in connection with the transaction contemplated by the Related Documents as documented in invoices or receipts provided to the Issuer, including, without limitation, any fee payable to the California Debt and Investment Advisory Commission by the Purchaser with respect to the Note and (ii) Chapman and Cutler LLP, as counsel to the Purchaser, shall have received payment of its legal fees and expenses incurred in connection with the preparation, review, negotiation, execution and delivery of the Related Documents (in an amount equal to \$25,000, plus disbursements).

*Section 3.05. No Note Rating; DTC; Offering Document; CUSIP.* The Note shall not be (i) assigned a specific rating by any Rating Agency, (ii) registered with DTC or any other securities depository, (iii) issued pursuant to any type of official statement, private placement memorandum or other offering document, (iv) assigned a CUSIP number by Standard & Poor’s CUSIP Service or (v) placed or offered by a broker-dealer in the capacity of an underwriter or a placement agent.

*Section 3.06. Conditions Precedent to Advances.* The obligation of the Purchaser to make an Advance (other than the initial Advance) is subject to the satisfaction of the following conditions precedent on the Advance Date:

(a) the representations of the Issuer set forth in Article V of this Agreement shall be true and correct in all material respects on and as of such Advance Date, and shall be deemed to have been made on such Advance Date;

(b) no Default or Event of Default shall have occurred and be continuing on such Advance Date;

(c) such Advance shall not violate any order, judgment or decree of any court or authority of competent jurisdiction entered against the Issuer or any provision of law applicable to the Issuer;

(d) after giving effect to such Advance, the aggregate principal amount of all Advances shall not exceed the Available Commitment; and

(e) the Purchaser shall have received a Request for Advance as required under, and in strict conformity with, Section 2.03 hereof.

#### **ARTICLE IV**

##### **THE ISSUER'S OBLIGATIONS**

*Section 4.01. Payment Obligations.* (a) The Issuer hereby agrees to make prompt and full payment of all payment obligations owed to the Purchaser under the Related Documents and to pay any other Obligations owing to the Purchaser whether now existing or hereafter arising, with interest thereon at the rate or rates provided in such Related Documents with respect to such Obligations.

(b) The Issuer shall repay the Note each date as required by Section 2.05(c) hereof and on the Maturity Date in an amount equal to 100% of the outstanding principal amount of the Note and accrued interest thereon, if any.

(c) The Issuer shall pay within thirty (30) days after demand:

(i) if an Event of Default shall have occurred, all costs and expenses of the Purchaser in connection with the enforcement (whether by means of legal proceedings or otherwise) of any of its rights under this Agreement, the other Related Documents and such other documents which may be delivered in connection therewith;

(ii) a fee for each amendment to this Agreement or any other Related Document or any consent or waiver by the Purchaser with respect to any Related Document, in each case, in a minimum amount of \$2,500 plus the reasonable fees and expenses of counsel to the Purchaser;

(iii) the reasonable fees and out-of-pocket expenses for counsel or other reasonably required consultants to the Purchaser in connection with advising the Purchaser as to its rights and responsibilities under this Agreement and the other Related Documents

or in connection with responding to requests from the Issuer for approvals, consents and waivers, including without limitation, any fee payable to the California Debt and Investment Advisory Commission by the Bank with respect to the Note (the “*CDIAC Fee*”), which CDIAC Fee shall be reimbursed within thirty (30) days of the Effective Date; and

(iv) any amounts advanced by or on behalf of the Purchaser to the extent required to cure any Default, Event of Default or event of nonperformance hereunder or any Related Document, together with interest at the Default Rate.

In addition, if at any time any Governmental Authority shall require revenue or other documentary stamps or any other tax in connection with the execution or delivery of this Agreement or other Related Documents, then, if the Issuer lawfully may pay for such stamps, taxes or fees, the Issuer shall pay, when due and payable, for all such stamps, taxes and fees, including interest and penalties thereon, and the Issuer agrees to save the Purchaser harmless from and against any and all liabilities with respect to or resulting from any delay of the Issuer in paying, or omission of the Issuer to pay, such stamps, taxes and fees hereunder.

(d) The Issuer shall pay or cause to be paid to the Purchaser on September 1, 2020, for the period commencing on the Effective Date, to and including August 31, 2020, and in arrears on the first Business Day of each month to occur thereafter to the Maturity Date, and on the Maturity Date, a non-refundable commitment fee (the “*Commitment Fee*”) in an amount equal to the product of (x) the Commitment Fee Rate and (y) the daily average Unutilized Amount during such one-month period. The Commitment Fee shall be payable monthly in arrears, together with interest on the Commitment Fee from the date payment is due until payment in full at the Default Rate.

*Section 4.02. Increased Payments.*

(a) *Increased Costs.* If, on or after the Effective Date, there occurs any Change in Law which:

(i) subjects the Purchaser or any other Noteholder, or the parent or holding company, if any, of any of the foregoing to any Taxes (other than Excluded Taxes), or changes the basis of taxation of payments (other than with respect to Excluded Taxes) to the Purchaser or any other Noteholder, in each case hereunder or with respect to the Note, or

(ii) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by the Purchaser or any other Noteholder, or

(iii) imposes any other condition the result of which is to increase the cost to the Purchaser or any other Noteholder, or the parent or holding company, if any, of any of the foregoing, with respect to this Agreement, the Note or its making, maintenance or funding of the Advances or any security therefor, or reduces any amount receivable by the Purchaser or any other Noteholder with respect to this Agreement, the Note, or the making,

maintenance of funding of any Advance, or requires the Purchaser or any other Noteholder to make any payment calculated by reference to any amount received with respect to this Agreement, the Note, or the making, maintenance or funding of any Advance, by an amount deemed material by the Purchaser or any other Noteholders, as the case may be,

and the result of any of the foregoing is to increase the cost to such Purchaser or any other Noteholder, or the parent or holding company, if any, with respect to this Agreement, the Note, or the making, maintenance or funding of any Advance or of participating the same or to reduce the amount received by the Purchaser or any other Noteholder, as the case may be, in connection with the same, then, within fifteen (15) days of demand by the Purchaser or any other Noteholder, as the case may be, the Issuer shall pay the Purchaser or such other Noteholder such additional amount or amounts as will compensate the Purchaser or such other Noteholder, or the parent or holding company, if any, of any of the foregoing, for such increased cost or reduction in amount received.

(b) If the Purchaser or any other Noteholder determines the amount of capital or liquidity required or expected to be maintained by the Purchaser or such other Noteholder, or any parent, holding company or entity controlling the Purchaser or such other Noteholder is increased as a result of (i) a Change in Law or (ii) any change on or after the Effective Date in the Risk-Based Capital Guidelines, then, within fifteen (15) days of demand by the Purchaser or any other Noteholder, the Issuer shall, to the extent permitted by law, pay the Purchaser or such other Noteholder the amount necessary to compensate for any shortfall in the rate of return on the portion of such increased capital or liquidity which the Purchaser or such other Noteholder determines is attributable to this Agreement or the Note, as the case may be, hereunder (after taking into account the Purchaser or such other Noteholder's policies as to capital adequacy and liquidity).

(c) In connection with any costs imposed upon the Issuer by the Purchaser or any other Noteholder, or any parent, holding company or entity controlling any of the foregoing, pursuant to this Section 4.02, the Purchaser or such other Noteholder shall (i) promptly notify the Issuer of such costs and (ii) provide the Issuer with a certificate as to such increased cost, increased capital, increased liquidity or reduction in return incurred by the Purchaser or such other Noteholder as a result of any event mentioned in paragraph (a) or (b) of this Section 4.02 setting forth, in reasonable detail, the basis for such calculation and the amount of such calculation submitted by the Purchaser or such other Noteholder to the Issuer which calculation shall be conclusive (absent manifest error) as to the amount thereof. In making the determinations contemplated by the above referenced certificate, the Purchaser or such other Noteholder may make such reasonable estimates, assumptions, allocations and the like that the Purchaser or such other Noteholder in good faith determines to be appropriate.

(d) Failure or delay on the part of any Noteholder to demand compensation pursuant to this Section 4.02 shall not constitute a waiver of such Noteholders right to demand such compensation.

(e) Without prejudice to the survival of any other agreement of the Issuer hereunder, the agreements and obligations of the Issuer contained in this Section shall survive the termination of

this Agreement and the payment in full of the Note and the obligations of the Issuer thereunder and hereunder.

*Section 4.03. Default Rate.* Upon the occurrence and during the continuance of an Event of Default and, for the avoidance of doubt, after the Maturity Date, the Obligations shall bear interest at the Default Rate, which shall be payable by the Issuer to each Noteholder (or, if applicable, the Purchaser) upon demand therefore and be calculated on the basis of a 360-day year and actual days elapsed.

*Section 4.04. Maximum Interest Rate.* (a) If the amount of interest payable for any period in accordance with the terms hereof or the Note exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the Maximum Interest Rate, then interest for such period shall be payable in an amount calculated at the Maximum Interest Rate.

(b) Any interest that would have been due and payable for any period but for the operation of the immediately preceding paragraph (a) shall accrue and be payable as provided in this paragraph (b) and shall, less interest actually paid to each Noteholder for such period, constitute the “*Excess Interest Amount.*” If there is any accrued and unpaid Excess Interest Amount as of any date, then the principal amount with respect to which interest is payable shall bear interest at the Maximum Interest Rate until payment to each Noteholder of the entire Excess Interest Amount.

(c) Notwithstanding the foregoing, on the date on which no principal amount with respect to the Note remains unpaid, the Issuer shall pay to each Noteholder a fee equal to any accrued and unpaid Excess Interest Amount.

*Section 4.05. Taxes.* (a) Any and all payments by or on account of any obligation of the Issuer under any Related Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law requires the deduction or withholding of any Tax from any such payment, then the Issuer shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Tax is an Indemnified Tax or Other Tax, then the sum payable by the Issuer shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 4.05) the Noteholder receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Issuer shall timely pay to the relevant Governmental Authority in accordance with applicable Law or at the option of the applicable Noteholder timely reimburse it for the payment of, any Other Taxes.

(c) The Issuer shall indemnify each Noteholder, within fifteen (15) days after demand therefor, for the full amount of any Indemnified Taxes and Other Taxes (including Indemnified Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this Section 4.05) payable or paid by such Noteholder or required to be withheld or deducted from a



payment to such Noteholder and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes and Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Issuer by a Noteholder shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Taxes by the Issuer to a Governmental Authority pursuant to this Section 4.05, the Issuer shall deliver to the applicable Noteholder the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to such Noteholder.

(e) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 4.05 (including by the payment of additional amounts pursuant to this Section 4.05), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 4.05 with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (e) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph (e) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(f) *Survival.* The obligations of the Issuer under this Section 4.05 shall survive the termination of this Agreement and the redemption, prepayment or other payment in full of the Note.

*Section 4.06. Obligations Absolute.* The payment obligations of the Issuer under this Agreement and the other Related Documents shall be unconditional and irrevocable, without setoff or counterclaim, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including without limitation the following:

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

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

(c) the existence of any claim, set-off, defense or other right which the Issuer may have at any time against the Purchaser, any other Noteholder or any other person or entity, whether in connection with this Agreement, the other Related Documents, the transactions contemplated herein or therein or any unrelated transaction; or

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

Notwithstanding this Section, the Purchaser acknowledges the Issuer may have the right to bring a collateral action with respect to one or more of the foregoing circumstances. The Issuer's payment obligations shall remain in full force and effect pending the final disposition of any such action. All Commitment Fees and all other fees payable pursuant to this Agreement shall be deemed to be fully earned when due and non-refundable when paid.

*Section 4.08. Illegality.* If the Purchaser determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Purchaser or its applicable lending office to make, maintain, or fund any Advance whose interest is determined by reference to LIBOR, or to determine or charge interest rates based upon LIBOR, or any Governmental Authority has imposed material restrictions on the authority of the Purchaser to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, upon notice thereof by the Purchaser to the Issuer, any obligation of the Purchaser to make Advances with reference to LIBOR shall be suspended until the Purchaser notifies the Issuer that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice all outstanding Advances shall bear interest at the Prime Rate until a successor rate is determined in accordance with Section 4.09 hereof.

*Section 4.09. LIBOR Unavailability.* If the Purchaser has determined that (a) LIBOR is no longer available, either because (i) LIBOR is not being quoted or published, (ii) any relevant agency or authority has announced that LIBOR will no longer be published or is no longer representative, or (iii) any similar circumstance exists such that LIBOR has become unavailable or ceased to exist, or (b) similar loans are being documented with a replacement rate to LIBOR, the Purchaser may, in its discretion, replace the Daily Reset LIBOR Rate with a replacement rate (which may include a successor index and a spread adjustment), taking into consideration any selection or recommendation of a replacement rate by any relevant agency or authority and evolving or prevailing market conventions. In connection with the selection and implementation of any such replacement rate, the Purchaser may make any technical, administrative or operational changes that the Purchaser decides may be appropriate to reflect the adoption and implementation of such replacement rate. The Purchaser does not warrant or accept any responsibility for the administration or submission of, or any other matter related to, the Daily Reset LIBOR Rate or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation whether any such alternative, successor or replacement rate will have the same value as, or be economically equivalent to, the Daily Reset LIBOR Rate. The Purchaser's internal records of applicable interest rates shall be determinative in the absence of manifest error.

## ARTICLE V

## REPRESENTATIONS AND WARRANTIES

The Issuer makes the following representations and warranties to each Noteholder:

*Section 5.01. Existence and Power.* The Issuer is a California charter city and municipal corporation, validly existing and in good standing under the constitution and laws of the State and has the power and authority to own its properties and to carry on its businesses as now being conducted and as currently contemplated to be conducted hereafter and is duly qualified to do business in each jurisdiction in which the character of the properties owned or leased by it or in which the transactions of any material portion of its business (as now conducted and as currently contemplated to be conducted) makes such qualification necessary.

*Section 5.02. Due Authorization.* (a) The Issuer has the corporate power, and has taken all necessary corporate action to authorize the Related Documents to which it is a party, and to execute, deliver and perform its obligations under this Agreement and each of the other Related Documents to which it is a party in accordance with their respective terms.

(b) The Issuer is duly authorized and licensed to own its Property and to operate its business under the laws, rulings, regulations and ordinances of all Governmental Authorities having the jurisdiction to license or regulate such Property or business activity and the departments, agencies and political subdivisions thereof, and the Issuer has obtained all requisite approvals of all such governing bodies required to be obtained for such purposes. All Governmental Approvals necessary for the Issuer to enter into this Agreement and the other Related Documents and to perform the transactions contemplated hereby and thereby and to conduct its business activities and own its Property have been obtained and remain in full force and effect and are subject to no further administrative or judicial review. No other Governmental Approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Issuer of this Agreement or the due execution, delivery or performance by the Issuer of the Related Documents.

*Section 5.03. Valid and Binding Obligations.* This Agreement has been duly executed and delivered by one or more duly authorized officers of the Issuer, and each of the Related Documents to which the Issuer is a party, when executed and delivered by the Issuer will be, a legal, valid and binding obligation of the Issuer enforceable in accordance with its terms, except as such enforceability may be limited by (a) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

*Section 5.04. Noncontravention; Compliance with Law .* (a) The execution, delivery and performance of this Agreement and each of the other Related Documents in accordance with their respective terms do not and will not (i) contravene the Issuer's authorizing legislation, (ii) require any consent or approval of any creditor of the Issuer, (iii) violate any Laws (including, without limitation, Regulations T, U or X of the FRB, or any successor regulations), (iv) conflict with,

result in a breach of or constitute a default under any contract to which the Issuer is a party or by which it or any of its Property may be bound or (v) result in or require the creation or imposition of any Lien upon or with respect to any Property now owned or hereafter acquired by the Issuer or any Affiliate thereof except such Liens, if any, expressly created by any Related Document.

(b) The Issuer is in compliance with all Laws, except for such noncompliance that, singly or in the aggregate, has not caused or is not reasonably expected to cause a Material Adverse Effect.

*Section 5.05. Pending Litigation and Other Proceedings.* There is no action, suit or proceeding pending in any court, any other governmental authority with jurisdiction over the Issuer or any arbitration in which service of process has been completed against the Issuer or, to the knowledge of the Issuer, any other action, suit or proceeding pending or threatened in any court, any other governmental authority with jurisdiction over the Issuer or any arbitrator, in either case against the Issuer or any of its properties or revenues, or any of the Related Documents to which it is a party, which if determined adversely to the Issuer would adversely affect the rights, security, interests or remedies of the Purchaser hereunder or under any of the other Related Documents or which is reasonably likely to result in a Material Adverse Effect, except any action, suit or proceeding which has been brought prior to the Effective Date as to which the Purchaser has received an opinion of counsel satisfactory to the Purchaser, in form and substance satisfactory to the Purchaser and the Purchaser's legal counsel, to the effect that such action, suit or proceeding is without substantial merit.

*Section 5.06. Financial Statements.* The audited financial statements of the Issuer as at June 30, 2019, and the related consolidated statement of activities and changes in net assets and the consolidated statement of cash flows for the Fiscal Year then ended, and accompanying notes thereto, which financial statements, accompanied by the audit report of The Pun Group, LLP, independent public accountants, were heretofore furnished by the Issuer to the Purchaser, which are consistent in all material respects with the audited financial statements of the Issuer for the Fiscal Year ended June 30, 2018, fairly present the financial condition of the Issuer in all material respects as of such dates and the results of its operations for the periods then ended in conformity with GAAP. Since June 30, 2019, there has been no material adverse change in the financial condition or operations of the Issuer that could reasonably be expected to result in a Material Adverse Effect.

*Section 5.07. Employee Benefit Plan Compliance.* The Issuer has no funding liability or obligation currently due and payable with respect to any employee benefit plan which could reasonably be expected to result in a Material Adverse Effect. The Issuer and each employee benefit plan is in compliance in all material respects with the terms of any such plan and applicable law related thereto. Neither the Issuer nor a member of the Controlled Group is subject to ERISA or maintains a Plan.

*Section 5.08. No Defaults.* No default by the Issuer has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any Debt including, without limitation, regularly scheduled payments on any Swap Agreements which constitute Debt. No bankruptcy, insolvency or other similar proceedings pertaining to the Issuer or any agency or

instrumentality of the Issuer are pending or presently contemplated. No Default or Event of Default has occurred and is continuing hereunder. No “default” or “event of default” under, and as defined in, any of the other Related Documents has occurred and is continuing. The Issuer is not presently in default under any material agreement to which it is a party which could reasonably be expected to have a Material Adverse Effect. The Issuer is not in violation of any material term of the organizational documents or authorizing legislation applicable to the Issuer or any material term of any bond indenture or agreement to which it is a party or by which any of its Property is bound which could reasonably be expected to result in a Material Adverse Effect.

*Section 5.09. Insurance.* The Issuer currently maintains a system of self-insurance or insurance coverage with insurance companies believed by the Issuer to be capable of performing their obligations under the respective insurance policies issued by such insurance companies to the Issuer (as determined in its reasonable discretion) and in full compliance with Section 6.04 hereof.

*Section 5.10. Title to Assets.* The Issuer has good and marketable title to its assets except where the failure to have good and marketable title to any of its assets would not have a Material Adverse Effect.

*Section 5.11. Incorporation by Reference.* The representations and warranties of the Issuer contained in the other Related Documents to which the Issuer is a party, together with the related definitions of terms contained therein, are hereby incorporated by reference in this Agreement as if each and every such representation and warranty and definition were set forth herein in its entirety, and the representations and warranties made by the Issuer in such Sections are hereby made for the benefit of the Purchaser. No amendment to or waiver of such representations and warranties or definitions made pursuant to the relevant Related Document or incorporated by reference shall be effective to amend such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Purchaser.

*Section 5.12. Correct Information.* All information, reports and other papers and data with respect to the Issuer furnished by the Issuer to the Purchaser were, at the time the same were so furnished, correct in all material respects. Any financial, budget and other projections furnished by the Issuer to the Purchaser were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent (subject to the updating or supplementation of any such financial, budget or other projections by any additional information provided to the Purchaser in writing, the representations contained in this Agreement being limited to financial, budget or other projections as so updated or supplemented), in the judgment of the Issuer, a reasonable, good faith estimate of the information purported to be set forth, it being understood that uncertainty is inherent in any projections and that no assurance can be given that the results set forth in the projections will actually be obtained. No fact is known to the Issuer that materially and adversely affects or in the future may (as far as it can reasonably foresee) materially and adversely affect the security for any of the Note, or the ability of the Issuer to repay when due the Obligations, that has not been set forth in the financial statements and other documents referred to in this Section 5.12 or in such information, reports, papers and data or otherwise disclosed in writing to the Purchaser. The documents furnished and statements made by the Issuer in connection with the negotiation,

preparation or execution of this Agreement and the Related Documents do not contain untrue statements of material facts or omit to state material facts necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

*Section 5.13. Investment Company.* The Issuer is not an “investment company” or a company “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended.

*Section 5.14. Margin Stock.* The Issuer is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds from any Advance on the Note will be used to purchase or carry any such Margin Stock or extend credit to others for the purpose of purchasing or carrying any such Margin Stock.

*Section 5.15. Mandatory Prepayment.* Upon the (x) issuance by the Issuer of any Debt evidenced by bonds, notes or certificates secured by or payable from the general fund of the Issuer or (y) incurrence of Debt by loan or other extension of credit from a third party secured by or payable from the general fund of the Issuer, the Issuer shall, in each case, prepay any Advances outstanding on the Note with the net proceeds thereof.

*Section 5.16. Usury.* None of the Related Documents or the Note provide for any payments that would violate any applicable law regarding permissible maximum rates of interest.

*Section 5.17. Security.* (a) Pursuant to the Resolution, the Issuer has pledged as security for the Issuer’s obligation to pay principal of and interest on the Note, the taxes, income, revenue, cash receipts and other moneys that are received by the Issuer for the General Fund for fiscal year ending June 30, 2021 and that are generally available for the payment of current expenses and other obligations of the City (the “Revenues”) in an amount equal to the principal of and interest on the Note (collectively, the “Pledged Revenues”). The pledge is valid and binding in accordance with the terms of the Resolution. The Pledged Revenues shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Pledged Revenues and be effective, binding, and enforceable against the Issuer, its successors, purchasers of the Pledged Revenues, creditors, and all others asserting the rights therein, to the extent set forth in the Resolution, and in accordance with the Resolution, irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act.

(b) To the extent not so paid from the Pledged Revenues, the Note shall be paid from any other moneys of the Issuer lawfully available therefor, including moneys designated as part of the Issuer’s unassigned fund balance as of June 30, 2021.

*Section 5.18. Pending Legislation and Decisions.* There is no amendment, or to the knowledge of the Issuer, proposed amendment to the Constitution of the State or any State law or any administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting any of the foregoing, the effect of which will materially adversely affect the issuance of the Note, the security for any of the Note or any Obligation, the creation, organization, or existence of the Issuer

or the titles to office of any officers executing this Agreement or any Related Documents to which the Issuer is a party or the Issuer's ability to repay when due its obligations under this Agreement, any of the Note or any other Obligation.

*Section 5.19. Paying Agent.* The Issuer is the duly appointed and acting Paying Agent for the Note.

*Section 5.20. Environmental Matters.* The operations of the Issuer are in material compliance with all of the requirements of applicable federal, state and local environmental, health and safety statutes and regulations and are not the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, where a failure to comply with any such requirement or the need for any such remedial action could reasonably be expected to result in a Material Adverse Effect.

*Section 5.21. No Immunity.* The City is not entitled to raise the defense of immunity (whether sovereign, governmental or otherwise) in connection with any legal proceedings to enforce or collect upon the obligations of the City under this Agreement or the transactions contemplated hereby, including, without limitation, the payment of the Note and the Obligations; *provided*, however, that the requirements applicable to commencing an action and exercising remedies against the City differ from those provisions and requirements applicable to individuals and non-governmental entities.

*Section 5.22. No Public Vote or Referendum.* There is no public vote or referendum pending, proposed or concluded, the results of which could reasonably be expected to result in a Material Adverse Effect.

*Section 5.23. Swap Agreements.* The Issuer has not entered into any Swap Agreement relating to Debt (i) wherein any termination payment thereunder is senior to or on a parity with the payment of the Note or the other Obligations or (ii) which requires the Issuer to post cash collateral to secure its obligations thereunder.

*Section 5.24. Anti-Corruption Laws; Sanctions.* (a) The Issuer, its directors, officers, and employees and, to the knowledge of the Issuer, the agents of the Issuer are in compliance with Anti-Corruption Laws and all applicable Sanctions in all material respects. The Issuer has implemented and maintain in effect policies and procedures designed to ensure compliance with Anti-Corruption Laws and applicable Sanctions. None of the Issuer, or any director, officer, employee, agent, or affiliate of the Issuer is an individual or entity that is, or is 50% or more owned (individually or in the aggregate, directly or indirectly) or controlled by individuals or entities (including any agency, political subdivision or instrumentality of any government) that are (a) the target of any Sanctions or (b) located, organized or resident in a country or territory that is the subject of Sanctions (currently Crimea, Cuba, Iran, North Korea and Syria).

(b) Neither the funding of any Advance on the Note nor the use of the proceeds thereof will violate the Patriot Act, the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter

V, as amended) or any enabling legislation or executive order relating thereto or successor statute thereto. The Issuer is in compliance in all material respects with the Patriot Act.

## **ARTICLE VI**

### **COVENANTS OF THE ISSUER**

The Issuer covenants and agrees, until the full and final payment and satisfaction of all of the Obligations, except in any instance in which the Purchaser specially agrees in writing to any performance or noncompliance, that:

*Section 6.01. Existence, Etc.* The Issuer (a) shall maintain its existence pursuant to the laws of the State and (b) shall not liquidate or dissolve, or sell or lease or otherwise transfer or dispose of all or any substantial part of its property, assets or business, or combine, merge or consolidate with or into any other entity or change the use of facilities or assets that generate Revenues.

*Section 6.02. Maintenance of Properties.* The Issuer shall, in all material respects, maintain, preserve and keep its Property in good repair, working order and condition (ordinary wear and tear excepted), except to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

*Section 6.03. Compliance with Laws; Taxes and Assessments.* The Issuer shall comply with all Laws applicable to it and its Property (including all applicable Environmental Laws, Anti-Corruption Laws and applicable Sanctions), except where non-compliance could not reasonably be expected to result in a Material Adverse Effect, such compliance to include, without limitation, paying all taxes, assessments and governmental charges imposed upon it or its Property before the same become delinquent, unless and to the extent that the same are being contested in good faith and by appropriate proceedings and reserves are provided therefor that in the opinion of the Issuer are adequate.

*Section 6.04. Insurance.* The Issuer shall maintain insurance with reputable insurance companies or associations believed by the Issuer at the time of purchase of such insurance to be financially sound and in such amounts and covering such risks as are usually carried by organizations engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibles from coverage. The Issuer shall upon request of the Purchaser furnish a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Section 6.04.

*Section 6.05. Reports.* The Issuer shall furnish to the Purchaser in form and detail satisfactory to the Purchaser:

(a) *Annual Report.* As soon as available, and in any event within 270 days after the end of the Fiscal Year, the annual audited financial statements of the Issuer together with (1) the opinion of the Issuer's independent accountants and (2) a Compliance Certificate signed by the Finance Director of the Issuer stating that no Event of Default or Default has occurred, or if such Event of Default or Default has occurred, specifying the



nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default.

(b) *Budget.* As soon as available, and in any event within 30 days following the approval thereof, each operating budget adopted by the Issuer.

(c) *Investments.* As soon as available, and in any event on or before the twentieth (20<sup>th</sup>) calendar day of each month, a budget and liquidity report detailing the investments and current balances of the Issuer's general fund and statement of activities for the immediately preceding month, showing in comparative form the figures for the corresponding date and period in the previous fiscal year, prepared by the Issuer and certified by the Finance Director of the Issuer, together with a comparison of the Issuer's budget compared to actual financial results through the end of such month and investment performance information for the Issuer.

(d) *Paying Agent Notices.* As soon as available all notices, certificates, and other documents in connection with the Note provided to the Paying Agent other than those that relate solely to the routine issuance and payment of the Note.

(e) *Notices of Resignation of the Paying Agent.* As promptly as practicable, written notice to the Purchaser of the resignation of the Paying Agent immediately upon receiving notice of the same.

(f) *Offering Memorandum and Material Event Notices.* (A) Within ten (10) days after the issuance of any securities by the Issuer with respect to which a final official statement or other offering or disclosure document has been prepared by the Issuer, (1) a copy of such official statement or offering circular or (2) notice that such information has been filed with EMMA and is publicly available; and (B) during any period of time the Issuer is subject to continuing disclosure requirements under an undertaking executed by the Issuer to assist an underwriter to comply with Rule 15c2-12 promulgated pursuant to the Securities Exchange Act of 1934, as amended (17 C.F.R. Sec. 240-15c2-12), or any successor or similar legal requirement, immediately following any dissemination, distribution or provision thereof to any Person, (1) a copy of any reportable event notice (as described in b(5)(i)(C) of Rule 15c2-12) disseminated, distributed or provided in satisfaction of or as may be required pursuant to such requirements or (2) notice that such event notice has been filed with EMMA and is publicly available.

(g) *Notice of Default or Event of Default.* (i) Promptly upon obtaining knowledge of any Default or Event of Default, or notice thereof, and in any event within five (5) days thereafter, a certificate signed by an Issuer Representative specifying in reasonable detail the nature and period of existence thereof and what action the Issuer has taken or proposes to take with respect thereto; (ii) promptly following a written request of the Purchaser, a certificate of an Issuer Representative as to the existence or absence, as the case may be, of a Default or an Event of Default under this Agreement; and (iii) promptly upon obtaining knowledge of any "default" or "event of default" as defined under

any Bank Agreement, notice specifying in reasonable detail the nature and period of existence thereof and what action the Issuer has taken or proposes to take with respect thereto.

(h) *Litigation.* As promptly as practicable, written notice to the Purchaser of all actions, suits or proceedings pending or threatened against the Issuer in any court or before any arbitrator of any kind or before any governmental authority.

(i) *Patriot Act.* The Issuer shall provide such information and take such actions as are reasonably requested by the Purchaser in order to assist the Purchaser in maintaining compliance with the Patriot Act.

(j) *Quarterly Financial Statements.* As soon as available, and in any event within fifteen (15) days after quarter-end, the unaudited quarterly financial statements of the Issuer.

(k) *Other Information.* Such other information regarding the business affairs, financial condition and/or operations of the Issuer as the Purchaser may from time to time reasonably request.

*Section 6.06. Maintenance of Books and Records.* The Issuer will keep proper books of record and account in which full, true and correct entries in accordance with GAAP. All financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements, except as otherwise specifically prescribed herein. Except as provided in the immediately preceding sentence, in preparing any financial data or statements contemplated or referred to in this Agreement, the Issuer shall not vary or modify the accounting methods or principles from the accounting standards employed in the preparation of its audited financial statements described in Section 5.06 hereof.

*Section 6.07. Access to Books and Records.* To the extent permitted by law, the Issuer will permit any Person designated by the Purchaser (at the expense of the Purchaser, unless and until a Default or Event of Default has occurred, at which time such expenses shall be borne by the Issuer) to visit any of the offices of the Issuer to examine the books and financial records (except books and financial records the examination of which by the Purchaser is prohibited by law or by attorney or client privilege), including minutes of meetings of any relevant governmental committees or agencies, and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of the Issuer with their principal officers, employees and independent public accountants, all at such reasonable times and as often as the Purchaser may reasonably request.

*Section 6.08. Compliance with Documents.* The Issuer agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Resolution and each of the other Related Documents to which it is a party, which provisions, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety all of

which shall be deemed to be made for the benefit of the Purchaser and shall be enforceable against the Issuer. To the extent that any such incorporated provision permits the Issuer or any other party to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to the Issuer or any other party, for purposes of this Agreement, such provision shall be complied with unless it is specifically waived by the Purchaser in writing and such document, opinion or other instrument and such event or condition shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Purchaser which shall only be evidenced by the written approval by the Purchaser of the same. Except as permitted by Section 6.13 hereof, no termination or amendment to such covenants and agreements or defined terms or release of the Issuer with respect thereto made pursuant to the any of the Related Documents to which the Issuer is a party, shall be effective to terminate or amend such covenants and agreements and defined terms or release the Issuer with respect thereto in each case as incorporated by reference herein without the prior written consent of the Purchaser. Notwithstanding any termination or expiration of any Related Document to which the Issuer is a party, the Issuer shall continue to observe the covenants therein contained for the benefit of the Purchaser until the termination of this Agreement and the payment in full of the Note and all other Obligations. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein.

*Section 6.09. No Impairment.* The Issuer will neither take any action which would materially adversely affect the rights, interests, remedies or security of the Purchaser under this Agreement or any other Related Document or which could reasonably be expected to result in a Material Adverse Effect.

*Section 6.10. Application of Advance Proceeds.* The Issuer will not take or omit to take any action, which action or omission will in any way result in the proceeds from the Advances on the Note being applied in a manner other than as provided in the Resolution.

*Section 6.11. Paying Agent.* The Issuer will not, without the prior written consent of the Purchaser (which consent shall not be unreasonably withheld or delayed) remove or replace the Paying Agent. The Issuer shall at all times maintain a Paying Agent pursuant to the terms of the Resolution that is reasonably acceptable to the Purchaser.

*Section 6.12. Limitation on Additional Debt.* The Issuer shall not incur any Debt (x) evidenced by bonds, notes or certificates or (y) by loan or other extension of credit from a third party that is secured by or payable from the Issuer's general fund, unless, in each case, the Issuer shall apply or cause to be applied the net proceeds thereof to redeem the Note and pay all other Obligations hereunder. In no event shall the Issuer issue any Debt secured by all or any portion of the Pledged Revenues (other than the Note).

*Section 6.13. Related Documents.* The Issuer shall not modify, amend or consent to any modification, amendment or waiver in any material respect of any Related Document without the prior written consent of the Purchaser.

*Section 6.14. Liens.* The Issuer shall not, directly or indirectly, incur, create or permit to exist any Lien on all or any part of the security provided by the Resolution.

*Section 6.15. Disclosure to Participants, Purchaser Transferees and Non-Purchaser Transferees.* The Issuer shall permit the Purchaser to disclose the financial information received by it pursuant to this Agreement to each participant of the Purchaser, Purchaser Transferee and Non-Purchaser Transferee pursuant to Section 9.13 of this Agreement, subject to confidentiality restrictions and use restrictions customary for financial institutions.

*Section 6.16. Other Agreements.* In the event that the Issuer shall, directly or indirectly, enter into or otherwise consent to any Bank Agreement which such Bank Agreement provides such Person with different or more restrictive covenants, different or additional events of default and/or greater rights and remedies than are provided to the Purchaser in this Agreement, the Issuer shall provide the Purchaser with a copy of each such Bank Agreement and such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies shall automatically be deemed to be incorporated into this Agreement and the Purchaser shall have the benefits of such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies as if specifically set forth herein. The Issuer shall promptly enter into an amendment to this Agreement to include different or more restrictive covenants, different or additional events of default and/or greater rights and remedies; *provided* that the Purchaser shall have and maintain the benefit of such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies even if the Issuer fails to provide such amendment.

*Section 6.17. Immunity from Jurisdiction.* To the fullest extent permitted by applicable law, with respect to its obligations arising under this Agreement or any other Related Document, the Issuer irrevocably agrees that it will not assert or claim any immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) from (i) any action, suit or other proceeding arising under or relating to this Agreement or any other Related Document, (ii) relief by way of injunction, order for specific performance or writ of mandamus or (iii) execution or enforcement of any judgment to which it or its revenues might otherwise be entitled in any such action, suit or other proceeding, and the Issuer hereby irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues (irrespective of their use or intended use), all such immunity.

*Section 6.18. Swap Agreements.* Without the prior written consent of the Purchaser, the Issuer will not enter into any Swap Agreement relating to Debt (i) wherein any termination payments thereunder are senior to or on parity with the payment of the Note or the other Obligations or (ii) which requires the Issuer to post cash collateral to secure its obligations thereunder.

*Section 6.19. Budget and Appropriation.* To the fullest extent permitted and/or required by State law, the Issuer shall cause the appropriate Issuer official(s) to take any and all ministerial actions that may be necessary to facilitate the payment of the principal of and interest on the Note (and the payment of all other Obligations and to include the principal of and interest on the Note

and the payment of all other Obligations in the annual budget of the Issuer (including any necessary appropriations related thereto).

*Section 6.20. Use of Purchaser's Name.* The Issuer shall not include any information concerning the Purchaser in any offering document that is not supplied in writing, or otherwise approved, by the Purchaser expressly for inclusion therein.

*Section 6.21. Maintenance of Rating on Debt.* If the Issuer obtains a long-term, unenhanced issuer credit rating (an "*Issuer Rating*") and/or any long-term unenhanced rating of any general obligation of the Issuer, any lease revenue or similar obligation (e.g., certificates of participation) of the Issuer, any obligation secured by or payable from the general fund of the Issuer, or any such rating on any similar obligation (each, an "*Obligation Rating*"), (i) the Issuer shall at all times thereafter maintain a rating of at least "A-" (or its equivalent) on such Issuer Rating or Obligation Rating from each applicable Rating Agency and (ii) the Issuer covenants and agrees that it shall not at any time withdraw any Issuer Rating or Obligation Rating from any of Rating Agency if the effect of such withdrawal would be to cure a Default or an Event of Default under this Agreement.

*Section 6.22. Environmental Laws.* The Issuer shall comply with all applicable Environmental Laws and cure any defect (or cause other Persons to cure any such defect) to the extent necessary to bring such real property owned, leased, occupied or operated by the Issuer back into compliance with Environmental Laws and to comply with any cleanup orders issued by a Governmental Authority having jurisdiction thereover. The Issuer shall at all times use commercially reasonable efforts to render or maintain any real property owned, leased, occupied or operated by the Issuer safe and fit for its intended uses. The Issuer shall also immediately notify the Purchaser of any actual or alleged material failure to so comply with or perform, or any material breach, violation or default under any Environmental Law.

*Section 6.23. Use of Proceeds.* The Issuer shall not use any portion of the proceeds of any Advance on the Note for the purpose of carrying or purchasing any Margin Stock and shall not incur any Debt which is to be reduced, retired or purchased by the Issuer out of such proceeds. The Issuer shall not use or allow to be used, and its directors, officers, employees and agents shall not use or allow to be used, the proceeds of any of the Note (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or (ii) in any manner that would result in the violation of any applicable Sanctions.

*Section 6.24. Minimum General Fund Balance.* (a) The Issuer shall maintain in **[aggregate within]** its General Fund **[please clarify other available funds: Non-Recurring General Fund and Payroll Fund?]**, a minimum cash balance of \$10,000,000 by December 31, 2020; *provided* that if the Issuer does not maintain such minimum cash balance by December 31, 2020 (the "*First Determination Date*"), the Issuer shall immediately implement expenditure reductions **[in aggregate]** within General Fund **[please clarify other available funds]** sufficient to maintain such minimum cash balance by January 30, 2021 (the "*Second Determination Date*"). No Event of Default shall occur hereunder, and the Default Rate shall not apply, unless the Issuer fails to

maintain such minimum cash balance of \$10,000,000 on both the First Determination Date and the Second Determination Date; and

(b) The Issuer shall maintain in **[aggregate within]** its General Fund **[please clarify other available funds]**, a minimum cash balance of \$10,000,000 by April 30, 2021.

## ARTICLE VII

### EVENTS OF DEFAULT

*Section 7.01. Events of Default.* The occurrence of any of the following events (whatever the reason for such event and whether voluntary, involuntary, or effected by operation of Law) shall be an “Event of Default” hereunder, unless waived in writing by Purchaser:

(a) the Issuer shall fail to pay the principal of or interest on the Note when due (whether by scheduled maturity, required prepayment, redemption or otherwise);

(b) the Issuer shall fail to pay any Obligation (other than the obligation to pay the principal or purchase price of or interest on the Note) when due and such failure shall continue for three (3) Business Days;

(c) any representation or warranty made by or on behalf of the Issuer in this Agreement or in any other Related Document or in any certificate or statement delivered hereunder or thereunder shall be incorrect or untrue in any material respect when made or deemed to have been made or delivered;

(d) the Issuer shall default in the due performance or observance of any of the covenants set forth in Article VI hereof;

(e) the Issuer shall default in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Related Document and such default shall remain unremedied for a period of thirty (30) days after the occurrence thereof;

(f) the Issuer shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) become insolvent or shall not pay, or be unable to pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any corporate action

in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 7.01(g) of this Agreement;

(g) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the Issuer or any substantial part of its Property, or a proceeding described in Section 7.01(f)(v) shall be instituted against the Issuer and such proceeding continues undischarged or any such proceeding continues undismissed or unstayed for a period of thirty (30) or more days;

(h) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Debt of the Issuer by the Issuer or any Governmental Authority with appropriate jurisdiction;

(i) (i) any provision of this Agreement or any Related Document related to (A) payment of principal of or interest on the Note or (B) the validity or enforceability of the pledge of the Pledged Revenues shall at any time for any reason cease to be valid and binding on the Issuer as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction, or shall be declared, in a final nonappealable judgment by any court of competent jurisdiction, to be null and void, invalid or unenforceable; or

(ii) the validity or enforceability of any material provision of this Agreement or any Related Document related to (A) payment of principal of or interest on the Note, or (B) the validity or enforceability of the pledge of the Pledged Revenues created by the Resolution shall be publicly contested by the Issuer; or

(iii) any other material provision of this Agreement or any other Related Document, other than a provision described in clause (i) above, shall at any time for any reason cease to be valid and binding on the Issuer as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or shall be declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid, or unenforceable, or the validity or enforceability thereof shall be publicly contested by the Issuer;

(j) dissolution or termination of the existence of the Issuer;

(k) the Issuer shall (i) default on the payment of the principal of or interest on any Debt including, without limitation, any regularly scheduled payments on Swap Agreements which constitute Debt, beyond the period of grace, if any, provided in the instrument or agreement under which such Debt was created or incurred; or (ii) default in the observance or performance of any agreement or condition relating to any Debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event shall occur or condition exist, the effect of

which default, event of default or similar event or condition is to cause (determined without regard to whether any notice is required) any such Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Debt;

(l) *Reserved;*

(m) any final, unappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, which are not covered in full by insurance, with written acknowledgement of such coverage having been provided by the provider of such insurance coverage to the Purchaser, in an aggregate amount in excess of \$5,000,000 shall be entered or filed against the Issuer, or payable from the General Fund of the Issuer, and remain unpaid, unvacated, unbonded or unstayed for a period of thirty (30) days; or

(n) any “event of default” under any Related Document (as defined respectively therein) shall have occurred.

*Section 7.02. Consequences of an Event of Default.* If an Event of Default specified in Section 7.01 hereof shall occur and be continuing, the Purchaser may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(i) by written notice to the Paying Agent and the Issuer, declare the outstanding amount of the Obligations under this Agreement to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue;

(ii) deliver a written notice to the Paying Agent and the Issuer that an Event of Default has occurred and is continuing and direct the Paying Agent and the Issuer, as applicable, to cause an acceleration of the Note or take such other remedial action as is provided for in the Resolution;

(iii) upon notice to the Paying Agent and the Issuer, terminate the Commitment and the Available Commitment; *provided*, that, in the case of any Event of Default under Sections 7.01(f) or (g) hereof, the Commitment and the Available Commitment shall each terminate automatically and without notice;

(iv) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the Related Documents or to enforce performance or observance of any obligation, agreement or covenant of the Issuer under the Related Documents, whether for specific performance of any agreement or covenant of the Issuer or in aid of the execution of any power granted to the Purchaser in the Related Documents;



(v) at the expense of the Issuer, cure any Default, Event of Default or event of nonperformance hereunder or under any Related Document; *provided, however*, that the Purchaser shall have no obligation to effect such a cure;

(vi) exercise, or cause to be exercised, any and all remedies as it may have under the Related Documents (other than as provided for in clause (ii) of this Section 7.02) and as otherwise available at law and at equity; and

(vii) by written notice to the Issuer and the Paying Agent request the appointment of a new Paying Agent under the Resolution, as designated by the Purchaser in its sole but reasonable discretion and approved by the initial purchaser of the Note, whose approval shall not be unreasonably withheld or delayed, and the Issuer shall promptly do such acts and things under the Resolution and otherwise as may be reasonably necessary or desirable to effect such replacement (and, if the Issuer shall fail to do so, the Purchaser may seek an order from a court of competent jurisdiction to effect the appointment of the new Paying Agent).

*Section 7.03. Remedies Cumulative; Solely for the Benefit of Purchaser.* To the extent permitted by, and subject to the mandatory requirements of, applicable Law, each and every right, power and remedy herein specifically given to the Purchaser in the Related Documents shall be cumulative, concurrent and nonexclusive and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy (whether specifically herein given or otherwise existing) may be exercised from time to time and as often and in such order as may be deemed expedient by the Purchaser, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy.

The rights and remedies of the Purchaser specified herein are for the sole and exclusive benefit, use and protection of the Purchaser, and the Purchaser is entitled, but shall have no duty or obligation to the Issuer or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Purchaser hereunder or under any of the other Related Documents.

*Section 7.04. Waivers or Omissions.* No delay or omission by the Purchaser in the exercise of any right, remedy or power or in the pursuit of any remedy shall impair any such right remedy or power or be construed to be a waiver of any default on the part of the Purchaser or to be acquiescence therein. No express or implied waiver by the Purchaser of any Event of Default shall in any way be a waiver of any future or subsequent Event of Default.

*Section 7.05. Discontinuance of Proceedings.* In case the Purchaser shall proceed to invoke any right, remedy or recourse permitted hereunder or under the Related Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Purchaser shall have the unqualified right so to do and, in such event, the Issuer and the Purchaser shall be restored to their former positions with respect to the Obligations, the Related Documents and otherwise, and

the rights, remedies, recourse and powers of the Purchaser hereunder shall continue as if the same had never been invoked.

## **ARTICLE VIII**

### **INDEMNIFICATION**

*Section 8.01. Indemnification.* In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant hereto or under law or equity, the Issuer hereby agrees (to the extent permitted by law) to indemnify and hold harmless each Noteholder and its officers, directors and agents (each, an “*Indemnatee*”) from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever (including reasonable attorneys’ fees) which may incur or which may be claimed against an Indemnatee by any Person or entity whatsoever (collectively, the “*Liabilities*”) by reason of or in connection with (a) the execution and delivery or transfer of, or payment or failure to pay under, any Related Document; (b) the issuance and sale of the Note; (c) the use of the proceeds of the Note; or (d) any actual or alleged presence or release of Hazardous Materials on or from any Property owned or operated by the Issuer, or any environmental liability related in any way to the Issuer; *provided* that the Issuer shall not be required to indemnify an Indemnatee for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the (i) Purchaser’s failure to honor its obligations to make Advances upon the satisfaction of the conditions precedent set forth herein and in accordance with the terms of this Agreement, or (ii) willful misconduct or gross negligence of such Indemnatee. Nothing under this Section 8.01 is intended to limit the Issuer’s payment of the Obligations.

*Section 8.02. Survival.* The obligations of the Issuer under this Article VIII shall survive the payment of the Note and the termination of this Agreement.

## **ARTICLE IX**

### **MISCELLANEOUS**

*Section 9.01. Patriot Act Notice.* The Purchaser hereby notifies the Issuer that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the Issuer, which information includes the name and address of the Issuer and other information that will allow the Purchaser to identify the Issuer in accordance with the Patriot Act. The Issuer hereby agrees that it shall promptly provide such information upon request by the Purchaser.

*Section 9.02. Further Assurances.* From time to time upon the request of either party hereto, the other shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as the requesting party may in its reasonable discretion deem necessary or desirable to confirm this Agreement, and the other Related Documents, to carry out the purpose and intent hereof and thereof or to enable the requesting party to enforce any of its rights hereunder or thereunder. At any time, and from time to time, upon request by the Purchaser, the Issuer will,

at the Issuer's expense, (a) correct any defect, error or omission which may be discovered in the form or content of any of the Related Documents, and (b) make, execute, deliver and record, or cause to be made, executed, delivered and recorded, any and all further instruments, certificates, and other documents as may, in the opinion of the Purchaser, be necessary or desirable in order to complete, perfect or continue and preserve the Lien of the Resolution. Upon any failure by the Issuer to do so, the Purchaser may make, execute and record any and all such instruments, certificates and other documents for and in the name of the Issuer, all at the sole expense of the Issuer, and the Issuer hereby appoints the Purchaser the agent and attorney-in-fact of the Issuer to do so, this appointment being coupled with an interest and being irrevocable. In addition, at any time, and from time to time, upon request by the Purchaser, the Issuer will, at the Issuer's expense, provide any and all further instruments, certificates and other documents as may, in the opinion of the Purchaser, be necessary or desirable in order to verify the Issuer's identity and background in a manner satisfactory to the Purchaser, as the case may be.

*Section 9.03. Amendments and Waivers; Enforcement.* The Purchaser and the Issuer may from time to time enter into agreements amending, modifying or supplementing this Agreement or the other Related Documents or changing the rights of the Purchaser or the Issuer hereunder or thereunder, and the Purchaser may from time to time grant waivers or consents to a departure from the due performance of the obligations of the Issuer hereunder or thereunder. Any such agreement, waiver or consent must be in writing and shall be effective only to the extent specifically set forth in such writing. In the case of any such waiver or consent relating to any provision hereof, any Default or Event of Default so waived or consented to shall be deemed to be cured and not continuing, but no such waiver or consent shall extend to any other or subsequent Default or Event of Default or impair any right consequent thereto.

*Section 9.04. No Implied Waiver; Cumulative Remedies.* No course of dealing and no delay or failure of the Purchaser in exercising any right, power or privilege under this Agreement or the other Related Documents shall affect any other or future exercise thereof or exercise of any right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege or any abandonment or discontinuance of steps to enforce such a right, power or privilege preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies of the Purchaser under this Agreement are cumulative and not exclusive of any rights or remedies which the Purchaser would otherwise have under any Related Document, at law or in equity.

*Section 9.05. Notices.* All notices, requests, demands, directions and other communications (collectively "*notices*") under the provisions of this Agreement shall be in writing (including facsimile communication), unless otherwise expressly permitted hereunder, and shall be sent by first-class mail or overnight delivery and shall be deemed received as follows: (i) if by first class mail, five (5) days after mailing; (ii) if by overnight delivery, on the next Business Day; (iii) if by telephone, when given to a person who confirms such receipt; and (iv) if by facsimile, when confirmation of receipt is obtained; *provided*, that each Request for Advance shall be sent via facsimile or email as provided in Section 2.03. All notices shall be sent to the applicable party at the following address or in accordance with the last unrevoked written direction from such party to the other parties hereto:

The Issuer: City of Napa, California  
955 School Street  
Napa, California 94559  
Attention: City Manager  
Telephone: (707) 257-9500

With a copy to City Attorney

The Purchaser: U.S. Bank National Association  
1 California Street  
Suite 350  
San Francisco, California 94111  
Attention: Jeffrey S. Kajisa  
Facsimile: ( ) -  
Telephone: (415) 677-3677

The Paying Agent: City of Napa, California  
955 School Street  
Napa, California 94559  
Attention: Finance Director  
Telephone: (707) 257-9500

The Purchaser may rely on any notice (including telephone communication) purportedly made by or on behalf of the other, and shall have no duty to verify the identity or authority of the Person giving such notice, unless such actions or omissions would amount to gross negligence or intentional misconduct.

*Section 9.06. Right of Setoff.* (a) Upon the occurrence of an Event of Default, a Noteholder may, at any time and from time to time, without notice to the Issuer or any other person (any such notice being expressly waived), set off and appropriate and apply against and on account of any Obligations under this Agreement, without regard to whether or not such Noteholder shall have made any demand therefor, and although such Obligations may be contingent or unmatured, any and all deposits (general or special, including but not limited to deposits made pursuant to this Agreement and Debt evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts, such as restricted donor accounts) and any other Debt at any time held or owing by such Noteholder to or for the credit or the account of any or all of the Issuer.

(b) Each Noteholder agrees promptly to notify the Issuer after any such set-off and application referred to in subsection (a) above, *provided* that the failure to give such notice shall not affect the validity of such set-off and application. Subject to the provisions of subsection (a) above, the rights of a Noteholder under this Section 9.06 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Noteholder may have.

*Section 9.07. No Third-Party Rights.* Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the parties hereto and the Noteholders

any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

*Section 9.08. Severability.* The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

*Section 9.09. Governing Law; Consent to Jurisdiction and Venue; Waiver of Jury Trial.*  
(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

(b) EACH PARTY HERETO CONSENTS TO AND SUBMITS TO IN PERSONAM JURISDICTION AND VENUE IN THE STATE OF CALIFORNIA AND IN THE FEDERAL DISTRICT COURTS WHICH ARE LOCATED IN THE STATE OF CALIFORNIA. EACH PARTY ASSERTS THAT EACH HAS PURPOSEFULLY AVAILED ITSELF OF THE BENEFITS OF THE LAWS OF THE STATE OF CALIFORNIA AND WAIVES ANY OBJECTION TO IN PERSONAM JURISDICTION ON THE GROUNDS OF MINIMUM CONTACTS, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY PLEA OF FORUM NON CONVENIENS. THIS CONSENT TO AND SUBMISSION TO JURISDICTION IS WITH REGARD TO ANY ACTION RELATED TO THIS AGREEMENT. REGARDLESS OF WHETHER THE PARTY'S ACTIONS TOOK PLACE IN THE STATE OF CALIFORNIA OR ELSEWHERE IN THE UNITED STATES, THIS SUBMISSION TO JURISDICTION IS NONEXCLUSIVE, AND DOES NOT PRECLUDE EITHER PARTY FROM OBTAINING JURISDICTION OVER THE OTHER IN ANY COURT OTHERWISE HAVING JURISDICTION.

(c) TO THE EXTENT PERMITTED BY APPLICABLE LAWS, EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE RELATED DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO HEREBY CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE SHALL BE EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND CONSENT AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(d) The covenants and waivers made pursuant to this Section 9.09 shall be irrevocable and unmodifiable, whether in writing or orally, and shall be applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

*Section 9.10. Prior Understandings.* This Agreement and the other Related Documents supersede all other prior understandings and agreements, whether written or oral, among the parties hereto relating to the transactions provided for herein and therein.

*Section 9.11. Duration.* All representations and warranties of the Issuer contained herein or made in connection herewith shall survive the making of and shall not be waived by the execution and delivery of this Agreement or the other Related Documents. All covenants and agreements of the Issuer contained herein shall continue in full force and effect from and after the date hereof until the Obligations have been fully discharged.

*Section 9.12. Counterparts.* This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

*Section 9.13. Successors and Assigns.*

(a) *Successors and Assigns Generally.* This Agreement is a continuing obligation and shall be binding upon the Issuer, its successors, transferees and assigns and shall inure to the benefit of the Noteholders and their respective permitted successors, transferees and assigns. The Issuer may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Purchaser. Each Noteholder may, in its sole discretion and in accordance with applicable Law, from time to time assign, sell or transfer in whole or in part, this Agreement, its interest in the Note and the Related Documents in accordance with the provisions of paragraph (b) or (c) of this Section. Each Noteholder may at any time and from time to time enter into participation agreements in accordance with the provisions of paragraph (d) of this Section. Each Noteholder may at any time pledge or assign a security interest subject to the restrictions of paragraph (e) of this Section. U.S. Bank National Association shall be the Purchaser hereunder until such time as the Majority Noteholder designates an alternate Person to serve as the Purchaser hereunder by delivery of written notice to the Issuer and the Paying Agent and such Person accepts and agrees to act as the Purchaser hereunder and under the Related Documents. The Majority Noteholder may so designate an alternate Person to act as the Purchaser from time to time. Upon acceptance and notification thereof to the Issuer and the Paying Agent, the successor to the Purchaser for such purposes shall thereupon succeed to and become vested with all of the rights, powers, privileges and responsibilities of the Purchaser, and U.S. Bank National Association or any other Person being replaced as the Purchaser shall be discharged from its duties and obligations as the Purchaser hereunder; *provided*, that in no event shall any such sale or transfer in any way affect the obligations of the Purchaser to make Advances hereunder.

(b) *Sales and Transfers by Noteholder to a Purchaser Transferee.* Without limitation of the foregoing generality, a Noteholder may at any time sell or otherwise transfer to one or more transferees all or a portion of its ownership interest in the Note to a Person that is (i) an Affiliate of the Purchaser or (ii) a trust or other custodial arrangement established by the Purchaser or an Affiliate of the Purchaser (each, a “*Purchaser Transferee*”). From and after the date of such sale or transfer, U.S. Bank National Association (and its successors) shall continue to have all of the rights of the Purchaser hereunder and under the other Related Documents as if no such transfer or

sale had occurred; *provided, however*, that (A) no such sale or transfer referred to in clause (b)(i) or (b)(ii) hereof shall in any way affect the obligations of the Purchaser hereunder, (B) the Issuer and the Paying Agent shall be required to deal only with the Purchaser with respect to any matters under this Agreement and (C) in the case of a sale or transfer referred to in clause (b)(i) or (b)(ii) hereof, only the Purchaser shall be entitled to enforce the provisions of this Agreement against the Issuer.

(c) *Sales and Transfers by Noteholder to a Non-Purchaser Transferee.* Without limitation of the foregoing generality, a Noteholder may at any time sell or otherwise transfer all or any portion of its ownership interest in the Note to one or more transferees that the Purchaser reasonably believes is qualified to purchase or hold such interest which are not Purchaser Transferees (each a “*Non-Purchaser Transferee*”) if (A) written notice of such sale or transfer, including that such sale or transfer is to a Non-Purchaser Transferee, together with addresses and related information with respect to the Non-Purchaser Transferee, shall have been given to the Issuer, the Paying Agent and the Purchaser (if different than the Noteholder) by such selling Noteholder and Non-Purchaser Transferee, and (B) the Non-Purchaser Transferee shall have delivered to the Issuer, the Paying Agent and the selling Noteholder, an investment letter in form and substance reasonably satisfactory to the Purchaser (the “*Purchaser Letter*”).

From and after the date the Issuer, the Paying Agent and the selling Noteholder have received written notice and an executed Purchaser Letter, (A) the Non-Purchaser Transferee thereunder shall be a party hereto and shall have the rights and obligations of a Noteholder hereunder and under the other Related Documents, and this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to effect the addition of the Non-Purchaser Transferee, and any reference to the assigning Noteholder hereunder and under the other Related Documents shall thereafter refer to such transferring Noteholder and to the Non-Purchaser Transferee to the extent of their respective interests, and (B) if the transferring Noteholder no longer owns any such interest in the Note, then it shall relinquish its rights and be released from its obligations hereunder and under the Related Documents.

(d) *Participations.* The Purchaser shall have the right to grant participations in all or a portion of the Purchaser’s interest in the Note, this Agreement and the other Related Documents to one or more other banking institutions; *provided, however*, that (i) no such participation by any such participant shall in any way affect the obligations of the Purchaser hereunder and (ii) the Issuer and the Paying Agent shall be required to deal only with the Purchaser, with respect to any matters under this Agreement, the Note and the other Related Documents and no such participant shall be entitled to enforce any provision hereunder against the Issuer.

(e) *Certain Pledges.* In addition to the rights of the Purchaser set forth above, the Purchaser may at any time pledge or grant a security interest in all or any portion of its rights or interests under the Note, this Agreement and/or the Related Documents to secure obligations of the Purchaser or an Affiliate of the Purchaser, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; *provided* that no such pledge or assignment shall release the Purchaser from any of its obligations hereunder or substitute any such pledgee or assignee for the Purchaser as a party hereto.

(f) *Evidence of Ownership Interest.* Any Purchaser Transferee or Non-Purchaser Transferee may, by written notice to the Issuer, with a copy to the Majority Noteholder, request that its ownership interest in the Note be evidenced by a separate instrument. Upon such request, the Issuer and the Majority Noteholder will promptly cooperate with such Purchaser Transferee or Non-Purchaser Transferee, as applicable, to grant such request, in a manner reasonably satisfactory to all such parties.

*Section 9.14. Headings.* Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

*Section 9.15. No Fiduciary Relationship.* The Issuer acknowledges and agrees that its dealing with the Purchaser are solely in the nature of a debtor/creditor relationship and that in no event shall the Purchaser be considered to be a partner or joint venturer of the Issuer. Also, the Issuer represents and warrants that it has independently evaluated the business transaction and has not relied upon, nor will it rely upon, the expertise, advice or other comments or statements of the Purchaser (including agents of the Purchaser), if any, in deciding to pursue such undertaking. As the Issuer is experienced in business, in no event shall the Purchaser owe any fiduciary or similar obligations to it in connection with the subject transaction.

*Section 9.16. Electronic Signatures.* The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or “printouts,” if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, “electronic signature” means a manually-signed original signature that is then transmitted by electronic means; “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a “pdf” (portable document format) or other replicating image attached to an e-mail message; and, “electronically signed document” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

*Section 9.17. Acknowledge and Appointment as the Paying Agent.* The Issuer hereby acknowledges and accepts its appointment as Paying Agent pursuant to the Resolution and acknowledges, accepts and agrees to all the duties and obligations of the Paying Agent set forth in the Resolution and in this Agreement.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE.]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the Effective Date.

U.S. BANK NATIONAL ASSOCIATION

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF NAPA, CALIFORNIA

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Auditor  
Budget Code: \_\_\_\_\_

ATTESTED:

CITY OF NAPA, CALIFORNIA

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Clerk

APPROVED AS TO FORM:

CITY OF NAPA, CALIFORNIA

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Attorney

EXHIBIT A

FORM OF COMPLIANCE CERTIFICATE

This Compliance Certificate (this “*Certificate*”) is furnished to U.S. Bank National Association (the “*Purchaser*”) pursuant to that certain Note Purchase Agreement dated as of August 1, 2020 (the “*Agreement*”), between City of Napa, California (the “*Issuer*”) and Purchaser. Unless otherwise defined herein, the terms used in this Certificate shall have the meanings assigned thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am the Finance Director of the Issuer;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Issuer during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. The financial statements required by Section 6.05(a) of the Agreement and being furnished to you concurrently with this certificate fairly represent the consolidated financial condition of the Issuer in accordance with GAAP (subject to year end adjustments) as of the dates and for the periods covered thereby.

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Issuer has taken, is taking, or proposes to take with respect to each such condition or event:

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The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF NAPA, CALIFORNIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT B

## FORM OF REQUEST FOR ADVANCE

[Date]

U.S. Bank National Association

**[Address]**

Attention: [ ]

Telephone: [ ]

E-mail: [ ]

with a copy to:

U.S. Bank National Association

**[Address]**

Attention: [ ]

Telephone: [ ]

E-mail: [ ]

Ladies and Gentlemen:

The undersigned, **[Insert Name of Undersigned]** the Finance Director of the City of Napa, California, a California charter city and municipal corporation duly organized and existing under the constitution and laws of the State of California (the “*Issuer*”), under that certain Note Purchase Agreement dated as of August 1, 2020 (the “*Agreement*”) between the Issuer and U.S. Bank National Association (the “*Purchaser*”), hereby gives the Purchaser notice irrevocably, pursuant to Section 2.03(b) of the Agreement, of the Advance specified below. Capitalized terms used herein have the meanings set forth in the Agreement.

1. The Business Day of the proposed Advance is \_\_\_\_\_, 20\_\_.
2. The principal amount of the proposed Advance is \$\_\_\_\_\_.

WIRE TRANSFER TO:

Bank Name: **[MUST BE COMPLETED BEFORE CLOSING]**

ABA Routing No.: \_\_\_\_\_

Credit to: \_\_\_\_\_

Account No.: \_\_\_\_\_

Notify: \_\_\_\_\_

Reference: \_\_\_\_\_

City, State: \_\_\_\_\_

3. The undersigned, the Finance Director of the Issuer, hereby certifies that the following statements are true on the date hereof, and will be true on the Advance Date, before and after giving effect thereto:

(a) the representations of the Issuer set forth in Article V of the Agreement (including those incorporated by reference) shall be true and correct in all material respects on and as of the date hereof, and shall be deemed to have been made on the date hereof;

(b) no Default or Event of Default shall have occurred and be continuing on the date hereof, or would result from the proposed Advance or from the application of the proceeds thereof;

(c) the proposed Advance will not violate any order, judgment or decree of any court or authority of competent jurisdiction entered against the Issuer or any provision of law as then in effect as it affects the Issuer;

(d) after giving effect to the proposed Advance, the aggregate principal amount of all Advances will not exceed the Commitment.

CITY OF NAPA, CALIFORNIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Finance Director

EXHIBIT C

FORM OF NOTICE OF REDUCTION OR TERMINATION

[Date]

U.S. Bank National Association

[Address]

Attention: [ ]

Telephone: [ ]

E-mail: [ ]

with a copy to:

U.S. Bank National Association

[Address]

Attention: [ ]

Telephone: [ ]

E-mail: [ ]

Ladies and Gentlemen:

Reference is made to the Note Purchase Agreement dated as of August 1, 2020 (the “*Agreement*”), between the City of Napa, California, a municipal corporation duly organized and existing under the laws of the State of California (the “*Issuer*”) and U.S. Bank National Association (the “*Purchaser*”) (the terms defined therein being used herein as therein defined).

**[(1) The Issuer hereby informs you that the Available Commitment is terminated in accordance with the Agreement.][(1) (a) The Issuer hereby informs you that the Available Commitment is reduced from [insert amount as of the date of Notice] to [insert new amount], such reduction to be effective on \_\_\_\_\_.]**

(b) Upon the foregoing reductions, the amount of the Available Commitment will not be less than the aggregate principal amount of all Advances then outstanding.

(2) This **[termination/reduction]** fully complies with the terms of Section 2.06 of the Agreement.

(3) The Issuer has paid any applicable Commitment Reduction Fee pursuant to Section 2.08 of the Agreement.

IN WITNESS WHEREOF, the Issuer has executed and delivered this Notice this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF NAPA, CALIFORNIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D****FORM OF NOTE**

\$15,000,000

August 6, 2020

FOR VALUE RECEIVED, the undersigned CITY OF NAPA, CALIFORNIA, a California charter city and municipal corporation organized and existing under the constitution and the laws of the State of California (the "*Issuer*"), hereby promises to pay to U.S. BANK NATIONAL ASSOCIATION, or its registered assigns (the "*Purchaser*"), in accordance with the provisions of the Agreement (as hereinafter defined), the principal outstanding amount of all Advances from time to time made by the Purchaser to the Issuer, under that certain Note Purchase Agreement, dated as of August 1, 2020 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "*Agreement*;" the terms defined therein being used herein as therein defined), between the Issuer and the Purchaser, in accordance with the terms of the Agreement.

The Issuer promises to pay interest on the unpaid principal amount of all Advances from the Advance Date, until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Purchaser in Dollars in immediately available funds as set forth in the instructions of the Purchaser. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

This Note referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. The Note is a limited obligation of the Issuer, payable solely from the Pledged Revenues and from other moneys lawfully available therefor described in the Resolution. The Advances made by the Purchaser shall be evidenced by one or more loan accounts or records maintained by the Purchaser in the ordinary course of business. The Purchaser may also attach schedules to this Note and endorse thereon the date, amount and maturity of the Advances and payments with respect thereto.

This Note is subject to prepayment as described in the Agreement.

This Note is transferable by the Purchaser, but only under the circumstances, in the manner and subject to the limitations provided in the Agreement.



Delivery of an executed counterpart of a signature page of this Note by fax transmission or other electronic mail transmission (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Note.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

CITY OF NAPA, CALIFORNIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager

ATTESTED:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Clerk

ADVANCES AND PAYMENTS WITH RESPECT THERETO

DATE	AMOUNT OF ADVANCE MADE	AMOUNT OF PRINCIPAL OR INTEREST PAID THIS DATE	OUTSTANDING PRINCIPAL BALANCE THIS DATE	NOTATION MADE BY