

IRREVOCABLE REFUNDING INSTRUCTIONS (Libraries, Parks, and Public Safety Projects)

These IRREVOCABLE REFUNDING INSTRUCTIONS (these "Instructions"), dated _____, 2019, are given by the CITY OF SAN JOSE, (the "City"), to WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, acting as fiscal agent (the "Prior Fiscal Agent") for the hereinafter defined Refunded Bonds;

W I T N E S S E T H :

WHEREAS, an election was duly and regularly held in the City on November 7, 2000, at which there was submitted to the qualified electors of the City the proposition of whether bonds should be issued in the principal amount of not to exceed \$211,790,000 for the purpose of acquiring property for and constructing improvements to the neighborhood library facilities throughout the City (the "Libraries Proposition"), which proposition was entitled "San José Neighborhood Libraries Bond"; and

WHEREAS, more than two-thirds of the votes cast at said election were in favor of the issuance of said bonds (the "Libraries Bonds"); and

WHEREAS, an election was duly and regularly held in the City on November 7, 2000, at which there was submitted to the qualified electors of the City the proposition of whether bonds should be issued in the principal amount of not to exceed \$228,030,000 for the purpose of acquiring property for and constructing improvements to parks and recreation facilities (the "Parks Proposition"), which proposition was entitled "San José Safe Neighborhood Parks and Recreation Bond"; and

WHEREAS, more than two-thirds of the votes cast at said election were in favor of the issuance of said bonds (the "Parks Bonds"); and

WHEREAS, an election was duly and regularly held in the City on March 5, 2002, at which there was submitted to the qualified electors of the City the proposition of whether bonds should be issued in the principal amount of not to exceed \$159,000,000 for the purpose of acquiring property for and constructing improvements in order to add and improve police and fire stations and training facilities and to create state of the art 911 communications facilities (the "Public Safety Proposition"), which proposition was entitled "San José 911, Fire, Police, Paramedic, and Neighborhood Security Act"; and

WHEREAS, more than two-thirds of the votes cast at said election were in favor of the issuance of said bonds (the "Public Safety Bonds"); and

WHEREAS, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2001 in a principal amount equal to \$71,000,000, with \$31,000,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition and \$40,000,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition; and

WHEREAS, pursuant to the authorizations received at the November 7, 2000 election and the March 5, 2002 election, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of July 1, 2002 in a principal amount equal to \$116,090,000, with \$30,000,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition, \$46,715,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition and \$39,375,000 of such bonds constituting Public Safety Bonds issued pursuant to the Public Safety Proposition; and

WHEREAS, pursuant to the authorizations received at the November 7, 2000 election and the March 5, 2002 election, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of July 1, 2004, in a principal amount equal to \$118,700,000, with \$58,300,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition, \$46,000,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition and \$14,400,000 of such bonds constituting Public Safety Bonds issued pursuant to the Public Safety Proposition; and

WHEREAS, pursuant to the authorization for Libraries Bonds received at the November 7, 2000 election, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2005, in a principal amount equal to \$46,300,000, with \$21,300,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition and \$25,000,000 of such bonds constituting Public Safety Bonds issued pursuant to the Public Safety Proposition; and

WHEREAS, pursuant to the authorizations received at the November 7, 2000 election, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2006, in a principal amount equal to \$105,400,000, with \$60,000,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition and \$45,400,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition; and

WHEREAS, pursuant to the authorization for Parks Bonds received at the November 7, 2000 election, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2007, in a principal amount equal to \$90,000,000, with \$22,100,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition, and \$67,900,000 of such bonds constituting Public Safety Bonds issued pursuant to the Public Safety Proposition; and

WHEREAS, pursuant to the authorizations received at the November 7, 2000 election, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2008, in a principal amount equal to \$33,100,000, with \$5,285,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition and \$27,815,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition; and

WHEREAS, pursuant to the authorizations received at the March 5, 2002 election, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2009, in a principal amount equal to \$9,000,000, all of which were Libraries Bonds issued pursuant to the Libraries Proposition; and

WHEREAS, the City has determined that it is in the best financial interests of the City to refund, at this time, that portion of the outstanding general obligation bonds described above that are more particularly listed in Schedule B hereto (collectively, the "Refunded Bonds"), through the issuance of the Refunding Bonds (defined below); and

WHEREAS, in order to provide funds for such purpose, among other purposes, the City is issuing its City of San José General Obligation Bonds, Series 2019C (Refunding, Libraries, Parks and Public Safety Projects) (the "Tax-Exempt Refunding Bonds") and applying a portion of the proceeds thereof to defease and redeem a portion of the Refunded Bonds;

WHEREAS, in order to provide funds for such purpose, among other purposes, the City is issuing its City of San José Taxable General Obligation Bonds, Series 2019D (Refunding, Libraries, Parks and Public Safety Projects) (the "Taxable Refunding Bonds" and, together with the Tax-Exempt Refunding Bonds, the "Refunding Bonds"), and applying a portion of the proceeds thereof to defease and redeem a portion of the Refunded Bonds; and

WHEREAS, the Refunding Bonds are being issued pursuant to a Fiscal Agent Agreement dated as of _____ 1, 2019 (the "Fiscal Agent Agreement") between the City and _____, as fiscal agent (the "Fiscal Agent"); and

WHEREAS, the City wishes to give these Instructions to the Prior Fiscal Agent for the purpose of providing the terms and conditions relating to the deposit and application of moneys to provide for the payment and redemption of the Refunded Bonds;

NOW, THEREFORE, the City hereby irrevocably instructs the Prior Fiscal Agent as follows:

Section 1. Establishment of the Escrow Account and Subaccounts. The Prior Fiscal Agent is hereby directed to establish a special account known as the "Refunded Bonds Escrow Account" (the "Escrow Account"). All amounts on deposit in the Escrow Account are hereby irrevocably pledged as a special trust fund for the redemption of all of the Refunded Bonds to be refunded on _____, 2019. Neither the Prior Fiscal Agent nor any other person shall have a lien upon or right of set off against the amounts at any time on deposit in the Escrow Account, and such amounts shall be applied only as provided herein.

The Prior Fiscal Agent is hereby directed to establish, within the Escrow Account, a subaccount for the receipt of proceeds of the Tax-Exempt Refunding Bonds known as the "Tax-Exempt Escrow Subaccount" (the "Tax-Exempt Subaccount") and a subaccount for the receipt of proceeds of the Taxable Refunding Bonds known as the "Taxable Escrow Subaccount" (the "Taxable Subaccount").

Section 2. Deposits into the Escrow Subaccounts; Investment of Amounts. Concurrently with delivery of the Refunding Bonds, the City shall cause to be deposited in the Escrow Account the amount of \$_____ in immediately available funds to be derived from a portion of the proceeds of sale of the Refunding Bonds, \$_____ of which will be deposited in the Tax-Exempt Subaccount, and \$_____ of which will be deposited in the Taxable Subaccount.

The Prior Fiscal Agent will, on _____, 2019, use \$_____ of such amount to purchase certain securities and investments for the Escrow Account, all as listed on Schedule A attached hereto and made a part hereof (which securities the City represents are non-callable Defeasance Obligations, as defined in each of the fiscal agent agreements pursuant to which the Refunded Bonds were authorized, maturing on the dates and in the amounts necessary to make the payments described in Section 3 below), and will retain \$_____ in cash uninvested in the Escrow Account.

The City certifies that by making the deposits described herein, it is discharging the Refunded Bonds pursuant to Section 9.03 of the fiscal agent agreements pursuant to which they were authorized, respectively.

Section 3. Proceedings for Redemption of Refunded Bonds. The City hereby irrevocably elects, and directs the Prior Fiscal Agent, to redeem, from amounts on deposit in the Escrow Account, on _____, 2019, the Refunded Bonds pursuant to the provisions of Section 2.03(a) of the respective fiscal agent agreement pursuant to which the Refunded Bonds were issued.

The Prior Fiscal Agent hereby confirms that it has previously given notice of redemption of the Refunded Bonds identified in Schedule B hereto in accordance with the requirements of Section 2.03 of the respective fiscal agent agreement pursuant to which the Prior Bonds were issued, and has posted the notices of redemption to the Municipal Securities Rulemaking Board Electronic Municipal Market Access (EMMA) system accessible at the emma.msrb.org website.

The Prior Fiscal Agent shall, upon receipt of the amounts set forth in Section 2 above, send to the owners of the Refunded Bonds notices of defeasance as applicable, in the form attached hereto as Exhibit A (the "Defeasance Notices"), and post the Defeasance Notices to the Municipal Securities Rulemaking Board Electronic Municipal Market Access (EMMA) system accessible at the emma.msrb.org website.

The sole remedy available for failure to post such notices of redemption and defeasance on EMMA shall be an action by holders of the Refunded Bonds in mandamus for specific performance or similar remedy to compel performance.

Section 4. Application of Funds. The Prior Fiscal Agent shall apply the amounts on deposit in the Escrow Accounts to redeem the Bonds on _____, 2019 at a price equal to 100% of the principal amount thereof plus accrued and unpaid interest, all in accordance with Section 2.03(a) of the respective prior fiscal agent agreements.

Section 5. Transfer of Remaining Funds. On _____, 2019, following the payment and redemption described above and payment of any amounts then owed to the Prior Fiscal Agent, the Prior Fiscal Agent shall transfer any amounts in the Escrow Account to the Bond Service Fund established under the Fiscal Agent Agreement, to be used solely for the purpose of paying interest on the Refunding Bonds. Funds in the Tax-Exempt Subaccount transferred to the Bond Service Fund shall only be used for payment on the Series 2019C Bonds.

Section 6. Amendment. These Instructions shall be irrevocable by the City. These Instructions may be amended or supplemented by the City, but only upon the filing by the City with the Prior Fiscal Agent of (a) an opinion of nationally recognized bond counsel engaged by the City stating that such amendment or supplement will not, of itself, adversely affect the exclusion from gross income of interest on the Refunded Bonds or the Refunding Bonds under federal income tax law and that such amendment, if the holders of a majority in aggregate principal amount of the Refunded Bonds are not consenting to such amendment, does not materially adversely affect the interests of such holders, and (b) a certification of an independent accountant or independent municipal advisor engaged by the City stating that such amendment or supplement will not affect the sufficiency of funds invested and held hereunder to make the payments required by Section 4.

Section 7. Application of Certain Terms of the Prior Fiscal Agent Agreement. All of the terms of the respective fiscal agent agreements pursuant to which the Refunded Bonds were issued relating to the payment of principal of and interest and repayment premium, if any, on the Refunded Bonds and the redemption thereof, and the protections, immunities and limitations from liability afforded the Prior Fiscal Agent, are incorporated in these Instructions as if set forth in full herein.

Section 8. Counterparts. These Instructions may be signed in several counterparts, each of which will constitute an original, but all of which will constitute one and the same instrument.

Section 9. Governing Law. These Instructions shall be construed in accordance with and governed by the laws of the State of California.

CITY OF SAN JOSE

By: _____
Director of Finance

ACCEPTED:

**WELLS FARGO BANK,
NATIONAL ASSOCIATION,**
as Prior Fiscal Agent

By: _____
Authorized Officer

ACKNOWLEDGED:

_____,
as Fiscal Agent

By: _____
Authorized Officer

SCHEDULE A

ESCROW ACCOUNT INVESTMENTS

<u>Type</u> <u>(CUSIP)</u>	<u>Coupon</u>	<u>Maturity</u>	<u>Par Amount</u>	Total Purchase <u>Price</u>
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SCHEDULE B

DEFEASED BONDS

<u>Maturity Date</u> <u>(September 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>CUSIP</u> [†]
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[†] CUSIP® is a registered trademark of the American Bankers Association. CUSIP® data herein is provided by Standard & Poor's CUSIP Service Bureau. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Service Bureau. CUSIP® numbers are provided for convenience of reference only. Neither the City nor the Fiscal Agent take any responsibility for the accuracy of such numbers.

EXHIBIT A

NOTICE OF DEFEASANCE

**City of San José
General Obligation Bonds
Series _____
(_____)**

NOTICE IS HEREBY GIVEN, in connection with the issuance and delivery of the captioned bonds (the "Bonds"), and the Irrevocable Refunding Instructions dated _____, 2019 from City of San José (the "City") to Wells Fargo Bank, National Association, as fiscal agent for the Bonds (the "Fiscal Agent"), that the Bonds have been defeased and discharged under and within the meaning of the documents pursuant to which the Bonds were issued. The Bonds that have been defeased consist of the following maturities:

Maturity Date (September 1)	Principal Amount	Interest Rate	CUSIP[†]
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Funds for the payment of the redemption price of the Bonds on _____, have been deposited with the Fiscal Agent, and the sufficiency of the funds and investments for the purpose of paying the principal and redemption price of and interest on the Bonds has been verified by _____, certified public accountants.

The City has irrevocably elected to redeem all of the outstanding Bonds on _____, 2019, at a redemption price equal to the par amount thereof, together with accrued interest thereon to the redemption date, without premium.

Dated: _____, 2019

Wells Fargo Bank, National Association,
as Fiscal Agent for the Bonds

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