

\$ \_\_\_\_\_  
City of San José  
Special Hotel Tax Revenue Bonds, Series 2011  
(Convention Center Expansion and Renovation Project)

BOND PURCHASE AGREEMENT

\_\_\_\_\_, 2011

City of San José, California  
200 East Santa Clara Street, 13th Floor  
San José, California 95113

Ladies and Gentlemen:

The undersigned, Merrill Lynch, Pierce, Fenner & Smith Incorporated (the “Representative”), as representative of itself, Citigroup Global Markets Inc. and Wells Fargo Bank, National Association (collectively, the “Underwriters”), hereby offers to enter into this Bond Purchase Agreement (the “Bond Purchase Agreement”) with you, the City of San José, California (the “City”), for the purchase by the Underwriters of the City of San José Special Hotel Tax Revenue Bonds, Series 2011 (Convention Center Expansion and Renovation Project) (the “Bonds”), in the aggregate principal amount of \$\_\_\_\_\_. The Bonds will be issued pursuant to (i) Chapter 14.32 of the Municipal Code of the City of San José (the “Chapter”), which includes by reference, to the extent they are not amended by the specific terms of the Chapter, the provisions of the Mello-Roos Community Facilities Act of 1982 as of August 26, 2008 (the date of adoption of the Chapter) (the “Act”); (ii) certain resolutions adopted by the City Council of the City; and (iii) the Indenture, dated as of March 1, 2011 (the “Indenture”), by and between the City and U.S. Bank National Association, as trustee (the “Trustee”). Capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Official Statement (as hereinafter defined) and, if not therein, in the Indenture.

This offer is made subject to written acceptance by the City prior to 5:00 p.m., California time, on the date hereof. If this offer is not so accepted, this offer will be subject to withdrawal by the Underwriters upon written notice delivered to you by the Representative at any time prior to acceptance of this offer. Upon acceptance, this Bond Purchase Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the City and the Underwriters.

1. Purchase, Sale and Delivery of the Bonds

(a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriters hereby agree to purchase and the City hereby agrees to sell to the Underwriters all (but not less than all) of the Bonds. The Bonds are payable from (i) revenues derived from the levy of a special tax (the “Special Tax”) on hotel properties within the Convention Center Facilities District according to the rate and method of apportionment of special tax approved by the City Council and the

eligible landowner voters in the Convention Center Facilities District (the “District”), and (ii) moneys deposited in certain funds held by the Trustee under the Indenture. A portion (the “Available TOT”) of the moneys received by the City as a result of the levy of the City’s transient occupancy tax may be deposited into the Revenue Fund established pursuant to the Indenture, but the City Council has no obligation to appropriate such Available TOT for this purpose.

The Bonds will mature on \_\_\_\_\_, 20\_\_ and are subject to optional and mandatory redemption as set forth in the Indenture and on the dates and in the amounts set forth in the Exhibit A hereto.

Simultaneously with the issuance of the Bonds, the City of San José Financing Authority (the “Authority”) plans to issue its \$\_\_\_\_\_ Lease Revenue Bonds, Series 2011A (Convention Center Expansion and Renovation Project) (the “2011A Bonds”). A portion of the proceeds of the Bonds, together with a portion of the proceeds of the 2011A Bonds, will be used to finance the expansion, rehabilitation and upgrading of the San José Convention Center (the “Project”). A portion of the proceeds of the Bonds will also be used to fund the Reserve Fund for the Bonds, and to pay capitalized interest and costs of issuance.

Pursuant to the Indenture, all Special Tax revenues held by the City, all amounts in the Revenue Fund and any investment earnings in the Revenue Fund shall be pledged to, and shall constitute a trust fund for, the payment of the principal of and interest on the Bonds and any Additional Bonds.

The Bonds shall be substantially in the form described in, and shall be executed, delivered and secured under and pursuant to, and shall be payable and subject to redemption as provided in, the Indenture.

The City hereby covenants to deliver or cause to be delivered to the Underwriters, not less than three days prior to the Closing Date (as hereinafter defined) and not more than seven business days from the date hereof, copies of the Official Statement relating to the Bonds (including the cover page, the introduction and all appendices thereto, the “Official Statement”), dated \_\_\_\_\_, 2011, and executed on behalf of the City by a duly authorized representative, in such reasonable quantity as the Underwriters shall request. The City hereby approves the use and distribution by the Underwriters of the Official Statement and hereby authorizes the Underwriters to use and distribute the Official Statement and all other documents, certificates and statements furnished to the Underwriters in connection with the transactions contemplated by this Bond Purchase Agreement, in connection with the offer and sale of the Bonds.

The Indenture, the Continuing Disclosure Certificate dated the Closing Date (the “Continuing Disclosure Certificate”) and the Bonds shall be collectively referred to herein as the “Legal Documents.”

(b) The aggregate purchase price for the Bonds shall be \$\_\_\_\_\_, which represents the par amount of the Bonds, [plus net original issue premium of \$\_\_\_\_\_ / less net original issue discount of \$\_\_\_\_\_,] and less an underwriting discount of \$\_\_\_\_\_.

(c) At 8:00 a.m., California time, on March \_\_, 2011, or at such other time or on such other date as we mutually agree upon (the “Closing Date”), the Trustee will deliver or cause to be delivered to the Representative, through the “FAST” book-entry system of The Depository Trust Company (“DTC”), the Bonds, duly executed and authenticated, together with the other documents mentioned herein. The Representative will accept such delivery and pay the purchase price of the Bonds as set forth in subparagraph (b) above in immediately available funds (such delivery and payment being herein referred to as the “Closing”) to the order of the Trustee. The Bonds will be made available for inspection by the Representative not less than one business day prior to the Closing.

(d) The Underwriters agree to make a bona fide public offering of the Bonds at the initial offering prices set forth in the Official Statement, which prices may be changed from time to time by the Underwriters after such offering.

2. Representations, Warranties and Agreements of the City. The City hereby represents, warrants and agrees with the Underwriters as follows:

(a) The District is a convention center facilities district duly organized and validly existing under the Constitution and the laws of the State of California and the Charter and Municipal Code of the City, and the City is and, on the Closing Date, will be a municipal corporation and charter city organized and operating pursuant to its Charter and the laws of the State of California with the full power and authority to execute and deliver the Official Statement, and to enter into this Bond Purchase Agreement and the Legal Documents;

(b) By all necessary official action of the City prior to or concurrently with the acceptance hereof, the City has (i) duly and validly made all the necessary findings and determinations required under the Chapter and the Act in connection with the formation of the District and the issuance of the Bonds, and (ii) has authorized and approved the execution and delivery of the Official Statement, and authorized and approved the execution and delivery of, and the performance by the City of the obligations on its part contained in, the Legal Documents, the Official Statement and this Bond Purchase Agreement to be executed by it and the consummation by it of all other transactions contemplated by the Official Statement and this Bond Purchase Agreement;

(c) The City represents to the Underwriters that the Preliminary Official Statement dated \_\_\_\_\_, 2011 relating to the Bonds (including the cover page, the introduction and all appendices thereto, the “Preliminary Official Statement”), has been “deemed final” by the City as of its date within the meaning of paragraph (a)(2) of Rule 15c2-12, except for the omission of some or all of such information the omission of which is permitted under Rule 15c2-12. The Preliminary Official Statement as of its date and as of the date hereof does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(d) The Legal Documents and this Bond Purchase Agreement, when duly executed and delivered by the parties thereto, will constitute valid and binding obligations of the City, enforceable in accordance with their terms, subject to bankruptcy, insolvency,

reorganization, arrangement, fraudulent conveyance, moratorium and other laws affecting the enforcement of creditors' rights in general and to the application of equitable principles, whether or not equitable remedies are sought, and to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public entities in the State, including the City;

(e) The Special Tax constituting the security for the Bonds has been duly and lawfully authorized and may be levied under the Chapter and the Constitution and the applicable laws of the State of California, and such Special Tax is secured by a valid and legally binding continuing lien on the properties on which it has been levied;

(f) As of the date hereof, and except for statements regarding DTC, as to which the City does not make any representation or warranty, the Official Statement does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(g) The execution and delivery of the Legal Documents, this Bond Purchase Agreement and the Official Statement, and compliance with the provisions on the City's part contained herein and therein, will not in any material respect conflict with or constitute a breach of or default under any law, administrative regulation, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject, which breach or default would have a materially adverse effect on the transactions contemplated hereby or by the Official Statement or on the City's liabilities and obligations under the Legal Documents or other instrument to which the City is a party or is otherwise subject or any judgment or decree to which the City is a party or is otherwise subject (and of which the City has knowledge), nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon the Project under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, which lien, charge or other security interest or encumbrance would have a materially adverse effect on the transactions contemplated hereby or by the Official Statement or on the City's liabilities and obligations under the Legal Documents, except as provided in the Legal Documents and disclosed in the Official Statement;

(h) Except as is otherwise disclosed in the Official Statement, the City is not in any material respect in breach of, or in default under, any applicable law or administrative regulation of the State of California or the United States of America or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject that would have a materially adverse effect on the transactions contemplated hereby or by the Official Statement or on the City's liabilities and obligations under the Legal Documents or other instrument to which the City is a party or is otherwise subject or any judgment or decree to which the City is a party or is otherwise subject (and of which the City has knowledge), and no event has occurred and is continuing that, with the passage of time or the giving of notice or both, would constitute a default or an event of default under any such instrument that would have a materially adverse effect on the transactions contemplated hereby

or by the Official Statement or on the City's liabilities and obligations under the Legal Documents;

(i) Except as otherwise disclosed in the Official Statement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, that has been served on the City and that is now pending or, to the best knowledge of the official executing this Bond Purchase Agreement on the City's behalf, threatened against the City in any material respect affecting the Project, the existence of the City or the titles of its officers to their respective offices or the finances or operations of the City, or seeking to prohibit, restrain or enjoin the sale, execution or delivery of the Bonds or the collection or application of the Special Tax, or contesting or affecting the validity or enforceability of the Legal Documents or this Bond Purchase Agreement or contesting the powers of the City or its authority to enter into, adopt or perform its obligations under any of the foregoing, or contesting the completeness or accuracy of the Official Statement, or any amendment or supplement thereto, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of, or the City's ability to perform its obligations under, the Legal Documents or this Bond Purchase Agreement;

(j) The City will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Underwriters may reasonably request in order (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriters may designate and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualification in effect so long as required for distribution of the Bonds (at the sole expense of the Underwriters); provided, however, that in no event shall the City be required to take any action that would subject it to general or unlimited service of process in any jurisdiction in which it is not now so subject; and provided, further, that notwithstanding the foregoing, nothing in this Bond Purchase Agreement shall impose any past or future requirement upon the City, or constitute a representation or warranty by the City, with respect to compliance with any Blue Sky laws;

(k) As of the date thereof, except for statements regarding DTC, as to which the City does not make any representation or warranty, the Official Statement did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(l) If between the date hereof and the date that is 25 days after the End of the Underwriting Period (as defined hereafter) for the Bonds, an event occurs that would cause the information contained in the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make such information therein, in the light of the circumstances under which it was presented, not misleading, the City will notify the Representative, and, if in the opinion of the City, the Representative or their respective counsel, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the City will forthwith prepare and furnish to the Underwriters (at the expense of the City) a reasonable number of

copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to counsel for the City and counsel for the Underwriters) that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. For the purposes of this subsection, between the date hereof and the date that is 25 days after the End of the Underwriting Period for the Bonds, the City will furnish such information with respect to itself as the Representative may from time to time reasonably request. As used in this Section 2, the term “End of the Underwriting Period” for the Bonds shall mean the Closing Date unless the City shall have been notified in writing to the contrary by the Underwriter on or prior to the Closing Date;

(m) If the information contained in the Official Statement is amended or supplemented pursuant to paragraph (l) hereof, at the time of each supplement or amendment thereto, the City will represent and warrant that the portions of the Official Statement so supplemented or amended (including any financial and statistical data contained therein), except for statements regarding DTC, as to which the City does not make any representation or warranty, do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading;

(n) The City will undertake, pursuant to the Continuing Disclosure Certificate, to provide certain annual financial information and notices of the occurrence of certain events. A description of this undertaking is set forth in the Preliminary Official Statement and the Official Statement. In the last five (5) years, the City has not failed to comply in any material respect with any previous undertakings to provide annual financial information and notices of certain events except as disclosed in the Preliminary Official Statement and the Official Statement; and

(o) The City has obtained a Validation Default Judgment from the Superior Court of California, County of Santa Clara dated March 30, 2010 (the “Validation Judgment”) related to the Bonds and the District, to the effect that the formation of the District, the authorization of the Special Tax and the authorization of the Bonds were and are legal, valid and binding, and were and are in conformity with the applicable provisions of all laws. Such Validation Judgment is final and binding as to all parties with respect to the matters determined therein.

3. Conditions to the Obligations of the Underwriters. The Representative hereby enters into this Bond Purchase Agreement in reliance upon the representations and warranties of the City contained herein and the representations and warranties to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the City of its obligations both on and as of the date hereof and as of the Closing Date. Accordingly, the Underwriters’ obligations under this Bond Purchase Agreement to purchase, to accept delivery of and to pay for the Bonds shall be subject to the accuracy of the representations and warranties of the City contained herein as of the date hereof and as of the Closing Date, to the accuracy in all material respects of the statements of the officers and other officials of the City made in any certificate or other document furnished pursuant to the provisions hereof, to the performance by the City of its obligations to be performed hereunder and under the Legal

(a) The City shall deliver, or cause to be delivered, the Bonds to the Representative, as provided in this Bond Purchase Agreement.

(b) At the Closing, the Legal Documents shall have been duly authorized, executed and delivered by the respective parties thereto, and the Official Statement shall have been duly authorized, executed and delivered by the City, all in substantially the forms submitted to the Representative, with only such changes as shall have been agreed to in writing by the Representative, and shall be in full force and effect; and there shall be in full force and effect such resolution or resolutions of the City Council of the City as, in the opinion of Orrick, Herrington & Sutcliffe LLP (“Bond Counsel”), shall be necessary or appropriate in connection with the transactions contemplated hereby;

(c) Between the date hereof and the Closing Date, the market price or marketability of the Bonds, at the initial offering prices set forth in the Official Statement, or the Underwriters’ ability to process and settle transactions, shall not have been materially adversely affected, in the reasonable judgment of the Representative (evidenced by a written notice from the Representative to the City terminating the obligation of the Underwriters to accept delivery of and make any payment for the Bonds), by reason of any of the following:

(1) legislation enacted (or resolution passed) by or introduced or pending legislation amended in the Congress or recommended for passage by the President of the United States, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Chairman or ranking minority member of the Committee of Ways and Means of the House of Representatives or the Chairman or ranking minority member of the Committee on Finance of the Senate, or a decision rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed) or press release issued or made by or on behalf of the Treasury Department of the United States or the Internal Revenue Service, with the purpose or effect, directly or indirectly, of imposing federal income taxation upon moneys that would be received by the City or the Special Tax that would be received by the Trustee under the Indenture;

(2) the declaration of war or engagement in or escalation of major military hostilities by the United States or the occurrences or escalation of any other national or international emergency, calamity, or crisis affecting the operation of the government of or the financial community or credit markets in the United States;

(3) the declaration of a general banking moratorium by federal, New York or California authorities, the general suspension of trading on any national securities exchange, or a major financial crisis or a material disruption in commercial banking in securities settlement or clearance services shall have occurred;

(4) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now

(5) legislation enacted (or resolution passed) by or introduced or pending legislation amended in the Congress or recommended for passage by the President of the United States, or an order, decree or injunction issued by any court of competent jurisdiction, or an order, ruling, regulation (final, temporary or proposed) or press release issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds, or the Bonds, including any or all underlying arrangements, are not exempt from registration under the Securities Act of 1933, as amended, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended, or that the execution, offering or sale of obligations of the general character of the Bonds, or of the Bonds, including any or all underlying arrangements, as contemplated hereby or by the Official Statement, otherwise is or would be in violation of the federal securities laws as amended and then in effect;

(6) the withdrawal or downgrading of any rating assigned to the Bonds by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. ("S&P"), Moody's Investors Service, Inc. ("Moody's"), or Fitch Ratings ("Fitch");

(7) there is a withdrawal or downgrading of any rating on any of the City's obligations substantially similar to the Bonds; or

(8) any event occurring, or information becoming known that, in the judgment of the Representative, makes untrue in any material respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) At or prior to the Closing Date, the Representative shall have received the following instruments and documents, in each case satisfactory in form and substance to the Representative and its counsel:

(1) Copies of the Legal Documents (excluding the Bonds) each duly executed and delivered by the respective parties thereto;

(2) The approving opinion of Bond Counsel, dated the Closing Date and addressed to the City, in substantially the form attached to the Official Statement as Appendix F, and a letter of Bond Counsel, dated the Closing Date and addressed to the Representative, to the effect that such opinion may be relied upon by the Representative to the same extent as if such opinion were addressed to the Representative;

(3) The supplemental opinion or opinions of Bond Counsel, dated the Closing Date and addressed to the Representative, in a form acceptable to the Representative,

(4) The opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, as disclosure counsel, dated the Closing Date and addressed to the City and the Representative, to the effect that, based upon the information made available to it in the course of its participation in the preparation of the Official Statement and without passing on and without assuming any responsibility for the accuracy, completeness and fairness of the statements in the Official Statement, and having made no independent investigation or verification thereof, it is of the opinion, subject to the limitations expressed, that as of the Closing Date it has no reason to believe that the Official Statement as of its date and as of the Closing Date (except for any financial, engineering, numerical and statistical data or forecasts, estimates, projections, assumptions or expressions of opinion, the information relating to DTC and its book-entry system contained in the Official Statement, as to all of which such firm expresses no opinion) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(5) The opinion of the City Attorney, as counsel for the City, dated the Closing Date and addressed to the Representative, to the effect that:

- (i) the District is a convention center facilities district duly organized and validly existing under the Chapter and the Act;

- (ii) the City is a charter city duly organized and existing under its charter and the laws of the State of California and has full legal right, power and authority to form the District;
- (iii) the City Resolutions (as defined in Section 3(d)(12) below) were duly adopted at meetings of the City Council of the City that were called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout;
- (iv) except as otherwise disclosed in the Official Statement, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, that has been served on the City and that is now pending or, to the best knowledge of such counsel after reasonable investigation, threatened against the City, to restrain or enjoin the Project, the collection or application of the Special Tax, or contesting or affecting the enforceability of the Legal Documents or the Bond Purchase Agreement;
- (v) the execution and delivery of the Legal Documents, the Bond Purchase Agreement and the Official Statement, the adoption of the City Resolutions, and compliance by the City with the provisions of the foregoing, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute on the part of the City a breach or default under (a) any agreement or other instrument to which the City is a party (and of which such counsel is aware after reasonable investigation) or by which it is bound (and of which such counsel is aware after reasonable investigation), which conflict, breach or default would have a materially adverse effect on the transactions contemplated hereby and by the Official Statement or on the City's liabilities and obligations under the Legal Documents, (b) any existing law or regulation to which the City is subject, which conflict, breach or default would have a materially adverse effect on the transactions contemplated hereby and by the Official Statement or on the City's liabilities and obligations under the Legal Documents, or (c) any court order or consent decree to which the City is subject (and of which such counsel is aware after reasonable investigation), which conflict, breach or default would have a materially adverse effect on the transactions contemplated hereby and by the Official Statement or on the City's liabilities and obligations under the Legal Documents;
- (vi) the Official Statement has been duly authorized, executed and delivered by the City, and the Legal Documents and the Bond Purchase Agreement have been duly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by the other parties thereto, constitute legal, valid and binding agreements of the City enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent

- (vii) except as described in the Official Statement, no authorization, approval, consent, or other order of the State of California or any other governmental authority or agency within the State of California having jurisdiction over the City is required for the valid authorization, execution, delivery and performance by the City of the Legal Documents or the Bond Purchase Agreement or the adoption of the City Resolutions or for the authorization, execution and delivery of the Official Statement, that has not been obtained; and
- (viii) as of its date and as of the Closing Date, the information contained in the Preliminary Official Statement and the Official Statement under the caption “LEGAL MATTERS – Absence of Material Litigation” does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(6) The opinion of Counsel to the Trustee, dated the Closing Date and addressed to the Representative and the City, to the effect that (i) the Trustee has been duly incorporated as a national banking association under the laws of the United States and is in good standing under the laws of the State of California, duly qualified to do business and to exercise trust powers therein, having full power and authority to enter into and to perform its duties as Trustee under the Indenture; (ii) the Trustee has duly authorized, executed and delivered the Indenture; (iii) the Indenture constitutes a legally valid and binding agreement of the Trustee, enforceable against the Trustee in accordance with its terms; (iv) the Bonds have been validly authenticated and delivered by the Trustee; (v) no authorization, approval, consent, or other order of the State of California or any other governmental authority or agency within the State of California having jurisdiction over the Trustee is required for the valid authorization, execution, delivery and performance by the Trustee of the Indenture; and (vi) the execution and delivery of the Indenture and compliance by the Trustee with the respective provisions of the foregoing, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute on the part of the Trustee a breach or default under any agreement or other instrument to which the Trustee is a party (and of which such counsel is aware after reasonable investigation) or by which it is bound (and of which such counsel is aware after reasonable investigation) or any existing law, regulation, court order or consent decree to which the Trustee is subject.

(7) The opinion of Hawkins Delafield & Wood LLP, counsel for the Underwriters (“Underwriters’ Counsel”), dated the Closing Date and addressed to the Representative, to the effect that (a) the Bonds are exempt from registration under the

(8) A certificate or certificates, dated the Closing Date, signed by a duly authorized official of the City satisfactory to the Representative, in form and substance satisfactory to the Representative, to the effect that, to the best of such official's knowledge, (a) the representations and warranties of the City contained in the Bond Purchase Agreement are true and correct when made and true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; (b) except as otherwise disclosed in the Official Statement, there is no litigation that has been served on the City and that is now pending or, to the best knowledge of such official, threatened (i) to restrain or enjoin the Project, the execution, sale or delivery of any of the Bonds or the collection or application of the Special Tax, (ii) in any way contesting or affecting the validity of the Bonds, the Bond Purchase Agreement, or the Legal Documents, or (iii) in any way contesting the existence or powers of the City; and (c) no event has occurred since the date of the Official Statement that either makes untrue or incorrect in any material respect as of the Closing Date any statement or information contained in the Official Statement or is not reflected in the Official Statement but should be reflected therein in order to make the statements and information therein not misleading;

(9) A certificate, dated the date of Closing, signed by a duly authorized officer of the Trustee, satisfactory in form and substance to the Representative, to the effect that:

- (i) the Trustee is a national banking association organized and existing under and by virtue of the laws of the United States, having the full power and being qualified to accept the trusts, and enter into and perform its duties, under the Indenture and to execute and deliver the Bonds to the Representative and the Indenture constitutes the legal, valid and binding obligation of the Trustee, enforceable in accordance with the terms;
- (ii) the Trustee is duly authorized to enter into the Indenture and to execute and deliver the Bonds to the Representative pursuant to the Indenture;

- (iii) the execution and delivery of the Indenture and compliance with the provisions on the Trustee's part contained therein, will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, Indenture, bond, note, resolution, agreement or other instrument to which the Trustee is a party or is otherwise subject (except that no representation, warranty or agreement is made with respect to any federal or state securities or blue sky laws or regulations), nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets held by the Trustee pursuant to the lien created by the Indenture under the terms of any such law, administrative regulation, judgment, decree, loan agreement, Indenture, bond, note, resolution, agreement or other instrument, except as provided by the Indenture; and
  - (iv) to the best of the knowledge of the Trustee, it has not been served with any action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, nor is any such action or other proceeding threatened against the Trustee, affecting the existence of the Trustee, or the titles of its officers to their respective offices or seeking to prohibit, restrain or enjoin the execution and delivery of the Bonds or the collection of revenues to be applied to pay the principal, premium, if any, and interest with respect to the Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Legal Documents, or contesting the powers of the Trustee or its authority to enter into, adopt or perform its obligations under any of the foregoing to which it is a party, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Legal Documents;
- (10) Two copies of the Official Statement, executed on behalf of the City by an authorized representative;
- (11) A certified copy of the general resolution of the Trustee authorizing the execution and delivery of the Legal Documents to which the Trustee is a party;
- (12) Copies of the relevant resolutions and ordinances of the City authorizing the sale of the Bonds, the formation of the District, and the levy of the Special Tax within the District, each together with a certificate of the City Clerk, dated as of the Closing Date, to the effect that such resolution or ordinance is a true, correct and complete copy of the resolution or ordinance duly adopted by the City, and that such resolution or ordinance has not been amended, supplemented and remains in full force and effect as of the Closing Date (collectively, the "City Resolutions");
- (13) Written evidence that the ratings on the Bonds of "\_\_\_" by S&P, "\_\_\_" by Moody's and "\_\_\_" by Fitch, are in full force and effect on the Closing Date;

(14) The Continuing Disclosure Certificate of the City;

(15) A certificate, dated the Closing Date, signed by a duly authorized officer of Stone & Youngberg LLC, financial advisor to the City in connection with the Bonds and the Official Statement in form and substance satisfactory to the City, the Representative and their respective counsel to the effect that the information set forth in the Official Statement under the captions “ESTIMATED SOURCES AND USES OF FUNDS” and “FINANCIAL ADVISOR” is true, complete and correct in all material respects;

(16) A consultant report executed by Horwath HTL (the “Feasibility Consultant”), in substantially the form attached to the Official Statement;

(17) A certificate of the Feasibility Consultant, dated the Closing Date, to the effect that the information in the Official Statement under Appendix G – “HOTEL TAX REVENUE REPORT”, are true and correct in all material respects, and contains no misstatement of any material fact and does not omit any statement necessary to make the statements contained therein, in the light of the circumstances in which such statements were made, not misleading;

(18) Certificates of the Feasibility Consultant dated the date of the Preliminary Official Statement and the Official Statement, consenting to the use of the report of the Feasibility Consultant in the Preliminary Official Statement and the Official Statement, respectively; and

(19) Such additional legal opinions, certificates, proceedings, instruments, insurance policies or evidences thereof and other documents as the Representative or Bond Counsel may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the representations of the City herein and of the statements and information contained in the Official Statement, and the due performance or satisfaction by the Trustee and the City at or prior to the Closing of all agreements then to be performed and all conditions then to be satisfied by any of them in connection with the transactions contemplated hereby, by the Official Statement and by the Legal Documents.

(e) No order, decree, injunction, ruling or regulation of any court, regulatory agency, public board or body shall have been issued, nor shall any legislation have been enacted, with the purpose or effect, directly or indirectly, of prohibiting the Project or the offering, sale or issuance of the Bonds as contemplated hereby or by the Official Statement.

(f) If the City or the Trustee shall be unable to satisfy the conditions to the Underwriters’ obligations contained in this Bond Purchase Agreement or if the Underwriters’ obligations shall be terminated for any reason permitted herein, all obligations of the Underwriters hereunder may be terminated by the Representative on, or at any time prior to, the Closing Date by written notice to the Trustee and the City and neither the Underwriters nor the City shall have any further obligations hereunder.

4. Expenses. All expenses and costs incident to the authorization, execution, delivery and sale of the Bonds to the Underwriters, including the costs of printing of the Bonds, the Preliminary Official Statement, the Official Statement, the cost of duplicating the Legal Documents, the fees of accountants, consultants and rating agencies, costs incurred by the Representative in relation to communications with the rating agencies, the initial fee of the Trustee and its counsel in connection with the issuance of the Bonds, the fees and expenses of the Financial Advisor and the fees and expenses of Bond Counsel and Disclosure Counsel shall be paid from the proceeds of the Bonds.

The Underwriters shall be responsible for and pay fees and expenses related to obtaining CUSIP numbers for the Bonds, the California Debt and Investment Advisory Commission, qualifying the Bonds for sale under any “blue sky” laws, and other expenses incurred by the Underwriters in connection with the public offering and distribution of the Bonds not specifically enumerated in the immediately preceding paragraph, including the fees and disbursements of Underwriters’ Counsel.

5. Notices. Any notice or other communication to be given to the parties to this Bond Purchase Agreement may be given by delivering the same in writing to the respective party at the following address:

Representative: Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
600 Montgomery Street  
San Francisco, California 94111  
Attention: Kim Nakahara

City: City of San José, California  
200 East Santa Clara Street, 13<sup>th</sup> Floor  
San José, California 95113  
Attention: Director of Finance

6. Survival of Representations and Warranties. The representations and warranties of the City set forth in or made pursuant to this Bond Purchase Agreement shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing or termination of this Bond Purchase Agreement and regardless of any investigations or statements as to the results thereof made by or on behalf of the Underwriters and regardless of delivery of and payment for the Bonds.

7. No Advisory or Fiduciary Role. The City acknowledges and agrees that (i) the purchase and sale of the Bonds pursuant to this Bond Purchase Agreement is an arm’s-length commercial transaction between the City and the Representative, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Representative is and has been acting solely as a principal and is not acting as the agent or fiduciary of the City, (iii) the Representative has not assumed an advisory or fiduciary responsibility in favor of the City with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the

8. Counterparts. This Bond Purchase Agreement may be executed in any number of counterparts and by delivering by electronic mail a scanned copy of a party's signature, and each of such counterparts shall for all purposes be deemed to be an original.

*[Remainder of Page Intentionally Left Blank]*

9. Effectiveness. This Bond Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by a duly authorized officer of the City and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED, as Representative of itself,  
Citigroup Global Markets Inc. and Wells Fargo  
Bank, National Association

---

Authorized Representative

APPROVED AS TO FORM:

ACCEPTED:

OFFICE OF THE CITY ATTORNEY

CITY OF SAN JOSE

By: \_\_\_\_\_  
Chief Deputy City Attorney

By: \_\_\_\_\_  
Assistant Director of Finance

**EXHIBIT A**

\$ \_\_\_\_\_

City of San José

Special Hotel Tax Revenue Bonds, Series 2011

(Convention Center Expansion and Renovation Project)

<u>Maturity Date</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Price</u>
	\$	

**Redemption Provisions:**