

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE PROVIDING FOR THE BORROWING OF FUNDS FOR FISCAL YEAR 2021-22 AND THE ISSUANCE AND SALE OF THE CITY OF SAN JOSE 2021 TAX AND REVENUE ANTICIPATION NOTE IN AN AMOUNT NOT TO EXCEED \$285,000,000, 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 \$285,000,000 is currently needed by the City in Fiscal Year 2021-22 to satisfy obligations of the City payable from the General Fund of the City (the "General Fund") during Fiscal Year 2021-22 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 2021-22 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 \$285,000,000 for such purpose by the issuance and sale of its 2021 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 2021-22 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 2021-22; 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 1, 2021 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 2021-22 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 2021-22, the City hereby determines at this time to and shall borrow the aggregate principal sum of not to exceed \$285,000,000 by the issuance of a temporary note under the Law, designated the "City of San José 2021 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, and shall mature and be payable as provided in the Note Purchase Agreement, provided that the interest rate thereon shall be a fixed and/or 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 his or 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.

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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 Note ("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 fixed and/or 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 \$285,000,000.

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.

ADOPTED this _____ day of June, 2021, 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

\$285,000,000

ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON OTHER THAN THE REGISTERED OWNER IS WRONGFUL so long as the Registered Owner hereof has an interest herein. This Note is non-negotiable and the Registered Owner hereof 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
2021 Tax and Revenue Anticipation Note**

<u>INTEREST RATE</u>		<u>DATED DATE</u>	<u>MATURITY DATE</u>
Fixed Rate Loan:	____%	July 1, 2021	June 30, 2022
Variable Rate LIBOR Loan and One- Month LIBOR Loan:	Variable		

REGISTERED OWNER: BANK OF AMERICA, N.A.

PRINCIPAL AMOUNT: TWO HUNDRED EIGHTY-FIVE MILLION DOLLARS

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 Two Hundred Eighty-Five Million Dollars (\$285,000,000) in lawful money of the United States of America, on June 30, 2022, together with interest on the principal amount outstanding hereunder from time to time at the rate or rates per annum set forth above as provided in that certain Note Purchase Agreement (the "Note Purchase Agreement") by and between the City and the Bank dated July 1, 2021 (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 30, 2022 and on such other dates as required pursuant to the Note Purchase Agreement; provided that the address may be changed pursuant to the terms of the Note Purchase Agreement. The principal of and interest 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 2021 Tax and Revenue Anticipation Note" (the "Note"), in the aggregate principal amount of Two Hundred Eighty-Five Million Dollars (\$285,000,000), comprised of a Fixed Rate Loan in the amount of _____ Dollars (\$_____), and a Variable Rate LIBOR Loan or One-Month LIBOR Loan in the amount of _____ Dollars (\$_____), 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 _____, 2021 (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, all as of the first day of July, 2021.

CITY OF SAN JOSE

By:

Its: Director of Finance

Countersigned:

By:

Its: City Clerk

CERTIFICATE OF AUTHENTICATION

This Note is the City of San José, California 2021 Tax and Revenue Anticipation Note described in the within mentioned Resolution.

Date of Authentication: July 1, 2021

Director of Finance

EXHIBIT B

FORM OF NOTE PURCHASE AGREEMENT

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 __, 2021 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 1, 2021

City Clerk of the City of San José, California