

WASTEWATER SYSTEM FIRST DRAFT DATED FEBRUARY 1, 2022

REVOLVING CREDIT AGREEMENT

dated as of _____, 2022

between

CITY OF PHOENIX, ARIZONA

and

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REVOLVING CREDIT AGREEMENT

This REVOLVING CREDIT AGREEMENT (as amended, modified or supplemented from time to time, this “*Agreement*”) is entered into as of _____, 2022, between CITY OF PHOENIX, ARIZONA, a municipal corporation organized and existing under the Constitution and laws of the State of Arizona (the “*City*”), and _____, a national banking association (the “*Bank*”).

PRELIMINARY STATEMENTS

WHEREAS, the City wishes to obtain loans from the Bank hereunder and the Bank is willing, upon the terms and subject to the conditions set forth below, to provide such loans to the City for use to finance or refinance Wastewater System capital projects, to pay costs in connection with this Agreement or for any other purpose permitted under the Ordinance (as defined herein); and

WHEREAS, all obligations of the City to repay the Bank for Borrowings (as defined herein) made by the Bank under the Revolving Commitment (as defined herein) and to pay all other amounts payable to the Bank arising under or pursuant to this Agreement or the Notes to be issued to the Bank hereunder are created under and will be evidenced by this Agreement and the Notes and will be secured by a pledge of and lien on Junior Subordinate Lien Revenues (as defined herein), all in accordance with the terms and conditions hereof and of the Ordinance;

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Bank to extend to the City the Revolving Commitment, the City and the Bank hereby agree as follows:

ARTICLE 1

DEFINITIONS AND ACCOUNTING TERMS

Section 1.01. Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“*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 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 hereto.

“*Amortization End Date*” means the earlier to occur of (a) the third (3rd) anniversary of the Commitment Termination Date and (b) the date on which all Obligations are redeemed, repaid, prepaid or cancelled in accordance with the terms hereof.

“*Amortization Payment Date*” means (a) the Initial Amortization Payment Date and each three-month period occurring thereafter which occurs prior to the Amortization End Date and (b) the Amortization End Date.

“*Applicable Factor*” means, with respect to Taxable Revolving Loans, one hundred percent (100%) and, with respect to Tax-Exempt Revolving Loans, _____ percent (___%).

“*Applicable Law*” means all applicable provisions of all constitutions, statutes, rules, regulations and all binding orders, judgments and decrees of any Governmental Authority.

“*Approving Opinion*” means, with respect to any action or matter that may affect a Tax-Exempt Revolving Loan and/or the Tax-Exempt Term Loan, an opinion delivered by Bond Counsel to the effect that such action (i) is permitted by this Agreement and the other Related Documents and (ii) will not adversely affect the exclusion of interest on any Tax-Exempt Revolving Loan and/or the Tax-Exempt Term Loan from gross income of the Bank or any Participant for purposes of federal income taxation.

“*Audited Financial Statements*” means the audited consolidated balance sheet of the City for the most recently completed Fiscal Year, which includes the complete financial information on the System, and the related consolidated statements of income or operations and cash flows for such Fiscal Year of the City, including the notes thereto.

“*Authorized Officer*” when used with reference to the City means the Chief Financial Officer of the City or any other person at any time designated to act on behalf of the City by written certificate furnished to the Bank, containing the specimen signature of such person and signed by the City Manager or his or her designee. Such certificate may designate one or more alternates.

“*Availability Period*” means the period from and including the Closing Date to the Commitment Termination Date.

“*Available Commitment*” means, on any date, an initial amount equal to \$200,000,000 and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to any Revolving Loan made to the City under the Tax-Exempt Revolving Loan Commitment and/or the Taxable Revolving Loan Commitment, as applicable; (b) upward in an amount equal to the principal amount of any Revolving Loan made to the City under the Tax-Exempt Revolving Loan Commitment and/or the Taxable Revolving Loan Commitment, as applicable, that is repaid or prepaid, as applicable, in the manner provided herein; (c) downward in an amount equal to any reduction thereof effected pursuant to Section 2.04 hereof; and (d) downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof; *provided*, that, after giving effect to any of the foregoing adjustments the Available Commitment shall never exceed \$200,000,000 at any one time.

“*Bank*” has the meaning specified in the introductory paragraph hereto.

“*Bank Agreement*” means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement (such as a continuing

covenant agreement or supplemental bondholder's 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 payment of or provide funds to make payment of, or to purchase or provide credit enhancement for bonds, notes or other obligations of the City.

"Bank Rate" means the rate of interest per annum with respect to a Term Loan (i) for any day commencing on the date such Term Loan is made up to and including the one hundred eightieth day (180th) day next succeeding the date such Term Loan was made, equal to the Base Rate from time to time in effect and (ii) for any day commencing on or after the one hundred eighty-first (181st) day next succeeding the date such Term Loan was made and thereafter, equal to the Base Rate from time to time in effect *plus* ____ percent (____%); *provided, however*, that immediately and automatically upon the occurrence of an Event of Default (and without any notice given with respect thereto) and during the continuance of such Event of Default, *"Bank Rate"* shall mean the Default Rate.

"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* ____ percent (____%), (ii) the Fed Funds Rate in effect at such time *plus* ____ percent (____%) and (iii) ____ percent (____%).

"Bond Counsel" means Greenberg Traurig, LLP, or any other firm of attorneys nationally recognized on the subject of tax-exempt municipal finance selected by the City.

"Bond Orders" means any ordinance, indenture, contract or agreement of the City authorizing and/or evidencing Senior Lien Revenue Obligations, Junior Lien Revenue Obligations, Junior Subordinate Lien Revenue Obligations and any other Debt payable from or secured by an interest in the Operating Revenues senior to or on a parity with the Obligations.

"Bond Year" means a twelve-month period beginning July 2 of the calendar year and ending on the next succeeding July 1.

"Borrowing" means a borrowing of Revolving Loans from the Bank pursuant to Section 2.01 hereof.

"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 state where the principal corporate office of the City 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 either (i) the principal office of the Bank is closed or (ii) the office of the Bank in which it advances Loans hereunder is closed.

"CAFR" means the City's Comprehensive Annual Financial Report prepared in accordance with Generally Accepted Accounting Principles.

"Change in Law" means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law,

rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued (other than any rule thereunder that has been adopted and fully implemented prior to the Closing Date).

“*City*” has the meaning set forth in the introductory paragraph hereto.

“*Closing Date*” means _____, 2022, subject to the satisfaction or waiver by the Bank of the conditions precedent set forth in Article 4 hereof.

“*Code*” means the Internal Revenue Code of 1986, as amended, and when appropriate, any statutory predecessor or successor thereto, and all applicable regulations (whether proposed, temporary or final) thereunder and any applicable official rulings, announcements, notices, procedures and judicial determinations relating to the foregoing.

“*Commitment Fee*” has the meaning set forth in the Fee Letter.

“*Commitment Termination Date*” shall mean the earlier of:

(a) _____, or such later date as may be established pursuant to Section 2.13 hereof; and

(b) the date the Revolving Commitment is reduced to zero pursuant to Section 2.04 or Section 7.02 hereof.

“*Corporation*” means the City of Phoenix Civic Improvement Corporation, a nonprofit corporation organized under the laws of the State of Arizona.

“*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 Bank Agreements or interest rate protection or other derivative instruments or agreements, (f) all debt of others secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person, and (g) all guarantees by such Person of debt other Persons; *provided, however*, in each case, such debt shall be payable from or secured by the Operating Revenues.

“*Debtor Relief Laws*” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“*Default*” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be 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 _____ percent (_____%).

“*Derivative Product*” means a swap, forward or other interest rate agreement of the City entered into in accordance with Section 6.25 hereof.

“*Designated Jurisdiction*” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“*Designated Revenues*” means Net Operating Revenues, after making all payments required by the Senior Lien Revenue Obligation Documents for the benefit of the Senior Lien Revenue Obligations. Designated Revenues do not include earnings on investments held in any project fund or rebate fund established for Junior Lien Revenue Obligations.

“*Determination of Taxability*” means and shall be deemed to have occurred on the first to occur of the following:

(i) on the date when the City files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability has occurred;

(ii) on the date when the Bank notifies the City that it has received a written opinion (which shall not be a reasoned opinion and shall be subject only to customary assumptions and exclusions) by a nationally recognized firm of attorneys of substantial expertise on the subject of tax exempt municipal finance to the effect that an Event of Taxability shall have occurred unless, within two hundred seventy (270) days after receipt by the City of such notification from the Bank, the City shall deliver to the Bank, a ruling or determination letter issued to or on behalf of the City by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability has not occurred;

(iii) on the date when the City shall be advised in writing by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to

time, including an employee subordinate to one of these officers who has been authorized to provide such advice) that, based upon filings of the City, or upon any review or audit of the City or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(iv) on the date when the City shall receive notice from the Bank that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of the Bank or any Participants the interest on any Tax-Exempt Revolving Loan or the Tax-Exempt Term Loan due to the occurrence of an Event of Taxability;

provided, however, no Determination of Taxability shall occur under subparagraph (iii) or (iv) hereunder unless the City has been afforded the reasonable opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; *provided further, however*, that upon demand from the Bank, the City shall promptly reimburse the Bank for any payments, including any taxes, interest, penalties or other charges, the Bank shall be obligated to make as a result of the Determination of Taxability.

“Dollar” and “\$” mean lawful money of the United States.

“*Environmental Laws*” means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“*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 other Related Document, has the meaning assigned therein.

“*Event of Taxability*” means a (i) Change in Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the City, or the failure to take any action by the City, or the making by the City of any misrepresentation herein or in any certificate required to be given in connection with this Agreement) which has the effect of causing interest paid or payable on any Tax-Exempt Revolving Loan or the Tax-Exempt Term Loan, as applicable, to become includable, in whole or in part, in the gross income of the Bank or any Participant for federal income tax purposes or (ii) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid or payable on any Tax-Exempt Revolving Loan or the Tax-Exempt Term Loan, as applicable, to become includable, in whole or in part, in the gross income of the Bank or any Participant for federal income tax purposes with respect to any Tax-Exempt Revolving Loan or the Tax-Exempt Term Loan, as applicable.

“Expenses of Maintenance and Operation” means:

(i) all expenses reasonably incurred in connection with the operation and maintenance of the System, including salaries, wages, the cost of materials and supplies, rentals of leased property, if any, payments to others for the collection or treatment of sewage, if any (but excluding payments to others for the construction of facilities to provide additional capacity for the System and excluding “pay-as-you-go” capital projects and further excluding in-lieu property tax payments and staff and administrative charges attributable to Citywide cost allocations of central service costs other than allocations attributable to regional systems);

(ii) the cost of audits, paying agent’s, registrar’s fees and payment of premiums for insurance required hereunder and other insurance which the City deems prudent to carry on the System and its operations and personnel, and generally, all expenses, exclusive of depreciation and interest on any wastewater system revenue bonds of the Corporation or the City that may be outstanding from time to time and on all other obligations (including, but not limited to general obligation bonds and repayment agreements) issued to improve or extend the System or to refund obligations issued for such purposes or such refunding purposes; and

(iii) the City’s obligations under any contract relating to the System, with any other political subdivision or agency of one or more political subdivisions, including, but not limited to the JEPA, pursuant to which the City undertakes to make payments measured by the expenses of operating and maintaining any facility which relates to the System owned or operated in part by the City and in part by others or wholly by others.

“Fed 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, if necessary, to a whole multiple of one one-hundredth of 1.00%) charged to _____ on such day on such transactions as determined by _____.

“Fee Letter” means the Fee and Interest Rate Agreement, dated as of the date of this Agreement, providing for payment of the Commitment Fee and other fees to be payable to the Bank related to the Revolving Loans, the Term Loans and this Agreement and for the determination of the Taxable Applicable Spread and Tax-Exempt Applicable Spread.

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

“Fixed Rate Revolving Loan” means a Revolving Loan that bears interest at a Taxable Fixed Rate or a Tax-Exempt Fixed Rate, as applicable.

“Floating Rate” means, for any day with respect to each Floating Rate Revolving Loan, the fluctuating rate of interest equal to the per annum rate of interest [determined on the basis of the rate on deposits in United States dollars of amounts equal to or comparable to the principal amount of such Floating Rate Revolving Loan, offered for a term of one month, which rate appears on the display designated as Reuters Screen LIBOR01 Page (or any successor page)], as determined for each Business Day at approximately 11:00 a.m., [London] time two (2) [London] Banking Days prior to the date in question, or if such rate is not available, another market conventional rate determined by the Bank of which the City has received written notice. Notwithstanding anything herein to the contrary, during any period of time while the Floating Rate, determined as provided above, would be less than zero percent (0.0%), the Floating Rate shall be deemed to be zero percent (0.0%).

“Floating Rate Revolving Loan” means a Revolving Loan that bears interest at a Taxable Floating Rate or a Tax-Exempt Floating Rate, as applicable.

“Generally Accepted Accounting Principles” means generally accepted accounting principles consistently applied and maintained throughout the period indicated, except for changes permitted by the Governmental Accounting Standards Board or any similar accounting authority of comparable standing.

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

“Governmental Authority” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, tribunal, agency, bureau, court or entity (including the Federal Reserve Board, any central bank or any comparable authority), or any arbitrator with authority to bind a party at law.

“Highest Lawful Rate” means the maximum interest rate permitted by applicable law, but in no event more than nine and one half percent (9.5%) per annum.

“Indemnitees” has meaning specified in Section 8.04(b) hereof.

“Initial Amortization Payment Date” means the first Business Day of the third (3rd) full calendar month following the Commitment Termination Date.

“Initial Tax-Exempt Revolving Loan” means the Tax-Exempt Revolving Loan extended on the Closing Date in the initial principal amount of \$ _____.

“Interest Payment Date” means, (a) as to any Fixed Rate Revolving Loan, the last day of each Interest Period applicable to such Fixed Rate Revolving Loan and the Commitment Termination Date; *provided, however*, that if any Interest Period for a Fixed Rate Revolving Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payments Dates; (b) as to any Floating Rate Revolving Loan, the first Business Day of each calendar month and the Commitment Termination Date, provided

that if a Floating Rate Revolving Loan is funded on the Closing Date, the initial Interest Payment Date with respect thereto shall be _____, 2022; and (c) as to the Term Loans, the first Business Day of each third calendar month and the Amortization End Date.

“Interest Period” means as to each Fixed Rate Revolving Loan, the period commencing on the date such Fixed Rate Revolving Loan is disbursed or converted to or continued as a Fixed Rate Revolving Loan and ending on the date one, three or six months thereafter as selected by the City in its Loan Notice; *provided* that:

(a) the Interest Period shall commence on the date of advance of or conversion to any Fixed Rate Revolving Loan and, in the case of immediately successive Interest Periods, each successive Interest Period shall commence on the date on which the immediately preceding Interest Period expires;

(b) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; *provided*, that if any Interest Period with respect to a Fixed Rate Revolving Loan would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the immediately preceding Business Day;

(c) any Interest Period with respect to a Fixed Rate Revolving Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month at the end of such Interest Period; and

(d) no Interest Period shall extend beyond the Commitment Termination Date.

“IRS” means the United States Internal Revenue Service.

“JEPA” means the joint exercise of powers agreement entitled “Construction, Operation and Maintenance of the Jointly Used Sewerage Treatment and Transportation Facilities” entered into as of September 25, 1979, as amended from time to time, by and among the SROG Members, as further described on Exhibit F hereto.

“Junior Lien Revenue Obligation Documents” means the City Purchase Agreements dated as of December 1, 2011, April 1, 2014 and November 1, 2017, respectively, and the Junior Lien City Purchase Agreement dated as of June 1, 2018, each between the Corporation and the City and relating to the System, or any other ordinance, indenture, contract or agreement of the City continuing or authorizing Junior Lien Revenue Obligations.

“Junior Lien Revenue Obligations” means the obligations of the City that are issued under Junior Lien Revenue Obligation Documents and are payable from Designated Revenues senior to Junior Subordinate Lien Revenue Obligations, which may include Series Revolving Credit Revenue Obligations.

“*Junior Subordinate Lien Revenue Obligation Documents*” means any ordinance, indenture, contract or agreement of the City continuing or authorizing Junior Subordinate Lien Revenue Obligations.

“*Junior Subordinate Lien Revenue Obligations*” means obligations which are issued or incurred and payable by, or the payment of which is assumed by the City, which obligations share pro rata in payments to be made by the City from Junior Subordinate Lien Revenues, including the Obligations and any Series Revolving Credit Revenue Obligations.

“*Junior Subordinate Lien Revenues*” means Designated Revenues, after making all payments required by the Junior Lien Revenue Obligation Documents for the benefit of the Junior Lien Revenue Obligations.

“*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.

“*Lending Office*” means, the office or offices of the Bank described as such in Schedule 8.02, or such other office or offices as the Bank may from time to time notify the City.

[“*LIBOR Index*” means, for any Interest Period with respect to a Fixed Rate Revolving Loan, the per annum rate of interest determined on the basis of the rate on deposits in United States dollars of amounts equal to or comparable to the principal amount of such Fixed Rate Revolving Loan, offered for a term equivalent to such Interest Period, which rate appears on the display designated as Reuters Screen LIBOR01 Page (or any successor page), determined as of approximately 11:00 a.m., London time, two (2) London Banking Days prior to the commencement of such Interest Period, or if such rate is not available, another market conventional rate determined by the Bank of which the City has received written notice. Notwithstanding anything herein to the contrary, during any period of time while the LIBOR Index, determined as provided above, would be less than zero percent (0.0%), the LIBOR Index shall be deemed to be zero percent (0.0%).]

“*Loans*” means, collectively, the Revolving Loans and the Term Loans.

“*Loan Notice*” or “*Revolving Loan Notice*” means a notice of (a) a Borrowing, (b) a conversion of Revolving Loans from one Type to the other or (c) a continuation of Fixed Rate Revolving Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A or such other form as may be approved by the Bank (including any form on an electronic platform or electronic transmission system as be approved the Bank), appropriately completed and signed by an Authorized Officer of the City.

[“*London Banking Days*” means any day on which dealings in U.S. Dollar deposits are conducted by and between banks in the London interbank Eurodollar market.]

“*Margin Stock*” has the meaning ascribed to such term in Regulation U promulgated by the Board of Governors of the Federal Reserve System of the United States, together with any successors thereof.

“*Material Adverse Effect*” means (a) (i) with respect to any Person, a materially adverse effect upon such Person’s business, assets, liabilities, financial condition, results of operations or business prospects, and (ii) with respect to a group of Persons as a whole, a materially adverse effect upon such Persons’ business, assets, liabilities, financial condition, results of operations or business prospects taken as a whole, and (b) with respect to any agreement or obligation, a materially adverse effect upon the binding nature, validity or enforceability of such agreement or obligation.

“*Maximum Annual Junior Subordinate Lien Debt Service*” means an amount equal to the highest aggregate amount of principal of and interest on Junior Subordinate Lien Revenue Obligations to become due in any Bond Year, calculated as set forth herein. With respect to Junior Subordinate Lien Revenue Obligations outstanding or proposed to be issued bearing a fixed rate of interest, the aggregate amount of principal of and interest on such Junior Subordinate Lien Revenue Obligations to become due in any Bond Year shall be computed using the fixed interest rate borne by such Junior Subordinate Lien Revenue Obligations and the principal to become due in such Bond Year upon maturity or by mandatory redemption. In case any Junior Subordinate Lien Revenue Obligations outstanding or proposed to be issued shall bear interest at a variable rate, the amount of interest due in any Bond Year shall be computed at the lesser of (1) the maximum rate which such Junior Subordinate Lien Revenue Obligations may bear under the terms of their issuance or (2) the rate of interest established for long-term bonds by the 20-year bond index most recently published by The Bond Buyer of New York, New York, prior to the date of computation (or in the absence of such published index, some other index selected in good faith by the Chief Financial Officer of the City after consultation with one or more reputable, experienced investment bankers as being equivalent thereto) (the “*Variable Rate Assumption*”). With respect to any Junior Subordinate Lien Revenue Obligations issued or proposed to be issued with a variable rate, the maximum amount of principal due in any Bond Year shall be calculated as if the entire amount issued or, if greater, authorized to be issued, was to be amortized over a term of thirty (30) years commencing in the year in which such obligations were issued or proposed to be issued and with substantially level annual debt service payments and the maximum amount of interest to be due in any Bond Year shall be computed using the Variable Rate Assumption. In connection with any calculation of interest or principal with respect to any variable rate Junior Subordinate Lien Revenue Obligation which is the subject of a Derivative Product pursuant to which the debt service payment, net of amounts received or owed to a Qualified Counterparty, is a fixed rate obligation, the net fixed rate debt service payments shall be assumed in the calculation.

“*Maximum Federal Corporate Tax Rate*” means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect from time to time (or, if as a result of a change in the Code, the rate of income taxation imposed on corporations generally shall not be applicable to the Bank, the maximum statutory rate of federal income taxation which

could apply to the Bank). As of the Closing Date, the Maximum Federal Corporate Tax Rate is 21%.

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

“*Notes*” means collectively, the Tax-Exempt Note and the Taxable Note.

“*Net Operating Revenues*” means, for any period, Operating Revenues, after provision for the payment of the Expenses of Maintenance and Operation for such period.

“*Notice of Loan Prepayment*” means a notice of prepayment with respect to a Revolving Loan or a Term Loan, which shall be substantially in the form of Exhibit C or such other form as may be approved by the Bank (including any form on an electronic platform or electronic transmission system as shall be approved by the Bank), appropriately completed and signed by an Authorized Officer.

“*Obligations*” means the obligations of the City under this Agreement to repay (i) all Revolving Loans, the Term Loans, the Notes and the obligations due under the Fee Letter, together with interest thereon, pursuant to and in accordance with this Agreement, the Fee Letter and the Notes, (ii) all fees, and (iii) all expenses and charges payable or reimbursable hereunder to the Bank (including, without limitation, any amounts to reimburse the Bank for any advances or expenditures by it under any of such documents) and all other payment obligations of the City to the Bank arising under or in relation to this Agreement, the Fee Letter or the other Related Documents, in each, case whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired.

“*OFAC*” means the United States Department of Treasury Office of Foreign Assets Control.

“*Operating Revenues*” means all income and revenue of any nature derived from the ownership, use or operation of the System including monthly billings, sewer service charges, sewer environmental charges, development occupational fees, connection fees, other charges for wastewater collection and treatment service and the availability thereof, and related investment earnings, but excluding proceeds of special assessments, local, state or federal grants, capital improvement contract payments or other money received for capital improvements to the System.

“*Ordinance*” means, collectively, Ordinance No. S-31743, Ordinance No. S-33636 and Ordinance No. 34856, adopted by the Mayor and Council of the City on February 16, 2005, January 10, 2007 and March 19, 2008, respectively, authorizing, among other things, the City to execute and deliver this Agreement, the Fee Letter and the Notes and to issue the Series Revolving Credit Revenue Obligations.

“*Other Monies*” means monies of the City other than Designated Revenues which are, at the time any payment is required under this Agreement, legally available to make such payment.

“*Other Taxes*” has the meaning assigned to that term in Section 3.01 hereof.

“Outstanding Amount” means (a) with respect to Revolving Loans or Term Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and prepayments or repayments of Revolving Loans or Term Loans, as the case may be, occurring on such date.

“Parity Obligations” has the meaning ascribed to such term in the Junior Lien Revenue Obligation Documents.

“Participant” means any person to whom the Bank has assigned its rights under this Agreement or to which the Bank or any Participant has sold a participation in rights under this Agreement.

“Person” means an individual, partnership, corporation (including a business trust), trust, unincorporated association, joint venture or other entity, including a government or political subdivision or any agency or instrumentality thereof.

“Prime Rate” means, for any day, the fluctuating rate of interest per annum equal to the “Prime Rate” listed in the “Money Rates” section of The Wall Street Journal as of such day or, if The Wall Street Journal is not published on a particular day, then the “Prime Rate” listed in the “Money Rates” section of The Wall Street Journal for the immediately preceding Business Day. If The Wall Street Journal ceases to exist or to publish a prime rate from which the Prime Rate is then determined, then the Prime Rate shall be the rate determined by _____ as its prime commercial lending rate for such day for loans denominated in U.S. Dollars made in the United States. _____ may make loans to its customers at, below or above such prime commercial lending rate, and the prime commercial lending rate referred to herein is not intended to be the best rate offered to customers of _____. Any change in the Prime Rate shall take effect on the date specified in the publication or announcement of such change. Each determination of the Prime Rate by the Bank will be conclusive and binding on the City absent manifest error.

“Project” means, in the aggregate, the improvements described on Exhibit D hereto as amended from time to time.

“Qualified Counterparty” means a counterparty to a Derivative Product which at the time such agreement is executed, (i) is a bank, insurance company, indemnity company, financial institution or any similar or related company with a credit rating in one of the two highest Rating Categories of the Rating Agency, (ii) the obligations of such counterparty are guaranteed by an entity described in clause (i), or (iii) the obligations of which are fully secured by obligations described in items (a) or (b) of the definition of Permitted Investment (as defined in the Junior Lien Revenue Obligation Documents) which are (A) valued not less frequently than monthly and have a fair market value, exclusive of accrued interest, at all times at least equal to 105% of the principal amount of the investment, together with the interest accrued and unpaid thereon, (B) held by a custodian, (who shall not be the provider of the collateral), or by any Federal Reserve Bank or a depository acceptable to the City, (C) subject to a perfected first lien on behalf of the applicable secured party, and (D) free and clear from all third-party liens.

“*Rating Agencies*” means Moody’s and S&P.

“*Related Documents*” means this Agreement, the Fee Letter, the Notes, the Ordinance 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 permitted hereunder and thereunder.

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

“*Revenue Obligations*” means Senior Lien Revenue Obligations, Junior Lien Revenue Obligations, Junior Subordinate Revenue Obligations and any other long-term Debt payable from or secured by an interest in the Operating Revenues senior to or on a parity with the Junior Subordinate Lien Revenue Obligations.

“*Revolving Commitment*” means the Bank’s obligation to make Revolving Loans to the City pursuant to Section 2.01(b). The Revolving Commitment on the Closing Date shall initially be \$200,000,000.

“*Revolving Loan*” has the meaning specified in Section 2.01 hereof.

“*S&P*” means S&P Global Ratings, a division of Standard & Poor’s Financial Services LLC, and any successor rating agency.

“*Sanction(s)*” means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“*Security*” shall have the meaning assigned to such term in Section 2.14 hereof.

“*Senior Lien Revenue Obligation Documents*” means the Senior Lien City Purchase Agreement dated as of June 1, 2018 between the Corporation and the City or any other ordinance, indenture, contract or agreement of City constituting or authorizing Senior Lien Revenue Obligations.

“*Senior Lien Revenue Obligations*” means the obligations of the City that are issued under Senior Lien Revenue Obligation Documents and are payable from Net Operating Revenues, which may include Series Revolving Credit Revenue Obligations.

“*Series Revolving Credit Revenue Obligations*” means Revenue Obligations issued to pay any or of the principal amount and accrued interest thereon of the Obligations.

“*State*” means the State of Arizona.

“*SROG Members*” means, collectively, the City, the city of Glendale, the city of Mesa, the city of Scottsdale and the city of Tempe and any other entity which may enter into the JEPA to contract for purchased capacity.

“*System*” or “*Wastewater System*” means the complete sewage treatment plants and collection system of the City, including such system as it now exists and as it may be improved and extended, consisting of all treatment, interceptor and collection facilities and all real and personal property of every nature owned or operated by the City and used or useful in the operation thereof whether within or without the boundaries of the City and including all licenses, franchises, easements, leases, rights-of-way, choses in action and other tangible and intangible property and rights therein, including portions thereof which may be owned jointly with other public bodies pursuant to the JEPA or other agreements.

“*Taxable Applicable Spread*” has the meaning set forth in the Fee Letter.

“*Taxable Date*” means the date on which interest on any Tax-Exempt Revolving Loan or the Tax-Exempt Term Loan, as applicable, is first includable in gross income of any recipient thereof (including the Bank) as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

“*Taxable Fixed Rate*” means an annualized fixed rate, for the applicable Interest Period, (rounded upward to the fifth-decimal place) that is equal to the sum of (a) the product of (i) the [LIBOR Index], for the applicable Interest Period, multiplied by (ii) the Applicable Factor plus (b) the Taxable Applicable Spread; *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, “Taxable Fixed Rate” shall mean the Default Rate.

“*Taxable Floating Rate*” means a fully floating rate per annum (rounded upward to the fifth decimal place) that is equal to the sum of (a) the product of (i) the Floating Rate multiplied by (ii) the Applicable Factor plus (b) the Taxable Applicable Spread; *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, “Taxable Floating Rate” shall mean the Default Rate.

[“*Taxable LIBOR Rate*” means, as applicable, the Taxable Fixed Rate and/or the Taxable Floating Rate.]

“*Taxable Note*” means the Note dated _____, 2022, of the City in favor of the Bank evidencing the outstanding Taxable Revolving Loans and the Taxable Term Loan made by the Bank and substantially in the form of Exhibit B-2 hereto.

“*Taxable Period*” has meaning specified in Section 2.13 hereof.

“*Taxable Rate*” means, with respect to a Taxable Period, the product of (i) the interest rate on the Tax-Exempt Revolving Loan for each day during such period and (ii) the applicable Taxable Rate Factor.

“*Taxable Rate Factor*” means for each day that the Taxable Rate is determined, the quotient of (i) one *divided by* (ii) one minus the Maximum Federal Corporate Tax Rate in effect as of such day, rounded upward to the second decimal place.

“*Taxable Revolving Loan*” means any Loan bearing interest at the [Taxable LIBOR Rate].

“*Taxable Revolving Loan Commitment*” means, on any date, an initial amount equal to \$200,000,000 and thereafter such initial amount adjusted from time to time as follows: (a) downward an amount equal to any Revolving Loan made to the City under the Tax-Exempt Revolving Loan Commitment and/or the Taxable Revolving Loan Commitment, as applicable; (b) upward in an amount equal the principal amount of any Revolving Loan made to the City under the Tax-Exempt Revolving Loan Commitment and/or the Taxable Revolving Loan Commitment, as applicable, that is repaid, prepaid or canceled, as applicable, in the manner provided herein; (c) downward in an amount equal to any reduction thereof effected pursuant to Section 2.04 hereof; and (d) downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof; *provided*, that, after giving effect to any of the foregoing adjustments the Taxable Revolving Loan Commitment shall never exceed \$200,000,000 at any one time.

“*Taxable Term Loan*” means the Taxable Term Loan advanced hereunder pursuant to the terms of Section 2.05 hereof.

“*Tax-Exempt Applicable Spread*” has the meaning set forth in the Fee Letter.

“*Tax-Exempt Fixed Rate*” means an annualized fixed rate, for the applicable Interest Period, (rounded upward to the fifth-decimal place) that is equal to the sum of (a) the product of (i) [the LIBOR Index], for the applicable Interest Period, multiplied by (ii) the Applicable Factor plus (b) the Tax-Exempt Applicable Spread; *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, “Taxable Fixed Rate” shall mean the Default Rate.

“*Tax-Exempt Floating Rate*” means a fully floating rate per annum (rounded upward to the fifth decimal place) that is equal to the product of (x) the sum of (a) the product of (i) the Floating Rate, multiplied by (ii) the Applicable Factor, plus (b) the Tax-Exempt Applicable Spread; *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, “Tax- Exempt Floating Rate” shall mean the Default Rate.

[“*Tax-Exempt LIBOR Rate*”] means the Tax-Exempt Fixed Rate and/or the Tax-Exempt Floating Rate.

“*Tax-Exempt Note*” means the Note dated _____, 2022, of the City in favor of the Bank evidencing the outstanding Tax-Exempt Revolving Loans and the Tax-Exempt Term Loans made by the Bank and substantially in the form of Exhibit B-1 hereto.

“*Tax-Exempt Revolving Loan*” means any Loan bearing interest at the [Tax-Exempt LIBOR Rate.]

“*Tax-Exempt Revolving Loan Commitment*” means, on any date, an initial amount equal to \$200,000,000 and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to any Revolving Loan made to the City under the Tax-Exempt Revolving Loan Commitment and the Taxable Revolving Loan Commitment, as applicable; (b) upward in an amount equal to the principal amount of any Revolving Loan made to the City under the Tax-Exempt Revolving Loan Commitment and/or the Taxable Revolving Loan Commitment, as applicable, that is repaid, prepaid or canceled, as applicable, in the manner provided herein; (c) downward in an amount equal to any reduction thereof effected pursuant to Section 2.04 hereof; and downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof; *provided*, that, after giving effect to any of the foregoing adjustments the Tax-Exempt Revolving Loan Commitment shall never exceed \$200,000,000 at any one time.

“*Tax-Exempt Term Loan*” means the Tax-Exempt Term Loan advanced hereunder pursuant to the terms of Section 2.05 hereof.

“*Taxes*” has the meaning assigned to that term in Section 2.07 hereof.

“*Term Loans*” means both the Tax-Exempt Term Loan and the Taxable Term Loan.

“*Total Outstandings*” means the aggregate Outstanding Amount of all Revolving Loans.

“*2018 Junior Lien City Purchase Agreement*” means the Junior Lien City Purchase Agreement dated as of June 1, 2018, between the City and the Corporation, and relating to the System.

“*Type*” means, with respect to a Revolving Loan, its character as a Floating Rate Revolving Loan or a Fixed Rate Revolving Loan.

“*United States*” and “*U.S.*” mean the United States of America.

“*Written*” or “*in writing*” means any form of written communication or a communication by means of telex, telecopier device or electronic mail.

Section 1.02. Other Interpretive Provisions. With reference to this Agreement, the Fee Letter, the Notes and the Ordinance, unless otherwise specified herein or in the Notes, the Fee Letter or the Ordinance:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.”

Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in the Fee Letter, the Notes or the Ordinance), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import when used in this Agreement, the Fee Letter, the Notes or the Ordinance, shall be construed to refer to such document in its entirety and not to any particular provision thereof, (iv) all references in this Agreement, the Fee Letter, the Notes or the Ordinance to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, the Fee Letter, the Notes or the Ordinance in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including."

(c) Section headings herein and in the Fee Letter, the Notes and the Ordinance are included for convenience of reference only and shall not affect the interpretation of this Agreement, the Notes or the Ordinance.

Section 1.03. Accounting Terms.

(a) *Generally.* All accounting terms not specifically or completely defined herein shall be construed in conformity with, and 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 Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) *Changes in GAAP.* If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Related Document, and either the City or the Bank shall so request, the Bank and the City shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; *provided* that, until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) the City shall provide to the Bank financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

Section 1.04. Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern Time (daylight or standard, as applicable).

ARTICLE 2

THE REVOLVING COMMITMENT

Section 2.01. Revolving Loans. Subject to the terms and conditions set forth herein, the Bank agrees to make loans (individually, a “*Revolving Loan*” and collectively, the “*Revolving Loans*”) to the City from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time the Available Commitment; *provided, however*, that after giving effect to any Borrowing, the Total Outstandings shall not exceed the Revolving Commitment, subject to any reductions thereof pursuant to the terms hereof. Subject to the other terms and conditions hereof, the City may borrow under this Section 2.01, prepay under Section 2.03, and reborrow under this Section 2.01. The City may elect that any Revolving Loan be either a Tax-Exempt Revolving Loan pursuant to the Tax-Exempt Revolving Loan Commitment or a Taxable Revolving Loan pursuant to the Taxable Revolving Loan Commitment. A Tax-Exempt Revolving Loan will bear interest at the Tax-Exempt Fixed Rate or the Tax-Exempt Floating Rate. A Taxable Revolving Loan will bear interest at the Taxable Fixed Rate or Taxable Floating Rate. In the event the Bank shall specify an alternate rate index as described in the definitions of [LIBOR Index or Floating Rate], the City shall use its best efforts to provide an Approving Opinion. If the City shall be unable to do so, the applicable rate shall convert to a Taxable Fixed Rate or Taxable Floating Rate, as applicable, as of the effective date of such alternate rate index. Notwithstanding the foregoing, the City shall not take any action that would cause a Borrowing to utilize the Taxable Loan Commitment unless it shall deliver to the Bank an opinion of Bond Counsel that the Ordinance has been amended to authorize the use of the Taxable Loan Commitment.

Section 2.02. Borrowings, Conversions and Continuations of Revolving Loans. (a) Each Borrowing, each conversion of Revolving Loans from one Type to the other, and each continuation of Fixed Rate Revolving Loans shall be made upon the City’s irrevocable notice to the Bank, which may be given by a Loan Notice. Each such notice must be received by the Bank not later than 11:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Fixed Rate Revolving Loans, or of any conversion of Fixed Rate Revolving Loans to Floating Rate Revolving Loans, and (ii) on the requested date of any Borrowing of Floating Rate Revolving Loans. Each Borrowing of, conversion to or continuation of Fixed Rate Revolving Loans shall be, unless otherwise agreed by the Bank, in a principal amount of \$250,000 or a whole multiple of \$50,000 in excess thereof. Each Borrowing of or conversion to Floating Rate Revolving Loans shall be in a principal amount of \$250,000 or a whole multiple of \$50,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) whether the City is requesting a Borrowing, a conversion of Revolving Loans from one Type to the other, or a continuation of Fixed Rate Revolving Loans, (ii) the requested date of the Borrowing, conversion or a continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Revolving Loans to be borrowed, converted, or continued, (iv) the Type of Revolving Loans to be borrowed or to which existing Revolving Loans are to be

converted, (v) whether the interest rate will be the Tax-Exempt Floating Rate, the Tax-Exempt Fixed Rate, the Taxable Floating Rate or the Taxable Fixed Rate and, if converting to or from a Tax-Exempt Revolving Loan, shall be accompanied by an Approving Opinion and (vi) if applicable, the duration of the Interest Period with respect thereto and, if different from the previous Interest Period, the Loan Notice shall be accompanied by an Approving Opinion. If the City fails to specify a Type of Revolving Loan in a Loan Notice, or to specify the interest rate or Interest Period applicable to such Revolving Loan in a Loan Notice or to give a timely notice requesting a conversion or continuation of such Revolving Loan, then the applicable Revolving Loan will be deemed to be or converted to or continued as, a Fixed Rate Revolving Loan with an Interest Period of one (1) month. All such Revolving Loans will bear interest at the Tax-Exempt Fixed Rate, other than Revolving Loans previously bearing interest at a Taxable Floating Rate or Taxable Fixed Rate or a new Revolving Loan for which the Loan Notice does not specify a Tax-Exempt Floating Rate or Tax-Exempt Fixed Rate. Any such conversion or continuation of a Fixed Rate Revolving Loan shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Fixed Rate Revolving Loan.

(b) Following receipt of a Loan Notice, upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Borrowing, Section 4.01), the Bank shall make the requested funds available to the City either by (i) crediting the account of the City on the books of the Bank with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided (and reasonably acceptable to) the Bank by the City.

(c) Except as otherwise provided herein, a Fixed Rate Revolving Loan may be continued or converted only on the last day of an Interest Period for such Fixed Rate Revolving Loan. During the existence of a Default, no Revolving Loans may be requested as, converted to or continued as Fixed Rate Revolving Loans without the consent of the Bank, and the Bank may demand that any or all of the then outstanding Fixed Rate Revolving Loans be converted immediately to Floating Rate Revolving Loans and the City agrees to pay all amounts due under Section 3.07 in accordance with the terms thereof due to any such conversion upon receipt of invoice of such charges.

(d) The Bank shall promptly notify the City of the interest rate applicable to any Interest Period for Fixed Rate Revolving Loans upon determination of such interest rate and the date on which such Interest Period ends.

(e) After giving effect to all Borrowings, all conversions of Revolving Loans from one Type to the other, and all continuations of Revolving Loans as the same Type, there shall not be more than seven (7) Interest Periods in effect with respect to Revolving Loans without the consent of the Bank.

Section 2.03. Prepayments.

(a) *Optional.* The City may, upon notice to the Bank pursuant to delivery to the Bank of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Revolving Loans or Term Loans in whole or in part subject to Section 3.06; *provided* that, unless otherwise agreed by the Bank (A) such notice must be received by Bank not later than 11:00 a.m. (1) three (3) Business Days prior to any date of prepayment of Fixed Rate Revolving Loans and (2) on the

date of prepayment of Floating Rate Revolving Loans or Term Loans, (B) any prepayment of Fixed Rate Revolving Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof and (C) any prepayment of Floating Rate Revolving Loans or Term Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each such notice shall specify the date and amount of such prepayment the Type(s) of Loans to be prepaid, if Fixed Rate Revolving Loans are to be prepaid, the Interest Period(s) of such Revolving Loans and, if Term Loans are to be prepaid, the type of Term Loan. If such notice is given by the City, the City shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of principal shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.07. Each prepayment of a Term Loan pursuant to this Section 2.03(a) shall be applied to the principal repayment installments thereof in inverse order of maturity. Notwithstanding anything herein to the contrary, the City may not prepay any Fixed Rate Revolving Loans on any day other than on the last day of the Interest Period applicable to such Fixed Rate Revolving Loan unless such prepayment is accompanied by any amount required to be paid pursuant to Section 3.06(a) hereof.

(b) *Mandatory.*

(i) *Revolving Outstandings.* If for any reason the Total Outstandings at any time exceed the Revolving Commitment at such time, the City shall immediately prepay Revolving Loans (together with all accrued but unpaid interest thereon) such that the Total Outstandings does not exceed the Revolving Commitment.

(ii) *Application of Other Payments.* Prepayments under the Revolving Commitment made pursuant to this Section 2.03(b), shall be applied to the outstanding Revolving Loans and, in the case of prepayments under the Revolving Commitment required pursuant to clause (i) of this Section 2.03(b), the amount remaining, if any, after the prepayment in full of all Revolving Loans outstanding at such time in full (the sum of such prepayment amounts, the "*Reduction Amount*") may be retained by the City for use in the ordinary course of its business, and the Revolving Commitment shall be automatically and permanently reduced by the Reduction Amount as set forth in Section 2.05(b)(i).

Within the parameters of the applications set forth above, prepayments pursuant to this Section 2.03(b) shall be applied first to Floating Rate Revolving Loans and then to Fixed Rate Revolving Loans in direct order of Interest Period maturities. All prepayments under this Section 2.03(b) shall be subject to Section 3.06 hereof, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

Section 2.04. Termination or Permanent Reduction of Revolving Commitment.

(a) *Optional.* The City may, upon notice to the Bank, terminate the Revolving Commitment, or from time to time permanently reduce the Revolving Commitment; *provided that* (i) any such notice shall be received by the Bank not later than 11:00 a.m. five (5) Business Days prior to the date of termination or permanent reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) the

City shall not terminate or permanently reduce the Revolving Commitment if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Revolving Commitment, and (iv) the City shall have paid any termination or reduction fee required by the Fee Letter.

(b) *Mandatory.* The Revolving Commitment shall be automatically and permanently reduced on each date on which the prepayment of Loans outstanding thereunder is required to be made pursuant to Section 2.03(b)(i) by an amount equal to the applicable Reduction Amount.

(c) *Payment of Fees.* All fees in respect of the Revolving Commitment accrued until the effective date of any termination of the Revolving Commitment shall be paid on the effective date of such termination.

Section 2.05. Repayment of Revolving Loans; Advance of Term Loans and Repayment of Term Loans. (a) The City shall repay to the Bank on the Commitment Termination Date the aggregate principal amount of Revolving Loans outstanding on such date.

(b) Subject to the satisfaction of the terms and conditions of Section 4.03 hereof, on the Commitment Termination Date the (i) Outstanding Amount of the Tax-Exempt Revolving Loans shall convert into the Tax-Exempt Term Loan and the proceeds of the Tax-Exempt Term Loan shall be used to pay in full the Tax-Exempt Revolving Loans and (ii) the Outstanding Amount of the Taxable Revolving Loans shall convert into the Taxable Term Loan and the proceeds of the Taxable Term Loan shall be used to pay in full the Taxable Revolving Loans. Any Revolving Loan not converted to the Tax-Exempt Term Loan or Taxable Term Loan, as applicable, shall be due and payable on the Commitment Termination Date and shall bear interest at the Default Rate.

(c) The principal amount of the Term Loans shall be due and payable in twelve (12) substantially equal installments due quarterly on each Amortization Payment Date; *provided, however,* that any remaining portion of the Term Loans shall be due and payable no later than the Amortization End Date.

Section 2.06. Interest and Default Rate.

(a) *Interest.* Subject to the provisions of subsection (b) below, (i) each Fixed Rate Revolving Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Tax-Exempt Fixed Rate or the Taxable Fixed Rate, as applicable, for such Interest Period, (ii) each Floating Rate Revolving Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to the Tax-Exempt Floating Rate or the Taxable Floating Rate, as applicable and (iii) each of the Taxable Term Loan and the Tax-Exempt Term Loan shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the Bank Rate.

(b) *Default Rate.* (i) While any Event of Default exists, the City shall pay interest on all outstanding Obligations hereunder (including, without limitation, all Revolving Loans and Term Loans) at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Law.

(ii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) *Interest Payments.* Interest on each Revolving Loan and the Term Loans shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.07. Fees. The City shall pay to the Bank a Commitment Fee and other amounts as required under the Fee Letter. The terms and provisions of the Fee Letter are incorporated herein by reference as if fully set forth herein. Any reference herein or in the Fee Letter to fees and/or other amounts or obligations payable hereunder shall include, without limitation, all fees and other amounts or obligations (including without limitation fees and expenses) payable pursuant to the Fee Letter, and any reference to this Agreement shall be deemed to include a reference to the Fee Letter. The Fee Letter and this Agreement shall be construed as one agreement between the City and the Bank and all obligations under the Fee Letter shall be construed as obligations hereunder. All fees payable pursuant to this Agreement shall be deemed to be fully earned when due and non-refundable when paid.

Section 2.08. Computation of Interest and Fees. A computations of interest shall be made on the basis of a year of three hundred sixty (360) days, and actual days elapsed. Interest shall accrue on each Revolving Loan and the Term Loans for the day on which such Revolving Loan and such Term Loan is made, and shall not accrue on a Revolving Loan or the Term Loans, or any portion thereof, for the day on which the Revolving Loan or the Term Loans or such portion is paid, *provided* that any Revolving Loan or Term Loan that is repaid on the same day on which it is made shall, subject to Section 2.10(a), bear interest for one day. Each determination by the Bank of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.09. Evidence of Debt. The Borrowings made by the Bank shall be evidenced by one or more accounts or records maintained by the Bank in the ordinary course of business. The accounts or records maintained by the Bank shall be conclusive absent manifest error of the amount of the Borrowings made by the Bank to the City and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the City hereunder to pay any amount owing with respect to the Obligations. The Tax-Exempt Revolving Loans and the Tax-Exempt Term Loan shall be evidenced by the Tax-Exempt Note to be issued on the Closing Date, initially registered in the name of, and payable to, the Bank and otherwise duly completed and the Taxable Revolving Loans and the Taxable Term Loan shall be evidenced the Taxable Note to be issued on the Closing Date, initially registered in the name of, and payable to, the Bank and otherwise duly completed. The Bank may attach schedules to the Notes and endorse thereon the date, amount and maturity of Revolving Loans and the Term Loans and payments with respect thereto.

Section 2.10. Payments.

(a) *General.* All payments to be made by the City shall be made in Dollars and immediately available funds by debit to a deposit account, as described in this Agreement or as authorized by the City and without condition or deduction for any counterclaim, defense, recoupment or setoff. If any payment to be made by the City shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be. For payments not made by direct debit, payments will be made to the Bank at the Lending Office not later than 4:30 p.m. on the date specified herein. All payments received by the Bank after 4:30 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) *Payments by the City.* For any payment under this Agreement made by debit to a deposit account, the City will maintain sufficient immediately available funds in the deposit account to cover each debit. If there are insufficient immediately available funds in the deposit account on the date the Bank enters any such debit authorized by this Agreement, the Bank may reverse the debit.

Section 2.11. Extension of Commitment Termination Date. At least sixty (60) days and no more than two hundred ten (210) days prior to the Commitment Termination Date, the City may make a request to the Bank, upon written notice, to extend the Commitment Termination Date. Not more than thirty (30) days from the date on which the Bank shall have received any such notice from the City pursuant to the preceding sentence, the Bank shall notify the City of the initial consent or nonconsent of the Bank to such extension request, which consent shall be given at the sole and absolute discretion of the Bank. The consent of the Bank, if granted, shall be conditioned upon the preparation, execution and delivery of documentation in form and substance satisfactory to the Bank which shall include, but not be limited to, the delivery of an Approving Opinion. Failure of the Bank to respond to a request for extension of the Commitment Termination Date shall constitute denial of such extension.

Section 2.12. Highest Lawful Rate. Any interest payable pursuant to this Agreement, the Fee Letter or the Notes shall not exceed the Highest Lawful Rate, and for such purpose all interest and other charges, fees, goods, things in action or any other sums, things of value and reimbursable costs that the City are or may become obligated to pay or reimburse in connection with this Agreement, the Fee Letter or the Notes, and which may be deemed to constitute "interest" within the meaning of Arizona Revised Statutes Sections 44-1201 *et seq.*, shall be deemed to constitute items of interest in addition to the rate(s) of interest specified herein, which the City hereby contracts in writing to pay. In the event any interest required to be paid hereunder at any time exceeds the Highest Lawful Rate, the portion of such interest required to be paid on a current basis shall equal such Highest Lawful Rate; *provided, however*, that the differential between the amount of interest payable assuming no Highest Lawful Rate was then in effect and the amount paid on a current basis after giving effect to the Highest Lawful Rate shall be carried forward and shall be payable on any subsequent date of calculation so as to result in a recovery of interest previously unrealized (because of the limitation dictated by such Highest Lawful Rate) at a rate of interest, and as part of the interest payable, that, after giving effect to the recovery of such excess and all

other interest paid and accrued hereunder to the date of calculation, does not exceed such Highest Lawful Rate. Notwithstanding the foregoing, on the date on which no Obligation remains unpaid, to the extent permitted by law, the City shall pay to the Bank a fee equal to any accrued and unpaid excess interest.

Section 2.13. Taxability. (a) In the event a Determination of Taxability occurs, (i) the City hereby agrees to pay to the Bank or any Participant on demand therefor (A) an amount equal to the difference between (x) the amount of interest that would have been paid to the Bank or such Participant, as applicable, on any Tax-Exempt Revolving Loans and/or the Tax-Exempt Term Loan during the period for which interest on such Tax-Exempt Revolving Loans and/or Tax-Exempt Term Loan, as applicable, is includable in the gross income of the Bank or such Participant, if such Tax-Exempt Revolving Loans and/or Tax-Exempt Term Loan had borne interest at the Taxable Rate, beginning on the Taxable Date (the “*Taxable Period*”), and (y) the amount of interest actually paid to the Bank or such Participant, as applicable, during the Taxable Period, and (B) any interest, penalties or charges owed by the Bank or the Participant, as applicable, as a result of interest on the Tax-Exempt Revolving Loans and/or the Tax-Exempt Term Loan, as applicable, becoming includable in the gross income of the Bank or such Participant, as applicable, together with any and all reasonable attorneys’ fees, court costs, or other out of pocket costs incurred by the Bank or such Participant, as applicable, in connection therewith and pursuant to Section 3.07 hereof and (ii) any Tax-Exempt Revolving Loans affected thereby shall automatically convert to Taxable Revolving Loans, and the outstanding Tax-Exempt Term Loan shall automatically convert to the Taxable Term Loan.

(b) The obligations of the City under this Section 2.13 shall survive the termination of the Revolving Commitment and this Agreement.

Section 2.14. Security. (a) The City hereby pledges and grants to the Bank, as security for the payment by the City when due of all Obligations now or at any time hereafter owing to the Bank under this Agreement, the Fee Letter, and the Notes and the due and punctual observance and performance of the City’s Obligations to the Bank under this Agreement, the Fee Letter, the Notes, and the other Related Documents (collectively, the “*Security*”):

(i) the portion of the proceeds from the sale of Series Revolving Credit Revenue Obligations issued to repay Obligations to the Bank;

(ii) Other Monies which the City determines to make available to pay the Obligations hereunder or under the Fee Letter or the Notes; and

(iii) a first lien and security interest in the Junior Subordinate Lien Revenues, subject to being on a parity with any additional Junior Subordinate Lien Obligations issued or incurred in accordance with Section 6.05 hereof.

(b) The City has determined that the Obligations are “Junior Subordinate Lien Revenue Obligations” and, accordingly hereby grants a first lien on and pledge of Junior Subordinate Lien Revenues to secure payment of the Obligations under this Agreement, the Fee Letter and the Notes. Such lien and pledge shall be subordinate only to the lien and pledge of the Net Operating

Revenues securing the payment of Senior Lien Revenue Obligations and the lien and pledge of the Designated Revenues securing the Junior Lien Revenue Obligations and shall be on a parity with the lien and pledge of Junior Subordinate Lien Revenues securing the payment of any Junior Subordinate Lien Revenue Obligations outstanding from time to time and shall be senior in payment priority to any other expenditure or obligation of the System other than Expenses of Maintenance and Operation, Senior Lien Revenue Obligations and Junior Lien Revenue Obligations.

(c) The City shall in good faith and with due diligence endeavor to sell, or cause to be sold, a sufficient principal amount of Series Revolving Credit Revenue Obligations to have funds available, together with other moneys available therefor, to pay all amounts owed to the Bank. The proceeds of all Series Revolving Credit Revenue Obligations, other than proceeds therefrom that have been issued for other purposes as permitted under Section 6.05 hereof, shall be applied solely to pay the amount outstanding of any Obligations of the City to the Bank then due and owing, including any Revolving Loans and Term Loans.

ARTICLE 3

TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01. Taxes. (a) Any and all payment to the Bank by the City hereunder shall be made, free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges, withholdings or liabilities imposed as a result of a Change of Law, excluding, however, taxes imposed on or measured by the net income or capital of the Bank by any jurisdiction or any political subdivision or taxing authority thereof or therein solely as a result of a connection between the Bank and such jurisdiction or political or political subdivision (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as “*Taxes*”). If as a result of a Change of Law, the City shall be required by law to withhold or deduct any Taxes imposed by the United States or any political subdivision thereof from in respect of any sum payable hereunder to the Bank, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01), the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the City shall make such deductions and (iii) the City shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with Applicable Law. If the City shall take any payment under this Section 3.01 to or for the benefit of the Bank with respect to Taxes and if the Bank shall claim any credit or deduction for such Taxes against any other taxes payable by the Bank to any taxing jurisdiction in the United States, then the Bank shall pay to the City an amount equal to the amount by which such other taxes are actually reduced; *provided*, that the aggregate amount payable by the Bank pursuant to this sentence shall not exceed the aggregate amount previously paid by the City with respect to such Taxes. In addition, the City agrees to pay any present or future stamp, recording or documentary taxes and, if as a result of a Change of Law, any other excise or property taxes, charges or similar levies that arise under the laws of the United States of America, the State of Arizona or the State of New York from any payment made hereunder or from the execution or delivery or otherwise with respect to this Agreement (hereinafter referred to as “*Other Taxes*”).

The Bank shall provide to the City within a reasonable time a copy of any written notification it receives with respect to Other Taxes owing by the City to the Bank hereunder, *provided* that the Bank's failure to send such notice shall not relieve the City of its obligation to pay such amounts hereunder.

(b) The City shall, to the extent permitted by law, compensate the Bank for the full amount of Taxes and Other Taxes including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 3.01 paid by the Bank or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. The Bank agrees to give notice to the City of the assertion of any claim against the Bank relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion; *provided*, that the Bank's failure to notify the City promptly of such assertion shall not relieve the City of its obligation under this Section 3.01. Payments by the City pursuant to this section shall be made within thirty (30) days from the date the Bank makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. The Bank agrees to repay to the City any refund (including that portion of any interest that was included as part of such refund) with respect to Taxes or Other Taxes paid by the City pursuant to this Section 3.01 and to contest, with the cooperation and at the expense of the City, any such Taxes or Other Taxes which the Bank or the City reasonably believes not to have been properly assessed. The City shall not be liable for any Taxes or Other Taxes resulting from a Change in Law prior to the date of such Change in Law, unless the Change in Law purports to have retroactive provisions.

(c) Within thirty (30) days after the date of any payment of Taxes by the City, the City shall furnish to the Bank the original or a certified copy of a receipt evidencing payment thereof. The City shall compensate the Bank for all reasonable losses and expenses sustained by the Bank as a result of any failure by the City to so furnish such copy of such receipt.

(d) All payments to the Bank under this Agreement, the Fee Letter and the Notes shall be made in U.S. Dollars and in immediately available and freely transferable funds at the place of payment without counterclaim, set off, condition or qualification, and free and clear of and without deduction or withholding for or by reason of any present or future taxes, levies, imposts, deductions or charges of any nature whatsoever. In the event that the City is compelled by law to make any such deduction or withholding, City shall nevertheless pay to the Bank such amounts as will result in the receipt by the Bank of the sum it would have received had no such deduction or withholding been required to be made. If requested, the Bank shall from time to time provide the City, the United States Internal Revenue Service (to the extent such information and forms may lawfully be provided by the Bank) with such information and forms as may be required by Treasury Regulations Section 1.411 or any other such information and forms as may be necessary to establish that the City is not subject to any withholding obligation under Section 1442 or other comparable provisions of the Code and Treasury Regulations promulgated thereunder.

(e) As used in this Section, the term "Bank" shall include each Participant; *provided, however*, that no Participant shall be entitled to recover amounts under this Section greater than those that the Bank would be entitled to recover. The obligations of the City under this Section 3.01 shall survive the termination of this Agreement.

Section 3.02. Increased Costs. If, after the date hereof, any Change in Law shall:

(a) subject the Bank to any tax, duty, deduction, withholding or other charge with respect to the Revolving Loans, any Term Loans, the Notes or any other Obligation, or shall change the basis of taxation of payments to the Bank with respect to the Notes or any Obligation, other than changes in the rate of tax on the overall net income of the Bank; or

(b) impose, modify or deem applicable any reserve, capital or liquidity ratio, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, or other acquisitions of funds by, the Bank;

(c) change the basis of taxation of payments due the Bank under this Agreement or the Notes (other than a change in taxation of the overall net income of the Bank); or

(d) impose on the Bank any other condition with respect to such amount paid or payable to or by the Bank or with respect to this Agreement or any Revolving Loan or Term Loan;

and the result of any event referred to in subsection (a), (b), (c) or (d) above shall be to increase the cost to the Bank of maintaining the Revolving Loans, any Term Loan or any other credit facilities hereunder (such increase in cost to be reasonably allocated to the City hereunder on the basis of the amount of the Revolving Commitment and the nature of this facility) or to reduce the amount of any payment received by the Bank, or to require the Bank to make any payment on or calculated by reference to the gross amount of any sum received by it, then, upon demand by the Bank, the City shall pay, or cause to be paid, to the Bank, from time to time as specified the Bank, additional amounts which shall be sufficient to compensate the Bank for such increased cost. A certificate setting forth such increased cost incurred by the Bank as a result of any event mentioned in subsection (a), (b) (c) or (d) above, and giving a reasonable explanation of the basis and computation thereof, shall constitute such demand and shall, in the absence of manifest error, be conclusive and binding for purposes of payment of such amount. In making the determinations contemplated by such certificate, the Bank may make such reasonable estimates, assumptions, allocations and the like as the Bank in good faith determines to be appropriate. Payment shall be made by the City within 30 days to the City's receipt of the above-mentioned certificate, and, to the extent that continuing payments are required under this Section, payments shall be made quarterly on the dates that the Commitment Fee is due. In determining the amount or amounts payable under this Section, the Bank may use any reasonable averaging and attribution methods. The initial payment will include payment for the period from the date the Bank was first affected to the date of such payment.

In addition to the foregoing, if after the date hereof the Bank shall have determined that a Change in Law has or would have the effect of reducing the rate of return on the capital of the Bank, as applicable, to a level below that which the Bank could have achieved but for such adoption, change or compliance (taking into consideration the policies of the Bank with respect to capital adequacy) by an amount deemed by the Bank to be material, or affects or would affect the

amount of capital required or expected to be maintained by the Bank or any corporation controlling the Bank by an amount deemed by the Bank to be material, as a consequence of its obligations hereunder then, upon demand from the Bank, from time to time the City shall be obligated to pay or cause to be paid to the Bank such additional amount or amounts as will compensate the Bank for such reduction or capital increase, as incurred in a manner consistent with that in which such increased costs are passed along to other borrowers of the Bank in general. A certificate setting forth in reasonable detail such reduction in the rate of return on capital, or such capital increase, of the Bank as a result of any event mentioned in this paragraph shall be submitted to the City and such certificate shall, in the absence of manifest error, be conclusive as to the amount thereof. Payment shall be made by the City within 30 days of the City's receipt of the above mentioned certificate together with interest on such amount for each day from the 30th day after such demand is received by the City until payment in full at the Default Rate.

The protections of this Section shall be available to the Bank regardless of any possible contention of invalidity or inapplicability of the law, regulation or condition which has been imposed; *provided, however*, that if it shall be later determined that any amount so paid by the City pursuant to this Section is in excess of the amount payable under the provisions hereof, the Bank shall refund such excess amount to the City. As used in this Section, the term "Bank" shall include each Participant; *provided, however*, that no Participant shall be entitled to recover amounts under this Section greater than those that the Bank would be entitled to recover.

Failure or delay on the part of the Bank to demand compensation pursuant to the foregoing provisions of this Section 3.02 shall not constitute a waiver of the Bank's right to demand such compensation, *provided* that the City shall not be required to compensate the Bank pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that the Bank notifies the City of the Change in Law giving rise to such increased costs or reductions and of the Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

Notwithstanding the foregoing, the City shall not be responsible for increased costs as a result of changes resulting solely and directly from the Bank's credit downgrade, other financial deterioration of other actions within the Bank's control or directly related to the Bank's credit status.

Section 3.03. Obligations Absolute. The Obligations of the City to pay money under this Agreement, the Fee Letter and the Notes shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement and the Notes under all circumstances, including, without limitation, the following:

- (a) any lack of validity or enforceability of this Agreement, the Fee Letter, the Notes 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 City may have at any time against the Bank or any Participant, or any other Person, whether in connection with this Agreement, the Fee Letter, the Notes, the other Related Documents, the transactions contemplated herein or therein or any unrelated transaction;

(d) any statement or any other document presented under Loan Notification proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

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

Section 3.04. Illegality. If the Bank determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Bank or its Lending Office to make, maintain or fund any Credit Extension whose interest is determined by reference to the [LIBOR Index] or the Floating Rate, or to determine or charge interest rates based upon the [LIBOR Index] or the Floating Rate, or any Governmental Authority has imposed material restrictions on the authority of the Bank to purchase or sell, or to take deposits of, Dollars in the [London interbank market], then, the Bank shall notify the City, and upon notice thereof, any obligation of the Bank to make or continue Fixed Rate Revolving Loans or Floating Rate Revolving Loans shall be suspended, until the Bank notifies the City that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the City shall, upon demand from the Bank, prepay or, if applicable, convert all Fixed Rate Revolving Loans or Floating Rate Revolving Loans to Revolving Loans bearing interest at an interest rate equal to the rate determined by the Bank (of which the City has received written notice) plus the Tax-Exempt Applicable Spread or the Taxable Applicable Spread, as applicable, either on the last day of the Interest Period therefor, if the Bank may lawfully continue to maintain such Fixed Rate Revolving Loans to such day, or immediately, if the Bank may not lawfully continue to maintain such Fixed Rate Revolving Loans or Floating Rate Revolving Loans. Upon any such prepayment or conversion, the City shall also pay accrued interest on the amount so prepaid or converted.

Section 3.05. Inability to Determine Rates. If the Bank determines that for any reason in connection with any request for a Fixed Rate Revolving Loan or Floating Rate Revolving Loan or a conversion to or continuation thereof that [(a) Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and the Interest Period of such Fixed Rate Revolving Loan or with respect to any Floating Rate Revolving Loan,] (b) adequate and reasonable means do not exist for determining the [LIBOR Index] for any requested Interest Period with respect to a proposed Fixed Rate Revolving Loan or the Floating Rate in connection with an existing or proposed Floating Rate Revolving Loan, or (c) the [LIBOR Index] for any requested Interest Period with respect to a proposed Fixed Rate Revolving Loan or the Floating Rate in connection with an existing or proposed Floating Rate Revolving Loan does not adequately and fairly reflect the cost to the Bank of funding the Revolving Loans, the Bank will promptly so notify the City. Thereafter, the obligation of the Bank to make or maintain Fixed Rate Revolving Loans or Floating Rate Revolving Loans shall be suspended, until the Bank revokes such notice. Upon receipt of such notice, the City may revoke any pending request for a Borrowing of, conversion to or continuation of Fixed Rate Revolving Loans or Floating Rate Revolving Loans

or, failing that, will be deemed to have converted such request into a request for a Borrowing of Revolving Loans in the amount specified therein bearing interest at an interest rate equal to the rate determined by the Bank (of which the City has received written notice) plus the Tax-Exempt Applicable Spread or the Taxable Applicable Spread, as applicable.

Section 3.06. Compensation for Losses. Upon written demand of the Bank from time to time, the City shall promptly compensate the Bank for and hold the Bank harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Fixed Rate Revolving Loan, the interest on which is determined by reference to the [LIBOR Index], on a day other than the last day of the Interest Period for such Fixed Rate Revolving Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise) other than prepayment of any Fixed Rate Revolving Loan on any date if the Bank has chosen a comparable or successor rate for purposes of the [LIBOR Index] which the City reasonably believes is substantially different from the prior rate, and (ii) prepayment of any Fixed Rate Revolving Loan on any date if the City is then obligated to pay increased costs pursuant to Section 3.02 hereof;

(b) any failure by the City (for a reason other than the failure of the Bank to make a Revolving Loan) to prepay, borrow, continue or convert any Fixed Rate Revolving Loan other than to a Floating Rate Revolving Loan on the date or in the amount notified by the City; including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Fixed Rate Revolving Loan or from fees payable to terminate the deposits from which such funds were obtained. The City shall also pay any customary administrative fees charged by the Bank in connection with the foregoing.

For purposes of calculating amounts payable by the City to the Bank under this Section 3.06, the Bank shall be deemed to have funded each Fixed Rate Revolving Loan made by it at the [LIBOR Index] for such Revolving Loan by [a matching deposit or other borrowing in the London interbank Eurodollar market] for a comparable amount and for a comparable period, whether or not such Fixed Rate Revolving Loan was in fact so funded.

Section 3.07. Survival. All of the City's obligations under this Article 3 shall survive termination of the Revolving Commitment and repayment of all other Obligations hereunder.

ARTICLE 4

CONDITIONS PRECEDENT TO BORROWINGS

Section 4.01. Conditions of Initial Borrowing; Authority; Enforceability. This Agreement shall become binding on the parties hereto upon the satisfaction of the following conditions precedent (all Related Documents and other documents to be delivered to the Bank pursuant to this Section 4.01 shall be subject to prior approval as to form and substance by the Bank, with

delivery by the Bank of its signature page to this Agreement evidencing such Person's acknowledgement that the conditions set forth in this Section 4.01 have been satisfied, unless otherwise waived in writing):

The Bank's receipt of the following, each of shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by an Authorized Officer of the City, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Bank:

(a) executed original counterparts of this Agreement, the Fee Letter, the original Notes and certified copies of all of the other Related Documents;

(i) the Bank shall have received the following opinions, dated the Closing Date and addressed to the Bank or on which the Bank is otherwise expressly authorized to rely;

(A) from Bond Counsel to the City, opinions as to the due authorization, execution, delivery and enforceability of this Agreement, the Fee Letter, the Notes and the other Related Documents to which the City is a party, and such other customary matters as the Bank may reasonably request;

(B) from Bond Counsel to the City, opinions to the effect that the pledge of Junior Subordinate Lien Revenues constitutes a valid pledge and such other customary matters as the Bank may reasonable request;

(C) from counsel to the City as to the adoption of the Ordinance, the execution and delivery of this Agreement, the Fee Letter and the Notes and such other customary matters as the Bank may reasonable request; and

(D) from Bond Counsel, opinions to the effect that the interest on the Initial Tax-Exempt Revolving Loan, the Tax-Exempt Term Loan and the Tax-Exempt Note, when issued and/or incurred in accordance with this Agreement, and any continuations thereof, will be excludable from gross income for federal and Arizona income tax purposes.

(ii) a certificate signed by an Authorized Officer of the City certifying that:

(1) the representations and warranties contained in Article 5 of this Agreement are true and correct on and as of the Closing Date as though made on such date;

(2) no petition by or against the City has at any time been filed under the United States Bankruptcy Code or under any similar act;

(3) all conditions precedent to the execution and delivery of this Agreement, the Fee Letter, the Notes and the other Related Documents have been satisfied and the City has duly executed and delivered this Agreement, the Fee Letter, the Notes and the other Related Documents to which it is a party;

(4) (x) no event that could reasonably be expected to have a Material Adverse Effect shall have occurred and (y) no material adverse change shall have occurred in the ability of the City to perform its obligations under the Related Documents to which it is a party, in each case subsequent to the date of the most recent CAFR (except as may otherwise have been disclosed in writing to the Bank prior to the Closing Date); and

(5) no Default or Event of Default has occurred and is continuing, or would result from, the execution and delivery of this Agreement, the Fee Letter, the Notes or any other Related Document.

(iii) recent evidence that the unenhanced long-term rating assigned to Junior Lien Revenue Obligations is at least “Aa2” by Moody’s, and “AA+” by S&P, respectfully;

(iv) completed and signed Loan Notice for the Initial Tax-Exempt Revolving Loan;

(v) evidence of due authorization, execution and delivery by the City of the Related Documents, which Related Documents shall be in form and substance satisfactory to the Bank and its special counsel;

(vi) true and correct copies of all Governmental Approvals necessary for the City to enter into this Agreement, the Fee Letter and the Notes and the transactions contemplated by this Agreement;

(vii) a certificate of the City Clerk of the City certifying the name, title, office and true signatures of the officers of the City authorized to sign this Agreement, the Fee Letter and the Notes;

(viii) the Bank shall have received a copy of the IRS Form 8038-G filed in connection with the Initial Tax-Exempt Revolving Loan, in form and substance satisfactory to the Bank;

(ix) arrangements satisfactory to the Bank have been made for the payment of the fees and expenses and all other amounts (including the fees and expenses of Bank’s counsel) payable pursuant to this Agreement and the Fee Letter;

(x) Evidence that all filings, recordings, re-filings and re-recordings shall have been made, notices given, all filing fees, taxes and expenses in

connection therewith shall have been paid and all such action shall have been taken, which are necessary or advisable on the Closing Date to create a duly perfected security interest in the Security in favor of, and other property pledged as security to this Agreement and for the benefit of the Bank; and

(xi) evidence that a CUSIP number has been obtained and reserved from Standard & Poor's CUSIP Service for the Taxable Note and the Tax-Exempt Note; and

(xii) such other documents, certificates and opinions as the Bank or its special counsel may reasonably request.

(b) No law, regulation, ruling or other action of the United States, the State of New York or the State of Arizona or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the Bank from fulfilling its obligations under this Agreement or the Notes.

(c) All legal requirements provided herein incident to the execution, delivery and performance of this Agreement, the Fee Letter, the Notes, the Resolution, the Ordinance and the other Related Documents, and the transactions contemplated hereby and thereby, shall have been complied with to the reasonable satisfaction of the Bank and Bank's counsel.

Section 4.02. Conditions to All Borrowings. The obligation of the Bank to honor any Loan Notice with respect to a Borrowing is subject to the following conditions precedent:

(a) The representations and warranties of the City contained in Article 5 hereof or in the Ordinance, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of such Borrowing, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Section 5.10 shall be deemed to refer to the most recent statements furnished pursuant to clause (b)(i) of Section 6.01.

(b) No Default or Event of Default shall exist, or would result from such proposed Borrowing or from the application of the proceeds thereof.

(c) If not covered by the opinion delivered pursuant to Section 4.01(a)(i)(D) hereof, an opinion of Bond Counsel to the effect that interest with respect to any Tax-Exempt Revolving Loan or Tax-Exempt Term Loan evidenced by the Tax-Exempt Note, and any conversions or continuations thereof, will be excludable from gross income for federal and Arizona income tax purposes. Such opinion may address future Tax-Exempt Revolving Loans issued within a specified time frame as part of a single issue for federal tax purposes.

(d) If not previously delivered pursuant to Section 4.01(a)(viii) hereof, the Bank shall have received a copy of the IRS Form 8038 or 8038-G, as filed in connection with any Tax-Exempt Revolving Loan or Tax-Exempt Term Loan, in form and substance satisfactory to the Bank.

(e) The Bank shall have received a Loan Notice in accordance with the requirements hereof.

(f) After giving effect to any Revolving Loan, the aggregate principal amount of all Revolving Loans outstanding hereunder shall not exceed the Commitment.

(g) Such Borrowing shall not violate any order, judgment or decree of any court or authority of competent jurisdiction or any provision of law as then in effect.

(h) The Bank shall not have received notice (either verbal or written) from the City, or Bond Counsel that any opinion delivered pursuant to Section 4.01(a)(ii) hereof may no longer be relied upon.

(i) The Bank shall have received, in form and substance satisfactory to it, such other assurances, certificates, documents or consents related to the foregoing as the Bank reasonably may require.

Each Loan Notice submitted by the City shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Borrowing.

Section 4.03. Conditions to Term Loan. (a) The obligation of the Bank to make any Term Loan is subject to (i) the representations and warranties contained in Article 5 hereof and in each certificate or other writing delivered to the Bank pursuant hereto on or prior to the Commitment Termination Date shall be true and correct on and as of the Commitment Termination Date as though made on and as of such date, except to the extent a representation or warranty relates specifically to an earlier date (in which case such representation or warranty shall be true and correct as of such date); (ii) no Default or Event of Default shall have occurred and be continuing on the Commitment Termination Date; and (iii) the Bank shall have received a certificate, signed by an Authorized Officer and dated the Commitment Termination Date, requesting an extension of the Term Loan and confirming that all of the foregoing conditions have been satisfied, substantially in the form of Exhibit E hereto.

(b) In the case of the conversion to the Tax-Exempt Term Loan, (i) the Bank shall be satisfied that the opinions of Bond Counsel delivered pursuant to Section 4.01(a)(i)(D) and Section 4.02(c) hereof remain in full force and effect with respect to such Tax-Exempt Term Loan or (ii) the Bank shall have received an opinion from Bond Counsel dated the date of such Tax-Exempt Term Loan as to the exclusion of interest on the Tax-Exempt Term Loan from gross income for federal income tax purposes, in form and substance satisfactory to the Bank.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

The City makes the following representations and warranties to the Bank:

Section 5.01. Organization and Powers. The City (a) is duly established and validly existing as a municipal corporation under the laws of the State; (b) has all powers and all material governmental licenses, authorizations, consents, and approvals required to carry on its business as now conducted; (c) has full power and authority to assist the City in the acquisition and financing or refinancing of the Project; and (d) has full power and authority to adopt, execute, deliver and perform its obligations under this Agreement, the Notes and the other Related Documents and to borrow hereunder.

Section 5.02. Authorization; Contravention. The execution, delivery and performance by the City of this Agreement, the Fee Letter, the Notes and the other Related Documents to which it is a party, and the making of the payments required hereby or thereunder, have been duly authorized by all necessary action by the City and do not contravene, or result in the violation of, or constitute a default under, any provision of Applicable Law or regulation, or any order, rule, or regulation of any Governmental Authority located in the United States or any agreement, resolution or instrument to which the City is a party or by which it or any of its property is bound.

Section 5.03. Governmental Consent or Approval. No authorization, consent, approval, permit, license, or exemption of, or filing or registration with, any court or Governmental Authority that has not been obtained or issued is or will be necessary for the valid adoption, execution, delivery or performance by the City of the Related Documents to which it is a party and, in particular, this Agreement, the Fee Letter and the Notes.

Section 5.04. Valid and Binding Obligations. This Agreement, the Fee Letter, the Notes and the other Related Documents are valid and binding obligations of the City, enforceable against the City in accordance with their respective terms, except as such enforceability may be limited by the City's bankruptcy, insolvency, reorganization, moratorium or other laws or equitable principles relating to or limiting creditors' rights generally.

Section 5.05. Pending Litigation and Other Proceedings. There is no pending action, proceeding or investigation before any Governmental Authority, against or directly involving the City and, to the best of the City's knowledge, there is no threatened action, proceeding or investigation affecting the City before any Governmental Authority which, in any case, may materially and adversely affect the financial condition or operations of the City or the System or the validity or enforceability of any of this Agreement, the Fee Letter, the Notes, the Ordinance or the other Related Documents.

Section 5.06. No Conflict. The execution, delivery and performance by the City of this Agreement, the Fee Letter, the Notes and the other Related Documents to which it is a party, the consummation of the transactions contemplated hereby and thereby, and the fulfillment of the terms and conditions hereof and thereof did not at any relevant time, does not now and will not

violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on it, its organizational documents or the provisions of any indenture, instrument or agreement to which it is a party or is subject, or by which it or its property is bound, or conflict with or constitute a default under or result in the creation or imposition of any lien pursuant to the terms of any such indenture, instrument or agreement.

Section 5.07. Environmental Laws. Except as disclosed to the Bank in writing prior to the Closing Date, the operations of the City and the System are in material compliance with all of the requirements of applicable Environmental Laws and are not the subject of any governmental investigation evaluating whether any remedial action is needed to respond 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 5.08. No Defaults. No Event of Default and no Default has occurred and is continuing, or exists under this Agreement or the Related Documents.

Section 5.09. Sovereign Immunity. The defense of immunity on the grounds of sovereignty or otherwise is not available to the City in any proceeding by the Bank to enforce the Obligations or the performance of any obligations of the City under this Agreement, the Fee Letter, the Notes or the other Related Documents.

Section 5.10. Ordinance. (a) The Ordinance is in full force and effect, duly authorizes the execution and delivery of the Series Revolving Credit Revenue Obligations in an amount sufficient to repay up to \$200,000,000 with respect to the principal component of Revolving Loans and Term Loans, and constitutes a valid, binding and enforceable obligation of the City.

(b) After due investigation, the City is not aware of any reason the Series Revolving Credit Revenue Obligations could not be issued in an aggregate principal amount of \$200,000,000 at an interest rate equal to the lesser of (i) the weighted average rate of interest (calculated on a net interest cost basis) applicable to all fixed rate Junior Lien Revenue Obligations and (ii) 6% using a twenty-five (25) year principal amortization schedule with no principal amortization during the first five (5) years with level debt service (either through serial maturities or sinking fund installments over the remaining twenty (20) years).

Section 5.11. Incorporation by Reference. The City hereby makes to the Bank the same representations and warranties as are set forth by it in each other Related Document to which it is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated herein by reference for the benefit of the Bank with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety and were made as of the date hereof. No amendment to such representations and warranties or defined terms made pursuant to any such Related Document shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the prior written consent of the Bank.

Section 5.12. Accuracy of Information. All information, reports and other documents and data with respect to the City, the System and the Project furnished to the Bank are complete and correct in all material respects, to the extent necessary to give the Bank true and accurate knowledge of the subject matter. No fact is known to the City which may have a Material Adverse Effect which has not been set forth in the financial statements of the City and the System or in such information, reports, papers and data or otherwise disclosed in writing to the Bank prior to the Closing Date. No document furnished or statement made by the City in connection with the negotiation, preparation or execution of this Agreement contains any untrue statement of a fact material to its creditworthiness or omits to state a material fact necessary in order to make the statements contained therein not misleading in any adverse respect.

Section 5.13. Reliance by the Bank and the Participants. All representations and warranties made herein to the Bank are made with the understanding that the Bank and the Participants are relying upon the accuracy of such representations and warranties. Notwithstanding that the Bank and the Participants may conduct their own investigation as to some or all of the matters covered by the representations and warranties in the Related Documents, and any certificates, information, opinions or documents delivered in connection therewith, the Bank and the Participants are entitled to rely on all representations and warranties as a material inducement to the Bank's extension of the credit evidenced hereby and by the Notes.

Section 5.14. No Proposed Legal Changes. There is no amendment or, to the knowledge of the City, proposed amendment certified for placement on a statewide ballot to the Constitution of the State or any published administrative interpretation of the Constitution of the State or any law of the State, or any legislation that has passed either house of the legislature of the State or the United States Congress, or any published judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect with respect to its ability to repay when due its obligations under this Agreement and the other Related Documents.

Section 5.15. Tax Exempt Status. With respect to the Initial Tax-Exempt Revolving Loan, the City has not taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by any other person or entity, which action, if taken or omitted, would cause interest on the Initial Tax-Exempt Revolving Loans to be subject to Federal income taxes or to personal income taxes levied by the State or such Initial Tax-Exempt Revolving Loan to be subject to local personal property taxes levied by any political subdivision thereof. With respect to subsequent Tax-Exempt Revolving Loans and Tax-Exempt Term Loans, the City agrees that it will not take any action or omit to take any action, which action, if taken or omitted, would cause interest on the such Tax-Exempt Revolving Loans to be subject to the federal income taxes or to personal income taxes levied by the State or such Tax-Exempt Revolving Loans to be subject to local personal property taxes levied by any political subdivision thereof.

Section 5.16. Federal Reserve Board Regulations. The City will not use any part of the proceeds of the Revolving Loans and has not incurred any indebtedness to be reduced, retired or purchased by the City out of such proceeds, for the purpose of purchasing or carrying any Margin Stock, and the City does not own and will not acquire any such Margin Stock.

Section 5.17. Investment Company Act. The City 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 5.18. Patriot Act Representation. (a) Neither the City nor any of its Affiliates is in violation of any laws relating to terrorism or money laundering (“*Anti-Terrorism Laws*”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “*Executive Order*”), and the USA Patriot Act (Title III of Pub. L. 107 56 (signed into law October 26, 2001)) (the “*Patriot Act*”).

(b) Neither the City nor any of its Affiliates is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which the Bank is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(v) a Person that is named as a “specially designated national and blocked person” on the most current list published by the Office of Foreign Asset Control (“*OFAC*”) or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list.

(c) Neither the City nor any of its Affiliates (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in subsection (b)(ii) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

Section 5.19. Derivative Product. The City has not entered into any Derivative Product relating to Debt (a) wherein any termination payment thereunder is senior to or on a parity with the payment of the Revolving Loans, the Term Loans or the other Obligations or (b) which requires the City to post cash collateral to secure its obligations thereunder.

Section 5.20. OFAC. Neither the City, nor, to the knowledge of the City, any Related Party, (a) is currently the subject of any Sanctions, (b) is located, organized or residing in any Designated Jurisdiction, or (c) is or has been (within the previous five (5) years) engaged in any transaction

with any Person who is now or was then the subject of Sanctions or who is located, organized or residing in any Designated Jurisdiction. To the best knowledge of the City, after due inquiry, the proceeds from the Revolving Loans or the Term Loans or the transaction contemplated by this Agreement have not been used, directly or indirectly, to lend, contribute, provide or otherwise be made available to fund any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including the Bank) of Sanctions.

Section 5.21. No Existing Right to Accelerate. No Person, including, without limitation, any credit facility provider or liquidity provider, either of which provides credit enhancement or liquidity support to any Debt of the City, or any holder of Debt of the City, has a right under any resolution, indenture, or supplemental indenture relating to any such Debt of the City or under any other document or agreement relating to any Debt of the City, to cause an acceleration of such Debt, or to otherwise declare the principal of and interest on any such Debt to be immediately due and payable, prior to its maturity.

ARTICLE 6

COVENANTS

The City covenants and agrees, until the full and final payment and satisfaction of all of the Obligations, unless the Bank shall otherwise consent in writing, that:

Section 6.01. Reporting Requirements. The City shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of the City and the System in accordance with Generally Accepted Accounting Principles consistently applied, and will furnish to the Bank each of the following:

(a) *Annual Financial Statements.* As soon as available, and in any event within two hundred seventy (270) days after the close of each Fiscal Year of the City, the CAFR, which includes the complete Audited Financial Statements of the City, including the balance sheet as of the end of such Fiscal Year and the related statements of revenues, expenses and changes in retained earnings and cash flows for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year, all in reasonable detail, certified by an independent certified public accountant in accordance with Generally Accepted Accounting Principles, consistently applied and fairly presenting the financial condition of the water department of the City as of the end of such Fiscal Year.

(b) *Certificate of Compliance.* Simultaneously with the delivery of each set of financial statements referred to in Section 6.01(a), a certificate signed by an Authorized Officer of the City (i) stating that, to the best of his or her knowledge, the City has kept, observed, performed and fulfilled each and every covenant, provision and condition of this Agreement on the City's part to be performed and is not in default in the performance or

observance of any of the terms, covenants, provisions or conditions hereof, (ii) if the City shall be in default, specifying all such defaults, the nature and status thereof and any remedial steps taken or proposed to correct such default and (iii) certifying compliance with the rate covenant set forth in Section 6.08 hereof.

(c) *Offering Circulars.* Simultaneously with the delivery of each set of financial statements referred to in Section 6.01(a), (i) copies of any prospectus, official statement, offering circular, placement memorandum, or similar or corresponding document, and any supplements thereto and updates and amendments thereof not previously supplied to the Bank, that the City makes available in connection with the offering for sale of any securities secured by a pledge of Operating Revenues, or, in the case of any ordinance, indenture, contract or agreement by the City involving the creation of any Debt on a parity with or senior to the Obligations hereunder, but not involving the offering for sale of any securities related thereto, a copy of such ordinance, indenture, contract or agreement creating the related Debt, together with, in either case, (ii) a certificate of an Authorized Officer stating that to the best of his or her knowledge the covenants set forth in the related Bond Order were complied with at the time such securities were issued or such Debt was incurred and otherwise providing the Bank with such additional assurance of compliance with the covenants, terms and other provisions of this Agreement, the Fee Letter and the other Related Documents at the time such securities were issued or such Debt was incurred.

(d) *Budget.* As soon as available after adoption, a copy of the City's budget for each Fiscal Year, which will include the budget for the System for such Fiscal Year or notice that such document is available on the City's website and providing the address.

(e) *Continuing Disclosure Documents.* Simultaneously with the filing thereof, all continuing disclosure documents filed by the City with respect to the Revenue Obligations in compliance with Securities and Exchange Commission rules codified at 17 C.F.R. Section 240.15c2-12 or notice that such filing is available through the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access system.

(f) *Other Information.* Such other information respecting the business, properties or the condition or operations, financial or otherwise, of the City, the City, the System or the Project as the Bank may from time to time reasonably request.

Section 6.02. Notices. The City shall provide to the Bank:

(a) *Notice of Default.* Immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an (i) Event of Default or Conditional Default or (ii) an "event of default" under the Ordinance or any Related Document to which the City is a party.

(b) *Other Events.* Prompt written notice of any event which is likely to have a Material Adverse Effect with respect to its ability to repay when due its obligations under

this Agreement, the Notes, the Revolving Credit Revenue Obligations and the other Related Documents.

Section 6.03. Sale or Encumbrance of the System. The City covenants that it will not sell or dispose of the System, except as permitted under the Junior Lien Revenue Obligation Documents.

Section 6.04. Access to Records. The City will permit any officers, employees, or agents of the Bank to visit and inspect any of the properties of the City and the System and to discuss matters reasonably pertinent to an evaluation of the credit of the System, all at such reasonable times as the Bank may reasonably request and upon reasonable advance notice. All information received by or provided to the Bank pursuant to this Agreement, unless otherwise made public by the City, will be held as confidential information by the Bank.

Section 6.05. Limitation on Additional Debt. The City will not issue or incur additional Revenue Obligations (other than for refunding purposes) unless (a) the conditions set forth in applicable Junior Lien Revenue Obligation Documents, Senior Lien Revenue Obligation Documents and the documents providing for all Junior Subordinate Lien Revenue Obligations are satisfied (subject to the additional requirement that Junior Subordinate Lien Revenues, subject to adjustment as permitted therein, for the most recently completed Fiscal Year for which Audited Financial Statements are available, were equal to at least 110% of Maximum Annual Junior Subordinate Lien Debt Service, including the debt service requirements for the Revenue Obligations proposed to be issued), (b) the conditions set forth in Sections 4.3 and 4.5 of the 2018 Junior Lien City Purchase Agreement are satisfied (and such provisions are incorporated herein by reference, *mutatis mutandis*, and shall be deemed to continue in effect for the benefit of the Bank as in effect on the Closing Date, whether or not said provisions otherwise remain in effect or are amended, waived or modified), and (c) if the proposed Revenue Obligations are not Series Revolving Credit Revenue Obligations, the City determines that Series Revolving Credit Revenue Obligations could have been issued under the additional indebtedness tests described above in addition to the proposed Revenue Obligations, in an amount sufficient to pay when due all principal of and interest on the Outstanding Amount of Revolving Loans and Maturity Loans at maturity. The City represents and covenants that execution and delivery of the Revolving Credit Agreement Obligations in an aggregate principal amount of not less than \$200,000,000 has been duly authorized by the Ordinance. Upon execution and delivery of the Series Revolving Credit Agreement Obligations, a portion of the proceeds thereof will be applied and pledged to the extent necessary to pay the principal amount of all Obligations, which pledge shall be prior to any pledge of such amounts to payment of Revenue Obligations.

Section 6.06. Proceeds of Revolving Loans and Series Revolving Credit Revenue Obligations. The proceeds of the Revolving Loans and the Series Revolving Credit Revenue Obligations will be used by the City solely for the purposes described herein, in the Ordinance and in the other Related Documents.

Section 6.07. Amendment of Certain Contracts or Ordinances. The City will not effect any amendment to or modification of the Related Documents which adversely affects the Bank's rights or adversely affects the ability of the City to perform its obligations under this Agreement without

the prior written consent of the Bank. The City will give the Bank notice as promptly as practicable (but in no event less than ten (10) Business Days) of any proposed amendments to or modifications of the Related Documents and of any meeting of the City at which any of the foregoing will be discussed or considered.

Section 6.08. Rates. The City shall comply with all covenants requiring it to establish, maintain and enforce schedules of rates, fees and charges for the use of the System set forth in the Junior Lien Revenue Obligation Documents and Senior Lien Revenue Obligation Documents, including, without limitation, Section 4.2 of the 2018 Junior Lien City Purchase Agreement, which is incorporated herein by reference, *mutatis mutandis*, and shall be deemed to continue in effect for the benefit of the Bank whether or not such Section otherwise remains in effect or is amended, waived or modified. In addition, the City shall establish, maintain and enforce schedules of rates, fees and charges for the use of the System sufficient at all times to produce Junior Subordinate Lien Revenues in an amount equal to Maximum Annual Junior Subordinate Lien Debt Service.

Section 6.09. Performance and Compliance with Other Covenants. The City shall fully and faithfully perform each of the covenants required of it, pursuant to the provisions of the Related Documents and the Ordinance.

Section 6.10. Taxes and Liabilities. The City will pay all Debt of the City and the System promptly and in accordance with the terms thereof and to pay and discharge promptly all taxes, assessments, and governmental charges or levies imposed upon it or the System or upon the City's income and profits, or upon any of their respective property, real, personal, or mixed, or upon any part thereof, before the same shall become in default, except for those matters which are reasonably being contested in good faith by appropriate action or proceedings or for which the City has established adequate reserves in accordance with Generally Accepted Accounting Principles.

Section 6.11. Further Assurances. The City agrees that it will from time to time, at its expense, promptly execute and deliver all further instruments a documents, and take all further action, that may be necessary or desirable, or that the Bank may reasonably request, in order to (a) perfect and protect any lien, pledge, or security interest or other right or interest given, or purported to be given, to the Bank under or in connection with this Agreement or any other Related Document or (b) enable the Bank to exercise or enforce its rights or remedies under or in connection with this Agreement and the Notes.

Section 6.12. Efforts to Pay. In the event that the Notes, any Term Loan or any other Obligations are not paid at maturity, the City shall as promptly as possible take all action reasonably necessary to cause payment to be made from the sources described in Section 2.14 hereof.

Section 6.13. Maintenance of Franchises. The City will maintain all licenses and franchises, required by the State or any other Governmental Authority for operation of the System, the loss which would have a Material Adverse Effect.

Section 6.14. Compliance with Rules and Regulations. The City shall comply, and cause the System to comply, with all Applicable Laws, including, without limitation, Environmental

Laws which, if not complied with, could reasonably be expected to result in a Material Adverse Effect.

Section 6.15. Maintenance and Operation of the System. The City covenants that it will at all times maintain the System, or within the limits of its authority cause the same to be maintained, in good condition and working order and to operate the same in an efficient and economical manner at a reasonable cost and in accordance with sound business principles. In operating and maintaining the System, the City will comply with all contractual provisions and agreements entered into by it and with all rules, regulations, directions or orders of any governmental, administrative or judicial body promulgating same, noncompliance with which could reasonably be expected to result in a Material Adverse Affect.

Section 6.16. Insurance. The City will keep the System insured either through self-insurance or with insurers of good standing against risks, accidents or casualties against which and to the extent customarily insured against by entities operating similar properties, to the extent that such insurance is available. All net proceeds of such insurance shall be applied in accordance with the Related Documents.

Section 6.17. Incorporation of Covenants by Reference. The City agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Related Documents, 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 Bank and shall be enforceable by the Bank against the City, which covenants, agreements, definitions and provisions shall continue in effect with regard to the Bank without regard or giving effect to any amendment or modification of such provisions or any waiver of compliance therewith unless consented to in writing by the Bank.

Section 6.18. Accounting Methods and Fiscal Year. The City will notify the Bank of any change in the City's Fiscal Year.

Section 6.19. Sovereign Immunity. To the extent that the City has or hereafter may acquire under any Applicable Law any right to immunity from set off or legal proceedings on the grounds of sovereignty or otherwise, the City hereby irrevocably waives, to the extent permitted by law, such rights to immunity for itself in respect of its obligations arising under or related to this Agreement, the Fee Letter, the Notes or the other Related Documents to which it is a party.

Section 6.20. Application of Revolving Loan and Term Loan Proceeds. The City will not take or omit to take any action, which action or omission will in any way result in the proceeds from a Revolving Loan or the Term Loans being applied in a manner other than as provided in the Ordinance.

Section 6.21. Disclosure to Participants, Bank Transferees and Non-Bank Transferees. The City shall permit the Bank to disclose the financial information received by it pursuant to this Agreement to each Participant of the Bank, subject to confidentiality restrictions and use restrictions customary for financial institutions.

Section 6.22. Other Agreements.

(a) *Junior Subordinate Lien Revenue Obligations.* In the event that the City shall, directly or indirectly, enter into or otherwise consent to any Bank Agreement secured by or payable from Junior Subordinate Lien Revenues which provides different or more restrictive covenants, different or additional events of default and/or greater rights and remedies than are provided to the Bank in this Agreement, the City shall provide the Bank 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 Bank 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 City 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 Bank 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 City fails to provide such amendment. The release, termination or other discharge of any Bank Agreement that provides for such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies shall be effective to amend, release, terminate or discharge (as applicable) such provisions as incorporated by reference herein without the consent of the City.

(b) *Maintenance of Tax-Exempt Status.* The City shall not take any action or omit to take any action which, if taken or omitted, would adversely affect the tax exempt status of the Tax-Exempt Revolving Loans and the Tax-Exempt Term Loan.

(c) *Federal Reserve Board Regulations.* The City shall not use any portion of the proceeds of a Revolving Loan or the Term Loans 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 City out of such proceeds.

Section 6.23. No Free Service. No free wastewater service shall be furnished by the System to the City or any department thereof or to any person, firm or corporation, public or private, or to any public agency or instrumentality. The reasonable cost and value of all wastewater service rendered to the City and its various departments by the System shall be charged against the City and will be paid for as the service occurs from the City's current funds. All payments so made shall be considered Operating Revenues and shall be applied in the manner herein provided for the application of the Revenues of the System.

Section 6.24. Disconnection for Non-Payment. The City shall diligently enforce payment of all bills for wastewater services supplied by the System. If a bill becomes delinquent and remains so for a period to be determined in accordance with City policy from time to time, the City will discontinue wastewater service in accordance with Arizona law to any premises the owner or occupant of which shall be so delinquent, and will not recommence such service to such premises until all delinquent charges with penalties shall have been paid in full or provisions for such payment satisfactory to the City shall have been made. The City will do all things and

exercise all remedies reasonably available to assure the prompt payment of charges for all services supplied by the System.

Section 6.25. Derivative Products. The City reserves the right to enter into arrangements involving Derivative Products including swap agreements, forward agreements, interest rate agreements, and other similar agreements, to the extent permitted by law, and make payments on such agreements from Net Operating Revenues, Designated Revenues or Junior Subordinate Lien Revenues, *provided* that payments under such agreements may not be made on a basis which is senior to the payment of any Senior Lien Obligations and do not permit extraordinary payments (such as termination payments) to be made on a basis other than subordinate to payment of the Principal Requirement and the interest requirement on Revenue Obligations.

To the extent the City enters into such agreements and pledges Net Operating Revenues, Designated Revenues or Junior Subordinate Lien Revenues to the payments due under such agreements, the City may do so if the City satisfies the tests for additional Revenue Obligations set forth in the Senior Lien Revenue Obligation Documents, the Junior Lien Revenue Obligation Documents and the Junior Subordinate Lien Revenue Obligation Documents, as applicable, subject to the provisions set forth below.

In determining whether the additional Revenue Obligations tests are satisfied in connection with any such agreements, the City is permitted to treat the amount or rate of interest on those agreements or on the Revenue Obligations to which the applicable agreement applies as the amount or rate of interest payable after giving effect to the agreements, so long as the agreement is with a Qualified Counterparty. If so, (i) the City is permitted to include the net payment due under such agreements in calculating the additional Revenue Obligations test and (ii) the City is permitted to disregard the notional principal amount of any such agreement.

ARTICLE 7

DEFAULTS

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 Bank:

(a) the City fails to pay, or cause to be paid, when due, any amount of principal or interest of any Revolving Loan or any Term Loan within one (1) Business Day of the day such amount was due;

(b) the City shall fail to pay any Obligation (other than the obligation to pay the principal of or interest on any Revolving Loan or Term Loan) when due and such failure shall continue for three (3) Business Days;

(c) failure of the City to observe or perform any of the covenants or conditions contained in Sections 6.03, 6.05, 6.06, 6.07, 6.08, 6.19, 6.20, 6.22(c) hereof;

(d) failure of the City to observe or perform any of the covenants, conditions or provisions of this Agreement or the Notes (other than as specified in subparagraphs (a), (b) or (c)) and to remedy such default within thirty (30) calendar days; *provided, however*, that any failure to comply with the reporting requirements of Section 6.01 hereof shall constitute an Event of Default hereunder only upon written notice from the Bank thereof and a failure by the City to remedy such failure within fifteen (15) Business Days of the receipt of such notice;

(e) any representation or warranty made by the City herein or in any certificate, financial or other statement furnished by the City to the Bank pursuant to this Agreement or the Related Documents shall prove to have been untrue or incomplete in any material adverse respect when made;

(f) the City shall apply for or consent to the appointment of, or the taking of possession by, a receiver, trustee, liquidator or custodian or the like of itself or of a substantial part of the System, admit in writing its inability, or be generally unable, to pay its debts as they become due, make a general assignment for the benefit of creditors, or commence a voluntary case as a debtor under the federal bankruptcy laws of the United States of America or file a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief as a debtor or seeking to take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding, or action shall be taken by it for the purpose of effecting any of the foregoing;

(g) if a proceeding shall be instituted, without the application or consent of the City, in any court of competent jurisdiction under any law relating to bankruptcy, insolvency, reorganization, dissolution, winding up, liquidation, seeking a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of the City or of all or any substantial part of the System, or other like relief in respect thereof under any bankruptcy or insolvency law, and the same shall result in the entry of an order for relief or any such adjudication or appointment, or continue undismissed, or pending and unstayed for any period of sixty (60) consecutive calendar days;

(h) any material provision of this Agreement, the Fee Letter, the Notes, any Related Document or the Ordinance shall at any time for any reason cease to be the legal, valid and binding obligation of the City or shall cease to be in full force and effect, or shall be declared to be not valid or binding in accordance with the terms thereof, or the validity or enforceability thereof shall be contested by the City or any Governmental Authority, as the case may be, shall renounce the same or deny that it has any further liability hereunder or thereunder;

(i) the City shall (i) fail to make any payment or payments of any Debt when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt, or (ii) fail to perform or observe any

term, covenant or condition on its part to be performed or observed under any such agreement or instrument (other than any failure to perform any term contemplated by subclause (i) hereof) if, in either case, the effect of such failure to perform or observe is to accelerate, or to permit the acceleration of the maturity of, or mandatory redemption of any Debt of the City the stated amount of which is equal to or greater than \$5,000,000;

(j) the City shall (i) fail to make any payment or payments when due in connection with any Senior Lien Revenue Obligations, Junior Lien Revenue Obligations or Junior Subordinate Lien Revenue Obligations (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), or under any Bank Agreements or derivative transaction related thereto with respect to the System, and such failure shall continue after the applicable grace period, if any, specified in the related Bond Order, or (ii) fail to perform or observe any term, covenant or condition on its part to be performed or observed under any such Bond Order (except as described in subclause (i) hereof), if, with respect to a failure described in (ii), the effect of such failure to perform or observe is to accelerate, or to permit the acceleration of the maturity of, or cause the mandatory redemption of, such Senior Lien Revenue Obligations, Junior Lien Revenue Obligations or Junior Subordinate Revenue Obligations;

(k) (i) any litigation or administrative proceeding ensues resulting in a judgment, which judgment is not dismissed or appealed within sixty (60) days, involving the City, the System or any instrument, contract or document delivered to the Bank in compliance herewith, and the adverse result of such litigation or proceeding could have, in the Bank's reasonable judgment, a Material Adverse Effect or (ii) a final, nonappealable judgment or order for the payment of money constituting Debt in excess of \$25,000,000 shall be rendered against the System or the City (insofar as it relates to the System), and such judgment or order shall continue unsatisfied and unstayed for a period of sixty (60) days;

(l) the occurrence of an "event of default" as defined in any other loan or credit agreement under which the City is now or hereafter obligated to the Bank or an "event of default" shall have occurred under any Related Document;

(m) the powers of the City shall be limited in any way or a Related Document or the Ordinance shall be modified or amended in any way without the prior written consent of the Bank, the result of which, in either case, is to prevent the City, as the case may be, from fixing, charging or collecting rates and charges for the use and services of the System in an amount sufficient to pay indebtedness payable from revenues derived from the System as due;

(n) any lien, pledge or security interest created to secure any amount due under this Agreement or the Notes, including the Security described in Section 2.14 hereof, should fail to be fully enforceable with the same priority as and when such lien, pledge or security interest was first created;

(o) the unenhanced ratings assigned to the Junior Lien Revenue Obligations by Moody's or S&P shall be reduced below "Baa3" or "BBB-", respectively, or if another rating agency is then maintaining a rating by agreement with the City, said rating shall be reduced below a level comparable to the foregoing, or either or both of said unenhanced ratings (or a comparable rating as contemplated above) shall be withdrawn or suspended for reasons other than debt maturity, redemption or defeasance;

(p) a court of competent jurisdiction has found any Senior Lien Revenue Obligation, Junior Lien Revenue Obligation or Junior Subordinate Lien Revenue Obligation to have been issued illegally or in violation of the related Bond Order;

(q) any federal, state or local legislation is enacted or amended which action or event has (i) a Material Adverse Effect on the ability of City to pay amounts due under this Agreement or to perform its obligations under this Agreement or the other Related Documents, or (ii) reduces the Highest Lawful Rate applicable to Obligations of the City under this Agreement; or

(r) there shall be appointed or designated with respect to the City, an entity such as an organization, board, commission, authority, agency or body to monitor or declare a financial emergency or similar state of financial distress with respect to it or there shall be declared by it or by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it.

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 Bank 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):

(a) declare the Revolving Commitment of the Bank to make Revolving Loans to be terminated by written notice to the City, whereupon such Revolving Commitment and obligation shall be terminated;

(b) by written notice to the City, declare the Outstanding Amount of the Obligations (including any Term Loans) 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; *provided*, that if any Event of Default described in Section 7.01(f) or (g) shall occur, the Obligations shall be automatically accelerated on the date of the occurrence of such Event of Default without presentment, demand, protest, notice of intention to accelerate, notice of acceleration or other notice of any kind to the City or any other Person, all of which are hereby expressly waived;

(c) 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, may take whatever action at law or in equity may appear necessary or desirable

to collect the amounts due and payable under this Agreement and the Notes or to enforce performance or observance of any obligation, agreement or covenant of the City under this Agreement and the Notes, whether for specific performance of any agreement or covenant of the City or in aid of the execution of any power granted to the Bank in this Agreement or the Notes or the other Related Documents; and

(d) exercise, or cause to be exercised, any and all remedies as it may have under this Agreement, the Notes and the other Related Documents.

In each case, the Obligations of the City shall, from and after the occurrence of an Event of Default, bear interest at the Default Rate until such time as the Bank shall have waived same or said Event of Default shall have been cured.

Section 7.03. Remedies Cumulative; Solely for the Benefit of the Bank. (a) 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 Bank in this Agreement, the Notes and the other 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 Bank, 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.

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

Section 7.04. Waivers or Omissions. No delay or omission by the Bank 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 Bank or to be acquiescence therein. No express or implied waiver by the Bank of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default.

Section 7.05. Discontinuance of Proceedings. In case the Bank shall proceed to invoke any right, remedy or recourse permitted under this Agreement, the Notes or the other Related Documents and shall thereafter elect to discontinue abandon the same for any reason, the Bank shall have the unqualified right so to do and, in such event, the City and the Bank shall be restored to their former positions with respect to the Obligations, this Agreement, the Notes and the other Related Documents and otherwise, and the rights, remedies, recourse and powers of the Bank hereunder shall continue as if the same had never been invoked.

Section 7.06. Injunctive Relief. The City recognizes that in the event the City fails to perform, observe or discharge any of its obligations or liabilities under this Agreement or the Notes, any remedy of law may prove to be inadequate relief to the Bank; therefore, the City agrees

that the Bank, if the Bank so requests, shall be entitled to temporary and permanent injunctive relief in any such case.

ARTICLE 8

MISCELLANEOUS

Section 8.01. Amendments, Etc.; Amendments and Waivers. The Bank and the City may from time to time enter into agreements amending, modifying or supplementing this Agreement, the Bank Note or the other Related Documents or changing the rights of the Bank or the City hereunder or thereunder, and the Bank may from time to time grant waivers or consents to a departure from the due performance of the obligations of the City 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; *provided* that no amendment to the terms “Amortization End Date,” “Amortization Payment Date,” “Applicable Factor,” “Applicable Spread,” “Commitment Termination Date,” and “Daily Floating Rate” shall be permitted without the delivery of an Approving Opinion to the Bank.

Section 8.02. Notices; Effectiveness; Electronic Communication.

(a) *Notices Generally.* Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or e-mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, to the address, fax number, e-mail address or telephone number specified for the City or the Bank on Schedule 8.02.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) *Electronic Communications.* Notices and other communications to the Bank hereunder may be delivered or furnished by electronic communication (including e-mail, FPML messaging and Internet or intranet websites) pursuant to procedures approved by the Bank. The Bank or the City may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Bank otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices and other communications posted to an Internet or intranet website shall be deemed received by the intended recipient upon the sender's receipt of an acknowledgement by the intended recipient (such as by the "return receipt requested" function, as available, return email address or other written acknowledgement) indicating that such notice or communication is available and identifying the website address therefor; *provided* that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) *Change of Address, Etc.* Each of the City and the Bank may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(d) *Reliance by Bank.* The Bank shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices, Loan Notices and Notice of Loan Prepayment) purportedly given by or on behalf of the City even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as reasonably understood by the recipient, varied from any confirmation thereof. The City shall, to the extent permitted by law, indemnify the Bank and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the City. All telephonic notices to and other telephonic communications with the Bank may be recorded by the Bank, and each of the parties hereto hereby consents to such recording.

Section 8.03. No Waiver; Cumulative Remedies; Enforcement. No failure by the Bank to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Related Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Related Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Related Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 8.04. Costs and Expenses; Damage Waiver.

(a) *Costs and Expenses.* The City shall pay (i) all reasonable out-of-pocket expenses incurred by the Bank and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Bank), in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Related Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket expenses incurred by the Bank (including the fees, charges and disbursements of any counsel for the Bank), and shall pay all fees and time charges for attorneys who may be employees of the Bank, in

connection the enforcement or protection of its rights (A) in connection with this Agreement and the other Related Documents, including its rights under this Section, or (B) in connection with Revolving Loans or the Term Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Revolving Loans or the Term Loans.

(b) *Indemnification by the City.* In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant hereto or under law or equity, the City hereby agrees, to the extent permitted by law, to indemnify and hold harmless the Bank and its officers, directors and agents and each Participant (the “*Indemnitees*”) from and against any and all claims, damages, losses, liabilities, costs or expenses whatsoever (including reasonable attorneys’ fees) which the Bank and each Participant may incur (or which may be claimed against the Bank and each Participant by any Person or entity whatsoever) by reason of or in connection with the transactions contemplated by this Agreement, including, without limitation (a) the execution and delivery or transfer of, or failure to pay the Notes; (b) the use of the proceeds of the Revolving Loans; or (c) the use or occupancy of the Project by any Person; *provided, however*, that the City shall not be required to indemnify the Bank for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, that any such claim, damage, loss, liability, cost or expense shall be caused by the Bank’s gross negligence or willful misconduct in connection with the Revolving Loans or the Term Loans. If any proceeding shall be brought or threatened against an Indemnitee by reason of or in connection with the events described in clause (a), (b) or (c) (and except as otherwise provided in clauses (i) or (ii) below), the Bank shall promptly notify the City in writing. The Bank shall have the right to employ its own counsel and to determine its own defense of such action in any such case, and the fees and expenses of such counsel shall be at the expense of the City.

(c) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by Applicable Law, the City shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Related Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Revolving Loan, Term Loans or Letters of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Related Documents or the transactions contemplated hereby or thereby.

(d) *Payments.* All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(e) *Survival.* The agreements in this Section and the indemnity provisions of Section 8.02(d) shall survive the termination of the Revolving Commitment and the repayment, satisfaction or discharge of all the other Obligations.

Section 8.05. Payments Set Aside. To the extent that any payment by or on behalf of the City is made to the Bank, or the Bank exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Bank in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

Section 8.06. Successors and Assigns; Participations. (a) *Participations.* The Bank may grant participations herein or in any of its rights and security hereunder, provided that any such participation shall grant to the City the right to continue dealing solely with the Bank. Any such participant is referred to in this agreement as a “Participant”; *provided, however,* that (i) no such participation by any such participant shall in any way affect the obligations of the Bank hereunder; (ii) the Bank shall provide the City with written notice of such participation five (5) Business Days before the effectiveness thereof if such Participant shall have any of the rights of set-off against the City; and (iii) the City shall be required to deal only with the Bank, with respect to any matters under this Agreement and the other Related Documents and no such participant shall be entitled to enforce any provision hereunder against the City. The City agrees that each participant shall be entitled to the benefits of Sections 3.01, 3.02 and 8.04 hereof to the same extent as if it were a Bank hereunder; *provided, however,* that a participant shall not be entitled to receive any greater payment under Sections 3.01 and 3.02 than the Bank would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with the City’s prior written consent. In connection with any proposed participation, the Bank may disclose to the proposed Participant any information that the City is required to deliver to the Bank pursuant to this Agreement.

(b) *Successors and Assigns Generally.* This Agreement is a continuing obligation and shall be binding upon the City, its successors, transferees and assigns and shall inure to the benefit of the holders of the Notes and their respective permitted successors, transferees and assigns. The City may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Bank. Notwithstanding anything to the contrary set forth herein, so long as no Event of Default shall have occurred and be continuing hereunder, _____ may not assign its obligations to fund Revolving Loans pursuant to the terms of this Agreement without the prior written consent of the City (such consent not to be unreasonably withheld). Each holder of a Note may, in its sole discretion and in accordance with applicable law, from time to time assign, sell or transfer in whole or in part, its interest in a Note in accordance with the provisions of paragraph (c) or (d) of this Section. Each holder of a Note may at any time and from time to time enter into participation agreements in accordance with the provisions of paragraph (a) of this Section. Each holder of a Note may at any time pledge or assign a security interest subject to the restrictions of paragraph (e) of this Section.

(c) *Sales and Transfers by Noteholder to a Bank Transferee.* Without limitation of the foregoing generality, the Bank may at any time sell or otherwise transfer to one or more transferees all or a portion of a Note to a Person that is (i) an Affiliate of the Bank or (ii) a trust or other custodial arrangement established by the Bank or an Affiliate of the Bank, the owners of any

beneficial interest in which are limited to “qualified institutional buyers” as defined in Rule 144A promulgated under the 1933 Act (each, a “*Bank Transferee*”). From and after the date of such sale or transfer, _____ (and its successors) shall continue to have all of the rights of the Bank 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 (c)(i) or (c)(ii) hereof shall in any way affect the obligations of the Bank hereunder, (B) any such sale or transfer referred to in clause (e)(i) or (e)(ii) hereof shall be in a minimum amount of \$250,000, (C) the City shall be required to deal only with the Bank with respect to any matters under this Agreement and (D) in the case of a sale or transfer referred to in clause (c)(i) or (c)(ii) hereof, only the Bank shall be entitled to enforce the provisions of this Agreement against the City. Upon the request of the City, the Bank shall provide the addresses and related information with respect to the Bank Transferee to the City.

Anything herein to the contrary notwithstanding, if any Bank Transferee shall incur increased costs or capital adequacy requirements as contemplated by Section 3.02 hereof, and such increased costs or capital adequacy requirements are greater than those that the Bank would have incurred had it not sold or otherwise transferred all or a portion of a Note to such Bank Transferee provided for in this Section 8.06(c), then the City shall not be obligated to pay to such Bank Transferee any portion of the cost greater than that which the City would have paid under the provisions of Section 3.02 hereof had the Bank not sold or otherwise transferred all or a portion of such Note to a Bank Transferee.

(d) *Sales and Transfers by Noteholder to a Non-Bank Transferee.* Without limitation of the foregoing generality, a holder of a Note may at any time sell or otherwise transfer all or a portion of a Note to one or more transferees which are not Bank Transferees but each of which constitutes (i) a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act and (ii) a commercial bank organized under the laws of the United States, or any state thereof, or any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, and, in any such case, having a combined capital and surplus, determined as of the date of any transfer pursuant to this clause (c), of not less than \$5,000,000,000 (each a “*Non-Bank Transferee*”), if written notice of such sale or transfer, including that such sale or transfer is to a Non-Bank Transferee, together with addresses and related information with respect to the Non-Bank Transferee, shall have been given to the City and the Bank (if different than the Noteholder) by such selling holder of a Note and Non-Bank Transferee; *provided, however*, that any such sale or transfer shall be in a minimum amount of \$250,000.

From and after the date the City has received written notice, (A) the Non-Bank Transferee thereunder shall be a party hereto and shall have the rights and obligations of a Noteholder (other than its obligation to fund Revolving Loans) 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-Bank Transferee, and any reference to the assigning holder of a Note hereunder and under the other Related Documents shall thereafter refer to such transferring holder of a Note and to the Non-Bank Transferee to the extent of their respective interests, and (B) if the transferring holder of a Note no longer owns any portion of the Note, then it shall relinquish

its rights and be released from its obligations hereunder and under the other Related Documents (other than its obligation to fund Revolving Loans).

Anything herein to the contrary notwithstanding, if any Non-Bank Transferee shall incur increased costs or capital adequacy requirements as contemplated by Section 3.02 hereof, and such increased costs or capital adequacy requirements are greater than those that the Bank would have incurred had all or a portion of the Note not been sold or otherwise transferred to such Non-Bank Transferee provided for in this Section 8.06(d), then the City shall not be obligated to pay to such Non-Bank Transferee any portion of the cost greater than that which the City would have paid under the provisions of Section 3.02 hereof had all or a portion of the Note(s) not been sold or otherwise transferred to such Bank Transferee.

(e) *Certain Pledges.* The Bank may at any time pledge or grant a security interest in all or any portion of its rights under the Notes, this Agreement and the other Related Documents to secure obligations of the Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such pledgee or assignee for the Bank as a party hereto.

Section 8.07. Counterparts; Integration; Effectiveness. This Agreement and each of the other Related Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Related Documents, and any separate letter agreements with respect to fees payable to the Bank, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Bank and when the Bank shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or any other Related Document, or any certificate delivered thereunder, by fax transmission or e-mail transmission (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement or such other Related Document or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Related Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

Section 8.08. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Related Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Bank, regardless of any investigation made by the Bank or on its behalf and notwithstanding that the Bank may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension or the making of the Term Loans, and shall continue in full force until the Commitment Termination Date or Amortization End Date.

Section 8.09. Severability. If any provision of this Agreement or the other Related Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Related Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.10. Governing Law; Jurisdiction Etc. (a) THIS AGREEMENT AND ANY OTHER DOCUMENTS TO WHICH THE BANK SHALL BECOME A PARTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ARIZONA, EXCEPT THE RIGHTS AND OBLIGATIONS OF THE BANK HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE CITY AND THE BANK AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY AND ALL CLAIM OR CAUSES OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT AND THE RELATED DOCUMENTS.

Section 8.11. No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof, the Notes or the Ordinance), the City acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the services regarding this Agreement provided by the Bank and any Affiliate thereof are arm's-length commercial transactions between the City, on the one hand, and the Bank and its Affiliates, on the other hand, (ii) the City has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the City is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the Notes and the Ordinance; (b) (i) the Bank and its Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor (municipal, financial or otherwise), agent or fiduciary, for the City, or any other Person and (ii) neither the Bank nor any of its Affiliates has any obligation to the City with respect to the transactions contemplated hereby except those obligations expressly set forth herein, in the Notes and in the Ordinance; and (c) the Bank and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the City, and neither the Bank nor any of its Affiliates has any obligation to disclose any of such interests to the City. To the fullest extent permitted by law, the City, hereby waives and releases any claims that it may have against the Bank or any of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

Section 8.12. Electronic Execution of Certain Documents. The words "delivery," "execute," "execution," "signed," "signature," and words of like import in any Related Document or any other document executed in connection herewith shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Bank, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical

delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 8.13. USA Patriot Act. The Bank hereby notifies the City that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “USA Patriot Act”), it is required to obtain, verify and record information that identifies the City, which information includes the name and dress of the City and other information that will allow the Bank to identify the City in accordance with the USA Patriot Act. The City agrees to, promptly following a request by the Bank, provide all such other documentation and information that the Bank requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act.

Section 8.14. Time of the Essence. Time is of the essence of the Related Documents and the Ordinance.

Section 8.15. Certain Statutory Provisions. (a) To the extent applicable under Section 38-511, Arizona Revised Statutes, as amended, notice is hereby given that the State, its political subdivisions (which may include the City) or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the State, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions, or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The State, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, as amended, the Bank shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the “E verify” requirements under Section 23-214(A), Arizona Revised Statutes, as amended. The breach by the Bank of the foregoing shall be deemed a material breach of this Agreement and may result in the termination of the services of the Bank by the City. The City retains the legal right to randomly inspect the papers and records of the Bank to ensure that the Bank is complying with the above mentioned warranty. The Bank shall keep such papers and records open for random inspection during normal business hours by the City. The Bank shall cooperate with the random inspections by the City including granting the City entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential.

(c) Pursuant to Section 35-393 *et seq.*, Arizona Revised Statutes, the Bank hereby certifies it is not currently engaged in, and for the duration of this Agreement shall not engage in, a boycott of Israel. The term “boycott” has the meaning set forth in Section 35-393, Arizona Revised Statutes. If the City determines that the Bank’s certification above is false or that it has breached such agreement, the City may impose remedies as provided by law.

Section 8.16. EMMA Postings. The City shall not file or submit or permit the filing or submission, of all or any portion of any document (or any summary thereof) entered into in connection with this Agreement or the other Related Documents (or any default, event of acceleration, termination event, modification of terms or other similar events relating to this Agreement) with the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system (or any successor continuing disclosure vehicle) unless such document or portion thereof (or summary thereof), as applicable, to be so filed or submitted (i) has been provided to the Bank for review in advance of such filing or submission, and (ii) shall have been redacted to the extent reasonably required by the Bank with respect to notice addresses, signatories, wiring information and similar confidential information, *provided* that such redaction may be no greater than permitted under applicable federal securities law guidance, if any. The City acknowledges and agrees that although the Bank may request review, edits or redactions of such materials prior to filing, the Bank is not responsible for the City’s or any other entity’s (including, but not limited to, any broker-dealer’s) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with any continuing disclosure undertaking, similar agreement or applicable securities or other laws, including but not limited to those relating to SEC Rule 15c2-12.

[SIGNATURE PAGES TO FOLLOW]

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

CITY OF PHOENIX, ARIZONA

By: JEFFREY BARTON
CITY MANAGER

By: _____
Name: Kathleen Gitkin
Title: Chief Financial Officer

ATTEST:

City Clerk

APPROVED AS TO FORM:

Cris Meyer, City Attorney

Assistant Chief Counsel

By: _____
Its: _____

SCHEDULE 8.02

**BANK'S LENDING OFFICE,
CERTAIN ADDRESSES FOR NOTICES**

CITY:

City of Phoenix Finance Department
251 West Washington Street, 9th Floor
Phoenix, Arizona 85003
Attention: Chief Financial Officer
Telephone: (602) 262-7166
Telecopy: (602) 495-5605

BANK:

EXHIBIT A

[FORM OF REVOLVING LOAN NOTICE]

Telephone:
Facsimile:
Attention:
Email:

Ladies and Gentlemen:

The undersigned, an Authorized Officer, refers to the Revolving Credit Agreement dated as of _____, 2022 (together with any amendments or supplements thereto, the "Agreement"), by and between the City of Phoenix, Arizona (the "City") and _____ (the "Bank") (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.02 of the Agreement, **[a Borrowing] [a conversion of a Revolving Loan from one Type to the other] [a continuation of a Fixed Rate Revolving Loan]**, and in that connection sets forth below the following information relating to such proposed Revolving Loan (the "Proposed Revolving Loan"):

1. The Business Day of the Proposed Revolving Loan is _____, 20__ (the "Loan Date"), which is at least three (3) [London] Business Days after the date hereof if the Proposed Revolving Loan is a Fixed Rate Revolving Loan.

2. The principal amount of the Proposed Revolving Loan is \$[_____], which is not greater than the Available Commitment as of the Loan Date set forth in 1 above, unless such Proposed Revolving Loan is a continuation of an existing Revolving Loan or a conversion of an existing Fixed Rate Revolving Loan maturing on the Loan Date.

3. The aggregate amount of the Proposed Revolving Loan shall be used solely as permitted under the Agreement and the Ordinance.

4. The Proposed Revolving Loan shall be a **[Tax-Exempt Revolving Loan] [Taxable Revolving Loan]** and the interest rate with respect to the Proposed Revolving Loan shall be **[the Tax-Exempt Fixed Rate] [the Tax-Exempt Floating Rate] [the Taxable Fixed Rate] [the Taxable Floating Rate]**.

[5. The duration of the Interest Period for the Proposed Revolving Loan constituting a Fixed Rate Revolving Loan shall be [one] [three] [six] months.]

[Because the Fixed Rate Revolving Loan will be for an Interest Period different from the previous Interest Period, an Approving Opinion is included herewith.]

[Because the Proposed Revolving Loan is being converted to/from a Tax-Exempt Revolving Loan, an Approving Opinion is included herewith.]

6. After giving effect to the Proposed Revolving Loan, the aggregate principal amount of all Loans outstanding under the Agreement will not exceed the Revolving Commitment. With respect to a Borrowing, the amount of such Loan is not in excess of the Tax-Exempt Revolving Loan Commitment or the Taxable Revolving Loan Commitment, as applicable, as of the Loan Date set forth in 1 above.

Solely with respect to a Borrowing, the undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Loan Date, before and after giving effect thereto:

(a) the undersigned is an Authorized Representative;

(b) the representations and warranties of the City set forth in Article V of the Agreement or in the Ordinance, or which are contained in any document furnished at any time under or in connection with the Agreement, shall be true and correct on the date hereof and on such Loan Date as though made on the date hereof and on such Loan Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this 4.02 of the Agreement, the representations and warranties contained in Section 5.10 of the Agreement shall be deemed to refer to the most recent statements furnished pursuant to clause (b)(i) of Section 6.01 of the Agreement;

(c) no Default or Event of Default shall have occurred and be continuing on such Loan Date or would result from the proposed Borrowing or from the application of the proceeds thereof; and

(d) all conditions precedent to the Borrowing in Section 4.02 of the Agreement have been satisfied.

7. With respect to the use of the proceeds of the Proposed Revolving Loan

Such Proposed Revolving Loan is for purposes described in the definition of "Project" on Exhibit D to the Agreement; or

The definition of "Project" in Exhibit D to the Agreement is hereby amended to read as follows:

The Proposed Revolving Loan shall be made by the Bank by wire transfer of immediately available funds to the undersigned in accordance with the instructions set forth below:

CITY OF PHOENIX, ARIZONA

By: JEFFREY BARTON
CITY MANAGER

By: _____
Name: Kathleen Gitkin
Title: Chief Financial Officer

EXHIBIT B-1

THE TRANSFERABILITY OF THIS NOTE IS SUBJECT TO THE LIMITATIONS ON TRANSFER SET FORTH IN SECTION 8.06 OF THE HEREINAFTER DEFINED AGREEMENT

FORM OF TAX-EXEMPT NOTE

Not to exceed \$200,000,000 _____, 2022

FOR VALUE RECEIVED, the undersigned the City of Phoenix, Arizona (the “City”), hereby promises to pay to _____, or registered assigns (the “Bank”), in accordance with the provisions of the Agreement (as hereinafter defined), the principal outstanding amount of each Tax-Exempt Revolving Loan and the Tax-Exempt Term Loan from time to time made by the Bank to the City under that certain Revolving Credit Agreement, dated as of _____, 2022 (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 City and the Bank, in accordance with the terms of the Agreement.

The City promises to pay interest on the unpaid principal amount of each Tax-Exempt Revolving Loan and the Tax-Exempt Term Loan from the date of such Tax-Exempt Revolving Loan and the Tax-Exempt Term Loan 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 Bank in Dollars in immediately available funds at the Bank’s Lending Office. 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 Tax-Exempt Note is the Tax-Exempt 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. Upon the occurrence and continuation of one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Tax-Exempt Note shall become, or may be declared to be, immediately due and payable all as provided in the Agreement. The Tax-Exempt Revolving Loans and the Tax-Exempt Term Loan made by the Bank shall be evidenced by one or more loan accounts or records maintained by the Bank in the ordinary course of business. The Bank may also attach schedules to this Tax-Exempt Note and endorse thereon the date, amount and maturity of its Tax-Exempt Revolving Loans and the Tax-Exempt Term Loan and payments with respect thereto.

The City, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Tax-Exempt Note.

Delivery of an executed counterpart of a signature page of this Tax-Exempt 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 Tax-Exempt Note.

CITY OF PHOENIX, ARIZONA

By: JEFFREY BARTON
CITY MANAGER

By: _____
Name: Kathleen Gitkin
Title: Chief Financial Officer

ATTEST:

City Clerk

APPROVED AS TO FORM:

Cris Meyer, City Attorney

Assistant Chief Counsel

**TAX-EXEMPT REVOLVING LOANS, TAX-EXEMPT TERM LOAN
AND PAYMENTS WITH RESPECT THERETO**

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

EXHIBIT B-2

THE TRANSFERABILITY OF THIS NOTE IS SUBJECT TO THE LIMITATIONS ON TRANSFER SET FORTH IN SECTION 8.06 OF THE HEREINAFTER DEFINED AGREEMENT

FORM OF TAXABLE NOTE

Not to exceed \$200,000,000 _____, 2022

FOR VALUE RECEIVED, the undersigned the City of Phoenix, Arizona (the “City”), hereby promises to pay to _____, or registered assigns (the “Bank”), in accordance with the provisions of the Agreement (as hereinafter defined), the principal outstanding amount of each Taxable Revolving Loan and the Taxable Term Loan from time to time made by the Bank to the City under that certain Revolving Credit Agreement, dated as of _____, 2022 (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 City and the Bank, in accordance with the terms of the Agreement.

The City promises to pay interest on the unpaid principal amount of each Taxable Revolving Loan and the Taxable Term Loan from the date of such Taxable Revolving Loan and the Taxable Term Loan 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 Bank in Dollars in immediately available funds at the Bank’s Lending Office. 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 Taxable Note is the Taxable 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. Upon the occurrence and continuation of one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Taxable Note shall become, or may be declared to be, immediately due and payable all as provided in the Agreement. The Taxable Revolving Loans and the Taxable Term Loan made by the Bank shall be evidenced by one or more loan accounts or records maintained by the Bank in the ordinary course of business. The Bank may also attach schedules to this Taxable Note and endorse thereon the date, amount and maturity of its Taxable Revolving Loans and the Taxable Term Loan and payments with respect thereto.

The City, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Taxable Note.

Delivery of an executed counterpart of a signature page of this Taxable 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 Taxable Note.

CITY OF PHOENIX, ARIZONA

By: JEFFREY BARTON
CITY MANAGER

By: _____
Name: Kathleen Gitkin
Title: Chief Financial Officer

ATTEST:

City Clerk

APPROVED AS TO FORM:

Cris Meyer, City Attorney

Assistant Chief Counsel

**TAXABLE REVOLVING LOANS, TAXABLE TERM LOAN
AND PAYMENTS WITH RESPECT THERETO**

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

EXHIBIT C

FORM OF NOTICE OF LOAN PREPAYMENT

[Date]

Telephone:
Facsimile:
Attention:
Email:

The undersigned, an Authorized Officer, refers to the Revolving Credit Agreement dated as of _____, 2022 (together with any amendments or supplements thereto, the "Agreement"), by and between the City of Phoenix, Arizona (the "City") and _____ (the "Bank") (the terms defined therein being used herein as therein defined) and hereby notifies the Bank that on _____ pursuant to the terms of Section 2.03(a) Agreement, the City intends to prepay/repay the following Revolving Loans and the Term Loan as more specifically set forth below:

1. The Business Day of the prepayment is _____, 20__ (the "Prepayment Date"), which is at least three (3) [London] Business Days after the date hereof if the Revolving Loan to be prepaid is a Fixed Rate Revolving Loan.

2. The principal amount of the prepayment is \$[_____], which is a principal amount of \$500,000 and a whole multiple of \$100,000 in excess thereof.

3. The Revolving Loan to be prepaid is a:

[Fixed Rate Revolving Loan bearing interest at a [Tax-Exempt Fixed Rate][Taxable Fixed Rate], with an Interest Period ending on [_____]]

[Floating Rate Revolving Loan bearing interest at a [Tax-Exempt Floating Rate][Taxable Floating Rate]

[Term, Loan].

Delivery of an executed counterpart of a signature page of this notice 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 notice.

Very truly yours,

CITY OF PHOENIX, ARIZONA

By: JEFFREY BARTON
CITY MANAGER

By: _____
Name: Kathleen Gitkin
Title: Chief Financial Officer

EXHIBIT D

DESCRIPTION OF PROJECT

The Initial Tax-Exempt Revolving Loan in the principal amount of \$200,000,000. The Project is more fully described in Exhibit A to the Tax Exemption Certificate.

EXHIBIT E

FORM OF REQUEST FOR EXTENSION OF TERM LOAN

[Date]

Telephone:
Facsimile:
Attention:
Email:

The undersigned, an Authorized Officer, refers to the Revolving Credit Agreement dated as of _____, 2022 (together with any amendments or supplements thereto, the “*Agreement*”), by and between the City of Phoenix, Arizona (the “*City*”) and _____ (the “*Bank*”) (the terms defined therein being used herein as therein defined). All capitalized terms contained herein which are not specifically defined shall have the meanings assigned to such terms in the Agreement.

The City hereby requests, pursuant to Section 4.03 of the Agreement, that on the date hereof (the “*Commitment Termination Date*”), the Bank convert (i) [**the Outstanding Amount of the Tax-Exempt Revolving Loans into the Tax-Exempt Term Loan**] and [**the Outstanding Amount of the Taxable Revolving Loans into the Taxable Term Loan**] in accordance with Section 2.05(a) of the Agreement. The [**Tax-Exempt Term Loan**] and [**the Taxable Term Loan**] shall be payable in accordance with Section 2.05 of the Agreement.

In connection with such request, the City hereby represents and warrants that:

(a) no Default or Event of Default has occurred and is continuing under the Agreement on the Commitment Termination Date;

(b) all representations and warranties of the Company in Article 5 of the Agreement and in each certificate or other writing delivered to the Bank pursuant to the Agreement on or prior to the Commitment Termination Date are true and correct on and as of the Commitment Termination Date as though made on as of such date, except in each case to the extent that such representations and warranties relates specifically to an earlier date, in which case they were true and correct as of such earlier date, and except that for purposes of this Request, the representations and warranties contained in Section 5.10 of the Agreement shall be deemed to refer to the most recent statements furnished pursuant to clause (b)(i) of Section 6.01; and

(c) all conditions precedent to the funding of the Term Loan in Section 4.03 of the Agreement have been satisfied.

We have enclosed along with this request the following information:

1. Any opinions required by the Bank under Section 4.03(b);
2. The nature of any and all Defaults and Events of Default; and
3. Any other pertinent information previously requested by the Bank.

Very truly yours,

CITY OF PHOENIX, ARIZONA

By: JEFFREY BARTON
CITY MANAGER

By: _____
Name: Kathleen Gitkin
Title: Chief Financial Officer

EXHIBIT F

DESCRIPTION OF JOINT EXERCISE POWERS AGREEMENT (JEPA)

Certain Definitions

“*Jointly Used Facilities*” means, collectively, the Jointly Used Sewage Facilities and the Jointly Used Sewage Transportation Facilities.

“*Jointly Used Sewage Facilities*” means the 91st Avenue Wastewater Treatment Plant, disposal facilities, and all appurtenances thereto used to store, treat, recycle, reclaim or dispose of the sewage discharge of the SROG Members and other facilities as may be agreed upon pursuant to the JEPA.

“*Jointly Used Sewage Transportation Facilities*” means Salt River Outfall Parallel Sewer, the Southern Avenue Interceptor and other collection lines, interceptor lines, and all appurtenances thereto used to receive and convey the sewer discharge of more than one SROG Member and other facilities as may be agreed upon pursuant to the JEPA.

“*Purchased Capacity*” means (a) with respect to Jointly Used Sewage Facilities, the amount of sewage capacity of a SROG Member expressed in millions of gallons per day that such SROG Member has purchased by the payment of the facility construction cost allocated to such SROG Member, and (b) with respect to Jointly Used Sewage Transportation Facilities, that part of the average daily flow expressed in millions of gallons per day that a SROG Member has purchased by participating in the total cost of the Jointly Used Transportation Facility.

“*SROG Committee*” means the Multicity Subregional Operating Group Committee comprised of one member and one alternate appointed by each SROG Member, which provides advice to the City on operation, maintenance, planning and financing of Jointly Used Facilities and additions to the Jointly Used Facilities and which approves the annual operating budget submitted by the City for the Jointly Used Facilities.

General

The JEPA is an agreement among the SROG Members for the construction, operation and maintenance of the Jointly Used Facilities. As lead agency under the JEPA, the City is responsible for the planning, budgeting, construction, operation and maintenance of the Jointly Used Facilities. The City provides all management personnel and accepts federal grants on behalf of the SROG Members.

Construction of Jointly Used Facilities

All construction of Jointly Used Facilities is required to be done under plans and specifications prepared by and under engineering supervision furnished by engineers engaged by the City. Prior to the start of construction of any Jointly Used Facilities, the City is required to submit the plans and specifications to the SROG Committee for its concurrence.

Pursuant to the JEPA, the SROG Members agree to pay their proportionate share of the construction cost of Jointly Used Facilities on the basis of their agreed upon participation in the facility. The proportionate allocation of construction cost is calculated by the City and submitted to the SROG Committee for approval. Each SROG Member is required to advance funds to the City in accordance with cash flow estimates for improvements and contingencies prepared by the City each May 1 and December 1. The City bills each SROG Member monthly, thirty days in advance for one-sixth of such SROG Member's share of the City's total six-month cash flow estimate.

Payment of Operations, Maintenance and Replacement Costs

Each SROG Member agrees to pay to the City its proportionate share of the actual costs of operation, maintenance and replacement of the Jointly Used Facilities. Each SROG Member's proportionate share of the actual cost is based upon each SROG Member's actual sewage flow and the cost of treating such actual sewage flow including, but not limited to the cost of treating its biochemical oxygen demand and suspended solids. Any SROG Member which exceeds its Purchased Capacity is required to pay the proportionate cost attributed to their total flows for operation, maintenance and replacement, and a rental charge until such time that the SROG Member purchases additional capacity at least equal to their excessive flow.

The City is required to transfer its own funds to the Operating Fund representing its proportionate share of operation and maintenance costs. Operation, maintenance and replacement costs include the City's cost for applicable salaries and benefits, parts, materials and services, applicable equipment replacement and appropriate indirect services, in each case relating to the Jointly Used Facilities.

Funds Established Under the JEPA

Pursuant to the JEPA, the City establishes an Operating Fund, a Capital Fund, an Equipment Replacement Fund and a Facility Rental Distribution Fund.

Events of Default and Remedies

In the event of default by any of the SROG Members in any of the terms or conditions of the JEPA, then, within thirty (30) days' following the giving of written notice of such default, the defaulting SROG Member is required to remedy such default either by advancing the necessary funds and/or rendering the necessary performance. Any SROG Member is entitled to dispute an asserted default upon payment or performance under protest by submission of the dispute to the SROG Committee.

In the event a default shall continue for a period of two months or more without having been cured or without the defaulting SROG Member having commenced or continued action in good faith to cure such default, or in the event the question of whether an act of default exists is the subject of litigation and such default continues for a period of two months following a final determination by a court of competent jurisdiction that an act of default exists, the nondefaulting SROG Members may, in addition to any remedy provided for by law for breach of a contractual obligation, including specific performance, declare a forfeiture of the unused Purchased Capacity, if any, of the defaulting SROG Member. Such forfeited unused Purchased Capacity will be distributed to the remaining SROG Members as may be agreed upon by the SROG Members.