
FIRST SUPPLEMENTAL INSTALLMENT PURCHASE CONTRACT

between the

CITY OF SAN JOSE

and the

CITY OF SAN JOSE FINANCING AUTHORITY

Dated as of December 1, 2022

RELATING TO

[\$[PRINCIPAL AMOUNT]
CITY OF SAN JOSE FINANCING AUTHORITY
WASTEWATER REVENUE BONDS
SERIES 2022B
(GREEN BONDS – CLIMATE BOND CERTIFIED)

FIRST SUPPLEMENTAL INSTALLMENT PURCHASE CONTRACT

This First Supplemental Installment Purchase Contract (this “First Supplemental Contract”), dated as of December 1, 2022, between the City of San José, a municipal corporation duly organized and existing under and by virtue of its charter and the Constitution of the State of California (the “City”), and the City of San José Financing Authority, a joint exercise of powers entity duly organized and existing under and by virtue of the laws of the State of California (the “Authority”);

WITNESSETH:

WHEREAS, the City and the Authority have entered into a Master Installment Purchase Contract, dated as of December 1, 2022 (the “Master Contract”), for the financing and refinancing of the acquisition, construction and installation from time to time of certain improvements, additions, and betterments to, and extensions and rehabilitations of, the Wastewater System (as defined in the Master Contract); and

WHEREAS, the City and the Authority heretofore determined to finance and refinance the acquisition, construction and installation of certain improvements, additions, and betterments to, and extensions and rehabilitations of, the Treatment Plant (as defined in the Master Contract) (the “Prior Project”), as provided in the Subordinate Installment Purchase Contract, dated as of October 1, 2017 (the “Prior Subordinate Contract”), between the City and the Authority; and

WHEREAS, the Authority heretofore determined to acquire and construct the Prior Project for, and sell the Prior Project to, the City; and

WHEREAS, the City heretofore determined to make installment payments to the Authority for the repayment of the costs of the acquisition, construction and installation of the Prior Project; and

WHEREAS, the City has determined to refinance the outstanding principal amount of the City’s installment payments under the Prior Subordinate Contract in the manner described herein, and the Authority is willing to assist the City in effecting such refinancing; and

WHEREAS, the City and the Authority have determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this First Supplemental Contract to supplement the Master Contract do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this First Supplemental Contract;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE TO SUPPLEMENT THE MASTER CONTRACT AS FOLLOWS:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. Unless the context otherwise requires, the terms defined in Section 1.01 of the Master Contract and in this section shall for all purposes hereof and of any certificate, opinion, report, request or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein:

Continuing Disclosure Certificate

“Continuing Disclosure Certificate” means the Continuing Disclosure Certificate, executed by the City and dated the date of the original issuance of the Series 2022B Bonds, as the same may be amended and supplemented in accordance with its terms.

First Supplemental Contract

“First Supplemental Contract” means this First Supplemental Installment Purchase Contract, dated as of December 1, 2022, between the City and the Authority, supplemental to the Master Contract.

First Supplemental Indenture

“First Supplemental Indenture” means the First Supplemental Indenture, dated as of December 1, 2022, between the Authority and the Trustee, supplemental to the Master Indenture.

Master Contract

“Master Contract” means the Master Installment Purchase Contract, dated as of December 1, 2022, between the City and the Authority, as originally executed and as it may from time to time be amended and supplemented in accordance with its terms.

Master Indenture

“Master Indenture” means the Master Indenture, dated as of December 1, 2022, between the Authority and the Trustee, as originally executed and entered into and as from time to time amended and supplemented in accordance with its terms.

Prior Installment Payments

“Prior Installment Payments” means the \$300,000,000 principal amount of outstanding installment payments scheduled to be paid by the City under the Prior Subordinate Contract.

Prior Project

“Prior Project” has the meaning set forth in the recitals to this First Supplemental Contract.

Prior Subordinate Contract

“Prior Subordinate Contract” means the Subordinate Installment Purchase Contract, dated as of October 1, 2017, between the City and the Authority.

Series 2022B Bonds

“Series 2022B Bonds” means the City of San José Financing Authority Wastewater Revenue Bonds, Series 2022B (Green Bonds – Climate Bond Certified) issued and outstanding under the Master Indenture and the First Supplemental Indenture.

Trustee

“Trustee” has the meaning ascribed thereto in the Master Indenture.

2022B Installment Payments

“2022B Installment Payments” means the Installment Payments scheduled to be paid by the City under Section 2.03 hereof.

ARTICLE II

TERMS OF THIS FIRST SUPPLEMENTAL CONTRACT

SECTION 2.01. Authority for this First Supplemental Contract. The City has reviewed all proceedings heretofore taken relative to the authorization of this First Supplemental Contract and has found, as a result of such review, and hereby finds and determines that all acts, conditions and things required by law to exist, happen or be performed precedent to and in connection with the execution and entering into hereof do exist, have happened and have been performed in due time, form and manner as required by law, and the City is now duly authorized, pursuant to each and every requirement of law and the Master Contract, to execute and enter into this First Supplemental Contract in the manner and form provided herein for the refinancing of the Prior Installment Payments in the manner provided herein, and this First Supplemental Contract is and shall constitute a Supplemental Contract under the Master Contract and the 2022B Installment Payments are and shall constitute Installment Payments under the Master Contract.

SECTION 2.02. Purpose of this First Supplemental Contract.

(a) The City has agreed under the terms of the Prior Subordinate Contract to purchase the Prior Project from the Authority, and the Authority has agreed under the terms of the Prior Subordinate Contract to sell the Prior Project to the City, which agreements shall remain in full force and effect, and the Authority hereby agrees to cause so much of the proceeds of the sale of the Series 2022B Bonds as may be necessary to refinance the Prior Installment Payments by refunding the \$300,000,000 outstanding principal amount of the Prior Subordinate Notes (as defined in the First Supplemental Indenture) as provided in the First Supplemental Indenture; and in consideration thereof the City agrees to pay to the Authority the refinanced purchase price of the Prior Project as provided herein.

(b) The principal amount of the refinanced purchase price to be paid by the City to the Authority hereunder is \$[_____].

(c) The refinanced purchase price of the Prior Project to be paid by the City hereunder is equal to the aggregate principal amount of the City's obligations hereunder plus the interest to accrue on the unpaid balance of such principal amount from the effective date hereof over the term hereof, subject to any right of prepayment provided in Section 2.04.

SECTION 2.03. Payment of 2022B Installment Payments. The City shall, subject to any rights of prepayment provided in Section 2.04, pay the Authority the refinanced purchase price of the Prior Project, without offset or deduction of any kind, by paying the principal installments of the 2022B Installment Payments annually in the amounts and on November 1 in each of the years as provided in the following schedule, together with the interest installments of the 2022B Installment Payments to accrue at the rates set forth in the following schedule (which interest installments shall be paid semiannually on each May 1 and November 1, beginning on [May 1, 2023]), calculated on the basis of a 360-day year composed of twelve (12) thirty (30)-day calendar months, and shall constitute interest paid on the principal amount of the City's obligation to pay the 2022B Installment Payments to the Authority hereunder):

Principal Amount Payable (November 1)	Principal Amount	Interest Rate
	\$	%

The obligation of the City to pay the 2022B Installment Payments to the Authority hereunder is, subject to Section 7.01 of the Master Contract, absolute and unconditional, and until such time as the 2022B Installment Payments shall have been paid or deemed paid in full, the City shall not discontinue or suspend any 2022B Installment Payment required to be paid by it under this section when due, whether or not the Wastewater System or any part thereof is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part, and such 2022B Installment Payments shall not be subject to reduction whether

by offset, abatement or otherwise and shall not be conditional upon the performance or non-performance by any party to any agreement for any cause whatsoever.

Notwithstanding the foregoing, the City agrees to transfer to the Trustee the amount of each 2022B Installment Payment at least one (1) business day before the date that payment of each such 2022B Installment Payment is due hereunder.

SECTION 2.04. Prepayment of 2022B Installment Payments. The City may prepay from any source of available funds all or any part of the principal amount of the unpaid 2022B Installment Payments on the same terms and conditions contained in the First Supplemental Indenture for the redemption or defeasance of a corresponding principal amount of Series 2022B Bonds.

Before making any prepayment pursuant to this section, the City shall give written notice to the Authority describing such event and specifying the date on which the prepayment will be paid, which date shall be not less than twenty-five (25) days following the date such notice is given; provided, that notwithstanding any such prepayment, the City shall not be relieved of its obligations hereunder, including specifically its obligations under this article, until all the 2022B Installment Payments shall have been fully paid or deemed paid in accordance with the Master Contract.

SECTION 2.05. Compliance With Master Contract. The City (subject to the terms hereof) shall pay the 2022B Installment Payments and observe and perform all of the agreements, conditions, covenants and terms contained in the Master Contract in accordance with the provisions of the Master Contract and this First Supplemental Contract.

SECTION 2.06. Continuing Disclosure. The City agrees and covenants that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate; provided, that notwithstanding any other provision hereof, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default under the Master Contract or the Master Indenture, although the Trustee may and, at the request of the Holders of at least twenty five percent (25%) in aggregate principal amount of the Outstanding Series 2022B Bonds, shall, or any Holder of any of the Series 2022B Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations hereunder.

SECTION 2.07. First Supplemental Contract Subject to the Master. Except as herein otherwise expressly provided, every condition and term contained in the Master Contract shall apply hereto with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform hereto.

SECTION 2.08. Execution. This First Supplemental Contract may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the City shall preserve undestroyed, shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this First Supplemental Installment Purchase Contract by their officers thereunto duly authorized as of the day and year first written above.

Approved as to form:

NORA FRIMANN, City Attorney

By: _____
Chief Deputy City Attorney

CITY OF SAN JOSE

By: _____
Julia H. Cooper
Director of Finance

CITY OF SAN JOSE FINANCING AUTHORITY

By: _____
Julia H. Cooper
Treasurer

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