

## **THIRD AMENDMENT TO CREDIT AGREEMENT**

**THIS THIRD AMENDMENT TO CREDIT AGREEMENT** (this “Third Amendment”) dated and effective as of March 30, 2022 (the “Third Amendment Effective Date”), is entered into by and among **CITY OF SAN JOSE, CALIFORNIA** (together with its successors and permitted assigns, the “City”), **CITY OF SAN JOSE FINANCING AUTHORITY** (together with its successors and permitted assigns, the “Authority”) and **WELLS FARGO BANK, NATIONAL ASSOCIATION** (together with its successors and assigns, the “Bank”).

### **WITNESSETH:**

WHEREAS, the City, the Authority and the Bank have previously entered into that certain Credit Agreement dated as of October 1, 2017, as amended by that certain First Amendment to Credit Agreement dated as of June 27, 2018, and by that Second Amendment to Credit Agreement dated as of October 15, 2020 (the “Original Agreement”), pursuant to which the Bank agreed, upon the terms and conditions therein, to lend to the Authority up to the principal amount of \$300,000,000; and

WHEREAS, pursuant to Section 8.04 of the Original Agreement, the City, the Authority and the Bank wish to amend the Original Agreement as provided herein;

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE I**

#### **INTENTION OF PARTIES; AGREEMENT PROVISIONS**

The City, the Authority and the Bank have entered into this Third Amendment pursuant to Section 8.04 of the Original Agreement to amend their rights and obligations set forth in the Original Agreement. The terms of the Original Agreement, as amended by this Third Amendment (as so amended, the “Agreement”), shall govern the rights and obligations of the City, the Authority and the Bank in connection with the transactions contemplated by the Agreement. Capitalized terms used but not defined in this Third Amendment shall have the respective meanings assigned thereto in the Original Agreement.

**ARTICLE II**  
**AMENDMENTS**

**Section 2.01.** Section 1.01 of the Original Agreement is hereby amended by deleting the definitions of Computation Date, LIBOR Index, London Business Day and Rate Reset Date.

**Section 2.02.** Section 1.01 is hereby further amended by amending and restating the following definitions in their entirety to read as follows:

“*Fee Letter Agreement*” means the Third Amended and Restated Fee Letter Agreement dated March 30, 2022, between the Authority and the Bank, as amended, supplemented, restated or otherwise modified from time to time in accordance with its terms.

“*Interest Period*” means, as to any Note, the period from and including the date on which the first Advance is made under such Note to but excluding the first Interest Payment Date and, thereafter, each period from and including an Interest Payment Date to but excluding the next succeeding Interest Payment Date.

“*Tax Exempt Rate*” means a per annum rate of interest established by the Calculation Agent on each SOFR Determination Day equal to the sum of (a) the Tax Exempt Applicable Spread plus (b) the product of (i) Daily Simple SOFR multiplied by (ii) the Applicable Factor. The Tax Exempt Rate shall be rounded upwards to the fifth decimal place. Upon the occurrence and during the occurrence of an Event of Default the Tax Exempt Rate shall equal the Default Rate.

“*Taxable Rate*” means a per annum rate of interest established by the Calculation Agent on each SOFR Determination Date equal to the sum of the Taxable Applicable Spread plus Daily Simple SOFR. The Taxable Rate shall be rounded upwards to the fifth decimal place. Upon the occurrence and during the continuance of an Event of Default the Taxable Rate shall equal the Default Rate.

**Section 2.03.** Section 1.01 of the Original Agreement is hereby further amended by adding the following definitions to be inserted in the appropriate alphabetical order:

“*Available Tenor*” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to **Error! Reference source not found.**

“*Benchmark*” means, initially, Daily Simple SOFR; provided that if a Benchmark Transition Event has occurred with respect to Daily Simple SOFR or the then-current Benchmark, then “*Benchmark*” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to **Error! Reference source not found.**

“*Benchmark Replacement*” means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by the Bank, the Authority and the City giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Related Documents.

“*Benchmark Replacement Adjustment*” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Bank, the City and the Authority giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

“*Benchmark Replacement Date*” means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in

such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Transition Event*” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Transition Start Date*” means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a

prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

*“Benchmark Unavailability Period”* means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Related Document in accordance with Section 2.15 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Related Document in accordance with Section 2.15.

*“Conforming Changes”* means, with respect to either the use or administration of Daily Simple SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.14 and other technical, administrative or operational matters) that the Bank decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Bank in a manner substantially consistent with market practice (or, if the Bank decides that adoption of any portion of such market practice is not administratively feasible or if the Bank determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Bank decides is reasonably necessary in connection with the administration of this Agreement and the other Related Documents).

*“Daily Simple SOFR”* means, for any day (a “*SOFR Rate Day*”), a rate per annum equal to the greater of (a) SOFR for the day (such day, a “*SOFR Determination Day*”) that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website in respect of such SOFR Determination Day and (b) the Floor. If by 5:00 p.m. on the second (2<sup>nd</sup>) U.S. Government Securities Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator’s Website and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which SOFR was published on the SOFR Administrator’s Website; provided that SOFR as determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive

SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Authority or the City.

“*Floor*” means a rate of interest equal to 0.00%.

“*FRB*” means the Board of Governors of the Federal Reserve System of the United States.

“*Relevant Governmental Body*” means the FRB or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the FRB or the Federal Reserve Bank of New York, or any successor thereto.

“*SOFR*” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“*SOFR Administrator*” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“*SOFR Administrator’s Website*” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“*SOFR Determination Date*” has the meaning specified in the definition of “Daily Simple SOFR”.

“*SOFR Rate Day*” has the meaning specified in the definition of “Daily Simple SOFR”.

“*Unadjusted Benchmark Replacement*” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“*U.S. Government Securities Business Day*” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements in Sections **Error! Reference source not found.**, 2.06 and 2.07, in each case, such day is also a Business Day.

**Section 2.04.** Section 2.04(b) of the Original Agreement is hereby amended and restated in its entirety to read as follows:

(b) ***Request for Advances.*** If, on any Business Day during the Commitment Period, the Bank receives, at the location specified for the delivery of a Request for Advance specified pursuant to Section 8.01, a Request for Advance from an Authorized Officer of the Authority with respect to an outstanding Note, and the Authority

telephonically confirms the Bank's receipt of such Request for Advance, by not later than 12:00 noon, the Bank shall, subject to satisfaction of the requirements of Section 2.01 and Article III, transfer to the Authority not later than 2:00 p.m. on the Advance Date specified in the Request for Advance, so long as such Advance Date occurs during the Commitment Period and is at least five U.S. Government Securities Business Days following the Bank's receipt of such Request for Advance, as specified in such Request for Advance, in immediately available funds, an amount equal to the Advance thereby requested. The Authority may not request that Advances be made hereunder more than twice in any 30-day period.

**Section 2.05.** Section 2.06(b) of the Original Agreement is hereby amended and restated in its entirety to read as follows:

(b) **Calculation.** The Calculation Agent shall determine the applicable interest rate for the Notes as provided herein and in the Notes, including the determination of Daily Simple SOFR on each SOFR Determination Day, and such rate shall become effective for the SOFR Rate Day corresponding to such SOFR Determination Day upon determination as provided herein. Interest on the outstanding principal amount of each Note shall accrue each day during the applicable Interest Period. Interest on each Note and amounts otherwise payable hereunder shall be calculated as provided in Section 2.09.

**Section 2.06.** Section 2.07(a) of the Original Agreement is hereby amended and restated in its entirety to read as follows:

(a) **Optional Prepayment.** The Authority may prepay a Note in whole at any time, or from time to time in part in amounts aggregating \$1,000,000 and any amount in excess thereof or, if the outstanding principal amount of the Note being prepaid is less than \$1,000,000, the total amount of such Note which is then outstanding, by giving notice to the Bank by 11:00 a.m. on the date which is at least five U.S. Government Securities Business Days prior to the date on which such prepayment is to be made and by paying to the Bank the principal amount thereof to be prepaid together with accrued interest to the date of prepayment. Any such notice shall be irrevocable once received by the Bank.

**Section 2.07.** Section 2.14 of the Original Agreement is hereby amended and restated in its entirety to read as follows:

**Section 2.14. Make Whole Funding.** In the event the Bank shall incur any loss, cost, or expense (including, without limitation, any loss, cost, or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by the Bank to fund or maintain the Notes or the relending or reinvesting of such deposits or other funds or amounts paid or prepaid to the Bank) as a result of any prepayment of any outstanding principal amount of any Note bearing interest at an interest rate calculated on the basis of Daily Simple SOFR on a date other than an Interest Payment Date for any reason, whether before or after default, and whether or not such payment is required by any provision of this Agreement, then upon

the demand of the Bank, the Authority shall pay to the Bank such amount as will reimburse the Bank for such loss, cost, or expense, as determined by the Bank in good faith; provided that this Section 2.14 shall not apply to any prepayment of any outstanding principal amount of any Note if the date of such prepayment occurs (a) at least 30 days after irrevocable and unconditional written notice of such prepayment is given to the Bank by the Authority or (b) on or after the Termination Date. If the Bank requests such a reimbursement, it shall provide to the Authority a certificate setting forth the computation of the loss, cost, or expense giving rise to the request for reimbursement in reasonable detail and such certificate shall be conclusive absent manifest error.

**Section 2.08.** Section 2.15 of the Original Agreement is hereby amended and restated in its entirety to read as follows:

**Section 2.15. Changed Circumstances.**

(a) ***Circumstances Affecting Benchmark Availability.*** Subject to Section 2.15(c) below, in connection with any request for an Advance or otherwise, if for any reason the Bank shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for ascertaining Daily Simple SOFR pursuant to the definition thereof, then the Bank shall promptly give notice thereof to the Authority and the City. Upon notice thereof by the Bank to the Authority and the City, any obligation of the Bank to make Advances, shall be suspended until the Bank revokes such notice. Upon receipt of such notice the Authority may revoke any pending Request for Advance. Interest shall thereafter accrue on the Advances outstanding as provided in Section 2.15(c)(v) until such circumstances no longer exist or a Benchmark Replacement is determined as provided below.

(b) ***Laws Affecting SOFR Availability.*** If, after the date hereof, the introduction of, or any change in, any law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Bank with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for the Bank to honor its obligations hereunder to make or maintain any Advance, or to determine or charge interest based upon Daily Simple SOFR, the Bank shall promptly give notice thereof to the Authority and the City. Thereafter, until the Bank notifies the Authority and the City that such circumstances no longer exist, any obligation of the Bank to make Advances shall be suspended. Upon receipt of such notice, interest on outstanding Advances shall be computed as set forth in Section 2.15(c)(v) hereof or the Authority may prepay the Advances outstanding (in each case, if necessary to avoid such illegality) on the next Interest Payment Date therefor, if the Bank may lawfully continue to maintain such Advances to such day, or immediately, if the Bank may not lawfully continue to maintain such Advances to such day. Upon any such prepayment, the Authority shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.14.



(c) ***Benchmark Replacement Setting.***

(i) *Benchmark Replacement.* Notwithstanding anything to the contrary herein or in any other Related Document, upon the occurrence of a Benchmark Transition Event, the Bank, the Authority and the City may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5<sup>th</sup>) Business Day after the Bank has provided notice of such proposed amendment to the Authority and the City. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.15(c)(i) will occur prior to the applicable Benchmark Transition Start Date.

(ii) *Benchmark Replacement Conforming Changes.* In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Bank will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Related Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Related Document.

(iii) *Notices; Standards for Decisions and Determinations.* The Bank will promptly notify the Authority and the City of (A) the occurrence of a Benchmark Transition Event and its related Benchmark Replacement Date, (B) the implementation of any Benchmark Replacement and (C) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Bank will promptly notify the Authority and the City of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.15(c)(iv). Any determination, decision or election that may be made by the Bank pursuant to this Section 2.15(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Related Document, except, in each case, as expressly required pursuant to this Section 2.15(c).

(iv) *Unavailability of Tenor of Benchmark.* Notwithstanding anything to the contrary herein or in any other Related Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Bank in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative,

then the Bank may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Bank may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) *Benchmark Unavailability Period.* For any determination of interest under this Agreement or any other Related Document during a Benchmark Unavailability Period, except as otherwise provided in the Agreement and the Notes with regard to overdue amounts and amounts outstanding during the continuance of an Event of Default, interest shall be computed as follows:

(A) The principal amount outstanding under the Tax Exempt Note subject to the then-current Benchmark shall bear interest at a fluctuating rate per annum (computed on the basis of a 360-day year, actual days elapsed) established by the Calculation Agent on each SOFR Determination Date equal to the sum of (I) the Tax Exempt Applicable Spread plus (II) the product of (1) the Fed Funds Rate multiplied by (2) the Applicable Factor. Such interest rate shall be rounded upwards to the fifth decimal place. Notwithstanding the forgoing provisions of this paragraph (v)(A), during the Benchmark Unavailability Period occurring after the Taxable Date the interest rate computed on the amounts outstanding under the Tax Exempt Note shall bear interest at a rate determined pursuant to Section 2.15(c)(v)(B).

(B) The principal amount outstanding under the Taxable Note subject to the then-current Benchmark shall bear interest at a fluctuating rate per annum (computed on the basis of a 360-day year, actual days elapsed) established by the Calculation Agent on each SOFR Determination Date equal to the sum of the Taxable Applicable Spread plus the Fed Funds Rate. Such interest rate shall be rounded upwards to the fifth decimal place.

(C) The Authority may revoke any request for an Advance under the Notes during any Benchmark Unavailability Period.

**Section 2.09.** Exhibits C and D to the Original Agreement are hereby amended and restated in their entirety to read as provided in Exhibits C and D to this Third Amendment. On the Third Amendment Effective Date the existing original Taxable Note and the existing original Series A Tax-Exempt Note shall be amended and restated to conform to Exhibits C and D hereto, respectively. In order to amend and restate the existing original Taxable Note and the existing original Series A Tax-Exempt Note on the Third Amendment Effective Date, the Bank shall present the existing original Taxable Note and the existing original Series A Tax-Exempt Note to

the Authority for cancellation and the Authority shall execute and deliver to the Bank a new Taxable Note (the “Replacement Taxable Note”) and a new Series A Tax-Exempt Note (the “Replacement Series A Tax-Exempt Note” and together with the Replacement Taxable Note, the “Replacement Notes”) in exchange therefore modified to conform to Exhibits C and D hereto, respectively, in each case equal in aggregate principal amount to the existing original Taxable Note and existing original Series A Tax-Exempt Note and having the same maturity. Upon the execution and delivery of the Replacement Notes to the Bank and satisfaction of the other conditions precedent specified in Section 3.01 of this Third Amendment, the Authority shall cancel the existing original Taxable Note and existing original Series A Tax-Exempt Note and the existing original Taxable Note and existing original Series A Tax-Exempt Note shall no longer be outstanding under the Agreement. The execution and delivery of the Replacement Notes shall not be deemed to be an issuance of additional Notes under the Agreement but shall be deemed to be an amendment and restatement of the original Taxable Note and Series A Tax-Exempt Note, respectively.

**Section 2.10.** Exhibit I to the Original Agreement is hereby deleted.

### ARTICLE III

#### CONDITIONS PRECEDENT

**Section 3.01. Conditions Precedent.** The parties hereto agree that this Third Amendment shall become effective as of the date first written above but only upon the Bank’s receipt of the following, each in form and substance satisfactory to the Bank:

(a) *Third Amendment, Fee Letter and Replacement Notes.* Counterparts of this Third Amendment, the Third Amended and Restated Fee Letter Agreement and the fully executed Replacement Notes.

(b) *Incumbency of City and Authority.* A certificate of the Secretary or an Assistant Secretary of the Authority certifying the names and specimen signatures of each Authorized Officer of the Authority and a certificate of the City Clerk or Deputy City Clerk of the City certifying the names and specimen signatures of each Authorized Officer of the City, each with respect to the authorization and execution of this Third Amendment, the Third Amended and Restated Fee Letter Agreement, the Replacement Notes and any other document to be delivered by the City or the Authority hereunder.

(c) *Resolutions of Authority and City.* Certified copies of all resolutions of the Authority and the City which authorize the execution, delivery or performance of this Third Amendment, the Replacement Notes and the Third Amended and Restated Fee Letter Agreement.

(d) *Opinion of Bond Counsel.* Opinion of Orrick Herrington & Sutcliffe LLP, bond counsel to the Authority, which shall include such matters as the Bank may reasonably request.

(e) *Opinions of City Attorney.* Opinion of the City Attorney, counsel for the Authority, and an opinion of the City Attorney, counsel for the City, which shall include such matters as the Bank may reasonably request for each opinion.

(f) *Other Documents.* Such other documents, instruments, approvals and, if requested by the Bank, certified duplicates of executed copies thereof, and opinions as the Bank may reasonably request.

**Section 3.02. Fees.** Promptly following the receipt of an invoice therefor, the City and the Authority shall pay reasonable fees and expenses of the Bank (which shall include the reasonable fees and expenses of counsel to the Bank) incurred in connection with the negotiation, execution and delivery of this Third Amendment, the Replacement Notes and the Third Amended and Restated Fee Letter Agreement.

#### **ARTICLE IV**

#### **FULL FORCE AND EFFECT**

The Original Agreement is hereby amended to the extent provided in this Third Amendment and, except as specifically provided herein, the Original Agreement shall remain in full force and effect in accordance with its terms.

#### **ARTICLE V**

#### **GOVERNING LAW**

**THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS THIRD AMENDMENT SHALL BE GOVERNED AS PROVIDED IN SECTION 8.09 OF THE ORIGINAL AGREEMENT.**

#### **ARTICLE VI**

#### **HEADINGS**

Section headings in this Third Amendment are included herein for convenience of reference only and shall not have any effect for purposes of interpretation or construction of the terms of this Third Amendment.

#### **ARTICLE VII**

#### **COUNTERPARTS**

This Third Amendment may be signed in any number of counterpart copies, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Third Amendment by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Third Amendment.

## **ARTICLE VIII**

### **REPRESENTATIONS AND WARRANTIES**

Each party hereto represents and warrants to the other that this Third Amendment has been duly authorized and validly executed by it and that the Original Agreement as hereby amended constitutes its valid obligation, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and subject to the application of general principles of equity including but not limited to the right of specific performance.

The City and the Authority each further represents and warrants to the Bank that: (a) no Default has occurred and is continuing on the date hereof and after giving effect to this Third Amendment, (b) each Note has been duly authorized and validly executed by it and constitutes its valid obligation, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and subject to the application of general principles of equity including but not limited to the right of specific performance and (c) except as disclosed in writing by the Authority and the City to the Bank on or before the date hereof, the representations and warranties of the City and of the Authority contained in the Agreement are true and correct on and as of the date hereof and after giving effect to this Third Amendment, as though made on and as of the date hereof (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date).

## **ARTICLE IX**

### **SEVERABILITY**

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.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to Credit Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

Approved as to form:

\_\_\_\_\_, City Attorney

By: \_\_\_\_\_  
Senior Deputy City Attorney

CITY OF SAN JOSE FINANCING  
AUTHORITY

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

Attested to:

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

[Signatures continued on next page]

[Signature page of Third Amendment to Credit Agreement]

CITY OF SAN JOSE

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

Attested to:

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

[Signatures continued on next page]

[Signature page of Third Amendment to Credit Agreement]

WELLS FARGO BANK, NATIONAL  
ASSOCIATION

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

Name: Mary Lou Lopez

Title: Vice President



**EXHIBIT C**

**[FORM OF TAXABLE NOTE]**

<u>NUMBER</u>	<u>PRINCIPAL AMOUNT</u>
R-2	NOT TO EXCEED \$300,000,000 OUTSTANDING AT ANY ONE TIME

**CITY OF SAN JOSE FINANCING AUTHORITY  
SUBORDINATE WASTEWATER REVENUE TAXABLE NOTE**

<b>INTEREST RATE</b>	<b>DATED</b>	<b>CUSIP</b>
Variable	October 19, 2017	79816NAA5

**REGISTERED OWNER: WELLS FARGO BANK, NATIONAL ASSOCIATION**

CITY OF SAN JOSE FINANCING AUTHORITY, a joint powers authority and public entity of the State of California (the “Authority”), for value received, hereby promises to pay (but only out of the Authority Revenues pledged therefor as hereinafter mentioned) to the Registered Owner specified above (the “Registered Owner”), on the Termination Date (as defined in the Credit Agreement, dated as of October 1, 2017, among the Authority, the City of San José (the “City”) and Wells Fargo Bank, National Association (the “Bank”), as amended by that certain First Amendment to Credit Agreement dated as of June 27, 2018, by that certain Second Amendment to Credit Agreement, dated as of October 15, 2020 and by that certain Third Amendment to Credit Agreement, dated as of March 30, 2022, each among the Authority, the City and the Bank (as so amended and as further amended from time to time in accordance with its terms, the “Credit Agreement”) the outstanding principal amount hereof, in lawful money of the United States of America; and to pay interest thereon (but only from said Authority Revenues) in like lawful money on the dates provided in the Credit Agreement at the rates per annum determined pursuant to the Credit Agreement. All payments of principal hereof, and interest hereon, are payable to the Registered Owner not later than the time specified in the Credit Agreement on the day when due, in federal or other funds immediately available as provided in the Fee Letter Agreement (as defined in the Credit Agreement). This Note is issuable in denominations of \$1,000,000 and any amount in excess thereof. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

This Note is one of a duly authorized issue of notes of the Authority designated as “City of San José Financing Authority Subordinate Wastewater Revenue Taxable Notes” (the “Notes”), limited in aggregate principal amount to \$300,000,000 outstanding at any one time, and issued pursuant to the provisions of the Joint Exercise of Powers Act, constituting Title 1, Division 7, Chapter 5 of the Government Code of the State of California (the “Act”), and the Credit Agreement. Subject to the terms of the Credit Agreement, Advances may be made on this Note, this Note may be prepaid, and the principal amount of this Note that is paid or prepaid by

the Authority may again be Advanced under this Note. The Notes are issued for the purpose of financing the acquisition, construction and installation from time to time of certain improvements, additions, and betterments to, and extensions and replacements of, the Treatment Plant for the City and/or, subject to the terms of the Credit Agreement, the refunding of any bonds, notes or other evidences of indebtedness of the Authority or the City issued or incurred for such purpose.

The Notes and the interest thereon are limited obligations of the Authority payable solely from the Authority Revenues (as that term is defined in the Credit Agreement), constituting installment payments (the "Installment Payments") to be made by the City to the Authority pursuant to the Subordinate Installment Purchase Contract, dated as of October 1, 2017 (as amended from time to time in accordance with its terms and the terms of the Credit Agreement, the "Installment Purchase Agreement"), between the Authority and the City, and are secured by a pledge and assignment of said Authority Revenues, subject only to the provisions of the Credit Agreement permitting the application thereof for the purposes and on the terms and conditions set forth in the Credit Agreement. The Notes are further secured by an assignment of the right, title and interest of the Authority in the Installment Purchase Agreement (to the extent and as more particularly described in the Credit Agreement).

The Notes are limited obligations of the Authority and the principal thereof, premium, if any, and interest thereon, are payable solely from, and secured in accordance with their terms and the provisions of the Credit Agreement solely by, the Authority Revenues. The Notes are not a debt or liability of the State of California, the City or of any other political subdivision of the State of California other than the Authority or a pledge of the faith and credit of the State of California, the City or of any other political subdivision of the State of California, but shall be payable solely from the Authority Revenues. None of the State of California, the City, any other political subdivision of the State of California, or the Authority shall be obligated to pay the principal of, premium, if any, or interest on the Notes except from the Authority Revenues and neither the faith and credit nor the taxing power of the State of California, the City or of any political subdivision of the State of California is pledged to the payment of the principal of, premium, if any, or the interest on the Notes. The issuance of the Notes shall not directly or indirectly or contingently obligate the State of California, the City or any other political subdivision of the State of California to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. Notwithstanding anything herein or in the Credit Agreement, the Authority shall have no pecuniary liability under the Notes except that which can be satisfied from the Authority Revenues, and the Authority shall not be required to advance any moneys derived from any source other than the Authority Revenues for the payment of the principal of, premium, if any, or the interest on the Notes.

Reference is hereby made to the Credit Agreement (a copy of which is on file with the Authority) and to the Act for a description of the rights thereunder of the Registered Owner, of the nature and extent of the security for the Notes, and of the rights and obligations of the Authority thereunder, all of the provisions of which Credit Agreement are incorporated herein and to which the Registered Owner of this Note, by acceptance hereof, assents and agrees.

### ***Interest***

This Note shall bear interest on the outstanding principal amount hereof, for each day from and including the date the initial Advance is made hereunder until it is paid in full, at the Taxable Rate.

“Taxable Rate” means a per annum rate of interest established by the Calculation Agent on each SOFR Determination Date equal to the sum of the Taxable Applicable Spread plus Daily Simple SOFR. The Taxable Rate shall be rounded upwards to the fifth decimal place. Upon the occurrence and during the continuance of an Event of Default the Taxable Rate shall equal the Default Rate.

The Calculation Agent shall determine the applicable interest rate for this Note as set forth in the Credit Agreement. Interest on the outstanding principal amount of this Note shall accrue each day during the applicable Interest Period. Interest on this Note shall be computed on the basis specified in the Credit Agreement.

Interest on the outstanding principal amount of this Note is payable monthly in arrears on each Interest Payment Date, on the date the outstanding principal of this Note is paid in full and, solely with respect to the portion of this Note being prepaid, on the date any portion of the principal of this Note is prepaid in part.

The interest rate borne by this Note is subject to adjustment as provided in Section 2.15 of the Credit Agreement.

### ***Optional Prepayment***

The Authority may prepay this Note in whole at any time, or from time to time in part in amounts aggregating \$1,000,000 and any amount in excess thereof or, if the outstanding principal amount of this Note being prepaid is less than \$1,000,000, the total amount of this Note which is then outstanding, by giving notice to the Registered Owner by 11:00 a.m. on the date which is at least five U.S. Government Securities Business Days prior to the date on which such prepayment is to be made and by paying to the Registered Owner the principal amount thereof to be prepaid together with accrued interest to the date of prepayment. Any such notice shall be irrevocable once received by the Registered Owner.

### ***Payment of Principal after Termination Date***

Notwithstanding anything to the contrary contained herein or in the Credit Agreement, in the event the Registered Owner does not receive repayment of the outstanding principal of this Note on or before the Termination Date, provided that the conditions set forth in Section 2.07(c) or the Credit Agreement are satisfied, including (A) no Default or Event of Default shall have occurred and be continuing and (B) the representations and warranties set forth in the Credit Agreement shall be true and correct on the Termination Date, then the Authority shall pay the outstanding principal amount of this Note (the “Amortization Amount”) in installments payable on each Amortization Principal Payment Date (each such payment, an “Amortization Principal Payment”), with the final installment in an amount equal to the remaining balance of the

Amortization Amount on the Amortization End Date (the period commencing on the Termination Date and ending on the Amortization End Date is herein referred to as the "Amortization Period"). Each Amortization Principal Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Principal Payments over the Amortization Period so the Amortization Amount is fully repaid by the end of the Amortization Period. The Authority may prepay, or cause to be prepaid, some or all of the Amortization Amount on any date upon one Business Days' notice to the Registered Owner, such prepayment to be accompanied by interest accrued thereon at the Bank Rate to the date of prepayment.

During the Amortization Period, interest on the Notes shall accrue at the Bank Rate and shall be payable in arrears on each Amortization Interest Payment Date.

***Maximum Interest Rate***

If the amount of interest payable on this Note for any period in accordance with the terms hereof or the Credit Agreement exceeds the amount of interest that would be payable on this Note for such period had interest for such period been calculated at the Maximum Interest Rate, then interest for such period shall be payable in an amount calculated at the Maximum Interest Rate for such period.

Any interest that would have been due and payable for any period but for the operation of the immediately preceding paragraph shall accrue and be payable on this Note as provided in this paragraph and shall, less interest actually paid to the Registered Owner, as applicable, for such period, constitute the "Excess Interest Amount." If there is any accrued and unpaid Excess Interest Amount as of any date with respect to this Note then the principal amount of this Note shall bear interest at the Maximum Interest Rate, until payment to the Registered Owner, of the entire Excess Interest Amount.

The Authority shall treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority shall not be affected by any notice to the contrary.

THE REGISTERED OWNER OF THIS NOTE WILL PURCHASE THE PRINCIPAL AMOUNT OF THIS NOTE IN INSTALLMENTS BY MAKING ADVANCES IN ACCORDANCE WITH THE TERMS OF THE CREDIT AGREEMENT. ACCORDINGLY, THE PRINCIPAL AMOUNT OF THIS NOTE WHICH HAS BEEN PURCHASED AND IS OUTSTANDING AT ANY GIVEN TIME MAY BE LESS THAN THE MAXIMUM PRINCIPAL AMOUNT OF THIS NOTE AS SET FORTH ON THE FACE OF THIS NOTE. THE REGISTERED OWNER OF THIS NOTE MAY MAKE A NOTATION ON THIS NOTE ON THE SCHEDULE ATTACHED HERETO AS TO THE DATE AND THE AMOUNT OF EACH ADVANCE AND AS TO EACH PAYMENT OF PRINCIPAL OF THIS NOTE, BUT THE FAILURE TO MAKE A NOTATION SHALL NOT RELIEVE THE AUTHORITY OF ITS OBLIGATIONS TO PAY THE OUTSTANDING PRINCIPAL OF THIS NOTE, TOGETHER WITH INTEREST HEREON, AS PROVIDED HEREIN AND IN THE CREDIT AGREEMENT.

PAYMENTS OF THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON THIS NOTE MAY BE MADE DIRECTLY TO THE REGISTERED OWNER HEREOF WITHOUT NOTATION HEREON. IT CANNOT BE DETERMINED FROM THE FACE OF THIS NOTE WHETHER ALL OR ANY PART OF SUCH PAYMENTS HAVE BEEN PAID.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to have happened and to have been performed precedent to and in the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by the provisions of the Act and by the Constitution and laws of the State of California, and that the amount of this Note, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Act or the Constitution and laws of the State of California, and is not in excess of the amount of Notes permitted to be issued under the Credit Agreement.

IN WITNESS WHEREOF, CITY OF SAN JOSE FINANCING AUTHORITY has caused this Note to be executed in its name and on its behalf by the manual signature of its [Treasurer] as of the date set forth above.

CITY OF SAN JOSE FINANCING AUTHORITY

By: \_\_\_\_\_  
[Treasurer]

**ADVANCES AND PAYMENTS OF PRINCIPAL**

<b>Date</b>	<b>Amount Of Advance</b>	<b>Amount Of Principal Repaid</b>	<b>Unpaid Principal Balance</b>	<b>Notation Made By</b>
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**EXHIBIT D**  
**[FORM OF TAX EXEMPT NOTE]**

NUMBER

PRINCIPAL AMOUNT

R-\_\_

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

CITY OF SAN JOSE FINANCING AUTHORITY  
SUBORDINATE WASTEWATER REVENUE NOTE, SERIES [ ]

INTEREST RATE

DATED

CUSIP

Variable

REGISTERED OWNER: WELLS FARGO BANK, NATIONAL ASSOCIATION

CITY OF SAN JOSE FINANCING AUTHORITY, a joint powers authority and public entity of the State of California (the “Authority”), for value received, hereby promises to pay (but only out of the Authority Revenues pledged therefor as hereinafter mentioned) to the Registered Owner specified above (the “Registered Owner”), on the Termination Date (as defined in the Credit Agreement, dated as of October 1, 2017, among the Authority, the City of San José (the “City”) and Wells Fargo Bank, National Association (the “Bank”), as amended by that certain First Amendment to Credit Agreement dated as of June 27, 2018, by that certain Second Amendment to Credit Agreement, dated as of October 15, 2020 and by that certain Third Amendment to Credit Agreement, dated as of March 30, 2022, each among the Authority, the City and the Bank (as so amended and as further amended from time to time in accordance with its terms, the “Credit Agreement”) the principal amount specified above or so much of such maximum authorized principal amount as may have been Advanced hereunder as provided in the Credit Agreement, in lawful money of the United States of America; and to pay interest thereon (but only from said Authority Revenues) in like lawful money on the dates provided in the Credit Agreement at the rates per annum determined pursuant to the Credit Agreement. All payments of principal hereof, and interest hereon, are payable to the Registered Owner not later than the time specified in the Credit Agreement on the day when due, in federal or other funds immediately available as provided in the Fee Letter Agreement (as defined in the Credit Agreement). This Note is issuable in denominations of \$1,000,000 and any amount in excess thereof. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

This Note is one of a duly authorized issue of notes of the Authority designated as “City of San José Financing Authority Subordinate Wastewater Revenue Notes, Series [ ]” (the “Notes”), limited in aggregate principal amount to \$[\_\_\_\_\_], and issued pursuant to the provisions of the Joint Exercise of Powers Act, constituting Title 1, Division 7, Chapter 5 of the Government Code of the State of California (the “Act”), and the Credit Agreement. The Notes are issued for the purpose of financing the acquisition, construction and installation from time to

time of certain improvements, additions, and betterments to, and extensions and replacements of, the Treatment Plant for the City and/or, subject to the terms of the Credit Agreement, the refunding of any bonds, notes or other evidences of indebtedness of the Authority or the City issued or incurred for such purpose.

The Notes and the interest thereon are limited obligations of the Authority payable solely from the Authority Revenues (as that term is defined in the Credit Agreement), constituting installment payments (the “Installment Payments”) to be made by the City to the Authority pursuant to the Subordinate Installment Purchase Contract, dated as of October 1, 2017 (as amended from time to time in accordance with its terms and the terms of the Credit Agreement, the “Installment Purchase Agreement”), between the Authority and the City, and are secured by a pledge and assignment of said Authority Revenues, subject only to the provisions of the Credit Agreement permitting the application thereof for the purposes and on the terms and conditions set forth in the Credit Agreement. The Notes are further secured by an assignment of the right, title and interest of the Authority in the Installment Purchase Agreement (to the extent and as more particularly described in the Credit Agreement).

The Notes are limited obligations of the Authority and the principal thereof, premium, if any, and interest thereon, are payable solely from, and secured in accordance with their terms and the provisions of the Credit Agreement solely by, the Authority Revenues. The Notes are not a debt or liability of the State of California, the City or of any other political subdivision of the State of California other than the Authority or a pledge of the faith and credit of the State of California, the City or of any other political subdivision of the State of California, but shall be payable solely from the Authority Revenues. None of the State of California, the City, any other political subdivision of the State of California, or the Authority shall be obligated to pay the principal of, premium, if any, or interest on the Notes except from the Authority Revenues and neither the faith and credit nor the taxing power of the State of California, the City or of any political subdivision of the State of California is pledged to the payment of the principal of, premium, if any, or the interest on the Notes. The issuance of the Notes shall not directly or indirectly or contingently obligate the State of California, the City or any other political subdivision of the State of California to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. Notwithstanding anything herein or in the Credit Agreement, the Authority shall have no pecuniary liability under the Notes except that which can be satisfied from the Authority Revenues, and the Authority shall not be required to advance any moneys derived from any source other than the Authority Revenues for the payment of the principal of, premium, if any, or the interest on the Notes.

Reference is hereby made to the Credit Agreement (a copy of which is on file with the Authority) and to the Act for a description of the rights thereunder of the Registered Owner, of the nature and extent of the security for the Notes, and of the rights and obligations of the Authority thereunder, all of the provisions of which Credit Agreement are incorporated herein and to which the Registered Owner of this Note, by acceptance hereof, assents and agrees.



### ***Interest***

This Note shall bear interest on the outstanding principal amount hereof, for each day from and including the date the initial Advance is made hereunder until it is paid in full, at the Tax Exempt Rate.

“Tax Exempt Rate” means a per annum rate of interest established by the Calculation Agent on each SOFR Determination Date equal to the sum of (a) the Tax Exempt Applicable Spread plus (b) the product of (i) Daily Simple SOFR multiplied by (ii) the Applicable Factor. The Tax Exempt Rate shall be rounded upwards to the fifth decimal place. Upon the occurrence and during the occurrence of an Event of Default the Tax Exempt Rate shall equal the Default Rate.

The Calculation Agent shall determine the applicable interest rate for this Note as provided in the Credit Agreement. Interest on the outstanding principal amount of this Note shall accrue each day during the applicable Interest Period. Interest on this Note shall be computed on the basis specified in the Credit Agreement.

Interest on the outstanding principal amount of this Note is payable monthly in arrears on each Interest Payment Date, on the date the outstanding principal of this Note is paid in full and, solely with respect to the portion of this Note being prepaid, on the date any portion of the principal of this Note is prepaid in part.

The interest rate borne by this Note is subject to adjustment as provided in Section 2.15 of the Credit Agreement.

### ***Taxability***

On and after a Taxable Date for this Note, this Note shall bear interest at the Taxable Rate until such time as another interest rate shall apply pursuant to the terms hereof.

“Taxable Rate” means a per annum rate of interest established by the Calculation Agent on each SOFR Determination Date equal to the sum of the Taxable Applicable Spread plus Daily Simple SOFR. The Taxable Rate shall be rounded upwards to the fifth decimal place. Upon the occurrence and during the continuance of an Event of Default the Taxable Rate shall equal the Default Rate.

### ***Optional Prepayment***

The Authority may prepay this Note in whole at any time, or from time to time in part in amounts aggregating \$1,000,000 and any amount in excess thereof or, if the outstanding principal amount of this Note being prepaid is less than \$1,000,000, the total amount of this Note which is then outstanding, by giving notice to the Registered Owner by 11:00 a.m. on the date which is at least five U.S. Government Securities Business Days prior to the date on which such prepayment is to be made and by paying to the Registered Owner the principal amount thereof to be prepaid together with accrued interest to the date of prepayment. Any such notice shall be irrevocable once received by the Registered Owner.

### ***Payment of Principal after Termination Date***

Notwithstanding anything to the contrary contained herein or in the Credit Agreement, in the event the Registered Owner does not receive repayment of the outstanding principal of this Note on or before the Termination Date, provided that the conditions set forth in Section 2.07(c) or the Credit Agreement are satisfied, including (A) no Default or Event of Default shall have occurred and be continuing and (B) the representations and warranties set forth in the Credit Agreement shall be true and correct on the Termination Date, then the Authority shall pay the outstanding principal amount of this Note (the “Amortization Amount”) in installments payable on each Amortization Principal Payment Date (each such payment, an “Amortization Principal Payment”), with the final installment in an amount equal to the remaining balance of the Amortization Amount on the Amortization End Date (the period commencing on the Termination Date and ending on the Amortization End Date is herein referred to as the “Amortization Period”). Each Amortization Principal Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Principal Payments over the Amortization Period so the Amortization Amount is fully repaid by the end of the Amortization Period. The Authority may prepay, or cause to be prepaid, some or all of the Amortization Amount on any date upon one Business Days’ notice to the Registered Owner, such prepayment to be accompanied by interest accrued thereon at the Bank Rate to the date of prepayment.

During the Amortization Period, interest on the Notes shall accrue at the Bank Rate and shall be payable in arrears on each Amortization Interest Payment Date.

### ***Maximum Interest Rate***

If the amount of interest payable on this Note for any period in accordance with the terms hereof or the Credit Agreement exceeds the amount of interest that would be payable on this Note for such period had interest for such period been calculated at the Maximum Interest Rate, then interest for such period shall be payable in an amount calculated at the Maximum Interest Rate for such period.

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

The Authority shall treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority shall not be affected by any notice to the contrary.

THIS NOTE IS BEING ISSUED AS A DRAW-DOWN NOTE, IN THAT THE REGISTERED OWNER OF THIS NOTE WILL PURCHASE THE PRINCIPAL AMOUNT OF THIS NOTE IN INSTALLMENTS BY MAKING ADVANCES IN ACCORDANCE WITH THE TERMS OF THE CREDIT AGREEMENT. ACCORDINGLY, THE PRINCIPAL

AMOUNT OF THIS NOTE WHICH HAS BEEN PURCHASED AND IS OUTSTANDING AT ANY GIVEN TIME MAY BE LESS THAN THE MAXIMUM PRINCIPAL AMOUNT OF THIS NOTE AS SET FORTH ON THE FACE OF THIS NOTE. THE REGISTERED OWNER OF THIS NOTE MAY MAKE A NOTATION ON THIS NOTE ON THE SCHEDULE ATTACHED HERETO AS TO THE DATE AND THE AMOUNT OF EACH ADVANCE AND AS TO EACH PAYMENT OF PRINCIPAL OF THIS NOTE, BUT THE FAILURE TO MAKE A NOTATION SHALL NOT RELIEVE THE AUTHORITY OF ITS OBLIGATIONS TO PAY THE OUTSTANDING PRINCIPAL OF THIS NOTE, TOGETHER WITH INTEREST HEREON, AS PROVIDED HEREIN AND IN THE CREDIT AGREEMENT.

PAYMENTS OF THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON THIS NOTE MAY BE MADE DIRECTLY TO THE REGISTERED OWNER HEREOF WITHOUT NOTATION HEREON. IT CANNOT BE DETERMINED FROM THE FACE OF THIS NOTE WHETHER ALL OR ANY PART OF SUCH PAYMENTS HAVE BEEN PAID.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to have happened and to have been performed precedent to and in the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by the provisions of the Act and by the Constitution and laws of the State of California, and that the amount of this Note, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Act or the Constitution and laws of the State of California, and is not in excess of the amount of Notes permitted to be issued under the Credit Agreement.

IN WITNESS WHEREOF, CITY OF SAN JOSE FINANCING AUTHORITY has caused this Note to be executed in its name and on its behalf by the manual signature of its [Treasurer] as of the date set forth above.

CITY OF SAN JOSE FINANCING AUTHORITY

By: \_\_\_\_\_  
[Treasurer]

**ADVANCES AND PAYMENTS OF PRINCIPAL**

<b>Date</b>	<b>Amount Of Advance</b>	<b>Amount Of Principal Repaid</b>	<b>Unpaid Principal Balance</b>	<b>Notation Made By</b>