

FEE AGREEMENT

This FEE AGREEMENT dated [____], 2023 (as amended, restated, supplemented or otherwise modified from time to time, this “*Fee Agreement*”), is by and between the CITY OF SAN JOSÉ CALIFORNIA (the “*City*”) and JPMORGAN CHASE BANK, N.A. (together with its successors and assigns, the “*Lender*”).

Reference is made to the Revolving Credit Agreement, dated as of [____], 2023 (as amended, restated, supplemented or otherwise modified from time to time, the “*Agreement*”), entered into between the City and the Lender. Capitalized terms not otherwise defined herein have the meanings set forth in the Agreement.

This Fee Agreement is the Fee Agreement referenced in the Agreement and the terms of this Fee Agreement are incorporated by reference into the Agreement. This Fee Agreement and the Agreement are to be construed as one agreement between the City and the Lender, and all obligations hereunder are to be construed as obligations thereunder. All references to amounts due and payable under the Agreement will be deemed to include all amounts, fees and expenses payable under this Fee Agreement.

Article I FEES.

Section 1.1 Undrawn Fees. The City agrees to pay to the Lender, in immediately available funds, for the period from and including the Effective Date to and including the earlier of the Maturity Date and the date the Commitment is terminated in full (the “*Commitment End Date*”), commencing on [April 3, 2023]¹ and in arrears on the first Business Day of each July, October, January and April occurring thereafter to the Commitment End Date, and on the Commitment End Date, a non-refundable undrawn fee (the “*Undrawn Fee*”) in an amount equal for each day during such calculation period to the product of (x) the rate per annum associated with the Total Commitment Utilization (as defined below) as specified in the applicable Level in the pricing matrix below under the column captioned “Undrawn Fee Rate” (the “*Undrawn Fee Rate*”) and in effect on such day, (y) the Unutilized Commitment (as defined below) for such day and (z) a fraction the numerator of which is 1 and denominator of which is 360; *provided, that*, upon the occurrence, and at all times during the continuation, of an Event of Default, the Undrawn Fee Rate shall be equal to the Default Rate.

<u>LEVEL</u>	<u>TOTAL COMMITMENT UTILIZATION</u>	<u>UNDRAWN FEE RATE</u>	<u>APPLICABLE RATE</u>	
			<u>TERM BENCHMARK/ RFR BORROWING</u>	<u>ABR BORROWING</u>
Level 1:	≥ 25%	0.57%	1.425%	0.425%
Level 2:	< 25%	0.60%	1.500%	0.500%

¹ **NTD:** To be the date that is the first Business Day after the last day of the first fiscal quarter ending after the Effective Date.

The term “*Total Commitment Utilization*” as used in this Fee Agreement means, for any day, the quotient obtained by dividing (x) the Revolving Credit Exposure as of 5:00 p.m. New York City time on such day by (y) the Commitment in effect at as of 5:00 p.m. New York City time on such day.

The term “*Unutilized Commitment*” as used in this Fee Agreement means, for any day, the number obtained by subtracting the Revolving Credit Exposure as of 5:00 p.m. New York City time on such day from the Commitment in effect at as of 5:00 p.m. New York City time on such day.

The term “*Applicable Rate*” as used in the Agreement and this Fee Agreement means, for any Interest Period, the rate per annum associated with the Total Commitment Utilization in effect for each day during each such Interest Period as specified in the applicable Level in the pricing matrix set forth in Section 1.1 above under the column captioned “Applicable Rate” with respect to an ABR Borrowing or a Term Benchmark Borrowing or, if a Term Benchmark Borrowing is not available under the Agreement, a RFR Borrowing, as applicable.

Section 1.2 Letter of Credit Fees. The City agrees to pay to the Lender, in immediately available funds, for the period from and including the date of issuance of each Letter of Credit to but excluding the date such Letter of Credit is terminated (the “*LC Termination Date*”), commencing on [April 3, 2023]² and in arrears on the first Business Day of each July, October, January and April occurring thereafter to the LC Termination Date, and on the LC Termination Date, a non-refundable undrawn fee (the “*LC Facility Fee*”) in an amount equal for each day during such calculation period to the product of (x) 1.00% per annum (the “*LC Facility Fee Rate*”), (y) the stated amount of such Letter of Credit as of 5:00 p.m. New York City time on such day and (z) a fraction the numerator of which is 1 and denominator of which is 360; *provided, that*, upon the occurrence, and at all times during the continuation, of an Event of Default, the LC Facility Fee Rate shall be equal to the Default Rate.

Section 1.3 Amendment, Waiver or Consent Fees. The City agrees to pay to the Lender on the date on which the City requests from the Lender (i) an amendment, supplement or modification to the Agreement or any other Basic Document, (ii) a consent under, or a waiver of any provision of, the Agreement or any other Basic Document or (iii) the transfer of any Letter of Credit, a non-refundable fee to be determined by the Lender at the time of such amendment, supplement or modification or waiver or consent or transfer, but in any event at a minimum of \$3,000, plus, in each case, the reasonable fees and expenses of legal counsel to the Lender.

Section 1.4 Termination Fee; Reduction Fee.

(a) The City hereby agrees to pay to the Lender a termination fee in connection with any termination of the Commitment by the City prior to the date that is two (2) years after the Effective Date (such date, the “*Permitted Termination Date*”), in an amount equal to the product

² **NTD:** To be the date that is the first Business Day after the last day of the first fiscal quarter ending after the Effective Date.

of (1) the Undrawn Fee Rate specified in Level 2, (2) the Commitment (without regard to any outstanding Loans, Letters of Credit or Reimbursement Obligations) and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such termination to but excluding the Permitted Termination Date, and the denominator of which is 360 (the “*Termination Fee*”), which Termination Fee shall be paid on or before the date of such termination; *provided, however*, that no Termination Fee shall be payable if the Commitment is terminated prior to the Permitted Termination Date (i) as a result of the Lender requesting compensation for increased costs or loss of return from the City pursuant to Section 8.01 of the Agreement as a result of a Change in Law, unless the City replaces the Commitment with an Other Credit Agreement provided by a bank or other financial institution that is also subject to the effects of such Change in Law, in which case the Termination Fee shall be payable, (ii) in the event the long-term credit rating assigned to the Lender by any of Moody’s, Fitch or S&P is reduced below “A3” (or its equivalent) by Moody’s, “A-” (or its equivalent) by S&P or “A-” (or its equivalent) by Fitch, respectively, or (iii) in the event the Lender fails to make any Loan required to be made under the Agreement, issue any Letter of Credit required to be issued under the Agreement or honor a properly presented and conforming draw under any Letter of Credit in accordance with the terms of the Agreement. No termination in full of the Commitment shall become effective unless and until all amounts payable by the City to the Lender under the Agreement and this Fee Agreement (including without limitation the amount payable, if any, pursuant to this Section 1.4(a)) have been paid in full in immediately available funds.

(b) The City agrees not to permanently reduce the Commitment below the Commitment in effect as of the Effective Date prior to the Permitted Termination Date, without the payment by the City to the Lender of a reduction fee (the “*Reduction Fee*”) in connection with each and every permanent reduction of the Commitment in an amount equal to the product of (1) the Undrawn Fee Rate specified in Level 2, (2) the amount of the permanent Commitment reduction and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such permanent reduction to the Permitted Termination Date, and the denominator of which is 360; *provided, however*, that no Reduction Fee shall be payable if the Commitment is permanently reduced prior to the Permitted Termination Date (i) as a result of the Lender requesting compensation for increased costs or loss of return from the City pursuant to Section 8.01 of the Agreement as a result of a Change in Law, (ii) in the event the long-term credit rating assigned to the Lender by any of Moody’s, Fitch or S&P is reduced below “A3” (or its equivalent) by Moody’s, “A-” (or its equivalent) by S&P or “A-” (or its equivalent) by Fitch, respectively or (iii) in the event the Lender fails to make any Loan required to be made under the Agreement, issue any Letter of Credit required to be issued under the Agreement or honor a properly presented and conforming draw under any Letter of Credit in accordance with the terms of the Agreement. Under no circumstances shall the City permanently reduce the Commitment below the Revolving Credit Exposure unless in connection with such permanent reduction the City reduces the Revolving Credit Exposure (whether by prepayment of Loans or return and cancellation of Letters of Credit) so that after giving effect to such permanent reduction the Revolving Credit Exposure is not greater than the reduced Commitment.

Section 1.5 Default Rate. For purposes of this Fee Agreement and the Agreement, “*Default Rate*” means, (i) with respect to any Loans, the then applicable Adjusted Term SOFR Rate, Alternate Base Rate or, to the extent that the Term SOFR Rate is not available under the

Agreement, Adjusted Daily Simple SOFR plus the Applicable Rate plus three percent (3%), (ii) with respect to any Letter of Credit, the LC Facility Fee Rate plus three percent (3%) and (iii) with respect to the Unutilized Commitment, the then applicable Undrawn Fee Rate plus one percent (1%).

Article II MISCELLANEOUS.

Section 2.1 Legal Fees. The City shall pay the reasonable legal fees and expenses of the Lender incurred in connection with the initial preparation and negotiation of the Agreement, this Fee Agreement and certain other Basic Documents in an amount not to exceed \$ _____ plus disbursements.

Section 2.2 Amendments. No amendment to this Fee Agreement will become effective without the prior consent of the City and the Lender, which consent must be in writing and signed by the Lender and an Authorized Officer of the City.

Section 2.3 Governing Law. This Fee Agreement shall be deemed to be a contract under, and for all purposes shall be governed by, and construed and enforced in accordance with, the laws of the State of California without giving effect to conflicts of laws provisions; *provided* that the obligations of the Lender hereunder shall be governed by the laws of the State of New York without giving effect to conflicts of laws provisions.

Section 2.4 Counterparts. This Fee Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Fee Agreement may be delivered by the exchange of signed signature pages by facsimile transmission or by attaching a pdf copy to an email, and any printed or copied version of any signature page so delivered will have the same force and effect as an originally signed version of such signature page.

Section 2.5 Severability. If any provision of this Fee Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Fee Agreement shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers or representatives thereunto duly authorized on the date first set forth above.

CITY OF SAN JOSÉ, CALIFORNIA

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Approved as to form:

NORA FRIMANN, City Attorney

By: _____

Chief Deputy City Attorney

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____