
MASTER INSTALLMENT PURCHASE CONTRACT

between the

CITY OF SAN JOSE

and the

CITY OF SAN JOSE FINANCING AUTHORITY

RELATING TO CERTAIN
WASTEWATER SYSTEM PROJECTS

Dated as of December 1, 2022

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS

SECTION 1.01. Definitions.....	2
--------------------------------	---

ARTICLE II ACQUISITION, CONSTRUCTION, SALE AND PURCHASE OF THE NEW PROJECTS; REFINANCING OF PURCHASE PRICE OF PRIOR PROJECTS

SECTION 2.01. Acquisition, Construction, Sale and Purchase of the New Projects; Refinancing of Purchase Price of Prior Projects.....	5
SECTION 2.02. Title to the Projects	6

ARTICLE III INSTALLMENT PAYMENTS

SECTION 3.01. Purchase Price	6
SECTION 3.02. Payment of the Installment Payments.....	6
SECTION 3.03. Prepayment of the Installment Payments.....	6
SECTION 3.04. Designation of Installment Payments as Parity Obligations.....	7

ARTICLE IV COVENANTS OF THE CITY

SECTION 4.01. Compliance with Installment Purchase Contract and Master Resolution.....	7
SECTION 4.02. Tax Covenants	7
SECTION 4.03. Protection of Security and Rights of Authority	7
SECTION 4.04. Further Assurances.....	7

ARTICLE V EVENTS OF DEFAULT AND REMEDIES OF THE AUTHORITY

SECTION 5.01. Events of Default	8
SECTION 5.02. Remedies of the Authority	8
SECTION 5.03. Non-Waiver.....	9
SECTION 5.04. Remedies Not Exclusive.....	9
SECTION 5.05. Application of Moneys Collected	9

ARTICLE VI DISCHARGE OF OBLIGATIONS

SECTION 6.01. Discharge of Obligations	9
--	---

TABLE OF CONTENTS

Page

ARTICLE VII MISCELLANEOUS

SECTION 7.01.	Liability of City Limited to Net System Revenues.....	10
SECTION 7.02.	Benefits of Installment Purchase Contract Limited to Parties and Beneficiary	10
SECTION 7.03.	Assignment	10
SECTION 7.04.	Successor is Deemed Included in all References to Predecessor	10
SECTION 7.05.	Waiver of Personal Liability	11
SECTION 7.06.	Article and Section Headings, Gender and References	11
SECTION 7.07.	Partial Invalidity.....	11
SECTION 7.08.	Net Contract.....	11
SECTION 7.09.	California Law	11
SECTION 7.10.	Notices	11
SECTION 7.11.	Effective Date	12
SECTION 7.12.	Amendments	12
SECTION 7.13.	Execution	13

MASTER INSTALLMENT PURCHASE CONTRACT

This Master Installment Purchase Contract, dated as of December 1, 2022 (this “Installment Purchase Contract”), 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 is empowered by its charter to own, operate and maintain systems, plants, buildings, works and other facilities for the collection, treatment and disposal of sewage and wastewater, including sewage treatment and disposal plants and works and facilities in connection therewith; and

WHEREAS, pursuant to such authority, the City owns and operates a Sanitary Sewer Collection System (as defined herein); and

WHEREAS, pursuant to such authority, on May 6, 1959, the City and the City of Santa Clara entered into that certain Agreement Between San José and Santa Clara Respecting Sewage Treatment Plant regarding the ownership, operation, maintenance and use of the Treatment Plant (as defined herein); and

WHEREAS, pursuant to such authority, the City has determined to finance and refinance the acquisition, construction and installation from time to time of certain improvements, additions, and betterments to, and extensions and rehabilitations of, the Sanitary Sewer Collection System and the Treatment Plant (collectively, the “Projects”); and

WHEREAS, the Authority is empowered by its Joint Exercise of Powers Agreement, dated December 8, 1992, by and between the City and the former Redevelopment Agency of the City of San José (the “Former Agency”), to assist the City in its financing needs by financing and refinancing the Projects and refunding any bonds, notes or other evidences of indebtedness of the Authority or the City issued or incurred for such purpose (the “Refunded Obligations”); and

WHEREAS, the Former Agency, as of February 1, 2012, has been dissolved and the City has become the successor agency of the Former Agency pursuant to Part 1.85 of Division 24 of the California Health and Safety Code and pursuant to California Health and Safety Code Section 34178(b)(3), the joint exercise of powers agreement establishing the Authority remains in effect; and

WHEREAS, the Authority and Wilmington Trust, National Association have entered into a Master Indenture (as defined herein) pursuant to which the Authority will issue its Wastewater Revenue Bonds (the “Bonds”) from time to time in one or more series to finance and refinance the Projects and/or refund Refunded Obligations; and

WHEREAS, the Authority has agreed to sell the Projects to the City and/or refinance the purchase price of Projects previously financed and/or refinanced with Refunded Obligations, and the City has agreed to purchase the Projects from the Authority and pay the refinanced purchase price of Projects previously financed and/or refinanced with Refunded Obligations, as provided herein; and

WHEREAS, the City has agreed to make installment payments to the Authority hereunder (the “Installment Payments”) to pay the purchase price of the Projects and refinance the purchase price of Projects previously financed and/or refinanced with Refunded Obligations, together with interest thereon, and pay other amounts payable by the Authority under the Master Indenture, as provided herein; and

WHEREAS, the City has agreed to designate the Installment Payments as Parity Obligations under the Master Resolution (as defined herein) and, as such, the Installment Payments shall be payable solely from, and secured by a pledge of and lien on, the Net System Revenues (as defined herein) as Parity Obligations under and as provided in the Master Resolution; and

WHEREAS, the City and the Authority hereby certify 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 Installment Purchase 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 Installment Purchase 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 AS FOLLOWS:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof and of any report 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.

Authority

“Authority” means 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.

Bonds

“Bonds” shall have the meaning ascribed thereto in the Master Indenture.

City

“City” means 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.

Code

“Code” shall have the meaning ascribed thereto in the Master Indenture.

Event of Default

“Event of Default” means an event defined as such in Section 5.01 hereof.

Installment Payments

“Installment Payments” means the payments to be made by the City to the Authority for the purchase of New Projects and/or the refinancing of the purchase price of Prior Projects pursuant hereto and any Supplemental Contract.

Installment Purchase Contract

“Installment Purchase Contract” means this 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.

Master Resolution

“Master Resolution” means Resolution No. [____], a Resolution of the City Council of the City of San José Amending and Restating Resolution No. 78382 Providing for the Allocation of Wastewater System Revenues, the Pledge of Wastewater Net System Revenues and Establishing Covenants to Secure the Payment of Obligations Payable from Wastewater Net System Revenues, adopted on [November 15, 2022], as amended from time to time in accordance with its terms.

Net System Revenues

“Net System Revenues” shall have the meaning ascribed thereto in the Master Resolution.

New Projects

“New Projects” means the improvements, additions, and betterments to, and extensions and rehabilitations of, the Wastewater System originally financed with the proceeds of the Bonds.

Outstanding

“Outstanding” when used with respect to Bonds, has the meaning ascribed thereto in the Master Indenture.

Prior Projects

“Prior Projects” means the improvements, additions, and betterments to, and extensions and rehabilitations of, the Wastewater System originally financed or refinanced with the proceeds of any Refunded Obligations (as defined in the recitals hereto) that are refunded with proceeds of the Bonds.

Projects

“Projects” means the New Projects and the Prior Projects.

Sanitary Sewer Collection System

“Sanitary Sewer Collection System” shall have the meaning ascribed thereto in the Master Resolution.

Series of Bonds

“Series of Bonds” shall have the meaning ascribed thereto in the Master Indenture.

Supplemental Contract

“Supplemental Contract” means a supplemental installment purchase contract, supplemental to this Installment Purchase Contract and providing for the payment of specific Installment Payments as the purchase price for any New Project and/or the refinanced purchase price for any Prior Project, executed and delivered by the City and the Authority.

Supplemental Indenture

“Supplemental Indenture” shall have the meaning ascribed thereto in the Master Indenture.

Tax Certificates

“Tax Certificates” shall have the meaning ascribed thereto in the Master Indenture.

Tax-Exempt Bonds

“Tax-Exempt Bonds” shall have the meaning ascribed thereto in the Master Indenture.

Treatment Plant

“Treatment Plant” shall have the meaning ascribed thereto in the Master Resolution.

Trustee

“Trustee” means Wilmington Trust, National Association, a national banking association duly organized and existing under the laws of the United States of America, or any successor Trustee which may at any time be substituted in place of the original or any successor Trustee pursuant to the Master Indenture.

Wastewater System

“Wastewater System” shall have the meaning ascribed thereto in the Master Resolution.

ARTICLE II

ACQUISITION, CONSTRUCTION, SALE AND PURCHASE OF THE NEW PROJECTS; REFINANCING OF PURCHASE PRICE OF PRIOR PROJECTS

SECTION 2.01. Acquisition, Construction, Sale and Purchase of the New Projects; Refinancing of Purchase Price of Prior Projects. The Authority agrees to acquire and construct the New Projects and to sell the New Projects to the City, and the City agrees to purchase the New Projects from the Authority, all as provided herein. In order to implement this provision, the Authority hereby appoints the City as its agent for the purpose of such acquisition and construction, and the City hereby agrees to enter into such engineering, design and construction contracts and to execute such purchase orders as may be necessary, as agent for the Authority, to provide for the complete acquisition and construction of the New Projects, and the City hereby agrees that as such agent it will cause the acquisition and construction of the New Projects to be diligently completed. In addition, the Authority agrees to refinance any remaining amount of the purchase price due by the City for the acquisition and construction of the Prior Projects.

In the event the Authority fails to observe or perform any agreement, condition, covenant or term contained herein required to be observed or performed by it, the City may institute such action or proceeding against the Authority as the City may deem necessary or convenient to compel the observance or performance of such agreement, condition, covenant or term, or to recover damages for the nonobservance or nonperformance thereof. The City may, at its own cost and expense and in its own name or in the name of the Authority, prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to protect or secure its rights hereunder, and in such event the

Authority agrees to cooperate fully with the City and to take all action necessary to effect the substitution of the City for the Authority in any action or proceeding if the City shall so request.

SECTION 2.02. Title to the Projects. Upon the acquisition or construction of each of the New Projects by the City, as agent for the Authority, all right, title and interest therein shall automatically vest in the City, which automatic vesting shall occur without further action by the Authority; provided, that the Authority shall, if requested by the City or if necessary to assure such automatic vesting of such right, title or interest, execute and deliver any and all documents required to assure such vesting.

ARTICLE III

INSTALLMENT PAYMENTS

SECTION 3.01. Purchase Price. The City will pay the purchase price for any New Project and/or pay the refinanced purchase price of any Prior Project as provided in a Supplemental Contract. The purchase price and/or refinanced purchase price to be paid by the City under any Supplemental Contract is equal to the aggregate principal amount of the City's obligations under such Supplemental Contract plus the interest to accrue on the unpaid balance of such principal amount from the effective date thereof over the term thereof, subject to any right of prepayment provided therein. The interest to accrue on the unpaid balance of such principal amount shall be paid at such intervals and such rates as shall be specified in a Supplemental Contract and shall be paid by the City as and constitute interest paid on the principal amount of the City's obligations thereunder.

SECTION 3.02. Payment of the Installment Payments; Reserve Account Deposits. The City shall, subject to any right of prepayment provided for in a Supplemental Contract, pay the Authority the purchase price of any New Project and/or the refinanced purchase price of any Prior Project in Installment Payments, all as specified in a Supplemental Contract.

In the event that a Trustee notifies the City that a deposit to one or more Reserve Accounts is required pursuant to Section 5.03 of the Master Indenture, the City shall deposit or cause to be deposited, solely from Net System Revenues, in such Reserve Accounts the amount so required to be deposited therein.

SECTION 3.03. Prepayment of the Installment Payments. Provisions may be made in any Supplemental Contract for the prepayment of Installment Payments, in whole or in part, in such multiples and in such order of maturity and from funds of any source, and with such prepayment premiums and other terms as are specified in the Supplemental Contract.

SECTION 3.04. Designation of Installment Payments as Parity Obligations.

The City hereby designates this Installment Purchase Contract as, and this Installment Purchase Contract constitutes, a Contract (as defined in the Master Resolution). The City hereby further designates the Installment Payments as, and the Installment Payments shall constitute, Parity Obligations (as defined in the Master Resolution) under the Master Resolution and, as such, this Installment Purchase Contract is a Parity Obligation Contract (as defined in the Master Resolution). The City and the Authority hereby agree that this Installment Purchase Contract and the Installment Payments shall be secured as, and shall have all rights and benefits afforded to, Parity Obligation Contracts and Parity Obligations, respectively, under and as provided in and subject to terms of the Master Resolution.

ARTICLE IV

COVENANTS OF THE CITY

SECTION 4.01. Compliance with Installment Purchase Contract and Master

Resolution. The City will punctually pay the Installment Payments in strict conformity with the terms hereof and of any Supplemental Contract, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein, in any Supplemental Contract and in the Master Resolution required to be observed and performed by it, and will not terminate this Installment Purchase Contract or the Master Resolution for any cause whatsoever, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Wastewater System or any part thereof, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of California or any political subdivision of either or any failure of the Authority to observe or perform any agreement, condition, covenant or term contained herein required to be observed and performed by it, whether express or implied. The City will, so long as any Installment Payments remain unpaid, apply the Net System Revenues as provided in the Master Resolution.

SECTION 4.02. Tax Covenants. The City will at all times do and perform

all acts and things permitted by law which are necessary or desirable in order to assure that the interest on the Tax-Exempt Bonds will not be included in the gross income of the owners of the Tax-Exempt Bonds for federal income tax purposes under the Code, and will take no action that would result in such interest being so included. Without limiting the foregoing, the City and the Authority will at all times comply with the requirements of the Tax Certificates. This covenant shall survive any defeasance or discharge of the Installment Payments pursuant to Article VI or any prepayment of principal installments of the Installment Payments pursuant to Article III.

SECTION 4.03. Protection of Security and Rights of Authority. The City

will preserve and protect the security hereof and the rights of the Authority to the Installment Payments hereunder and will warrant and defend such rights against all claims and demands of all persons.

SECTION 4.04. Further Assurances. The City will adopt, deliver, execute

and make any and all further assurances, instruments and resolutions as may be reasonably

necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the Authority of the rights and benefits provided to it herein.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES OF THE AUTHORITY

SECTION 5.01. Events of Default. The following events shall be Events of Default under this Installment Purchase Contract:

(a) if default shall be made in the due and punctual payment of any Installment Payment when the same shall become due and payable;

(b) if default shall be made by the City in the performance of any of the other agreements or covenants contained herein required to be performed by it, and such default shall have continued for a period of sixty (60) days after the City shall have been given notice in writing of such default by the Authority, except that, if such default can be remedied but not within such sixty (60) day period and if the City has taken all action reasonably possible to remedy such default within such sixty (60) day period, such failure shall not become an Event of Default for so long as the City diligently proceeds to remedy the same;

(c) if the City shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property; or

(d) if any Event of Default specified in any Supplemental Contract shall have occurred and be continuing.

SECTION 5.02. Remedies of the Authority. The Authority shall have the right --

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any councilmember, officer or employee thereof, and to compel the City or any such councilmember, officer or employee to perform and carry out its duties under agreements and covenants required to be performed by the City or any such councilmember, officer or employee contained herein;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Authority; or

(c) by suit in equity upon the happening of an Event of Default to require the City and its councilmembers, officers and employees to account as the trustee of an express trust.

Notwithstanding anything to the contrary contained herein, in no event are the Installment Payments subject to acceleration if an Event of Default occurs and is continuing.

SECTION 5.03. Non-Waiver. Nothing in this article or in any other provision hereof shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the Installment Payments to the Authority at their respective due dates or upon prepayment as provided herein, or shall affect or impair the right of the Authority, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied herein.

A waiver of any default or breach of duty or contract by the Authority shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract, and no delay or omission by the Authority to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Authority by applicable law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Authority.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Authority, the City and the Authority shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

SECTION 5.04. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by applicable law.

SECTION 5.05. Application of Moneys Collected. Any amounts collected pursuant to action taken under this Article V shall be applied in accordance with the provisions of the Master Indenture, and to the extent applied to the payment of amounts due on the Bonds or other amounts payable by the Authority under the Master Indenture shall be credited against the Installment Payments.

ARTICLE VI

DISCHARGE OF OBLIGATIONS

SECTION 6.01. Discharge of Obligations.

(a) If the City shall pay or cause to be paid all the Installment Payments at the times and in the manner provided herein, then the right, title and interest of the Authority herein and the obligations of the City hereunder shall thereupon cease, terminate, become void and be completely discharged and satisfied, except as provided in Section 4.02.

(b) All or any portion of any unpaid principal installment of the Installment Payments, together with the accrued interest thereon, shall on the date of prepayment therefor be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) of this section if the City makes payment of such unpaid principal installment and the interest and prepayment premium, if any, thereon in the manner provided herein.

(c) All or any portion of any unpaid principal installment of the Installment Payments, together with the accrued interest thereon, shall be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) of this section if the corresponding principal amount of the Bonds is paid or deemed paid under Section 10.01 of the Master Indenture.

ARTICLE VII

MISCELLANEOUS

SECTION 7.01. Liability of City Limited to Net System Revenues. Notwithstanding anything contained herein, the City shall not be required to advance any money derived from any source of income other than the Net System Revenues for the payment of the Installment Payments or for the performance of any agreements or covenants required to be performed by it contained herein; provided, that the City may advance money for any such purpose so long as such money is derived from a source legally available for such purpose and may be legally used by the City for such purpose.

The obligation of the City to make the Installment Payments is a special obligation of the City and is payable solely from the Net System Revenues as provided herein and the Master Resolution, and does not constitute a debt of the City or the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction, and does not constitute an obligation for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

SECTION 7.02. Benefits of Installment Purchase Contract Limited to Parties and Beneficiary. Except as provided in Sections 7.03 and 7.04, nothing contained herein, expressed or implied, is intended to give to any person other than the City, the Authority and their assigns any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the City or the Authority shall be for the sole and exclusive benefit of the City, the Authority and their assigns.

SECTION 7.03. Assignment. This Installment Purchase Contract and any rights hereunder may be assigned by the Authority, as a whole or in part, without the necessity of obtaining the prior consent of the City. The City acknowledges the assignment of this Installment Purchase Contract and the Installment Payments by the Authority to the Trustee under the Master Indenture and agrees to perform its obligations herein and therein.

SECTION 7.04. Successor is Deemed Included in all References to Predecessor. Whenever either the City or the Authority is named or referred to herein, such

reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the City or the Authority, and all agreements and covenants required hereby to be performed by or on behalf of the City or the Authority shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

SECTION 7.05. Waiver of Personal Liability. No councilmember, officer or employee of the City shall be individually or personally liable for the payment of the Installment Payments, but nothing contained herein shall relieve any councilmember, officer or employee of the City from the performance of any official duty provided by any applicable provisions of law or hereby.

SECTION 7.06. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, convenience or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to “Articles,” “Sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words “hereby,” “herein,” “hereto,” “herewith,” “hereunder” and other words of similar import refer to this Installment Purchase Contract as a whole and not to any particular article, section, subdivision or clause hereof.

SECTION 7.07. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the City or the Authority shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof, and the City and the Authority hereby declare that they would have executed this Installment Purchase Contract and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

SECTION 7.08. Net Contract. This Installment Purchase Contract shall be deemed and construed to be a net contract, and the City shall pay absolutely net during the term hereof the Installment Payments and all other payments required hereunder, free of any deductions and without abatement, diminution or set-off whatsoever.

SECTION 7.09. California Law. This Installment Purchase Contract shall be construed and governed in accordance with the laws of the State of California.

SECTION 7.10. Notices. All written notices to be given hereunder shall be given by mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

If to the City:

City of San José – Finance Department
Attention: Debt Management
200 East Santa Clara Street, 13th Floor
San José, CA 95113
Phone: (408) 535-7010
Email: debt.management@sanjoseca.gov

If to the Authority:

City of San José Financing Authority
Attention: Debt Management
200 East Santa Clara Street, 13th Floor
San José, CA 95113
Phone: (408) 535-7010
Email: debt.management@sanjoseca.gov

SECTION 7.11. Effective Date. This Installment Purchase Contract shall become effective upon its execution and delivery.

SECTION 7.12. Amendments. This Installment Purchase Contract and the rights and obligations of the Authority and of the City may be amended at any time by mutual agreement of the Authority and the City, which amendment shall become binding when the written consents of the Holders (as defined in the Master Indenture) of at least a majority in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 8.02 of the Master Indenture, shall have been filed with the Trustee. No such amendment shall (1) extend the time for payment of or reduce the amount of the interest on or the principal of any Installment Payment without the express written consent of the Holders of the affected Bonds, or (2) reduce the percentage of Bonds required for the written consent to any such amendment without the written consent of the Holders of all of the Bonds then Outstanding. The written consent of the Holders of a Series of Bonds may be effected (1) through a consent by the underwriter of such Series of Bonds at the time of the issuance of such Series of Bonds and (2) through a provision of a Supplemental Indenture that deems any Holders purchasing such Series of Bonds to consent for purposes of this Section 7.12 by virtue of its purchase of such Series of Bonds.

This Installment Purchase Contract and the rights and obligations of the Authority and of the City hereunder may also be amended at any time by mutual agreement of the Authority and the City, which amendment shall become binding upon execution without the prior written consent of any Holders, for any purpose that will not materially adversely affect the interests of the Holders, including (without limitation) for any one or more of the following purposes

(a) to add to the agreements and covenants required herein to be performed by the City other agreements and covenants thereafter to be performed by the City which shall not (in the opinion of the City) adversely affect the interests of the Holders, or to surrender any right

or power reserved herein to or conferred herein on the City which shall not (in the opinion of the City) adversely affect the interests of the Holders;

(b) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained herein or in regard to questions arising hereunder which the City may deem desirable or necessary and not inconsistent herewith and which shall not (in the opinion of the City) adversely affect the interests of the Holders;

(c) to make such additions, deletions or modifications as may be necessary or appropriate to insure compliance with Section 148(f) of the Internal Revenue Code of 1986, as amended, relating to the required rebate of excess investment earnings to the United States of America, or otherwise as may be necessary to insure the exclusion from gross income for purposes of federal income taxation of the interest on the Tax-Exempt Bonds;

(d) to make such additions, deletions or modifications as may be necessary or appropriate to maintain any then current ratings on the Bonds;

(e) to add to the rights of the Authority or the Trustee; or

(f) to make any other addition, deletions or modifications which shall not materially adversely affect the interests of the Holders.

SECTION 7.13. Execution. This Installment Purchase 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 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

