

**THIRD AMENDMENT TO
LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT**

AMONG

CITY OF SAN JOSE FINANCING AUTHORITY,

CITY OF SAN JOSE

AND

U.S. BANK NATIONAL ASSOCIATION

DATED: [AUGUST 28], 2018

**THIRD AMENDMENT TO LETTER OF CREDIT AND REIMBURSEMENT
AGREEMENT**

This **THIRD AMENDMENT** to **LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT**, dated [August 28], 2018 (this “*Amendment*”), is among the CITY OF SAN JOSE FINANCING AUTHORITY (the “*Authority*”), the CITY OF SAN JOSE (the “*City*”) and U.S. BANK NATIONAL ASSOCIATION (the “*Bank*”). Terms used herein with initial capital letters and not otherwise defined shall have the respective meanings attributed thereto in the Agreement (as defined below).

RECITALS

WHEREAS, the Authority, the City and the Bank entered into the Letter of Credit and Reimbursement Agreement, dated as of February 1, 2013 (the “*Original Agreement*”), pursuant to which the Bank agreed to provide support for the payment of principal of and interest on the Series 2 Notes by issuing the Letter of Credit; and

WHEREAS, the Authority, the City and the Bank entered into the First Amendment to Letter of Credit and Reimbursement Agreement, dated August 20, 2015 (the “*First Amendment*”) and the Second Amendment to Letter of Credit and Reimbursement Agreement, dated November 18, 2015 (the “*Second Amendment*”; and, the Original Agreement, as revised by the First Amendment and the Second Amendment, the “*Revised Agreement*”) and a Fee Letter dated August 20, 2015 (the “*2015 Fee Letter*”) to, among other things, (i) extend the Stated Expiration Date to November 30, 2018; (ii) make certain pricing changes; and (iii) make certain amendments to the Original Agreement; and

WHEREAS, the Authority, the City and the Bank now desire to, among other things, (i) extend the Stated Expiration Date from November 30, 2018 to [February 23, 2022], (ii) make certain additional amendments to the Revised Agreement, including increasing the Stated Amount from \$45,643,835.62 to \$[67,123,288], and (iii) and execute a new fee letter (the “*New Fee Letter*”).

NOW, THEREFORE, in consideration of the respective agreements contained herein and in the Agreement, and intending to be legally bound, the Authority, the City, and the Bank hereby agree as follows.

ARTICLE I. INTENTION OF PARTIES, AGREEMENT PROVISIONS.

The Authority, the City and the Bank have entered into this Amendment pursuant to Section 2.10 and Section 7.1 of the Revised Agreement and the New Fee Letter to, among other things, extend the Stated Expiration Date and amend other terms set forth in the Revised Agreement and to reflect the delivery of the New Fee Letter to replace the 2015 Fee Letter. The terms of the Revised Agreement, as amended by this Amendment (as so amended, the “*Agreement*”), shall govern the rights and obligations of the Authority, the City, and the Bank in connection with the transactions contemplated by the Agreement.

ARTICLE II. AMENDMENTS.

(a) The Revised Agreement is hereby amended as follows:

- i. The definition of “Commitment” in Section 1.1 of the Revised Agreement is hereby amended by deleting the “\$45,643,835.62” therein and replacing it with “[67,123,288].”
- ii. The definition of “Fee Letter” in Section 1.1 of the Revised Agreement is hereby amended by deleting it in its entirety and replacing it with the following:

“ ‘Fee Letter’ means the letter, dated the Third Amendment Effective Date, from the Bank to the Authority and the City regarding certain fees, costs and expenses, as the same may be amended from time to time thereafter.”
- iii. The definition of “Stated Expiration Date” in Section 1.1 of the Revised Agreement is hereby amended by deleting “November 30, 2018” therein and replacing it with “[February 23, 2022]”.
- iv. There is hereby added to Section 1.1 of the Revised Agreement each of the following definitions, each of which is to be situated alphabetically:

“ ‘Third Amendment’ means that certain Third Amendment to the Letter of Credit and Reimbursement Agreement, dated [August 28], 2018, among the Authority, the City and the Bank.”

“ ‘Third Amendment Effective Date’ means [August 28], 2018.”
- v. Section 2.10(a) of the Revised Agreement is hereby amended by deleting “On the Date of Issuance the Stated Expiration Date shall be November 30, 2018” therein and replacing it with “On the Third Amendment Effective Date, the Stated Expiration Date shall be [February 23, 2022]”.
- vi. Section 4.1 of the Revised Agreement is hereby amended by adding the following paragraph “(r)” after paragraph “(q)” therein:

“(r) Anti-Terrorism Laws. The City hereby agrees to provide documentary and other evidence as may be reasonably requested by the Bank at any time to enable the Bank to verify the City’s compliance with any applicable law or regulation, including, without limitation, regulations of OFAC (defined below). The City is not 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 Purchaser 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.”

vii. Section 4.2 of the Revised Agreement is hereby amended by adding the following paragraph “(o)” after paragraph “(n)” therein:

“(o) Anti-Terrorism Laws. *Anti-Terrorism Laws.* The Authority hereby agrees to provide documentary and other evidence as may be reasonably requested by the Bank at any time to enable the Bank to verify the Authority’s compliance with any applicable law or regulation, including, without limitation, regulations of OFAC. The Authority is not 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 Purchaser 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 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.”

ARTICLE III. CONDITIONS TO DELIVERY OF THIS AMENDMENT.

The amendments to the Revised Agreement provided for in Article II hereof shall become effective on the Third Amendment Effective Date; *provided* that each of the following conditions shall be fulfilled to the satisfaction of the Bank:

(a) Documentation:

- (i) An executed counterpart of this Amendment, each signed by the Authority, the City and the Bank;
- (ii) Confirmation that the Issuing and Paying Agent has received an Annex E of the Letter of Credit increasing the Stated Amount and an Annex G of the Letter of Credit confirming the extension of the Stated Expiration Date;
- (iii) Executed copies of amendments to the Sublease, the Trust Agreement and the Memorandum of Assignment,
- (iv) Copies of the resolutions of the Authority and the City certified as being in full force and effect as of the Third Amendment Effective Date;
- (v) The opinion of Note Counsel and certificates of the City and the Authority as required under the Related Documents; and
- (vi) All other legal matters pertaining to the execution and delivery of this Amendment shall be satisfactory to the Bank and the execution and delivery hereof by the Bank shall constitute conclusive evidence that all such legal matters have been completed to the satisfaction of the Bank.

(b) Representations and Warranties True.

(i) The representations and warranties of the Authority and the City contained in Article IV of the Original Agreement and in this Amendment shall be true and correct with the same effect as though made on and as of the Third Amendment Effective Date, except to the extent a representation or warranty relates specifically to an earlier date (in which case, such representation and warranty shall be true and correct as of such date).

(ii) In addition to the foregoing representations, the Authority and the City hereby represent and warrant as follows:

(A) The execution, delivery and performance by the Authority and the City of this Amendment are within their powers, have been duly authorized by all necessary actions and do not contravene any law or any contractual restriction binding on or affecting the Authority and the City;

(B) No further authorization, approval or other action by, and no notice to or filing, is required for the due execution, delivery and performance by the Authority and the City of this Amendment that has not been received as of the Third Amendment Effective Date;

(C) The Authority and the City have provided, or will cause to have provided, (1) written notice of this Amendment to the Issuing and Paying Agent, the Trustee, and to each Rating Agency; and

(D) This Amendment constitutes the legal, valid and binding obligation of the Authority and the City and each such document is enforceable against the Authority and the City in accordance with its terms.

(c) Performance and Compliance. On or before the Third Amendment Effective Date, the Authority and the City shall have performed and complied with all agreements and conditions in the Agreement and the other Related Documents which are required to be performed or complied with by the Authority and the City on or prior to the Third Amendment Effective Date.

(d) Absence of Certain Events. (i) There shall not have occurred any material adverse change in the affairs, condition and/or operations, financial or otherwise, of the City since the date of the most recent financial information provided to the Bank pursuant to Section 4.1(l) of the Agreement; on or prior to the Third Amendment Effective Date, no change shall have occurred in any law, rule or regulation or in any interpretation thereof that, in the opinion of the Bank, would make it illegal for the Bank to execute and deliver this Amendment; and (ii) no event has occurred which constitutes an Event of Default under the Agreement.

(e) Fees. The Authority or the City shall have paid, in immediately available funds, on or before the Third Amendment Effective Date, the fees of Nixon Peabody LLP in the amount of \$5,000.

(f) Other Approvals. The Bank shall have received such other approvals, opinions, certificates, instruments and documents as it may reasonably request.

ARTICLE IV. MISCELLANEOUS.

(a) The parties hereto acknowledge and confirm that, from and after the Third Amendment Effective Date, any reference in the Agreement or in the other Related Documents to the “Agreement” shall mean and refer to the Revised Agreement as amended hereby.

(b) Except as provided herein, the Agreement shall remain in full force and effect and unaffected hereby except, as set forth herein, from and after the Third Amendment Effective Date.

(c) This Amendment and the Revised Agreement, as amended hereby, shall be subject to Section 7.10 of the Agreement. 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.

(d) This Amendment may be executed in one or more counterparts, each of which taken together shall constitute one original and all of which shall constitute one and the same instrument.

[Remainder of page intentionally left blank; signature pages to follow.]

IN WITNESS WHEREOF, the parties have duly executed this Amendment as of the day and year first above written.

CITY OF SAN JOSE FINANCING AUTHORITY

By: _____
Treasurer

CITY OF SAN JOSE

By: _____
Director of Finance

Approved as to Form:

City Attorney

By: _____
Chief Deputy City Attorney

U.S. BANK NATIONAL ASSOCIATION

By: _____

