

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE PROVIDING FOR THE BORROWING OF FUNDS FOR FISCAL YEAR 2018-19 AND THE ISSUANCE AND SALE OF THE CITY OF SAN JOSE 2018 TAX AND REVENUE ANTICIPATION NOTE IN AN AMOUNT NOT TO EXCEED \$150,000,000, AND APPROVING THE EXECUTION OF A NOTE PURCHASE AGREEMENT RELATING TO SUCH NOTE AND AUTHORIZING OTHER ACTIONS IN CONNECTION THEREWITH**

**WHEREAS**, pursuant to Sections 53850 to 53858, both inclusive, of the California Government Code, being Article 7.6, Chapter 4, Part 1, Division 2, Title 5 thereof (the "Law"), the City Council (the "Council") of the City of San José (the "City") has found and determined that the sum of not to exceed \$150,000,000 is currently needed by the City in Fiscal Year 2018-19 to satisfy obligations of the City payable from the General Fund of the City (the "General Fund") during Fiscal Year 2018-19 before the receipt of taxes, income, revenue, cash receipts and other moneys of the City to be received for or accrued to the General Fund during Fiscal Year 2018-19 that will be available for such purpose, and that it is necessary that such sum be borrowed for such purpose by the issuance of a temporary note in anticipation of such receipt; and

**WHEREAS**, the City intends to borrow such initial sum of not to exceed \$150,000,000 for such purpose by the issuance and sale of its 2018 Tax and Revenue Anticipation Note (as defined more particularly in Section 3 hereof, the "Note"); and

**WHEREAS**, it appears, and the Council hereby finds and determines, that the principal amount of the Note, when added to the interest payable thereon, does not exceed eighty-five percent (85%) of the estimated amount of the uncollected taxes, income, revenue, cash receipts and other moneys of the City anticipated to be received for or accrued to the General Fund during Fiscal Year 2018-19 that will be available for the payment of the interest on and the principal of the Note; and

**WHEREAS**, no money has heretofore been borrowed by the City in anticipation of the receipt of, or payable or secured by, any taxes, income, revenue, cash receipts or other moneys of the City to be received for or accrued to the General Fund during Fiscal Year 2018-19; and

**WHEREAS**, the City wishes to authorize the issuance of the Note in a single series, to be purchased by Bank of America, N.A. (the "Bank") from the City in accordance with that certain Note Purchase Agreement tentatively dated July 2, 2018 between the City and the Bank, as originally executed and as it may be amended from time to time in accordance with its terms (the "Note Purchase Agreement"); and

**WHEREAS**, pursuant to the Law, certain taxes, income, revenue, cash receipts and other moneys of the City which will be received for or accrued to the General Fund during Fiscal Year 2018-19 can and will be pledged for the payment of the interest on and the principal of the Note; and

**WHEREAS**, pursuant to the Law and this Resolution, the City has pledged all Property Tax Revenues and the Additional Revenues (if applicable) (as such terms are defined in the Note Purchase Agreement) to the payment of the interest on and the principal of the Note;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

Section 1. Recitals. All of the recitals hereinabove set forth are true and correct, and the Council so finds and determines, and the Council further finds and determines that all acts, conditions and things required by law to exist, to have occurred and to have been performed precedent to the issuance and sale of the Note do exist, have occurred and have been performed in regular and due time, form and manner as required by law, and that the City is empowered under the Law to issue and sell the Note as provided herein.

Section 2. Defined Terms. Unless otherwise defined herein, capitalized terms used in this Resolution shall have the meanings given such terms in the Note Purchase Agreement.

Section 3. Issuance of Note.

(a) Solely for the purpose of anticipating taxes, income, revenue, cash receipts and other moneys of the City to be received for or accrued to the General Fund during Fiscal Year 2018-19, the City hereby determines at this time to and shall borrow the aggregate principal sum of not to exceed \$150,000,000 by the issuance of a temporary note under the Law, designated the "City of San José 2018 Tax and Revenue Anticipation Note" (the "Note"). The Note shall be issued in a single series and shall be dated the date of issuance thereof. The Note shall bear interest on the principal amount outstanding from time to time, mature and be payable as provided in the Note Purchase Agreement, provided that the interest rate thereon shall be a variable rate or rates determined in accordance with the Note Purchase Agreement, in no event to exceed ten percent (10%) per annum. The principal amount of the Note shall be noted by the Bank on the form of the Note in accordance with the Note Purchase Agreement. The Note is subject to prepayment prior to the maturity date thereof in accordance with the terms of the Note Purchase Agreement.

(b) The Note shall be initially issued and registered in the name of "Bank of America, N.A.," as the registered owner thereof (together with any of the

Bank's successors or assigns as permitted in the Note Purchase Agreement, the "Owner") and shall be evidenced by a single note.

(c) The Note shall be initially issued and registered as provided in Section 3(b) hereof. The Note is non-negotiable. The Bank shall have the right to sell or transfer the Note or to otherwise directly or indirectly transfer or assign any interest in the Note only to the extent permitted in the Note Purchase Agreement.

(d) The City shall be entitled to treat the Bank as the Owner of the Note indicated therein as the absolute owner of such Note for all purposes under this Resolution and for purposes of payment of principal of and interest on such Note, notwithstanding any notice to the contrary received by the City.

(e) The Authorized Representatives (as defined in the Note Purchase Agreement), each acting alone, are hereby authorized and directed to provide any notices or other directions of the City to the Bank pursuant to the Note Purchase Agreement.

(f) The Director of Finance will maintain or cause to be maintained, at her office in San José, California, sufficient books for the registration of the Note.

Section 4. Form of Note. The Note shall be issued without coupons and shall be substantially in the form thereof set forth in Exhibit A attached hereto and incorporated herein, the blanks in said form to be filled in with appropriate words and figures after the sale of the Note and before the execution, authentication and delivery of the Note.

Section 5. Execution of Note. The Director of Finance (including officials acting in this position on an interim basis) is hereby authorized to execute the Note by his or her manual or facsimile signature, and the City Clerk (including officials acting in this position on an interim basis) is hereby authorized to countersign the Note by his or her manual or facsimile signature and to impress the seal of the City thereon. The Note shall not be valid, however, unless and until the Director of Finance (including officials acting in this position on an interim basis) shall have manually authenticated such Note by executing the Certificate of Authentication printed thereon.

Section 6. Use of Proceeds of Note. The Director of Finance shall, immediately upon receiving the proceeds of the sale of the Note, deposit in the General Fund all amounts representing the proceeds of the Note received from such sale, and such proceeds shall be used for the purpose specified in the Note Purchase Agreement or otherwise permitted by applicable law.

Section 7. Security for Note; Security Interest.

(a) The City hereby pledges all Property Tax Revenues and the Additional Revenues (if applicable) (collectively, the "Pledged Property") to the payment of the principal of and interest on the Note. This pledge is valid and binding in accordance with the terms of this Resolution and the Pledged Property shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Pledged Property and be effective, binding, and enforceable against the City, its successors, purchasers of the Pledged Property, creditors, and all others asserting the rights therein, to the extent set forth, and in accordance with, this Resolution irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act.

(b) Nothing in this Resolution shall prohibit the City from issuing additional tax and revenue anticipation notes payable from the Pledged Property or other available funds on a basis subordinate to the Notes ("Subordinated Notes"); provided that with respect to any such Subordinated Note, the City shall not, prior to the termination of the Note Purchase Agreement pursuant to the terms therein and payment in full of the Note, (i) make any scheduled payments of principal thereof or interest thereon, (ii) make any prepayment thereof, and (iii) issue any such Subordinated Note that has a maturity date earlier than the stated maturity date of the Note.

Section 8. Sale of Note. The Note Purchase Agreement providing for the sale of the Note proposed to be entered into between the Bank and the City, in the form thereof set forth in Exhibit B attached hereto and incorporated herein, is hereby approved, and the Director of Finance or his or her designee, each acting alone, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Bank the Note Purchase Agreement in substantially said form (which Note Purchase Agreement shall contain the maturity date and the interest rates and the prepayment provisions for the Note), with such changes as such officer executing the Note Purchase Agreement may require or approve upon consultation with the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof; provided, the Note shall bear interest at the variable rate or rates established from time to time pursuant to the Note Purchase Agreement, in no event to exceed ten percent (10%) per annum, and the aggregate principal amount of the Note shall not exceed \$150,000,000.

Section 9. Further Actions. The Director of Finance and the City Clerk are hereby authorized and directed to execute and deliver the Note to the Bank in accordance with the Note Purchase Agreement, and the City Manager, the Director of Finance, and the City Clerk are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and

execute any and all certificates, agreements and other documents, including but not limited to an agreement relating to the breakage fee related to the Note, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Note in accordance with this Resolution, and all actions heretofore taken by such officers with respect to the sale and issuance of the Note are hereby approved, confirmed and ratified. Any authority delegated under this Resolution to a specified official (including officials acting in these positions on an interim basis) of the City may also be exercised by the specified official's authorized designee.

Section 10. Resolution to Constitute Contract. It is hereby covenanted and warranted by the City that all representations and recitals contained in this Resolution are true and correct, and that the City, and its appropriate officials, have duly taken all proceedings necessary to be taken by them, and will take any additional proceedings necessary to be taken by them, for the levy and collection and deposit of the Property Tax Revenues and Additional Revenues pledged hereunder in accordance with law and with this Resolution and for carrying out the provisions of this Resolution. It is hereby further covenanted and warranted by the City that the provisions of the Note and of this Resolution shall constitute a contract between the City and the Owner, and such provisions shall be enforceable by mandamus or any other appropriate suit, action or proceeding at law or in equity in any court of competent jurisdiction; provided, that notwithstanding any other provision hereof to the contrary, upon the City's failure to observe, or refusal to comply with, the covenants contained herein, no one other than the Owner or former Owner of the Note shall be entitled to exercise any right or remedy under this Resolution on the basis of the City's failure to observe, or refusal to comply with, such covenants.

Section 11. Amendments. This Resolution may be amended by a supplemental resolution adopted by the City Council with the written consent of the Owner of one hundred percent of the principal amount of the Note outstanding.

Section 12. Severability. If any one or more of the provisions of this Resolution shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the decision, finding, order or decree of which becomes final, none of the remaining provisions of this Resolution shall be affected thereby, and such provisions shall be valid and enforceable to the fullest extent permitted by applicable law.

Section 13. Effective Date. This Resolution shall take effect from and after its adoption.

RD:DMK:KMM  
6-6-2018

ADOPTED this 19th day of June, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

SAM LICCARDO  
Mayor

ATTEST:

---

TONI J. TABER, CMC  
City Clerk

**EXHIBIT A**

FORM OF NOTE

R-1

\$150,000,000

ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Bank of America, N.A., has an interest herein. This Note is non-negotiable and Bank of America, N.A. has the right to sell or transfer the Note or to otherwise directly or indirectly transfer or assign any interest in the Note only to the extent permitted by the Note Purchase Agreement.

**CITY OF SAN JOSE, CALIFORNIA  
2018 Tax and Revenue Anticipation Note**

<u>INTEREST RATE</u>	<u>DATED DATE</u>	<u>MATURITY DATE</u>
Variable	July 2, 2018	June 28, 2019

FOR VALUE RECEIVED, the City of San José, California, acknowledges itself indebted to and promises to pay to Bank of America, N.A. (together with any of its successors and assigns as permitted under the Note Purchase Agreement (defined below), the "Bank"), at the office of the Director of Finance, the principal sum of One Hundred Fifty Million Dollars (\$150,000,000) in lawful money of the United States of America, on June 28, 2019, together with interest on the principal amount outstanding hereunder from time to time at the rate or rates per annum set forth in that certain Note Purchase Agreement (the "Note Purchase Agreement") by and between the City and the Bank dated July 2, 2018 (computed on the basis set forth in the Note Purchase Agreement) in like lawful money from the date hereof until payment in full of said principal sum. Interest hereon shall be payable to the Bank at the address shown on the registration books of the Director of Finance on June 28, 2019; provided that the address may be changed pursuant to the terms of the Note Purchase Agreement, and at such other times as may be required under the Note Purchase Agreement. The principal of and interest at maturity on this Note shall be payable only to the Bank and in the manner provided in the Note Purchase Agreement. Upon payment in full of this Note, this Note shall be surrendered for cancellation.

It is hereby certified, recited and declared that this Note is an authorized Note entitled "City of San José, California 2018 Tax and Revenue Anticipation Note" (the "Note"), in the aggregate principal amount of One Hundred Fifty Million Dollars (\$150,000,000), to be issued in a single series by authority of Article 7.6, Chapter 4, Part 1, Division 2, Title 5 of the Government Code of the State of California and Resolution No. \_\_\_\_\_ adopted by the City Council on June 19, 2018 (together with the Note Purchase Agreement appended thereto, the "Resolution"), and that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Note have existed, happened and been performed in regular and due time, form and manner as required by law, and that this Note, together with all other indebtedness and obligations of the City does not exceed any limit prescribed by the Constitution or laws of the State of California. Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Resolution.

The Note is subject to prepayment at the times and upon the terms set forth in the Note Purchase Agreement.

Pursuant to the Resolution, the City has pledged all Property Tax Revenues and the Additional Revenues (if applicable) to the payment of the principal of and interest on the Note.

This Note shall not be valid or become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by the Director of Finance.



IN WITNESS WHEREOF, the City of San José has caused this Note to be executed by the manual or facsimile signature of its Director of Finance and countersigned by the manual or facsimile signature of the City Clerk and caused a facsimile of the official seal to be imprinted hereon, all as of the 2nd day of July, 2018.

CITY OF SAN JOSE

By: \_\_\_\_\_  
Its: Director of Finance

(SEAL)

Countersigned:

By: \_\_\_\_\_  
Its: City Clerk

CERTIFICATE OF AUTHENTICATION

This Note is the City of San José, California 2018 Tax and Revenue Anticipation Note described in the within mentioned Resolution.

Date of Authentication: July 2, 2018

\_\_\_\_\_  
Director of Finance

**EXHIBIT B**

FORM OF NOTE PURCHASE AGREEMENT

---

---

NOTE PURCHASE AGREEMENT

between

CITY OF SAN JOSE

and

BANK OF AMERICA, N. A.

---

Dated July 2, 2018

---

**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE I      DEFINITIONS.....	1
Section 1.01      Definitions .....	1
Section 1.02      Construction.....	7
ARTICLE II      NOTE.....	7
Section 2.01      Purchase of Note .....	7
Section 2.02      Interest Rate Conversion.....	8
Section 2.03      Interest .....	8
Section 2.04      Increased Costs .....	9
Section 2.05      Illegality; Impracticability .....	10
Section 2.06      Compensation; Breakage Fees.....	10
Section 2.07      Prepayments.....	11
Section 2.08      Security Interest .....	11
Section 2.09      Method and Place of Payment .....	11
Section 2.10      Net Payment.....	11
Section 2.11      Transfers of the Note .....	12
Section 2.12      Evidence of Indebtedness .....	12
ARTICLE III      CONDITIONS PRECEDENT.....	12
Section 3.01      Conditions to the Bank’s Entering Into Agreement.....	12
ARTICLE IV      REPRESENTATIONS OF THE CITY .....	13
Section 4.01      Valid Existence .....	13
Section 4.02      Authorization and Validity .....	14
Section 4.03      Compliance with Laws and Contracts .....	14
Section 4.04      Litigation.....	14
Section 4.05      No Event of Default.....	14
Section 4.06      Projections and Budget Material.....	14
Section 4.07      Accurate and Complete Disclosure.....	14
Section 4.08      Regulatory Approvals .....	15
Section 4.09      Prospective Change in Law .....	15
Section 4.10      Sovereign Immunity .....	15
Section 4.11      Priority of Pledge .....	15
Section 4.12      Resolution .....	15

**TABLE OF CONTENTS**  
(continued)

		<u>Page</u>
Section 4.13	City Charter.....	15
Section 4.14	Note.....	15
Section 4.15	Usury.....	15
<b>ARTICLE V</b>	<b>COVENANTS OF THE CITY</b> .....	15
Section 5.01	Notice of Default .....	15
Section 5.02	Compliance With Laws .....	16
Section 5.03	Resolution .....	16
Section 5.04	No Impairment.....	16
Section 5.05	Budgets; Financial Statements; Reports, Certificates and Other Information .....	16
Section 5.06	Inspection Rights .....	17
Section 5.07	Use of Proceeds .....	17
Section 5.08	Existence.....	17
Section 5.09	Indebtedness and Liens.....	17
Section 5.10	Assignments.....	18
Section 5.11	OFAC.....	18
Section 5.12	Further Assurances .....	18
Section 5.13	Certain Information.....	18
Section 5.14	Accuracy of Information.....	18
Section 5.15	No Immunity.....	18
Section 5.16	Books and Records .....	18
<b>ARTICLE VI</b>	<b>EVENTS OF DEFAULT; REMEDIES</b> .....	18
Section 6.01	Events of Default .....	18
Section 6.02	Remedies.....	20
Section 6.03	No Waiver; Cumulative Remedies .....	21
<b>ARTICLE VII</b>	<b>MISCELLANEOUS</b> .....	21
Section 7.01	Amendments .....	21
Section 7.02	Assignments.....	21
Section 7.03	Governing Law; Waiver of Jury Trial; Waiver of Special Damages; Sovereign Immunity .....	22
Section 7.04	Severability .....	23

**TABLE OF CONTENTS**  
(continued)

	<b><u>Page</u></b>
Section 7.05	Counterparts..... 23
Section 7.06	Expenses ..... 23
Section 7.07	Indemnification..... 23
Section 7.08	Term of the Agreement..... 24
Section 7.09	Notice..... 24
Section 7.10	Holidays ..... 25
Section 7.11	Survival..... 25
Section 7.12	USA PATRIOT ACT NOTIFICATION ..... 25
Section 7.13	No Liability..... 26
Section 7.14	No Advisory or Fiduciary Relationship..... 26

This NOTE PURCHASE AGREEMENT, dated July 2, 2018, is entered into by and between the CITY OF SAN JOSE, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California and its charter (the “City”), and BANK OF AMERICA, N.A., a national banking association (the “Bank”).

W I T N E S S E T H:

WHEREAS, the City desires to sell its City of San Jose 2018 Tax and Revenue Anticipation Note (as amended, restated or otherwise modified, the “Note”) in anticipation of its receipt of Property Tax Revenues (as defined herein) in order to support its cash flow needs; and

WHEREAS, the Bank is willing, on the terms and conditions contained herein, to purchase the Note as further described herein from the City.

NOW, THEREFORE, in consideration of the respective agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I  
DEFINITIONS

Section 1.01 Definitions. The following terms have the meanings indicated below or in the referenced Section of this Agreement, unless the context shall clearly indicate otherwise:

“Additional Revenues” means all legally available taxes, income, revenue, cash receipts, and other moneys of the City attributable to the City’s Fiscal Year ending June 30, 2019 and chargeable to the City’s general fund and excluding moneys which, when received by the City, will be encumbered for a special purpose.

“Affiliate” means with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have correlative meanings.

“Agreement” means this Note Purchase Agreement, as amended, modified and supplemented from time to time.

“Alternate Base Rate” means either a rate determined by reference to the Federal Funds Effective Rate or a rate of interest or an index selected by the Bank and reasonably acceptable to the City to replace (as closely as possible) the Daily LIBO Rate or the LIBO Rate.

“Applicable Lending Office” means the office the Bank at which the Note is carried on the books and records of the Bank, which, initially, is Fifth Avenue Plaza, 800 5<sup>th</sup> Ave., WA1-501-34-03, Seattle, Washington 98104.

“Applicable Margin” means 0.32% per annum.

“Assistant Director of Finance” means the individual who from time to time occupies the office of the Assistant Director of Finance of the City.

“Authorized Representative” means any of the following officers of the City: the City Manager, the Director of Finance, the Assistant Director of Finance, the Deputy Director of Finance (Treasury), the Debt Administrator and any individual designated in writing to the Bank as an Authorized Representative by the City Manager or the Director of Finance.

“Authorizing Law” means California Government Code Sections 53850 to 53858 (inclusive).

“Automatic Conversion” has the meaning assigned to that term in Section 2.02 hereof.

“Bank” has the meaning assigned to that term in the introductory paragraph of this Agreement.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York, Los Angeles, California or San Jose, California are authorized or required by law to remain closed; provided that the term “Business Day” shall for purposes of purchase, interest rate determinations, conversion and prepayment also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“Cash Flow Projections” has the meaning assigned to that term in Section 3.01(b)(viii) hereof.

“Change in Law” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by the Bank (or by the Applicable Lending Office of the Bank) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“City” has the meaning assigned to that term in the introductory paragraph of this Agreement.

“Continuation” means the automatic continuation of a Fixed LIBO Rate Loan for an additional Interest Period, which additional Interest Period shall commence upon the expiration of the then current Interest Period, unless the Bank has timely received a Conversion Notice.

“Conversion” means, as applicable, a Fixed Conversion and/or a Variable Conversion.



“Daily LIBO Rate” means for any date a rate per annum equal to LIBOR, determined at approximately 11:00 a.m., London time two (2) London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one (1) month commencing that day; provided, however, that, if the Daily LIBO Rate as so determined shall be less than zero percent, such rate shall be deemed to be zero percent for purposes of this Agreement. The Daily LIBO Rate is a fluctuating rate of interest which can change on each banking day.

“Debt Administrator” means the individual who from time to time occupies the office of the Debt Administrator of the City.

“Default” means the occurrence of any event or the existence of any circumstances that, with the passage of time, the giving of notice, or both, would become an Event of Default.

“Default Rate” has the meaning assigned to that term in Section 2.03(b) hereof.

“Deputy Director of Finance (Treasury)” means the individual who from time to time occupies the office of the Deputy Director of Finance (Treasury) of the City.

“Director of Finance” means the individual who from time to time occupies the office of the Director of Finance of the City or, if such office is vacant, the office of the Acting Director of Finance.

“Dollars” and “\$” means the lawful currency of the United States of America.

“Effective Date” means July 2, 2018.

“Event of Default” has the meaning assigned to that term in Section 6.01 hereof.

“Excess Interest” has the meaning assigned to that term in Section 2.03(d) hereof.

“Federal Funds Effective Rate” means, for any day, an interest rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations at approximately 10:00 a.m., Pacific Standard Time, on such day on such transactions received by the Bank from three Federal funds brokers of recognized standing selected by the Bank in its sole discretion.

“Fiscal Year” means each twelve-month period commencing on July 1 and ending on June 30.

“Fixed Conversion” has the meaning assigned to that term in the definition of “Interest Period” hereof.

“Fixed Rate LIBOR Loan” means the Note or any portion thereof bearing interest at a rate determined by reference to LIBO Rate.

“GO Indebtedness” has the meaning assigned to that term in Section 6.01(d) hereof.

“Governmental Authority” means the government of the United States of America, or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Indebtedness” means, without duplication, (a) all indebtedness (including principal and interest) of the City for borrowed money or for the deferred purchase price of property or services; (b) all liabilities secured by any Lien on any property owned by the City, whether or not such liabilities have been assumed by the City; (c) the aggregate amount required to be capitalized under leases under which the City is the lessee; and (d) all Contingent Obligations of the City. As used in this definition, the term “Contingent Obligation” means, as to the City, any obligation of the City guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly including, without limitation, any obligation of the City, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the holder of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming the City is required to perform thereunder) as determined by the City in good faith.

“Indemnitee” has the meaning assigned to that term in Section 7.07(a) hereof.

“Interest Invoice” has the meaning assigned to that term in Section 2.03(c) hereof.

“Interest Payment Date” means the first Business Day of each calendar month and June 28, 2019.

“Interest Period” means with respect to each Fixed Rate LIBOR Loan, a period commencing on the date of a Continuation or a conversion of a Variable Rate LIBOR Loan to a Fixed Rate LIBOR Loan (“Fixed Conversion”) and ending on the date one month thereafter; *provided* that:

- (i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such

Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond June 28, 2019.

“Interest Rate” means:

(i) the Daily LIBO Rate with respect to any Variable Rate LIBOR Loan, which interest rate shall change whenever the Daily LIBO Rate changes,

(ii) the LIBO Rate for the Interest Period with respect to Fixed Rate LIBOR Loan, and

(iii) the Alternate Base Rate with respect to any Variable Rate LIBOR Loan or Fixed Rate LIBOR Loan as required by Section 2.05.

“LIBO Rate” means, with respect to the Note or any portion thereof for any Interest Period, the rate per annum equal to (i) the London interbank offered rate (“LIBOR”) or any successor thereto as approved by the Bank, as published by Bloomberg (or such other commercially available source providing quotations of LIBOR as may be designated by the Bank from time to time) at approximately 11:00 a.m., London time, two (2) London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or, (ii) if such published rate is not available at such time for any reason, the rate per annum determined by such alternate method as reasonably selected by the Bank; provided, however, that, if the LIBO Rate as so determined shall be less than zero percent, such rate shall be deemed to be zero percent for purposes of this Agreement.

“LIBOR” has the meaning assigned to that term in the definition of “LIBO Rate”.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement).

“London Banking Day” means a day on which banks in London are open for business and dealing in offshore dollars.

“Margin Stock” has the meaning provided in Regulation U of the Board of Governors of the Federal Reserve System.

“Maximum Rate” means ten percent (10%) per annum.

“Note” has the meaning assigned to that term in the recitals of this Agreement.

“Notice” or “notice” means any form of written communication or a communication by means of electronic mail, facsimile device, telegraph or cable and confirmed telephonically.

“Notice Office” means the office of the Bank as set forth in Section 7.09 herein, or such other office or mail code as the Bank may hereafter designate in writing as such to the City. Any Notice of a change in the Notice Office shall become effective on the fifth calendar day after the delivery of Notice thereof to the City.

“Obligations” means all amounts owing to the Bank pursuant to the terms of this Agreement and the Note.

“OFAC” means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Parent” has the meaning assigned to that term in Section 2.04(b) hereof.

“Person” means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or a political subdivision or an agency or instrumentality thereof.

“Pledged Property” has the meaning assigned to that term in Section 2.08 hereof.

“Police and Fire Plan” means the Police and Fire Department Plan.

“Prime Rate” means the rate of interest per annum announced from time to time by the Bank as its prime rate. The Prime Rate is a variable rate and each change in the Prime Rate is effective from and including the date the change is announced as being effective. THE PRIME RATE IS A REFERENCE RATE AND MAY NOT BE THE BANK’S LOWEST RATE.

“Property Tax Revenues” means all secured ad valorem property tax payments that the City receives from the County of Santa Clara, California during the Fiscal Year ending June 30, 2019 (but not including property taxes levied for general obligation bonds as provided under Section 1(b) of Article XIII A of the California Constitution).

“Related Documents” means the Note and the Resolution.

“Resolution” means Resolution No. [●] adopted by the City Council of the City on June 19, 2018, as amended, modified and supplemented from time to time.

“Retirement System” means the Federated City Employees’ Retirement System.

“Section 5.05 Documents” means the documents required by Section 5.05 hereof.

“State” means the State of California.

“Taxes” has the meaning assigned to that term in Section 2.10 hereof.

“Usury Rate” has the meaning assigned to that term in Section 2.03(d) hereof.

“Variable Conversion” has the meaning assigned to that term in Section 2.02 hereof

“Variable Rate LIBOR Loan” means the Note or any other Obligation of the City which bears interest at a rate determined by reference to Daily LIBO Rate.

Section 1.02 Construction. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (d) all references herein to Articles, Sections and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Agreement.

## ARTICLE II

### NOTE

Section 2.01 Purchase of Note. On the basis of the representations, warranties and covenants contained herein, but subject to the terms and conditions herein set forth, the Bank hereby agrees to purchase from the City, and the City hereby agrees to sell to the Bank, the Note. The Note shall be in a principal amount equal to \$150,000,000, shall bear interest at the rate provided in Section 2.03(a) and shall have a maturity date of June 28, 2019. The purchase price of the Note shall be 100% of the principal amount thereof. The Bank shall wire transfer the purchase price to:

Wells Fargo Bank, N.A.  
Government & Institutional Banking  
ACH/Wire Routing # 121000248  
Benefit of: City of San Jose  
Account # 4121-893267  
Reference: 2018/2019 Tax and Revenue Note Proceeds

The wiring instructions for the City’s payment of the Note are as follows:

Bank of America, N.A.  
ABA # 026009593  
Account # 1366211001000 – (AFS Wire Clearing)  
Attention: City of San Jose TRANS

Section 2.02 Interest Rate Conversion. The Note shall be issued as a Variable Rate LIBOR Loan. Effective on the third London Banking Day from and including the Effective Date, the aggregate principal amount of the Note shall, unless an Event of Default has occurred and is continuing, be converted automatically without further action from a Variable Rate LIBOR Loan to a Fixed Rate LIBOR Loan (the "Automatic Conversion"). Following the Automatic Conversion, subject to Section 2.05, the Fixed Rate LIBOR Loan shall continue as a Fixed Rate LIBOR Loan until (i) the Note is prepaid in full, (ii) the City elects to convert (each a "Variable Conversion") all or a portion, which portion shall be in a principal amount equal to \$5,000,000 or \$5,000,000 and multiples of \$1,000,000 in excess thereof, of the Fixed Rate LIBOR Loan to a Variable Rate LIBOR Loan or (iii) June 28, 2019. If the City elects to make a Conversion, the City shall deliver to the Bank a written notice in the form attached hereto as Exhibit C (each, a "Conversion Notice"). If the Bank receives a Conversion Notice, signed by a Person who purports to be an Authorized Representative, on or before 11:00 a.m., Pacific Standard Time, on a Business Day, the Conversion shall be effective on the third London Banking Day thereafter. Any requests by the City for a Conversion shall be irrevocable as to such portion.

Section 2.03 Interest. The City agrees to pay interest in respect of the unpaid principal amount of the Note as follows:

(a) The City agrees to pay interest in respect of the unpaid principal amount of the Note from the date the proceeds thereof are made available to the City until the date the Note is paid in full, at a rate per annum which shall be equal, subject to Section 2.03(d) below, the Interest Rate plus the Applicable Margin.

(b) Overdue principal and, to the extent permitted by law, overdue interest in respect of the Note shall, subject to Section 2.03(d) below, bear interest at a rate per annum equal to the highest of (i) the Federal Funds Effective Rate plus 3.00%, (ii) the Prime Rate plus 1.50%, or (iii) 7.50% (the "Default Rate").

(c) Interest shall be payable on each Interest Payment Date for the interest accrued on the Note from and including the preceding Interest Payment Date to the date of the Interest Invoice and estimated to be accrued on the Note from and including the date of the Interest Invoice to but excluding such Interest Payment Date for which interest is being determined. The Bank shall deliver an invoice (each an "Interest Invoice") to the City no later than ten (10) Business Days prior to each Interest Payment Date; provided that failure of the Bank to deliver an Interest Invoice shall not affect the City's obligations in respect of such interest; provided further that to the extent that the interest set forth in an Interest Invoice is either below or above the actual interest amount, the difference shall be either credited or debited in the next succeeding Interest Invoice and, in the case of a deficiency, as long as the City pays such deficiency on the following Interest Payment Date, such interest shall not be considered overdue as set forth in Section 2.03(b) above. Each Interest Invoice shall set forth in reasonable detail the Interest Rates applicable to the Note from time to time. If the Note has not been paid in full by June 28, 2019, interest shall be payable upon demand of the Bank.

(d) If the rate of interest payable on the Note, including amounts payable under Sections 2.04 and 2.10 hereof, shall exceed the Maximum Rate or, if less, any maximum

interest rate payable by law for any period for which interest is payable (the “Usury Rate”), then (i) interest at such Maximum Rate or the Usury Rate, as the case may be, shall be due and payable on the Note and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and (B) such Maximum Rate or the Usury Rate, as the case may be (the “Excess Interest”), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed such Maximum Rate or the Usury Rate, as the case may be, at which time the City shall pay or cause to be paid to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal such Maximum Rate or the Usury Rate, as the case may be, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until the earlier of (x) the date all deferred Excess Interest is fully paid to the Bank or (y) June 28, 2019.

(e) All computations of interest (other than interest that is determined by reference to the Prime Rate as set forth in Section 2.03(b) hereof) shall be made on the basis of a 360 day year and actual days lapsed.

#### Section 2.04 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, the Bank; or impose on the Bank or the London interbank market any other condition affecting this Agreement, the Resolution or the purchase the of Note by the Bank;

(ii) and the result of any of the foregoing shall be to increase the cost to the Bank for purchasing the Note or to increase the cost or to reduce the amount of any sum received or receivable by the Bank (whether of principal, interest or otherwise), then, subject to Section 2.04(c) and Section 2.04(d) hereof, the City will pay to the Bank such additional amount or amounts as will compensate the Bank for such additional costs incurred or reduction suffered.

(b) If the Bank determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on the Bank’s capital or on the capital of the Bank’s holding company (the “Parent”), as a consequence of this Agreement, the Resolution or the purchase of the Note by the Bank to a level below that which the Bank or the Parent could have achieved but for such Change in Law (taking into consideration the Bank’s and/or Parent’s policies with respect to capital adequacy), then, subject to Section 2.04(c) and Section 2.04(d) hereof, from time to time the City will pay to the Bank, such additional amount or amounts as will compensate the Bank or the Parent for any such reduction suffered.

(c) A certificate of the Bank setting forth the amount or amounts necessary to compensate the Bank or the Parent, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the City and shall be conclusive absent manifest error. The City

shall pay the Bank the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) Failure or delay on the part of the Bank to demand compensation pursuant to this Section shall not constitute a waiver of the Bank's right to demand such compensation; provided that the City shall not be required to compensate the Bank pursuant to this Section for any increased costs or reductions incurred more than two hundred seventy (270) days prior to the date that the Bank notifies the City of the Change in Law giving rise to such increased costs or reductions and of the Bank's intention to claim compensation therefor; provided further that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.05 Illegality; Impracticability. If (a) for any reason the Bank shall determine (which determination shall be conclusive and binding absent manifest error) that (i) U.S. dollar deposits are not being offered to banks in the London Interbank Eurodollar market for the amount of the Note and for one month interest periods, (ii) reasonable and adequate means do not exist for ascertaining the LIBO Rate or the Daily LIBO Rate or (iii) the LIBO Rate or the Daily LIBO Rate does not adequately and fairly reflect the cost to the Bank of making or maintaining the Note at the LIBO Rate or the Daily LIBO Rate, as the case may be, or (b) after the date hereof, the introduction of, or any change in, any applicable law or any change in the interpretation or administration thereof by any Governmental Authority, or compliance by the Bank with any request or directive (whether or not having the force of law) of any such Governmental Authority, shall make it unlawful or impossible for the Bank to maintain any Fixed Rate LIBOR Loan or Variable Rate LIBOR Loan, then the Bank shall promptly give notice thereof to the City. Thereafter, until the Bank notifies the City that such circumstances no longer exist, (x) the obligation of the Bank to make available the LIBO Rate or Daily LIBO Rate and the right of the City to convert the Note and any portion thereof to, or continue the Note as a Fixed Rate LIBOR Loan or a Variable Rate LIBOR Loan shall be suspended, (y) the portion of the Note, if any, bearing interest at the LIBO Rate shall be deemed converted on the last day of the then current Interest Period (or immediately if the Bank determines that it may not lawfully maintain the Note or any portion thereof as a Fixed Rate LIBOR Loan or Variable Rate LIBOR Loan) to a loan bearing interest at the Alternate Base Rate plus the Applicable Margin and (z) the portion of the Note, if any, bearing interest at the Daily LIBO Rate shall be deemed converted to a loan bearing interest at the Alternate Base Rate plus the Applicable Margin.

Section 2.06 Compensation; Breakage Fees. The City shall compensate the Bank, upon its written request (which request shall set forth the basis for requesting such compensation and shall, absent manifest error, be final and conclusive and binding on all the parties hereto), for all reasonable losses, expenses and liabilities (including, without limitation, any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by the Bank to fund the Note) which the Bank may sustain: (i) if any prepayment of the Note is not made on any date specified in a notice of prepayment given by the City to the Bank; (ii) if any Fixed Rate LIBOR Loan is converted or prepaid on a date other than the last day of the then current Interest Period; or (iii) as a consequence of any other default by the City to pay the principal of and interest on the Note when required by the terms of this Agreement and the Note. Notwithstanding anything to the contrary contained herein, the Bank shall not be required to purchase Dollar deposits in the London interbank market to fund or otherwise match fund any



Fixed Rate LIBOR Loan, but the provisions hereof shall be deemed to apply as if the Bank had purchased such deposits to fund or match fund the Fixed Rate LIBOR Loan.

Section 2.07 Prepayments. The City shall have the right to prepay the Note in whole or in part on a Business Day by providing the Bank with written notice in the form attached hereto as Exhibit D at least three (3) Business Days prior to such prepayment date. With respect to each prepayment of the Note in part, the amount prepaid shall be an amount not less than \$5,000,000 and integral multiples of \$1,000,000 in excess thereof.

Section 2.08 Security Interest. Pursuant to the Resolution, the City has pledged all Property Tax Revenues and the Additional Revenues (if applicable) (collectively, the “Pledged Property”) to the payment of the principal of and interest on the Note. The pledge is valid and binding in accordance with the terms of the Resolution, and the Pledged Property shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Pledged Property and be effective, binding, and enforceable against the City, its successors, purchasers of the Pledged Party, creditors, and all others asserting the rights therein, to the extent set forth, and in accordance with, the Resolution irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act.

Section 2.09 Method and Place of Payment. All payments under this Agreement or the Note shall be made to the Bank not later than 12:00 Noon (Pacific Standard Time) on the date when due and shall be made in Dollars in immediately available funds by wire transfer to the account of the Bank set forth in Section 2.01 herein or by check delivered to the office of the Bank set forth in any invoice of the Bank, or such other account as the Bank may hereafter designate in writing as such to the City. Any Notice of a change in the account of the Bank shall become effective on the fifth calendar day after the delivery of such Notice to the City. Whenever any payment to be made hereunder or under the Note shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable at the applicable rate during such extension.

Section 2.10 Net Payment. All payments made by the City hereunder or under the Note will be made without setoff, counterclaim or other defense. All such payments will be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein (but excluding any tax imposed on or measured by the net income of the Bank pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) in which the Applicable Lending Office of the Bank is located) and all interest, penalties or similar liabilities with respect thereto (collectively, “Taxes”). If any Taxes are so levied or imposed, the City agrees, subject to Section 2.03(d) hereof, to pay the full amount of such Taxes and such additional amounts as may be necessary so that every payment of all amounts due hereunder or under the Note, after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for herein or in the Note. The City will furnish to the Bank, within forty-five (45) days after the date the payment of any Taxes is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by the City. To the extent permitted by

law, the City hereby agrees, subject to Section 2.03(d) hereof, to indemnify and hold harmless the Bank, and reimburse the Bank upon its written request, for the amount of any Taxes so levied or imposed and paid by the Bank.

Section 2.11 Transfers of the Note. Unless an Event of Default has occurred and is continuing, the Bank shall not transfer the Note to any Person other than an Affiliate of the Bank without the prior written consent of the City.

Section 2.12 Evidence of Indebtedness. The Bank shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the City under the Note and the amount of principal and interest payable and paid from time to time thereunder. In any legal action or proceeding in respect of this Agreement or the Note, the entries made in such account or accounts shall be conclusive evidence (absent manifest error) of the existence and amounts of the obligations of the City therein recorded.

### ARTICLE III CONDITIONS PRECEDENT

Section 3.01 Conditions to the Bank's Entering Into Agreement. It shall be a condition precedent to the Bank's entering into this Agreement and purchasing the Note that all proceedings taken in connection with the transactions contemplated hereby and all documents incident thereto, including the Related Documents, shall be in form and substance satisfactory to the Bank and that the conditions enumerated in this Section 3.01 have been fulfilled to the satisfaction of the Bank. Delivery by the Bank of a fully executed signature page to this Agreement and a fully executed signature page to the Purchaser Letter, which such Purchaser Letter shall be in the form attached hereto as Exhibit E, constitute acknowledgment and acceptance by the Bank that all such conditions have been met or waived.

(a) Representations. On the Effective Date, (i) there shall exist no Event of Default or Default; (ii) all representations and warranties made by the City herein or in any of the Related Documents shall be true and correct with the same effect as though such representations and warranties had been made at and as of such time; and (iii) each of the Related Documents to which the City is a party, as amended (if applicable), is in full force and effect and has not been amended, modified or changed.

(b) Documents. On or prior to the Effective Date, the Bank shall have received, in form and substance satisfactory to the Bank, the following:

- (i) True and complete executed originals of this Agreement and the Note;
- (ii) The Resolution certified as of the Effective Date by the City Clerk;
- (iii) Signature and incumbency certificates, dated the Effective Date, of the signatories of the City executing this Agreement and the Note;
- (iv) A certificate of an Authorized Representative dated the Effective Date, confirming that the budget for the Fiscal Year ending June 30, 2019 has been

approved by the City Council and making the representations set forth in Section 3.01(a) with respect to the City;

(v) Executed copies of (A) the legal opinion of counsel to the City addressed to the Bank; and (B) the legal opinion of Hawkins, Delafield & Wood LLP, which opinions, in each case, shall be in form and substance satisfactory to the Bank;

(vi) A copy of the City's comprehensive annual financial report ("CAFR") for the City's Fiscal Year ended June 30, 2017;

(vii) If the annual budget for the Fiscal Year ending June 30, 2019 is changed after June 19, 2018 and before the Effective Date, a synopsis of the meeting at which the City Council approved such changes to the annual budget for the City's Fiscal Year ending June 30, 2019 certified by an Authorized Representative;

(viii) A copy of the City's monthly cash flow projections for the City's Fiscal Year ending June 30, 2019 (the "Cash Flow Projections"); and

(ix) Such further documentation, certificates or opinions as the Bank may reasonably request in connection with the matters arising under this Agreement and the Related Documents.

(c) Absence of Material Adverse Change. The Bank shall be satisfied that, on the Effective Date, no material adverse change in or effect upon the financial condition of the City shall have occurred since June 30, 2017 or the City's ability to perform its obligation under this Agreement and the Related Documents. In addition, on or prior to the Effective Date, no change shall have occurred in any law, rule or regulation or in any interpretation thereof that, in the opinion of counsel to the Bank, would make it illegal for the Bank to execute and deliver this Agreement or for the City to execute, deliver and perform under the terms of this Agreement and the Note.

(d) Payment. The City shall have paid the fees and expenses of counsel to the Bank as provided in Section 7.06 hereof.

(e) Other Matters. All other legal matters pertaining to the execution and delivery of this Agreement and the Related Documents shall be satisfactory to the Bank, and the Bank shall have received such other statements, certificates, agreements, documents and information with respect to the City and matters contemplated by this Agreement as the Bank may reasonably request.

#### ARTICLE IV REPRESENTATIONS OF THE CITY

The City makes the following representations and warranties to the Bank as of the date hereof:

Section 4.01 Valid Existence. The City is a municipal corporation duly organized and existing under and by virtue of the laws of the State and its Charter and has the necessary power

and authority to execute and deliver this Agreement and the Related Documents, and to perform its obligations hereunder and thereunder.

Section 4.02 Authorization and Validity. The execution, delivery and performance by the City of this Agreement, the Note and the other Related Documents have been duly authorized by proper proceedings of the City, and no further approval, authorization or consents are required by law or otherwise. This Agreement, the Note and the Resolution constitute the legal, valid and binding obligations of the City enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally and principles of equity and public policy.

Section 4.03 Compliance with Laws and Contracts. Neither the execution and delivery by the City of this Agreement, the Note and the Resolution, nor the consummation by the City of the transactions herein and therein contemplated, nor compliance by the City with the provisions hereof or thereof will (a) violate any provision of its Charter, (b) violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the City, (c) result in any breach of, or default under the provisions of any material indenture, resolution, instrument or agreement to which the City is a party or is subject, or by which it or its property is bound, or (d) conflict with or result in the creation or imposition of any Lien pursuant to the terms of any such indenture, instrument or agreement.

Section 4.04 Litigation. Other than has been previously disclosed in writing to the Bank, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending with service of process accomplished or, to the knowledge of the City's Director of Finance, threatened against or affecting the City (a) wherein an unfavorable decision, ruling or finding would materially adversely affect (i) the transactions contemplated by or the validity of this Agreement, the Note or any of the other Related Documents, or (ii) the City's ability to perform its obligations hereunder or under the Note, or the other Related Documents; or (b) which in any way contests the existence, organization or powers of the City or the titles of the officers of the City to their respective offices.

Section 4.05 No Event of Default. No Event of Default or Default has occurred and is continuing.

Section 4.06 Projections and Budget Material. The City represents that (a) the Cash Flow Projections, and (b) the proposed budget for the Fiscal Year ending June 30, 2019 in the form adopted by the City Council at its meeting on June 19, 2018 were prepared on the basis of information and estimates that the City believed on the Effective Date to be reasonable.

Section 4.07 Accurate and Complete Disclosure. The City certifies as of the Effective Date that a true, correct and complete copy of the documents listed in Exhibit A has been furnished to the Bank. The City also certifies that the information contained in the documents listed in Exhibit A was accurate as of the respective dates of such information. The Director of Finance certifies that he or she has not failed to disclose any material information relating to the Property Tax Revenues of which he or she has actual knowledge, without any investigation, where such omission would reasonably be expected to impact the Bank's decision to enter into the Note Purchase Agreement.

Section 4.08 Regulatory Approvals. Each authorization, consent, approval, license or formal exemption from or filing, declaration or registration with, any court, governmental agency or regulatory authority (federal, state or local), required to be obtained by the City in connection with the City's execution and delivery of, and performance under this Agreement, the Note and the other Related Documents has been obtained or made and is in full force and effect.

Section 4.09 Prospective Change in Law. To the knowledge of the City's Director of Finance, there is no amendment, or proposed amendment certified for placement on a ballot, to the City Charter or the Constitution of the State or any published administrative interpretation of the Constitution of the State or any State law, or any legislation which has passed either house of the State legislature or is under consideration by any conference or similar committee, or any published judicial decision interpreting any of the foregoing, the effect of which is to invalidate, eliminate or materially reduce the Property Tax Revenues.

Section 4.10 Sovereign Immunity. Under California law and subject to Section 7.03(d) hereto, the City cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement and the Note.

Section 4.11 Priority of Pledge. The Resolution provides the Bank with a valid pledge of the Pledged Property, the priority of which is set forth in the Resolution, and the Bank is required to take no further action to perfect or maintain this pledge.

Section 4.12 Resolution. The Resolution is in full force and effect. The Resolution has not been amended or supplemented except by such amendments or supplements as have previously been delivered to the Bank.

Section 4.13 City Charter. The City Charter is in full force and effect and has not been amended or supplemented except by such amendments or supplements as have previously been disclosed on the City's website located at <http://sanjoseca.gov>.

Section 4.14 Note. As of the Effective Date, the Note has been duly and validly issued under the Resolution and is entitled to the benefits thereof.

Section 4.15 Usury. The terms of this Agreement, the Note and the other Related Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

## ARTICLE V COVENANTS OF THE CITY

During the term of this Agreement, and until the Obligations are paid in full, including full payment of the Note, unless the Bank shall otherwise consent in writing, the City covenants and agrees as follows:

Section 5.01 Notice of Default. As soon as practicable but in any event not more than three (3) Business Days after an Authorized Representative of the City shall have obtained knowledge of the occurrence of an Event of Default or Default provide to the Bank the written statement of an Authorized Representative setting forth the details of each such Event of Default

or Default and, to the extent the City has made any determination with respect thereto, the action which the City proposes to take with respect thereto.

Section 5.02 Compliance With Laws. The City shall comply with all laws, rules and regulations, and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject; provided, however, that the City may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect the City's power and authority to execute and deliver this Agreement, to perform its obligations and pay all amounts payable by it hereunder or under the Note, or to execute and deliver the other Related Documents and to perform its obligations thereunder.

Section 5.03 Resolution. The City agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Resolution, each of which covenants and agreements is, by this reference, incorporated into this Agreement in its entirety together with all defined terms and construction provisions necessary for a correct understanding thereof. The City shall not amend, modify, terminate or grant, or permit the amendment, modification, termination or grant of, any waiver under, or consent to, or permit or suffer to occur any action or omission which results in, or is equivalent to, an amendment, termination, modification, or grant of a waiver under the Resolution which would materially impair the ability of the City to perform its obligations under this Agreement without the prior written consent of the Bank.

Section 5.04 No Impairment. The City will not take any action that would materially impair the City's ability to perform its obligations under this Agreement, the Note and the other Related Documents.

Section 5.05 Budgets; Financial Statements; Reports, Certificates and Other Information. The City shall provide or cause to be provided to the Bank copies of:

(a) As soon as available, a copy of the City's annual budget for the City's Fiscal Year ending June 30, 2019, as said budget shall have been adopted by the City Council;

(b) As soon as available, and, in any event, within two hundred seventy (270) days after the Fiscal Year ended June 30, 2018, the CAFR for Fiscal Year ended June 30, 2018 together with an opinion of the independent accountants who conducted the audit of the financial statements of the City contained in the CAFR, which opinion shall contain no qualifications other than qualifications relating to the implementation of rules issued by the Government Accounting Standards Board (the failure to comply with which would not, in the opinion of the Bank in its sole discretion, individually or in the aggregate, have a material impact on any financial statement line item);

(c) Concurrently with the furnishing of the financial statements described under Section 5.05(b) hereof, a certificate signed by an Authorized Representative stating that (i) the City has complied with all of the terms, provisions and conditions of this Agreement and the other Related Documents, (ii) to the best of his/her knowledge, the City has kept, observed, performed and fulfilled each and every covenant, provision and condition of this Agreement and

the other Related Documents on the City's part to be performed and (iii) no Default or Event of Default has occurred or, if such Default or Event of Default has occurred, specifying the nature of such Default or Event of Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Default or Event of Default;

(d) As soon as practicable, after a written request by the Bank, such other information respecting the affairs, conditions and/or operations, financial or otherwise, of the City as the Bank may from time to time reasonably request;

(e) As soon as available and, in any event, within ten (10) Business Days after adoption by the City Council any changes to the annual budget for the City for the Fiscal Year ending June 30, 2019, including, but not limited to, all interim budget reports, if any, but only to the extent that such changes relate to Property Tax Revenues;

(f) Promptly, notice of (i) any action, suit or proceeding known to it at law or in equity or by or before any governmental instrumentality, entity or other agency or (ii) any pending or threatened in writing investigation by any governmental instrumentality, entity or other agency, which, if adversely determined, would materially impair the ability of the City to carry out its obligations under this Agreement, the Note or any other Related Document or any other document, instrument or agreement required hereunder or thereunder, or would materially and adversely affect its assets or financial condition; and

(g) Promptly, notice of any matter or event which may result in a material adverse change in the City's financial condition or operations.

Section 5.06 Inspection Rights. At any reasonable time and from time to time the City shall permit the Bank or any agents or representatives thereof to examine and make copies of the records and books of account related to the Property Tax Revenues and the transactions contemplated by this Agreement, the Note and the other Related Documents, to visit the City's properties and to discuss its affairs, finances and accounts with any of its officers and independent accountants.

Section 5.07 Use of Proceeds. The City shall use the proceeds of the Note to prepay the City's pension contribution and retiree health benefits to the Federated City Employees' Retirement System and the Police and Fire Department Retirement Plan for the Fiscal Year of the City ending June 30, 2019. Without limiting the foregoing, the City agrees that no part of the proceeds of the Note will be used by the City to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock. The Bank acknowledges that the City does not have any control over how the Note proceeds are invested by the Retirement System or the Police and Fire Plan.

Section 5.08 Existence. The City shall maintain its legal existence and shall not merge or consolidate with or into any other Person.

Section 5.09 Indebtedness and Liens. The City shall not create or suffer to exist any Indebtedness secured by a Lien upon, or with respect to, any of the Pledged Property, except as permitted pursuant to the Resolution.

Section 5.10 Assignments. The City shall not assign, transfer or otherwise convey any interest in the Pledged Property without the prior written consent of the Bank.

Section 5.11 OFAC. 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.

Section 5.12 Further Assurances. From time to time hereafter, the City will execute and deliver such additional instruments, certificates or documents, and will take all such actions as the Bank may reasonably request for the purpose of implementing or effectuating the provisions of this Agreement and the Related Documents or for the purpose of more fully perfecting or renewing the Bank's rights with respect to the Pledged Property.

Section 5.13 Certain Information. The City shall not include in any amendment or supplement to any offering or disclosure document with respect to any Indebtedness, whether offered publicly or private, any information concerning the Bank that is not supplied in writing, or otherwise consented to, by the Bank expressly for inclusion therein, other than the Bank's name and a brief description of this Agreement, which may be included in such offering or other document without the Bank's prior written consent.

Section 5.14 Accuracy of Information. The City agrees that it shall provide the Bank with true, correct and complete copies of the Section 5.05 Documents. The City also agrees that the information contained in the Section 5.05 Documents (excluding any budget materials) will be accurate as of the respective dates of such information. The Director of Finance agrees that, to his or her actual knowledge, without any investigation, the information contained in the Section 5.05 Documents (excluding any budget materials) will be complete in all material respects with respect to the Property Tax Revenues.

Section 5.15 No Immunity. The City agrees that under California law and subject to Section 7.03(d) hereto it cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement or the Note.

Section 5.16 Books and Records. The City agrees that it shall keep proper books of record and account in which full, true, and correct entries in accordance with the City's budget basis, accounting principles and reporting requirements and all requirements of law shall be made of all dealings and transactions relating to the City's general fund.

## ARTICLE VI EVENTS OF DEFAULT; REMEDIES

Section 6.01 Events of Default. Each of the following events shall constitute an "Event of Default" hereunder:

(a) Payments. The City shall (i) default in the payment when due of any principal of the Note; or (ii) default, and such default shall continue unremedied for two (2) or more days, in the payment when due of any interest on the Note or any other Obligation.



(b) Representations Untrue. Any representation, warranty, certification or statement made by the City in this Agreement or in the Resolution shall (in any such case) have been incorrect or untrue in any material respect when made or deemed to have been made.

(c) Covenant Defaults.

(i) The City shall default in the due performance on or observance of any term, covenant or agreement contained in Sections 5.01, 5.03, 5.04, 5.08, 5.09, 5.10 and 5.15 of this Agreement.

(ii) The City shall default in the due performance on or observance of any term, covenant or agreement contained in Section 5.05 of this Agreement and such default, if capable of being remedied, shall remain unremedied for ten (10) days after written notice thereof shall have been given to the City by the Bank.

(iii) The City shall default in the due performance or observance of any term, covenant or agreement contained herein or incorporated herein (other than those described in other provisions of this Section 6.01) and such default, if capable of being remedied, shall remain unremedied for sixty (60) days after written notice thereof shall have been given to the City by the Bank.

(d) Cross Default. The City shall (i) default in any payment of the general obligation Indebtedness described in Exhibit B hereto (collectively, the “GO Indebtedness”) beyond the period of grace (not to exceed thirty (30) days), if any, provided in the instrument or agreement under which such GO Indebtedness was created or (ii) default in the observance or performance of any agreement or condition relating to any GO Indebtedness (other than the Note) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such GO Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such GO Indebtedness to become due prior to its stated maturity.

(e) Cross Acceleration. Any GO Indebtedness shall be declared to be due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof.

(f) Invalidity; Repudiation.

(i) Any material provision of this Agreement, the Note, the Authorizing Law or the Resolution is declared to be null and void by a final non-appealable judgment of court of competent jurisdiction; or

(ii) The City, pursuant to official action on the part of its City Council, shall deny that it has any or further liability or obligation under this Agreement, the Note, the Authorizing Law or the Resolution.

(g) Insolvency, Etc. The City shall become insolvent or admit in writing its inability to pay its debts as they mature or shall declare a moratorium on the payment of its debts

or apply for, consent to or acquiesce in the appointment of a trustee, custodian, liquidator or receiver for itself or any substantial part of its property, or shall take any action to authorize or effect any of the foregoing; or in the absence of any such application, consent or acquiescence, a trustee, custodian, liquidator or receiver shall be appointed for it or for a substantial part of its property or revenues and shall not be discharged within a period of ninety (90) days; or the State or any other Governmental Authority having jurisdiction over the City imposes a debt moratorium, debt restructuring, or comparable restriction on repayment when due and payable of the principal of or interest on any debt by the City; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding shall be instituted by or against the City (or any action shall be taken to authorize or effect the institution by it of any of the foregoing) and if instituted against it, shall be consented to or acquiesced in by it, or shall not be dismissed within a period of ninety (90) days.

(h) Pledge, Etc. The pledge of the Pledged Property created by the Resolution shall fail to provide the Bank, as Note holder, with the security interest in the Pledged Property purported to be provided, or the Bank, as Note holder, shall cease to have a valid security interest in the Pledged Property.

(i) Resolution Default. The City shall default in the due performance or observance of any material term, covenant or agreement contained in the Resolution and the same shall not have been cured within any applicable cure period.

(j) Certain Unsatisfied Judgments. A judgment or court order for the payment of money in excess of \$10,000,000 shall be rendered against the City that is payable from the City's general fund, and such judgment or court order shall continue unsatisfied and in effect for a period of sixty (60) consecutive days without being vacated, discharged, satisfied, or stayed or bonded pending appeal.

(k) Ratings. (i) The long-term rating assigned by Moody's, Fitch or S&P to any long-term, unenhanced GO Indebtedness of the City is reduced below "A3" (or its equivalent), "A-" (or its equivalent) or "A-" (or its equivalent), respectively or (ii) the long-term rating assigned by Moody's, Fitch and S&P to any long-term, unenhanced GO Indebtedness of the City shall be withdrawn or suspended, in either case, due to credit-related reasons.

Section 6.02 Remedies. If any Event of Default shall have occurred and be continuing, the interest on the Note or any portion outstanding shall automatically accrue interest at the Default Rate, and the Bank may by Notice to the City take any or all of the following actions, without prejudice to the rights of the Bank to enforce its claims against the City (provided, that, if an Event of Default specified in Section 6.01(g) shall occur, the result which would occur upon the giving of Notice by the Bank to the City as specified in clauses (i) and (ii) below shall occur automatically without the giving of any such Notice): (i) declare the principal of and any accrued interest in respect of the Note and all other Obligations owing hereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the City; and/or (ii) exercise any other rights or remedies the Bank may have under the Resolution, at law or in equity.

Section 6.03 No Waiver; Cumulative Remedies. No failure or delay on the part of the Bank in exercising any right, power or privilege hereunder, under the Note or under any other Related Document and no course of dealing between the City and the Bank shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder, under the Note or under any other Related Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein, under the Note or in any other Related Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Bank would otherwise have. No notice to or demand on the City in any case shall entitle the City to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Bank to any other or further action in any circumstances without notice or demand.

## ARTICLE VII MISCELLANEOUS

Section 7.01 Amendments. No provision of this Agreement may be amended, modified, changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the parties hereto.

Section 7.02 Assignments. (a) This Agreement shall be binding upon and inure to the benefit of the City and the Bank and their respective successors, endorsees and assigns, except that neither party hereto may assign or transfer their respective rights or obligations hereunder without the prior written consent of the other party except that the Bank may assign its rights hereunder without the consent of the City to an Affiliate of the Bank or to any other Person upon the occurrence and during the continuation of an Event of Default. The Bank may grant a participation to any financial institution in all or any part of, or any interest (undivided or divided) in, the Bank's rights and benefits under this Agreement, the Note and the other Related Documents and, to the extent of that participation, such participant shall, except as set forth in the following clause (ii), have the same rights and benefits against the City hereunder and the Note as it would have had if such participant were a direct party hereto, including, but not limited to, the rights set forth in Section 2.04; provided that (i) no such participation shall affect the obligations of the Bank to purchase the Note as herein provided; (ii) the City shall be required to deal only with the Bank with respect to any matters under this Agreement and no such participant shall be entitled to enforce directly against the City any provision hereunder; (iii) no participant shall be entitled to recover amounts hereunder in excess of any amounts to which the Bank or the Parent is entitled to recover hereunder; and (iv) such participant shall not be any Person registered as an investment company under the Investment Company Act of 1940, as amended.

(b) Notwithstanding the foregoing provisions of this Section 7.02(a), (i) the Bank may assign and pledge all or any portion of the amounts owing to it with respect to the Note to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank; and (ii) any payment in respect of such assigned amounts owed with respect to the Note made by the City to the Bank in accordance with the terms thereof shall satisfy the City's obligations thereunder in respect of such assigned obligation

to the extent of such payment. No such assignment shall release the Bank from its obligations hereunder.

Section 7.03 Governing Law; Waiver of Jury Trial; Waiver of Special Damages; Sovereign Immunity.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE; *PROVIDED*, THAT THE DUTIES AND OBLIGATIONS OF THE CITY UNDER THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT GIVING EFFECT TO CONFLICT OF LAW PRINCIPLES. ANY JUDICIAL PROCEEDING BROUGHT BY OR AGAINST THE BANK WITH RESPECT TO ANY OF THE OBLIGATIONS HEREUNDER, THIS AGREEMENT OR ANY RELATED AGREEMENT MAY BE BROUGHT IN ANY COURT OF COMPETENT JURISDICTION IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, STATE OF NEW YORK, UNITED STATES OF AMERICA, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE BANK ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT.

(b) THE CITY AND THE BANK (BY ITS ACCEPTANCE HEREOF) HEREBY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) BETWEEN THE CITY AND THE BANK ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE NOTE AND THE OTHER RELATED DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE BANK TO PROVIDE THE FINANCING EVIDENCED BY THIS AGREEMENT. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, THE CITY AND THE BANK HEREBY CONSENT TO THE ADJUDICATION OF ANY AND ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE SHALL BE EMPOWERED TO HEAR AND DETERMINE ANY AND ALL ISSUES IN SUCH REFERENCE WHETHER FACT OR LAW. THE CITY AND THE BANK REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND CONSENT AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE FOLLOWING THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL OF ITS CHOICE ON SUCH MATTERS. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(c) THE CITY WAIVES, TO THE EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE UNDERSIGNED MAY HAVE TO CLAIM OR RECOVER FROM THE BANK IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

(d) THE BANK HEREBY RECOGNIZES THAT THE PROCEDURAL REQUIREMENTS AND REMEDIES APPLICABLE TO COMMENCING AN ACTION AGAINST THE CITY DIFFER FROM REQUIREMENTS APPLICABLE TO NONGOVERNMENTAL ENTITIES.

Section 7.04 Severability. If any provision of this Agreement shall be held or deemed to be or shall in fact be illegal, inoperative or unenforceable the same shall not affect any other provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

Section 7.05 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

Section 7.06 Expenses. The City shall pay the reasonable fees and costs of counsel for the Bank not to exceed \$17,500. The City shall also pay (a) all reasonable out-of-pocket expenses of the Bank, including reasonable fees and expenses of counsel retained by the Bank in connection with any waiver or consent hereunder or under any Related Documents or any amendment hereof or thereof; provided that simple amendments (as determined by the Bank in its sole discretion) shall be subject to a fee equal to \$2,500 plus attorney's fees and expenses and more complex amendments (as determined by the Bank in its sole discretion) shall be subject to a fee determined by the Bank on a case-by-case basis; and (b) if any Default or Event of Default occurs, all out-of-pocket expenses incurred by the Bank, including the fees and disbursements of counsel and experts retained by the Bank in connection with such Default or Event of Default and collection and other enforcement proceedings resulting therefrom.

Section 7.07 Indemnification.

(a) To the extent permitted by law, the City agrees to indemnify and hold harmless the Bank and its officers, directors, employees and their agents (each, an "Indemnitee") from and against any and all claims, damages, penalties, actions, losses, liabilities, judgments, suits and reasonable costs or expenses (including, without limitation, reasonable attorney's fees and expenses) whatsoever which an Indemnitee may incur (or which may be claimed against an Indemnitee by any person or entity whatsoever) by reason of or in connection with any action, proceeding or investigation (whether or not the Bank is a party thereto) arising from the entering into and/or performance of this Agreement or any Related Document or the use of the proceeds of the Note or the consummation of any transactions contemplated herein or in any Related Document, including, without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such action, proceeding or investigation (but excluding any such claims, damages, penalties, actions, losses, liabilities, judgments, suits and reasonable costs or expenses, to the extent incurred by reason of the gross negligence or willful misconduct of the Indemnitee).

(b) Promptly after receipt by an Indemnitee of notice of the commencement of any action, proceeding or investigation in respect of which indemnity or reimbursement may be sought as provided above (each, an “Indemnified Claim”), such Indemnitee will notify the City in writing of the receipt or commencement thereof, but the failure of an Indemnitee to notify the City with respect to a particular action, proceeding or investigation shall not relieve the City from any obligation or liability which it may have pursuant to this Section 7.07 with respect to such action, proceeding or investigation, or which it may have otherwise than pursuant to this Agreement with respect to any action, proceeding, or investigation.

(c) The City shall be entitled, at its own expense, to participate in and control the defense of any action, proceeding or investigation with counsel reasonably satisfactory to such Indemnitee. Notwithstanding the preceding sentence, an Indemnitee will be entitled to employ counsel separate from counsel for the City and from any other party in such action, proceeding or investigation and to participate in the action, proceeding, or investigation, and the City shall bear the fees and expenses of such separate counsel (and shall pay such fees and expenses as and when incurred), only if either (i) the Indemnitee shall have reasonably concluded that there may be one or more legal defenses available to it which are different from or additional to those available to the City, or (ii) the City shall not have employed counsel reasonably satisfactory to the Indemnitee to represent the Indemnitee within a reasonable time after the City shall have notice of the institution of any such action, proceeding or investigation. Each Indemnitee shall cause its counsel to cooperate with the City in the defense of any action, proceeding or investigation to the extent consistent with its professional responsibilities. The City shall not be liable for the settlement by any Indemnitee of any action, proceeding or investigation effected without its consent, which consent will not be unreasonably or untimely withheld. The City shall not settle or compromise any action, proceeding or investigation, or permit a default or consent to the entry of any judgment with respect thereto, unless such settlement, compromise, default or consent includes, as an unconditional term thereof, the giving by the party other than the City thereto of an unconditional general release to all Indemnitees from all liability in respect of such action, proceeding, or investigation.

(d) To the extent permitted by law, the City agrees to indemnify and hold the Bank and its officers, directors, employees and their agents harmless (on a net after-tax basis) from any present or future claim or liability for stamp, transfer, documentary, excise or other similar tax and any penalties or interest with respect thereto, which may be assessed, levied or collected by any jurisdiction in connection with the execution, delivery and performance of, or any payment made under, this Agreement, the Note and the other Related Documents, or any amendment thereto.

Section 7.08 Term of the Agreement. Except for the City’s obligations to indemnify the Bank and each Indemnitee, this Agreement shall terminate when all Obligations have been paid in full.

Section 7.09 Notice. Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the City or the Bank shall be deemed or have been sufficiently given or filed for all purposes, if any, when delivered by hand or three (3) Business Days after being sent by registered mail, return receipt requested,

postage prepaid, and if given electronically shall be deemed given when transmitted (receipt electronically confirmed):

If to the City:

City of San Jose — Finance  
200 East Santa Clara Street, 13th Floor  
San Jose, California 95113  
Attention: Debt Management  
Telephone: (408) 535-7010  
Facsimile: (408) 292-6482  
E-mail: [debt.management@sanjoseca.gov](mailto:debt.management@sanjoseca.gov)

If to the Bank:

Bank of America, N.A.  
800 Fifth Avenue, Floor 34  
WA1-501-34-03  
Seattle, WA 98104-3176  
Attention: Nancy Nuereberg, SVP  
Telephone: (206) 358-6279  
Facsimile: (206) 358-8815

or to such other address, telephone number or facsimile number as one party hereto shall notify to the other party hereto.

Section 7.10 Holidays. Except as otherwise provided herein, whenever any payment or action to be made or taken hereunder shall be stated to be due on a day which is not a Business Day, such payment or action shall be made or taken on the next following Business Day, and such extension of time shall be included in computing interest or fees, if any, in connection with such payment or action.

Section 7.11 Survival. All representations, warranties, covenants and agreements of the City contained in this Agreement as amended or supplemented from time to time or made in writing in connection herewith shall survive the execution and delivery hereof shall continue in full force and effect until payment in full of the Obligations, it being understood that the agreements of the City found in Sections 2.04, 2.06, 2.10 and 7.06 hereof shall survive the termination of this Agreement and payment in full of the Obligations.

Section 7.12 USA PATRIOT ACT NOTIFICATION. The following notification is provided to the City pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including

any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for the City: When the City opens an account, if the City is an individual the Bank will ask for the City's name, taxpayer identification number, residential address, date of birth, and other information that will allow the Bank to identify the City, and if the City is not an individual the Bank will ask for the City's name, taxpayer identification number, business address, and other information that will allow the Bank to identify the City. The Bank may also ask, if the City is an individual to see the City's driver's license or other identifying documents, and if the City is not an individual to see the City's legal organizational documents or other identifying documents.

Section 7.13 No Liability. The City agrees that none of the Bank, its officers, directors, employees and their agents shall have any liability or responsibility for the acts or omissions of the City in respect of its use of this Agreement or any amounts made available by the Bank hereunder. The Bank agrees that none of the City, its officers, City Council members, employees and their agents shall have any liability or responsibility for the acts or omissions of the Bank in respect of the performance of the Bank's obligations under this Agreement.

Section 7.14 No Advisory or Fiduciary Relationship. In connection with all aspects of the transactions contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any Related Document), the City acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the services regarding this Agreement provided by the Bank and any Affiliate thereof are arm's-length commercial transactions between the City, on the one hand, and the Bank and its Affiliates, on the other hand, (ii) the City has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the City is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the Related Documents; (b) (i) the Bank and its Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the City, or any other Person and (ii) neither the Bank nor any of its Affiliates has any obligation to the City with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Related Documents; and (c) the Bank and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the City, and neither the Bank nor any of its Affiliates has any obligation to disclose any of such interests to the City. To the fullest extent permitted by law, the City, hereby waives and releases any claims that it may have against the Bank or any of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

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



IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement, effective as of the day and year first above written.

CITY OF SAN JOSE

By: \_\_\_\_\_  
Name: Julia H. Cooper  
Title: Director of Finance

Approved as to form:

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

-Signature Page-

2018 NOTE PURCHASE AGREEMENT

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**

BANK OF AMERICA, N.A.

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

Name: Nancy D. Nuerenberg

Title: Senior Vice President

-Signature Page-

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**

**EXHIBIT A**

**LIST OF INFORMATION PROVIDED BY THE CITY  
TO BANK OF AMERICA, N.A. PURSUANT TO SECTION 4.07**

1. City's CAFR for the Fiscal Year ended June 30, 2017.
2. Cash Flow Projections.

## **EXHIBIT B**

### **LIST OF GENERAL OBLIGATION INDEBTEDNESS OF THE CITY**

1. Series 2001 (Libraries and Parks Project);
2. Series 2002 (Libraries, Parks and Public Safety Projects);
3. Series 2004 (Libraries, Parks and Public Safety Projects);
4. Series 2005 (Libraries and Public Safety Projects);
5. Series 2006 (Libraries and Parks Projects);
6. Series 2007 (Parks and Public Safety Projects);
7. Series 2008 (Libraries and Parks Projects); and
8. Series 2009 (Public Safety Projects).

**EXHIBIT C**

**NOTICE OF CONVERSION**

[insert date]

Bank of America, N.A.  
[insert address]

Attention: [insert contact]

Ladies and Gentlemen:

The undersigned, City of San Jose, California (the “City”), refers to the Note Purchase Agreement, dated July 2, 2018 (as amended from time to time, the “Agreement”; the terms defined therein being used herein as therein defined), between the undersigned and Bank of America, N.A. (the “Bank”), hereby gives you notice pursuant to Section 2.02 of the Agreement of the Conversion specified herein, that:

1. The Conversion Date is \_\_\_\_\_, 20\_\_\_\_, which date is a Business Day<sup>1</sup>.
2. The aggregate amount of the [Fixed Rate LIBOR Loan][Variable Rate LIBOR Loan] to be converted is \$\_\_\_\_\_ to a [Fixed Rate LIBOR Loan][Variable Rate LIBOR Loan].

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the proposed Conversion Date, before and after giving effect thereto and to the application of the proceeds therefrom:

(a) The representations and warranties of the City contained in the Agreement are correct in all material respects on and as of the Conversion Date as though made on and as of such date, other than any such representation or warranty which relates to a specified prior date or to the extent that the Bank has been notified in writing by the City that any representation or warranty is not correct and the Bank has explicitly waived in writing compliance with such representation or warranty; and

(b) No Default or Event of Default has occurred and is continuing, or would result from such proposed Conversion.

CITY OF SAN JOSE

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

<sup>1</sup> Note: In the case of a Conversion of a Fixed Rate LIBOR Loan to a Variable Rate LIBOR Loan, breakage costs may be due and payable in accordance with Section 2.06 of the Agreement if the Conversion Date is not the last day of the then current Interest Period.

**EXHIBIT D**  
**NOTICE OF PREPAYMENT**

[insert date]

Bank of America, N.A.  
[insert address]

Attention: [insert contact]

Ladies and Gentlemen:

The undersigned, City of San Jose, California (the “City”), refers to the Note Purchase Agreement, dated July 2, 2018 (as amended from time to time, the “Agreement”; the terms defined therein being used herein as therein defined), between the undersigned and Bank of America, N.A. (the “Bank”), hereby gives you notice pursuant to Section 2.07 of the Agreement of a prepayment:

1. The Prepayment Date is \_\_\_\_\_, 20 \_\_, which date is a Business Day<sup>2</sup>.
2. The aggregate amount in which the Note is to be prepaid on the Prepayment Date is \$ \_\_\_\_\_.
3. Pursuant to the terms of the Note Purchase Agreement, the portion of the Note to be prepaid prior to the Prepayment Date pays interest at the rate set forth in clause [(i)][(ii)][(iii)] of the definition of “Interest Rate” .

The undersigned hereby certifies that the preceding statements are true on the date hereof, and will be true on the proposed Prepayment Date.

CITY OF SAN JOSE

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

---

<sup>2</sup> Note: In the case of a prepayment of a Fixed Rate LIBOR Loan, breakage costs may be due and payable in accordance with Section 2.06 of the Agreement if the Prepayment Date is not the last day of the then current Interest Period.

**EXHIBIT E**  
**FORM OF PURCHASER LETTER**

July 2, 2018

City of San Jose — Finance  
200 East Santa Clara Street, 13th Floor  
San Jose, California 95113

Attention: Debt Management

Re: Purchaser Letter

Sir or Madam:

Reference is hereby made to that certain Note Purchase Agreement, dated July 2, 2018 (as amended from time to time, the “Note Purchase Agreement”; the terms defined therein being used herein as therein defined), between the City of San Jose (the “City”) and Bank of America, N.A. (the “Bank”).

In connection with the Note Purchase Agreement, the Bank hereby represents, warrants to and agrees with the City that:

1. The Bank has authority to purchase the Note and to enter into the Note Purchase Agreement on a private placement basis without provision by the City of an official statement or other offering document;

2. The Bank has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the Note and is able to bear the economic risks of such investment;

3. The Note is being acquired by the Bank for investment and not with a view to, or for resale in connection with, any distribution of the Note. The Bank intends to hold the Note for its own investment portfolio, and acknowledges that the Note is non-negotiable. Unless an Event of Default has occurred and is continuing, the Bank cannot transfer, sell, assign or create a participation in the Note prior to maturity to any Person other than an Affiliate of the Bank without the prior written consent of the City;

4. The Bank understands that the Note is not registered under the Securities Act of 1933 and that such registration is not legally required as of the date hereof; and further understands that the Note (a) is not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state; (b) will not be listed on any stock or other securities exchange; (c) will not carry a rating from any rating service; and (d) will be delivered in a form which is non-negotiable and, except as provided in paragraph 3 above, is non-transferable;

5. The Bank acknowledges that it has either been supplied with or been given access to information to which a reasonable investor would attach significance in making investment

decisions, and the Bank has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the financial condition of the City, the Note and the security therefor so that, as a reasonable investor, the Bank has been able to make an informed investment decision to purchase the Note;

6. The Bank acknowledges that the obligation of the City to pay debt service on the Note is an obligation payable solely from Property Tax Revenues and Additional Revenues; and

7. The Bank has made its own inquiry and analysis with respect to the Note and the security therefor, and other material factors affecting the security and payment of the Note.

BANK OF AMERICA, N.A.

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

Name: Nancy D. Nuerenberg

Title: Senior Vice President



## CITY CLERK'S CERTIFICATE

I, Toni J. Taber, CMC, City Clerk of the City of San José, hereby certify as follows:

The foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of the City Council of said City duly, regularly and legally held at the San José City Hall, 200 E. Santa Clara Street, San José, California, on June 19, 2018 and entered into the minutes thereof, of which meeting all of said members of the Council had due notice and at which a quorum thereof were present.

At said meeting said resolution was adopted by the following vote:

Ayes:

Noes:

Absent:

Disqualified:

An agenda of said meeting was posted at least 72 hours before said meeting at 200 E. Santa Clara Street, San José, California, a location freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda.

I have carefully compared the foregoing with the original synopsis of said meeting on file and of record in my office. Said original resolution has not been amended, modified or rescinded since the date of its adoption, and the same is now in full force and effect.

Dated: July 2, 2018

---

City Clerk of the City of San José, California