

CITY OF SANTA ROSA  
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL  
SUBJECT: FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT  
FOR VARIABLE RATE DEMAND WASTEWATER REVENUE  
REFUNDING BONDS, SERIES 2004A  
STAFF PRESENTER: DAVID HEATH, CHIEF FINANCIAL OFFICER  
FINANCE DEPARTMENT  
AGENDA ACTION: RESOLUTION

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ISSUE(S)

Shall the Council, by resolution, approve the form of and authorize the execution and delivery of a first amendment to the reimbursement agreement relating to the Variable Rate Demand Wastewater Revenue Refunding Bonds, Series 2004A, and authorize certain other actions in connection herewith?

COUNCIL GOALS AND STRATEGIES

“Sustain City Leadership in Environmental Initiatives...”: Minimization of treated waste into the Russian river.

BACKGROUND

1. The City issued its wastewater revenue bonds in 2004 as variable interest rate bonds (the “Bonds”). The variable interest rate structure requires that the City maintain a supporting letter of credit to provide credit support and liquidity for the Bonds. At the time the Bonds were issued, the letter of credit was provided by LANDESBANK BADEN-WÜRTTEMBERG, acting through its New York Branch (the “Bank”). In 2009, the Bank informed the City that the Bank was exercising its option to adjust its fee structure for providing the letter of credit, and has submitted proposed new terms for continuing to provide a letter of credit to support the Bonds. The City’s financial advisor, Public Financial Management, which has experience in negotiating letters of credit for municipal issuers, has reviewed the Bank’s proposal, and has concluded that the terms are reasonable, given the present market for letters of credit.

ANALYSIS

1. The Bonds, which bear a variable rate of interest (presently quite low, less than 1%) require that the Bonds be supported by a letter of credit. Our analysis is that

that the proposed terms of the letter of credit for the Bonds to be provided by the Bank (which terms are contained in the First Amendment to Reimbursement Agreement), are reasonable, and the best option for the City at this time.

RECOMMENDATION

This resolution, recommended by the Finance Department, approves the form of and authorizes the execution and delivery of a first amendment to the reimbursement agreement relating to the Variable Rate Demand Wastewater Revenue Refunding Bonds, Series 2004A, and authorizes certain other actions in connection herewith.

Author: David Heath

Attachments:

- First Amendment to Reimbursement Agreement

## FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT

This FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT (this "*Amendment*") is dated February 10, 2010 (the "*Amendment Date*"), between the CITY OF SANTA ROSA, CALIFORNIA (the "*City*") and LANDESBANK BADEN-WÜRTTEMBERG, acting through its New York Branch (the "*Bank*").

### WITNESSETH

WHEREAS, the Bank and the City have previously entered into that certain Reimbursement Agreement dated as of March 1, 2004 (such Reimbursement Agreement as amended, modified or supplemented prior to the date hereof being referred to as the "*Agreement*"), relating to the City of Santa Rosa Variable Rate Demand Wastewater Revenue Refunding Bonds, Series 2004A;

WHEREAS, pursuant to its terms, the Agreement may be amended at any time by a written amendment thereto, signed by the Bank and the City;

WHEREAS, the parties hereto wish to amend the Agreement as set forth herein;

NOW THEREFORE, in consideration of the premises, the parties hereto hereby agree as follows:

1. AMENDMENT TO THE AGREEMENT.

Upon satisfaction of the conditions precedent set forth in Section 2 hereof, the Agreement shall be amended as follows:

1.01. The definitions of the terms "*Base Rate*," "*Default Rate*," "*Letter Agreement*" and "*Liquidity Rate*" set forth in Section 1.1 of the Agreement are hereby amended in their entireties and as so amended shall be restated to read as follows:

"*Base Rate*" means, for any day, the highest of (i) the Prime Rate in effect on such day *plus* 2.00%, (ii) the Federal Funds Rate in effect on such day *plus* 3.00% and (iii) the LIBOR Index Rate in effect on such day *plus* 3.00%.

"*Default Rate*" means a rate per annum equal to the Base Rate from time to time in effect, plus four percent (4.0%).

"*Letter Agreement*" means that certain Amended and Restated Letter Agreement dated February 10, 2010, between the City and the Bank, as the same may be amended, supplemented or otherwise modified from time to time.

“*Liquidity Rate*” means a rate per annum equal to (i) for any day commencing on the date a Bank Bond is purchased by the Bank to but not including the date which is thirty-one (31) calendar days immediately following the date a Bank Bond was purchased, the Base Rate from time to time in effect, (ii) for the period from and including the date which is thirty-one (31) days immediately following the date a Bank Bond was purchased by the Bank to but not including the date which is ninety-one (91) days immediately following the date a Bank Bond was purchased by the Bank, the sum of the Base Rate from time to time in effect *plus* one percent (1.00%) and (iii) thereafter, the sum of the Base Rate from time to time in effect *plus* two percent (2.00%); *provided* that from and after the occurrence of an Event of Default (and without any notice given with respect thereto), and during the continuance of such Event of Default, “*Liquidity Rate*” shall mean the Default Rate; *provided further* that in no event shall the Liquidity Rate be less than the per annum rate of interest applicable to Bonds that are not Bank Bonds.

1.02. Section 1.1 of the Agreement is hereby amended by the addition of the defined terms “*Bank Bond CUSIP Number*,” “*Bond CUSIP Number*” and “*LIBOR Index Rate*” in the appropriate alphabetical order which shall read as follows:

“*Bank Bond CUSIP Number*” means \_\_\_\_\_.

“*Bond CUSIP Number*” means \_\_\_\_\_.

“*LIBOR Index Rate*” means, for any day, a rate per annum (rounded upwards, if necessary to the nearest 1/1000 of 1%) for deposits in United States Dollars for a period equal to one month, which appears on Reuters LIBOR01 Page as of 11:00 a.m. (London, England time) on such date (or, if such day is not a Business Day, on the immediately preceding Business Day).

1.03. Section 2.7(d) of the Agreement is hereby amended in its entirety and as so amended shall be restated to read as follows:

(d) *Termination of Letter of Credit by the City.* Notwithstanding any provisions of this Agreement or the Indenture to the contrary, the City agrees not to terminate the Letter of Credit prior to October 8, 2010 unless (a) the rating assigned to the Bank’s senior unsecured long-term credit rating is withdrawn, suspended or reduced by Moody’s below “Aa3” (or its equivalent); *provided, however*, that for purposes of this clause (a), the long-term credit ratings of the Bank shall be the long-term credit ratings assigned to the Bonds by Moody’s, (b) the rating assigned to the

Bank's senior unsecured short-term credit rating has been withdrawn, suspended or reduced below "P-1" by Moody's; *provided, however*, that for purposes of this clause (b), the short-term credit ratings of the Bank shall be the short-term credit ratings assigned to the Bonds by Moody's and S&P, respectively, (c) the Bank seeks payment of increased costs pursuant to Section 2.5 hereof, or (d) the City pays to the Bank a termination fee in an amount equal to the Letter of Credit Fees payable pursuant to Section 2.5 hereof (based upon a Stated Amount in an amount equal to that in effect on the Closing Date) for the period from and including February 10, 2010 to and including April 8, 2011 (for each day prior to April 8, 2010 at the Letter of Credit Fee Rate that corresponds to the Level in the first pricing matrix set forth in the Letter Agreement in effect as of the date of such termination and for each day from and after April 8, 2010 at the applicable Letter of Credit Fee Rate that corresponds to the Level in the second pricing matrix set forth in the Letter Agreement in effect as of the date of such termination), less the actual amount of Letter of Credit Fees the City has previously paid to the Bank pursuant to Section 2.5 hereof from and after February 10, 2010. The City agrees that it will pay in connection with any termination of the Letter of Credit pursuant to the terms hereof to the Bank all fees, expenses and other Reimbursement Obligations payable hereunder, including, without limitation, all principal and accrued interest owing on any Bank Bonds. All payments from the City to the Bank referred to in this Section 2.7(d) shall be made with immediately available funds. Upon satisfaction of the conditions set forth in the first two sentences of this Section 2.7(d), or at any time after October 8, 2010, the City may, to the extent such termination is permitted by the Indenture, terminate the Letter of Credit.

1.04. Section 6.18. of the Agreement is hereby amended in its entirety and as so amended shall be restated to read as follows:

*Section 6.18. Credit Facilities.* In the event that the City shall enter into any credit agreement, standby bond purchase agreement, liquidity agreement or other agreement or instrument (or any amendment, supplement or modification thereto) under which any Person or Persons undertakes to make or provide funds to provide liquidity or credit support for any Parity Bonds (or amendment thereto) which such agreement (or amended thereto) provides such Person with more restrictive or different covenants, more restrictive or different events of default or greater rights and remedies (including, without limitation, the right to accelerate the payment of the principal of or interest on such Parity Bonds or

amounts owed under any such agreement) than are provided to the Bank in this Agreement, the City shall promptly, and in any event not more than five (5) Business Days after the final execution and delivery of such agreement (or amendment thereto), provide the Bank with an executed copy of each such agreement (or amendment thereto) (which shall be sent to the Bank and its counsel via certified mail and such letter shall reference this Agreement, as amended, and instruct the Bank that it has ninety (90) calendar days to identify more restrictive or different covenants, more restrictive or different events of default or greater rights or remedies set forth in such other agreement or amendment (the “Notice”), and the Bank shall identify in writing such more restrictive or different covenants, more restrictive or different events of default or greater rights and remedies within ninety (90) days of receipt of any Notice. Upon the written request of the Bank made within ninety (90) days of receipt of any Notice and provided that the addition of such more restrictive or different covenants, more restrictive or different events of default or greater rights and remedies to this Agreement will not affect the coverage of the Bank’s obligation hereunder by the guaranty obligation (the “Gewährträgerhaftung”), which is reflected in Article 4 of the *Gesetz über die Landesbank Baden-Württemberg* of November 11, 1998, as amended or as may be amended from time to time (provided that a special counsel to the Bank shall at the expense of the City have delivered an opinion to such effect), the City shall promptly enter into an amendment to this Agreement to include such more restrictive or different covenants, more restrictive or different events of default or greater rights or remedies effective as of the date of receipt of any Notice (*provided* that the Bank shall have the benefit of such more restrictive or different covenants, more restrictive or different events of default or greater rights and remedies effective as of the date of receipt of any Notice upon delivery by the Bank of a draft of such amendment and draft of such corresponding opinion that relates to the preservation of the guaranty obligation).

1.05. Section 6.19 of the Agreement is hereby amended in its entirety and as so amended shall be restated to read as follows:

*Section 6.19. Maintenance of Shadow Ratings.* The City covenants that it shall maintain at least two “shadow” ratings on the City’s long-term indebtedness (without regard to any credit enhancement) from any two of Moody’s, Fitch or S&P.

1.06. Article VI of the Agreement is hereby amended by the addition of Sections 6.20 and 6.21, each of which shall read as follows:

*Section 6.20. Trustee.* The City hereby agrees that it shall request the Trustee to use its best efforts to (i) notify the Bank of any potential Tender Draft immediately upon its receipt of notice that the Bonds may not be successfully remarketed, (ii) send to the Bank any Tender Draft immediately upon its receipt of notice that a Tender Draft will be required and (iii) immediately succeeding the delivery to the Bank of a Tender Draft under the Letter of Credit, make a telephone call to the Bank to confirm its receipt of such Tender Draft.

*Section 6.21. Bank Bond Rating.* The City will, at its own expense, within three (3) calendar days of the Bank purchasing Bank Bonds in connection with any Tender Draft, apply for the Bank Bonds to be assigned a long-term credit rating and shall use its best efforts to cause the Bank Bonds (and their related CUSIP Number to be available on the Bloomberg Municipal Bond Description Screen or otherwise provided electronically to the Bank pursuant to a third party provider of such information) to be assigned a long-term credit rating of at least “Baa3,” “BBB-” or “BBB-,” respectively, from Moody’s, Fitch or S&P.

1.07. Section 7.1(c) of the Agreement is hereby amended in its entirety and as so amended shall be restated to read as follows:

(c) the City shall fail in the due observance or performance of any of the covenants set forth in Section 6.3, 6.9, 6.11 or 6.21 hereof;

1.08. Section 9.6(c) of the Agreement is hereby amended in its entirety and as so amended shall be restated to read as follows:

(c) be addressed to such Person at the following respective addresses and telex or telecopy numbers;

(i) if to the City, to:

City of Santa Rosa  
90 Santa Rosa Avenue  
Santa Rosa, California 95404  
Attention: David Heath  
Telephone No.: (707) 543-3089  
Telecopy No.: (707) 543-3126

(ii) If to the Bank, with respect to credit matters:

Landesbank Baden-Württemberg,  
New York Branch  
280 Park Avenue

31<sup>st</sup> Floor, West Building  
New York, New York 10017  
Attention: Gary Valente or Jennifer Davis  
Telephone: (212) 584-1786/1788  
Telecopy: (212) 584-1789

If to the Bank, with  
respect to operations:

Landesbank Baden-Württemberg  
280 Park Avenue  
31<sup>st</sup> Floor, West Building  
New York, New York 10017  
Attention: Thomas Pastore, Head of Operations  
Telephone: (212) 584-1720  
Telecopy: (212) 584-1729

With a copy to:

Landesbank Baden-Württemberg,  
New York Branch  
280 Park Avenue  
31<sup>st</sup> Floor, West Building  
New York, New York 10017  
Attention: Gary Valente or Jennifer Davis  
Telephone: (212) 584-1786/1788  
Telecopy: (212) 584-1789

(iii) if to the Trustee, to:

U.S. Bank Trust National Association  
One California Street, 10th Floor  
San Francisco, California 94111  
Attention: Corporate Trust Department  
Telephone No.: (415) 273-4517  
Telecopy No.: (415) 273-4591  
Wiring Instructions:  
U.S. Bank, National Association  
ABA # 091000022, FBO: U.S. Bank  
National Association,  
Acct #180121167365  
Ref: Santa Rosa Wastewater Rev Refunding Bonds,  
Series 2004A  
Attn: TFM

2. CONDITIONS PRECEDENT.

This Amendment shall become effective upon the satisfaction of or waiver by the Bank of all of the following conditions precedent:

2.01. Delivery to the Bank by the City of executed counterparts of (i) this Amendment and (ii) that certain Amended and Restated Letter Agreement dated February 10, 2010 (“*Letter Agreement*”) between the City and the Bank.

2.02. The following statements shall be true and correct as of the date hereof:

(a) the representations and warranties of the City contained in the Agreement and each of the Operative Documents are true and correct on and as of the date hereof as though made on and as of such date (except to the extent the same expressly relate to an earlier date); and

(b) no Default or Event of Default has occurred and is continuing or would result from the execution of this Amendment.

2.03. The Authority shall, at its own expense cause a CUSIP Number to be obtained from Standard & Poor’s CUSIP Services for the Bank Bonds (the CUSIP Number for the Bank Bonds is \_\_\_\_\_).

2.04. Delivery to the Bank of an opinion of counsel to the City addressed to the Bank and in form and substance satisfactory to the Bank and its counsel.

2.05. Payment to the Bank on the Amendment Date (i) a closing fee in an amount equal to \$2,500 (as described in clause (c) of the Letter Agreement), (ii) the reasonable legal fees and expenses of United States counsel to the Bank and (iii) the legal fees and expenses of foreign and special counsel to the Bank with respect to delivery of any legal opinion rendered by foreign and/or special counsel to the Bank at the request of the City.

2.06. All other legal matters pertaining to the execution and delivery of this Amendment shall be satisfactory to the Bank and its counsel.

3. REPRESENTATIONS AND WARRANTIES OF THE CITY.

In addition to the representations given in Article V of the Agreement, the City hereby represents and warrants as follows:

3.01. The City has all requisite power and authority to execute, deliver and perform this Amendment and the Agreement, as amended hereby, and to perform each and all of the matters and things provided for herein and therein.

3.02. No authorization, consent, approval, license, exemption from or registration with any court or governmental department, commission, board, bureau, agency or instrumentality,

domestic or foreign, other than those which have been obtained, will be necessary for the valid execution, delivery and performance by the City of this Amendment or the Agreement, as amended hereby.

3.03. This Amendment and the Agreement, as amended hereby, constitute the valid and binding obligations of the City enforceable against the City in accordance with their respective terms, except to the extent that such enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other laws relating to or affecting creditors' rights generally, by the application of equitable principles, by the exercise of judicial discretion in the appropriate cases, and by the limitations contained in applicable law regarding legal remedies against the City.

#### 4. MISCELLANEOUS.

Except as specifically amended herein, the Agreement shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in any note, document, agreement, letter, certificate, the Agreement or any communication issued or made subsequent to or with respect to the Agreement, it being hereby agreed that any reference to the Agreement shall be sufficient to refer to the Agreement, as hereby amended. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby. All capitalized terms used herein without definition shall have the same meanings herein as they have in the Agreement. The City agrees to pay on demand all reasonable fees and expenses of or incurred by counsel to the Bank in connection with the negotiation, preparation, execution and delivery of this Amendment. This Amendment shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of California; *provided, however*, that the obligations of the Bank hereunder shall be governed by the laws of the State of New York.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Dated as of the date first above written.

CITY OF SANTA ROSA

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

LANDESBANK BADEN-WÜRTTEMBERG, acting  
through its New York Branch

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

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