

FIRST AMENDMENT TO INSTALLMENT SALE AGREEMENT

This FIRST AMENDMENT TO INSTALLMENT SALE AGREEMENT (together with any amendments hereof and supplements hereto, this "First Amendment"), dated as of April 1, 2023, is between the CITY OF SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), as seller, and the CITY OF SANTA CLARA, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California (the "City"), as purchaser.

RECITALS

A. The Corporation and the City entered into an Installment Sale Agreement dated as of June 1, 2020 (the "Original Agreement"), in order to finance the construction of the Project (as defined in the Original Agreement).

B. For the purpose of obtaining the moneys required to finance the construction of the Project, the Corporation assigned and transferred certain of its rights under the Original Agreement to JPMorgan Chase Bank, N.A. (the "Assignee"), under an Assignment Agreement dated as of June 1, 2020, among the City, the Corporation and the Assignee.

C. In accordance with Exhibit A of the Original Agreement, the Assignee has provided notice to the City that the Assignee has selected an alternate interest rate index to replace LIBOR.

D. Pursuant to and in accordance with Section 5.9 of the Original Agreement, the Corporation and the City have determined to amend Appendix A and Appendix C to the Original Agreement, with the consent of the Assignee, for the purpose of revising the provisions governing the calculation of interest components of the Installment Payments to reflect the alternate rate of interest selected by the Assignee.

E. Capitalized terms used but not defined herein have the meanings set forth in the Original Agreement.

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained and for other valuable consideration, the Corporation and the City do hereby agree as follows:

Section 1. Amendment of Original Agreement. Appendix A to the Original Agreement is hereby amended and restated in full in the form attached as Appendix A attached hereto, and Appendix C to the Original Agreement is hereby amended and restated in full in the form attached as Appendix C attached hereto.

Section 2. Authority. This First Amendment is being executed pursuant to and in accordance with Section 5.9 of the Original Agreement.

Section 3. Original Agreement Continues in Effect. Except as amended and supplemented by this First Amendment, the Original Agreement shall remain in full force and effect.

Section 4. Effective Date. This First Amendment shall become effective upon the date hereof.

IN WITNESS WHEREOF, the Corporation and the City have caused this First Amendment to be executed as of the date first above written.

**CITY OF SANTA CLARA PUBLIC
FACILITIES FINANCING CORPORATION**

By: _____
Director of Finance

APPROVED AS TO FORM:

By _____
General Counsel

ATTEST:

By _____
Assistant Secretary

CITY OF SANTA CLARA

By: _____
Chief Operating Officer

APPROVED AS TO FORM:

By _____
City Attorney

ATTEST:

By _____
Assistant City Clerk

CONSENTED TO BY:
JPMORGAN CHASE BANK N.A.,
as Assignee

By _____
Name _____
Title _____

APPENDIX A

CALCULATION OF INTEREST COMPONENTS

The interest components of the Installment Payments shall be calculated in accordance with the following provisions set forth in this Appendix A.

Basis of Calculation. Advances hereunder shall be SOFR Rate Advances, subject to provisions below on Illegality/Temporary Unavailability/ Alternate Rate of Interest. The interest components of the Installment Payments shall be calculated on the unpaid principal components of the Installment Payments, on the basis of the actual number of days elapsed in a year of 360 days, at the Adjusted Term SOFR Rate and at the rate of 4.00% Per Annum above the Adjusted Term SOFR Rate, at the Assignee's option, upon the occurrence of any Event of Default, whether or not the Assignee elects to accelerate the maturity of the Installment Payments, from the date such increased rate is imposed by the Assignee, except that interest computed by reference to the CB Floating Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable CB Floating Rate, Adjusted Term SOFR Rate, and Term SOFR Rate, shall be determined by the Assignee, and each such determination shall be conclusive absent manifest error.

Definitions. As used in this Appendix A, the following terms have the following respective meanings:

“Adjusted Term SOFR Rate” means, with respect to the relevant Interest Period, the sum of (i) the Applicable Margin plus (ii) (a) 80% of the Term SOFR Rate in effect for such Interest Period plus (b) the SOFR Adjustment.

“Advance” means a SOFR Rate Advance or a CB Floating Rate Advance and *“Advances”* means all SOFR Rate Advances and all CB Floating Rate Advances which are made by the Assignee to the City to finance the payment of Project Costs.

“Alternate Rate” has the meaning assigned to such term in clause (c) of the section titled “Illegality/Temporary Unavailability/Alternate Rate”.

“Applicable Margin” means 0.95% Per Annum.

“Benchmark” means, initially, the Term SOFR Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Rate, then “Benchmark” means the Alternate Rate to the extent that such Alternate Rate has replaced such prior benchmark rate pursuant to clause (c) of the section titled “Illegality/Temporary Unavailability/Alternate Rate”.

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the Term SOFR Rate:

- (i) a public statement or publication of information by or on behalf of the CME Term SOFR Administrator (or any successor administrator of the Term SOFR Rate, or the published component used in the calculation thereof) announcing that such CME Term SOFR Administrator has ceased or will cease to provide the Term SOFR Rate (or such component thereof),

permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Term SOFR Rate (or such component thereof); or

- (ii) a public statement or publication of information by the NYFRB, the Federal Reserve Board, or, as applicable, the regulatory supervisor for the CME Term SOFR Administrator, an insolvency official with jurisdiction over the CME Term SOFR Administrator, a resolution authority with jurisdiction over the CME Term SOFR Administrator, or a court or an entity with similar insolvency or resolution authority over the CME Term SOFR Administrator, in each case, which states that the CME Term SOFR Administrator (or any successor administrator of the Term SOFR Rate, or the published component used in the calculation thereof) has ceased or will cease to provide the Term SOFR Rate (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Term SOFR Rate (or such component thereof); or
- (iii) a public statement or publication of information by the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, or the regulatory supervisor for the CME Term SOFR Administrator (or any successor administrator of the Term SOFR Rate, or the published component used in the calculation thereof), announcing that the Term SOFR Rate (or such component thereof) is no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to the Term SOFR Rate if a public statement or publication of information set forth above has occurred with respect to each then-current available tenor of the Term SOFR Rate.

“*Business Day*” means any day (other than a Saturday or a Sunday) on which banks are open for business in New York City or Chicago; provided that, when used in connection with a SOFR Advance, the term “Business Day” shall also exclude any day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“*CB Floating Rate*” means the greater of the Prime Rate or 2.5%. Any change in the CB Floating Rate due to a change in the Prime Rate shall be effective from and including the effective date of such change in the Prime Rate. The CB Floating Rate is a variable rate and any change in the CB Floating Rate due to any change in the Prime Rate or the Adjusted Term SOFR Rate is effective from and including the effective date of such change in the Prime Rate or the Adjusted Term SOFR Rate, respectively.

“*CB Floating Rate Advance*” or “CBFR Advance” means any borrowing under the Installment Payments when and to the extent that its interest rate is determined by reference to the CB Floating Rate.

“*CME Term SOFR Administrator*” means CME Group Benchmark Administration Limited as administrator of the forward-looking term secured overnight financing rate (or a successor administrator).

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Floor" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Term SOFR Rate. For the avoidance of doubt the initial Floor for the Term SOFR Rate shall be 0.0%.

"Governmental Authority" means the government of the United States of America, any other nation 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.

"Interest Period" means the period commencing on the date of such Advance and ending on the numerically corresponding day in the calendar month that is one (1), three (3) or six (6) months thereafter, as the City may elect; provided that (a) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, and (c) no Interest Period may extend beyond the Maturity Date. For purposes hereof, the date of an Advance initially shall be the date on which such Advance is made and thereafter, in the case of a Revolving Borrowing, shall be the effective date of the most recent conversion or continuation of such Advance.

"Overnight Bank Funding Rate" means, for any day, the rate comprised of both overnight federal funds and overnight eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on the Federal Reserve Bank of New York's Website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

"Per Annum" means for a year deemed to be comprised of 360 days.

"Prime Rate" means the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if *The Wall Street Journal* ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Assignee) or any similar release by the Federal Reserve Board (as determined by the Assignee). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"Relevant Governmental Body" means the Federal Reserve Board, the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board or the NYFRB, or, in each case, any successor thereto.

“Revolving Advances” means Revolving Advances of the same Type, made, converted or continued on the same date, and, in the case of SOFR Rate Advances, as to which a single Interest Period is in effect.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Adjustment” means 0.10% per annum.

“SOFR Rate Advance” means any borrowing under this Agreement when and to the extent that its interest rate is determined by reference to the Adjusted Term SOFR Rate.

“Term SOFR Rate” means, with respect to any SOFR Rate Advance, such reference rate as is published by the CME Term SOFR Administrator at approximately 5:00 a.m., Chicago time, two Business Days prior to the commencement of such tenor comparable to the applicable Interest Period; such rate being the rate per annum determined by the Assignee as the forward-looking term rate based on SOFR; provided that if the Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be the Floor for the purposes of this Agreement.

“Type”, when used in reference to any Advance, refers to whether the rate of interest on such Advance is determined by reference to the Adjusted Term SOFR Rate or the CB Floating Rate.

Prepayment/Funding Loss Indemnification

The City may prepay all or any part of any CB Floating Rate Advance at any time without premium or penalty except as set forth herein.

In the event of the payment of any principal of any SOFR Rate Advance other than (a) on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment), (b) the conversion of any SOFR Rate Advance other than on the last day of the Interest Period applicable thereto, or (c) the failure to borrow, convert, continue or prepay any SOFR Rate Advance on the date specified in any notice delivered pursuant to the Agreement (regardless of whether such notice may be revoked and is revoked in accordance therewith), then, in any such event, the City shall compensate the Assignee for the loss, cost and expense attributable to such event. In the case of a SOFR Rate Advance, such loss, cost or expense to the Assignee shall be deemed to include an amount determined by the Assignee to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such SOFR Rate Advance had such event not occurred, at the Adjusted Term SOFR Rate that would have been applicable to such SOFR Rate Advance, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such SOFR Rate Advance), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which the Assignee would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the applicable interbank market, whether or not such SOFR Rate Advance was in fact funded. A certificate of the Assignee setting forth any amount or amounts that the Assignee is entitled to receive pursuant to this Section

shall be delivered to the City and shall be conclusive absent manifest error. The City shall pay the Assignee the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Interest Rates; Benchmark Transition Notification

The interest rate on an Advance may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, clause (c) of the section titled "Illegality/Temporary Unavailability/ Alternate Rate" provides a mechanism for determining an alternative rate of interest. The Assignee does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Assignee and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Alternate Rate) and/or any relevant adjustments thereto, in each case, in a manner adverse to the City. The Assignee may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the City or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Illegality/Temporary Unavailability/Alternate Rate of Interest

- (a) Subject to clause (c) of this section, if prior to the commencement of any Interest Period for a SOFR Advance:
 - (i) the Assignee determines (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate or the Term SOFR Rate, as applicable, for such Interest Period; or
 - (ii) the Assignee determines the Adjusted Term SOFR Rate or the Term SOFR Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to the Assignee of making or maintaining its Advances for such Interest Period;
 - (iii) then the Assignee shall give notice thereof to the City by telephone, fax or electronically as provided in Section 8.2 as promptly as practicable thereafter and, until (x) the Assignee notifies the City that the circumstances giving rise to such notice no longer exist and (y) the City delivers a Funding Request in accordance with the terms of Section 3.5 (A) any Funding Request that requests the conversion of any Advance

to, or continuation of any Advance as, a SOFR Advance shall be ineffective and any such SOFR Advance shall be repaid or converted into a CBFR Advance on the last day of the then current Interest Period applicable thereto, and (iv) if any Funding Request requests a SOFR Advance, such Advance shall be made as a CBFR Advance.

- (b) If the Assignee determines that any Requirement of Law has made it unlawful, or if any Governmental Authority has asserted that it is unlawful, for the Assignee or its applicable lending office to make, maintain, fund or continue any SOFR Advance, or any Governmental Authority has imposed material restrictions on the authority of the Assignee to purchase or sell, or to take deposits of, dollars in the interbank offering market, then, on notice thereof by the Assignee to the City, any obligations of the Assignee to make, maintain, fund or continue SOFR Rate Advances or to convert CBFR Advances to SOFR Advances will be suspended until the Assignee notifies the City that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the City will upon demand from the Assignee, either prepay or convert all SOFR Advances of the Assignee to CBFR Advances, either on the last day of the Interest Period therefor, if the Assignee may lawfully continue to maintain such SOFR Advances to such day, or immediately, if the Assignee may not lawfully continue to maintain such Advances. Upon any such prepayment or conversion, the City will also pay accrued interest on the amount so prepaid or converted.
- (c) Notwithstanding anything to the contrary herein or in this Agreement, if a Benchmark Transition Event has occurred, Assignee may, by notice to City, amend this Agreement to establish an alternate rate of interest for the Benchmark that gives due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) the then-evolving or prevailing market convention for determining a benchmark rate as a replacement for the then current Benchmark at such time (the "Alternate Rate"); City acknowledges that the Alternate Rate may include a mathematical adjustment using any then-evolving or prevailing market convention or method for determining a spread adjustment for the replacement of the Benchmark (which may include, if any Benchmark already contains such a spread, adding that spread to the Alternate Rate). The Assignee may further amend this Agreement by such notice to City to make technical, administrative or operational changes (including, without limitation, changes to the definition of "Interest Period", timing and frequency of determining rates and making payments of interest, the timing of prepayment or conversion notices, the length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that Assignee decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of the Alternate Rate. The Alternate Rate, together with all such technical, administrative and operational changes as specified in any notice, shall become effective at the later of (i) the fifth Business Day after the Assignee has provided notice (including without limitation for this purpose, by electronic means) to the City (the "Objection Date") and (ii) a date specified by the Assignee in the notice, without any further action or consent of the City, so long as Assignee has not received, by 5:00 pm Eastern time on the Objection Date,

written notice of objection to the Alternate Rate from the City. If, on the date the Benchmark actually becomes permanently unavailable pursuant to a Benchmark Transition Event, an Alternate Rate has not been established in this manner, Advances will, until an Alternate Rate is so established, bear interest at the CB Floating Rate. In no event shall the Alternate Rate be less than the Floor.

- (d) All determinations by Assignee under this Illegality/Temporary Unavailability shall be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party to this Agreement or any other loan document, except, in each case, as expressly required pursuant to this clauses a-c of this section.

Default Rate of Interest

After a default has occurred under this Agreement, whether or not the Assignee elects to accelerate the maturity of this Agreement because of such default, all Advances outstanding under this Agreement, shall bear interest at a Per Annum rate equal to the interest rate being charged on each such Advance plus four percent (4.00%) from the date the Assignee elects to impose such rate. Imposition of this rate shall not affect any limitations contained in this Agreement on the City right to repay principal on any SOFR Rate Advance before the expiration of the Interest Period for each such Advance.

Notice and Manner of Electing Interest Rates on Advances

The City shall give the Assignee written notice via Appendix C in accordance with established procedures (effective upon receipt) of the City's intent to draw down funds for payment of Project Costs no later than 1:00 p.m. Pacific time, on the date of disbursement, if the full amount of the drawn Advance is to be disbursed as a CB Floating Rate Advance and no later than 1:00 p.m. Pacific time three Business Days before disbursement, if any part of such Advance is to be disbursed as a SOFR Rate Advance. The City's notice must specify: (a) the disbursement date, (b) the amount of each Advance, and (c) for each SOFR Rate Advance, the duration of the applicable Interest Period; *provided, however*, that the City may not elect an Interest Period ending after the Maturity Date. Each SOFR Rate Advance shall be in a minimum amount of \$1,000,000. All notices under this paragraph are irrevocable. By the Assignee's close of business on the disbursement date and upon fulfillment of the conditions set forth herein and in any other related document, the Assignee shall disburse the requested Advances in immediately available funds by crediting the amount of such Advances to the City's account with the Assignee.

Conversion and Renewals

The City may elect from time to time to convert one Type of Advance into another or to renew any Advance by giving the Assignee written notice via Appendix D no later than 1:00 p.m. Pacific time, on the date of the conversion into or renewal of a CB Floating Rate Advance and 1 p.m. Pacific time three Business Days before conversion into or renewal of a SOFR Rate Advance, specifying: (a) the renewal or conversion date, (b) the amount of the Advance to be converted or renewed, (c) in the case of conversion, the Type of Advance to be converted into (CB Floating Rate Advance or SOFR Rate Advance), and (d) in the case of renewals of or conversion into a SOFR Rate Advance, the applicable Interest Period, provided that (i) the minimum principal amount of each SOFR Rate Advance outstanding after a renewal or conversion shall be \$1,000,000; (ii) a

SOFR Rate Advance can only be converted on the last day of the Interest Period for the Advance; and (iii) the City may not elect an Interest Period ending after the Maturity Date. All notices given under this paragraph are irrevocable. If the City fails to give the Assignee the notice specified above for the renewal or conversion of a SOFR Rate Advance by 1:00 p.m. Pacific time three Business Days before the end of the Interest Period for that Advance, the Advance shall automatically be converted to a CB Floating Rate Advance on the last day of the Interest Period for the Advance.

APPENDIX C

FUNDING REQUEST NO. _____

The undersigned hereby states and certifies that:

(i) I am an "Authorized Representative," as such term is defined in that certain Installment Sale Agreement dated as of June 1, 2020, as amended by the First Amendment to Installment Sale Agreement dated as of April 1, 2023 (as amended and supplemented, the "Installment Sale Agreement"), between the City and the City of Santa Clara Public Facilities Financing Corporation (the "Corporation"). Capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Installment Sale Agreement.

(ii) Under Section 3.5 of the Installment Sale Agreement, the undersigned hereby requests that the Assignee advance the amount of \$_____ to the City, for deposit into the Project Fund which has been established under the Installment Sale Agreement.

(iii) The City has selected a [one-month] [three-month] [six-month] Interest Period.

(iv) The amount requested for funding shall be spent on Project Costs or used to reimburse the City for Project Costs previously paid for by the City. No portion of the amount herein requested to be disbursed was set forth in any Funding Request previously submitted to Assignee by City.

(v) _____ *[if checked]* This Funding Request constitutes the final Funding Request. Under Section 3.5(c) of the Installment Sale Agreement, the City hereby relinquishes the remaining Commitment.

(vi) Following the funding of this Funding Request by the Assignee, the total amount funded by the Assignee will be \$_____.

(vii) No Event of Default has occurred or is continuing under the Installment Sale Agreement and each representation and warranty set forth in the Installment Sale Agreement remains true and correct except for such representations and warranties that are no longer true due to the passage of time.

(viii) The City has completed the information set forth in Appendix D attached to the Installment Sale Agreement.

The City and the Assignee hereby acknowledge and agree that all Advances made hereunder shall be a SOFR Rate Advance unless and until a Benchmark Transition Event has occurred.

Dated: _____

CITY OF SANTA CLARA, as Agent of the
Corporation

By: _____
Name:
Title:

Acknowledged and Accepted:

JPMORGAN CHASE BANK, N.A.

By: _____
Name:
Title: