

**RESOLUTION NO. 75456**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE PROVIDING FOR THE BORROWING OF FUNDS FOR FISCAL YEAR 2010-11 AND THE ISSUANCE AND SALE OF THE CITY OF SAN JOSE 2010 TAX AND REVENUE ANTICIPATION NOTE (OR PORTIONS THEREOF) IN AN AMOUNT NOT TO EXCEED \$75,000,000, AND APPROVING THE EXECUTION OF A NOTE PURCHASE AGREEMENT RELATING TO SUCH NOTE AND AUTHORIZING OTHER ACTIONS IN CONNECTION THEREWITH**

**WHEREAS**, pursuant to Sections 53850 to 53858, both inclusive, of the California Government Code, being Article 7.6, Chapter 4, Part 1, Division 2, Title 5 thereof (the "Law"), the City Council (the "Council") of the City of San José (the "City") has found and determined that the sum of not to exceed \$75,000,000 is currently needed by the City in Fiscal Year 2010-11 to satisfy obligations of the City payable from the General Fund of the City (the "General Fund") during Fiscal Year 2010-11 before the receipt of taxes, income, revenue, cash receipts and other moneys of the City to be received for or accrued to the General Fund during Fiscal Year 2010-11 that will be available for such purpose, and that it is necessary that such sum be borrowed for such purpose by the issuance of a temporary note in anticipation of such receipt; and

**WHEREAS**, the City intends to borrow such initial sum of not to exceed \$75,000,000 for such purpose by the issuance and sale of its 2010 Tax and Revenue Anticipation Note (together with portions thereof, the "Note"); and

**WHEREAS**, it appears, and the Council hereby finds and determines, that the principal amount of the Note, when added to the interest payable thereon, does not exceed eighty-five percent (85%) of the estimated amount of the uncollected taxes, income, revenue, cash receipts and other moneys of the City anticipated to be received for or accrued to the General Fund during Fiscal Year 2010-11 that will be available for the payment of the interest on and the principal of the Note; and

**WHEREAS**, no money has heretofore been borrowed by the City in anticipation of the receipt of, or payable or secured by, any taxes, income, revenue, cash receipts or other moneys of the City to be received for or accrued to the General Fund during Fiscal Year 2010-11; and

**WHEREAS**, the City wishes to authorize the issuance of the Note in a single series, to be purchased by JPMorgan Chase Bank, N.A. (the "Bank") from the City from time to time and evidenced by periodic notations on the single Note, in accordance with that certain Note Purchase Agreement tentatively dated July 1, 2010 between the City and the Bank, as originally executed and it may be amended from time to time in accordance with its terms (the "Note Purchase Agreement"); and

**WHEREAS**, pursuant to the Law, certain taxes, income, revenue, cash receipts and other moneys of the City which will be received for or accrued to the General Fund during Fiscal Year 2010-11 can be pledged for the payment of the interest on and the principal of the Note; and

**WHEREAS**, pursuant to the Law and this Resolution, the City has pledged all Revenues, the Additional Revenues (if applicable), the Repayment Account and all amounts held therein (as such terms are defined in the Note Purchase Agreement) to the payment of the interest on and the principal of the Note;

**NOW, THEREFORE**, BE IT RESOLVED BY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

Section 1. Recitals. All of the recitals hereinabove set forth are true and correct, and the Council so finds and determines, and the Council further finds and determines that all acts, conditions and things required by law to exist, to have occurred and to have been performed precedent to the issuance and sale of the Note do exist, have occurred and have been performed in regular and due time, form and manner as required by law, and that the City is empowered under the Law to issue and sell the Note as provided herein.

Section 2. Defined Terms. Unless otherwise defined herein, capitalized terms used in this Resolution shall have the meanings given such terms in the Note Purchase Agreement.

Section 3. Issuance of Note.

(a) Solely for the purpose of anticipating taxes, income, revenue, cash receipts and other moneys of the City to be received for or accrued to the General Fund during Fiscal Year 2010-11, the City hereby determines at this time to and shall borrow the aggregate principal sum of not to exceed \$75,000,000 by the issuance of a temporary note under the Law, designated the "City of San José 2010 Tax and Revenue Anticipation Note" (together with portions thereof, the "Note"). The Note shall be issued in a single note and shall be dated the date of issuance thereof which shall be deemed to be the date on which the first advance in an amount at least equal to \$5,000,000 is funded by the Bank. The Note shall bear interest on the principal amount outstanding from time to time, mature and be payable as provided in the Note Purchase Agreement, provided that the interest rate thereon shall be a variable rate or rates determined in accordance with the Note Purchase Agreement, in no event to exceed ten percent (10%) per annum. The principal amount of the Note shall be noted by the Bank on the form of the Note in accordance with the Note Purchase Agreement. The Note is subject to prepayment prior to the maturity date thereof in accordance with terms of the Note Purchase Agreement.

(b) The Note shall be initially issued and registered in the name of "JPMorgan Chase Bank, National Association," as the registered owner thereof (the "Owner") and shall be evidenced by a single Note.

(c) The Note shall be initially issued and registered as provided in Section 3(b) hereof. Except as otherwise provided in the Note Purchase Agreement, the Note is non-negotiable and non-transferable and the Bank shall not have the right to sell or transfer the Note or to otherwise directly or indirectly transfer or assign any interest in the Note and the foregoing transfer restrictions will be a legend on the Note.

(d) The City shall be entitled to treat the Bank as the Owner of the Note indicated therein as the absolute owner of such Note for all purposes under this Resolution and for purposes of payment of principal of and interest on such Note, notwithstanding any notice to the contrary received by the City.

(e) The Director of Finance is hereby authorized and directed to provide any notices or other directions of the City to the Bank pursuant to the Note Purchase Agreement.

(f) The Director of Finance will maintain or cause to be maintained, at his office in San José, California, sufficient books for the registration of the Note.

Section 4. Form of Note. The Note shall be issued without coupons and shall be substantially in the form thereof set forth in Exhibit A attached hereto and incorporated herein, the blanks in said form to be filled in with appropriate words and figures after the sale of the Note and before the execution, authentication and delivery of the Note.

Section 5. Execution of Note. The Director of Finance is hereby authorized to execute the Note by his manual signature, and the City Clerk is hereby authorized to countersign the Note by her manual signature and to impress the seal of the City thereon. The Note shall not be valid, however, unless and until the Director of Finance shall have manually authenticated such Note by executing the Certificate of Authentication printed thereon.

Section 6. Use of Proceeds of Note. The Director of Finance shall, immediately upon receiving the proceeds of the sale of the Note (or portions thereof), deposit in the General Fund all amounts representing the proceeds of the Note (or portions thereof) received from such sale, and such proceeds shall be used for the purpose specified in Section 3 hereof.

Section 7. Security for Note; Repayment Account; Security Interest.

(a) There is hereby established by the Director of Finance a separate account in the General Fund, which separate account is hereby designated the "2010-11 Tax Anticipation Note-Repayment Account" (the "Repayment Account"). As security for the payment of the principal of and interest on the Note, the City agrees and covenants to deposit in trust into the Repayment Account, all Revenues received by the City on and after April 1, 2011; provided however that if such Revenues are, or thereafter become, insufficient to enable the City to make such transfers or to pay amounts owed to the Bank under the Note, the City shall thereafter transfer Additional Revenues to the Repayment Account so that the amounts in the Repayment Account

are at least equal to the amounts required to pay the principal of and interest on the Note as they become due.

(b) The City hereby pledges all Revenues, the Additional Revenues (if applicable), the Repayment Account and all amounts held therein (collectively, the "Pledged Property") to the payment of the principal of and interest on the Note. This pledge is valid and binding in accordance with the terms of this Resolution and the Pledged Property shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Pledged Property and be effective, binding, and enforceable against the City, its successors, purchasers of the Pledged Party, creditors, and all others asserting the rights therein, to the extent set forth, and in accordance with, this Resolution irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Amounts deposited in the Repayment Account may not be used for any purpose other than payment of the Note and may be invested in legal investments which are permitted by the City's Investment Policy and which mature not later than the maturity date of the Note; provided that the earnings on any such investment shall be transferred by the City to the City's General Fund.

(c) Nothing in this Resolution shall prohibit the City from issuing additional tax and revenue anticipation notes payable from the Pledged Property or other available funds on a basis subordinate to the Notes.

Section 8. Sale of Note. The Note Purchase Agreement providing for the sale of the Note proposed to be entered into between the Bank and the City, in the form thereof set forth in Exhibit B attached hereto and incorporated herein, is hereby approved, and the Director of Finance or his designee is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Bank the Note Purchase Agreement in substantially said form (which Note Purchase Agreement shall contain the maturity date and the interest rates and the prepayment provisions for the Note), with such changes as such officer executing the Note Purchase Agreement may require or approve upon consultation with the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof; provided, the Note shall bear interest at the variable rate established from time to time pursuant to the Note Purchase Agreement, and in no event to exceed ten percent (10%) per annum, and the aggregate principal amount of the Note shall be disbursed to the City from time to time in accordance with the draw down procedures set forth in the Note Purchase Agreement and shall not exceed in the aggregate \$75,000,000.

Section 9. Further Actions. The Director of Finance and the City Clerk are hereby authorized and directed to execute and deliver all of the Note to the Bank in accordance with the Note Purchase Agreement, and the City Manager, the Director of Finance and the City Clerk are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute any and all certificates, agreements and other documents, including but not limited to an agreement relating to the breakage fee for the Initial Note Portion (as defined in the Note Purchase Agreement), which they, or any of them, may deem necessary or

advisable in order to consummate the lawful issuance and delivery of the Note in accordance with this Resolution, and all actions heretofore taken by such officers with respect to the sale and issuance of the Note is hereby approved, confirmed and ratified. Any authority delegated under this Resolution to a specified official of the City may also be exercised by the specified official's authorized designee.

Section 10. Resolution to Constitute Contract. It is hereby covenanted and warranted by the City that all representations and recitals contained in this Resolution are true and correct, and that the City, and its appropriate officials, have duly taken all proceedings necessary to be taken by them, and will take any additional proceedings necessary to be taken by them, for the levy and collection and deposit of the Revenues pledged hereunder in accordance with law and with this Resolution and for carrying out the provisions of this Resolution. It is hereby further covenanted and warranted by the City that the provisions of the Note and of this Resolution shall constitute a contract between the City and the Owner, and such provisions shall be enforceable by mandamus or any other appropriate suit, action or proceeding at law or in equity in any court of competent jurisdiction, and shall be irreparable; provided, that notwithstanding any other provision hereof to the contrary, upon the City's failure to observe, or refusal to comply with, the covenants contained herein, no one other than the Owner or former Owner of the Note shall be entitled to exercise any right or remedy under this Resolution on the basis of the City's failure to observe, or refusal to comply with, such covenants.

Section 11. Amendments. This Resolution may be amended by a supplemental resolution adopted by the City Council with the written consent of the Owner of one hundred percent of the principal amount of the Note outstanding.

Section 12. Severability. If any one or more of the provisions of this Resolution shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the decision, finding, order or decree of which becomes final, none of the remaining provisions of this Resolution shall be affected thereby, and such provisions shall be valid and enforceable to the fullest extent permitted by law.

Section 13. Effective Date. This Resolution shall take effect from and after its adoption.

ADOPTED this 22<sup>nd</sup> day of June, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:



CHUCK REED  
Mayor

ATTEST:



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LEE PRICE, MMC  
City Clerk

**EXHIBIT A**

**FORM OF NOTE**

R-1

Up to \$75,000,000.00

ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, JPMorgan Chase Bank, N.A., has an interest herein. Except as otherwise provided in the Note Purchase Agreement referenced herein, the Note is non-negotiable and non-transferable and JPMorgan Chase Bank, N.A. does not have the right to sell or transfer the Note or to otherwise directly or indirectly transfer or assign any interest in the Note.

**CITY OF SAN JOSE, CALIFORNIA  
2010 Tax and Revenue Anticipation Note**

<u>INTEREST RATE</u>	<u>DATED DATE</u>	<u>MATURITY DATE</u>
Variable	July __, 2010	June 30, 2011

FOR VALUE RECEIVED, the City of San José, California, acknowledges itself indebted to and promises to pay to JPMorgan Chase Bank, N.A. (the "Bank"), at the office of the Director of Finance, the principal sum advanced to the City from time to time in respect hereof and noted on the Principal Log attached hereto as Schedule I and incorporated herein by reference, in no event to exceed Seventy Five Million Dollars (\$75,000,000.00) in lawful money of the United States of America, on June 30, 2011, together with interest on the principal amount outstanding hereunder from time to time at the rate or rates per annum set forth in that certain Note Purchase Agreement by and between the City and the Bank dated July \_\_, 2010 (computed on the basis set forth in the Note Purchase Agreement) in like lawful money from the date hereof until payment in full of said principal sum. Interest hereon shall be payable to the registered owner hereof at the address shown on the registration books of the Director of Finance on June 30, 2011, and at such other times as may be required under the Note Purchase Agreement. The principal of and interest at maturity on this Note shall be payable only to the registered owner hereof upon surrender of this Note as the same shall fall due; provided, however, that no interest shall be payable for any period after maturity during which the registered owner hereof fails to properly present this Note for payment.

It is hereby certified, recited and declared that this Note is an authorized Note entitled "City of San José, California 2010 Tax and Revenue Anticipation Note" (the "Note"), in the aggregate principal amount of not to exceed Seventy Five Million Dollars (\$75,000,000.00), to be issued in a single series by authority of Article 7.6, Chapter 4, Part 1, Division 2, Title 5 of the Government Code of the State of California and Resolution No. 75456 adopted by the City Council on June 22, 2010 (together with the Note Purchase Agreement appended thereto, the "Resolution"), and that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Note have existed, happened and been performed in regular and due time, form and manner as required by law, and that this Note, together with all other indebtedness and obligations of the City does not exceed any limit prescribed by the Constitution or laws of the State of California. Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Resolution.

The Principal Log attached as Schedule I hereto shall be used by the Bank to record the principal amount of the Note (or portions thereof) purchased by the Bank from time to time, which shall evidence the principal amount of the Note Outstanding and the prepayment or payment of principal of the Note. The Interest Log attached as Schedule II hereto shall be used by the Bank to record the Interest Period applicable to the Note (or portion thereof) from time to time. The total amount outstanding under the Note may not exceed \$75,000,000 at any time.

The Note is subject to prepayment at the times and upon the terms set forth in the Note Purchase Agreement.

As security for the payment of the principal of and interest on the Note, the City agrees and covenants in the Resolution to deposit in trust into a separate account in the General Fund, designated as the "2010-11 Tax Anticipation Note Repayment Account" (the "Repayment Account"), certain moneys to enable the City to pay in full such principal and interest at the times and in the manner set forth in the Resolution. Pursuant to the Resolution, the City has pledged all Revenues, the Additional Revenues (if applicable), the Repayment Account and all amounts held therein to the payment of the principal of and interest on the Note. Amounts deposited in the Repayment Account may not be used for any purpose other than payment of the Note and may be invested in legal investments which are permitted by the City's Investment Policy and which mature not later than the maturity date of the Note; provided that the earnings on any such investment shall be transferred by the City to the City's General Fund.

This Note shall not be valid or become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by the Director of Finance.

IN WITNESS WHEREOF, the City of San José has caused this Note to be executed by the manual or facsimile signature of its Director of Finance and countersigned by the manual or facsimile signature of the City Clerk and caused a facsimile of the official seal to be imprinted hereon, all as of the 1st day of July, 2010.

CITY OF SAN JOSE

By: \_\_\_\_\_  
Its: Director of Finance

(SEAL)

Countersigned:

By: \_\_\_\_\_  
Its: City Clerk

CERTIFICATE OF AUTHENTICATION

This Note is the City of San José, California 2010 Tax and Revenue Anticipation Note described in the within mentioned Resolution.

Date of Authentication: July 1, 2010

\_\_\_\_\_  
Director of Finance

**SCHEDULE I**  
**PRINCIPAL LOG**

<u>Purchase Amount</u>	<u>Purchase Date</u>	<u>Prepayment or Payment Amount</u>	<u>Prepayment Date</u>	<u>Outstanding Principal</u>	<u>Bank Initials</u>
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**SCHEDULE II  
INTEREST LOG**

I. Initial Note Portion: \$ \_\_\_\_\_  
Purchase Date: \_\_\_\_\_

Determination Date <sup>1</sup>	Interest Period <sup>2</sup>	LIBOR Rate <sup>3</sup>	Interest Period Start Date	Interest Period End Date <sup>4</sup>
			Effective Date/ Purchase Date	

II. Note Portion \$ \_\_\_\_\_  
Purchase Date: \_\_\_\_\_

Determination Date	Interest Period	LIBOR Rate	Interest Period Start Date	Interest Period End Date
			Purchase Date	

III. Note Portion \$ \_\_\_\_\_  
Purchase Date: \_\_\_\_\_

Determination Date	Interest Period	LIBOR Rate	Interest Period Start Date	Interest Period End Date
			Purchase Date	

<sup>1</sup> Third Business Day prior to Interest Period Start Date.

<sup>2</sup> One-week, two-week, one-month, two-month, three-month, four-month, five-month, six-month or seven-month period.

<sup>3</sup> LIBOR Rate two (2) Business Days prior to the Interest Period Start Date for a maturity comparable to the Interest Period and rounded to the fifth decimal place.

<sup>4</sup> The numerically corresponding day in the calendar month that is a one week, two week, one month, two month, three month, four month, five month, six month or seven month period thereafter based on the Interest Period selected.

EXHIBIT B

FORM OF NOTE PURCHASE AGREEMENT

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NOTE PURCHASE AGREEMENT

between

CITY OF SAN JOSE

and

JPMORGAN CHASE BANK, N.A.

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Dated July 1, 2010

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This NOTE PURCHASE AGREEMENT, dated July 1, 2010, is entered into by and between the CITY OF SAN JOSE, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California and its charter (the "City"), and JPMORGAN CHASE BANK, N.A., a national banking association ("JPMC").

W I T N E S S E T H:

WHEREAS, the City desires to sell its City of San José 2010 Tax and Revenue Anticipation Note (together with the portions thereof the "Note") in anticipation of its receipt of certain property tax payments in order to support its cash flow needs; and

WHEREAS, JPMC is willing, on the terms and conditions contained herein, to purchase the Note as further described herein from the City.

NOW, THEREFORE, in consideration of the respective agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I  
DEFINITIONS

Section 1.01 Definitions. The following terms have the meanings indicated below or in the referenced Section of this Agreement, unless the context shall clearly indicate otherwise:

"Additional Revenues" means all legally available taxes, income, revenue, cash receipts, and other moneys of the City attributable to the City's 2010-2011 Fiscal Year and chargeable to the City's General Fund and excluding moneys which, when received by the City, will be encumbered for a special purpose.

"Agreement" means this Note Purchase Agreement, as amended, modified and supplemented from time to time.

"Applicable Lending Office" means, in the case of any Note Portion, the office of JPMC at which the Note is carried on the books and records of JPMC as set forth in Section 7.09 herein.

"Applicable Margin" means 0.60% per annum.

"Authorized Representative" means any of the following officers of the City: the City Manager, the Director of Finance and any individual designated in writing to JPMC as an Authorized Representative by the City Manager or the Director of Finance.

"Authorizing Law" means California Government Code Sections 53850 to 53858 (inclusive).

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York or San José, California are authorized or required by

law to remain closed; provided that the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"Cash Flow Projections" has the meaning assigned to that term in Section 3.01(b)(viii) hereof.

"Change in Law" means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by JPMC (or by the Applicable Lending Office of JPMC) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

"City" has the meaning assigned to that term in the introductory paragraph of this Agreement.

"Commitment Termination Date" means June 30, 2011, unless terminated earlier as provided herein.

"Default" means the occurrence of any event or the existence of any circumstances that, with the passage of time, the giving of notice, or both, would become an Event of Default.

"Default Rate" has the meaning assigned to that term in Section 2.05(b) hereof.

"Determination Date" means, with respect to any Interest Period after the Purchase Date, the third Business Day prior to the commencement of that Interest Period.

"Director of Finance" means the individual who from time to time occupies the office of the Director of Finance of the City.

"Dollars" and "\$" means the lawful currency of the United States of America.

"Effective Date" means July 1, 2010.

"Event of Default" has the meaning assigned to that term in Section 6.01 hereof.

"Excess Interest" has the meaning assigned to that term in Section 2.05(d) hereof.

"Fiscal Year" means each twelve-month period commencing on July 1 and ending on June 30.

"GO Indebtedness" has the meaning assigned to that term in Section 6.01(d) hereof.

"Governmental Authority" means the government of the United States of America, or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive,

legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Indebtedness” means, without duplication, (a) all indebtedness (including principal and interest) of the City for borrowed money or for the deferred purchase price of property or services; (b) all liabilities secured by any Lien on any property owned by the City, whether or not such liabilities have been assumed by the City; (c) the aggregate amount required to be capitalized under leases under which the City is the lessee; and (d) all Contingent Obligations of the City. As used in this definition, the term “Contingent Obligation” means, as to the City, any obligation of the City guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly including, without limitation, any obligation of the City, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the holder of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming the City is required to perform thereunder) as determined by the City in good faith.

“Indemnitee” has the meaning assigned to that term in Section 7.07(a) hereof.

“Interest Invoice” has the meaning assigned to that term in Section 2.05(c) hereof.

“Initial Note Portion” means \$40,000,000 purchased on the Effective Date as described in Section 2.01(a) hereof.

“Interest Payment Date” means the first Business Day of each month and will be calculated and invoiced as set forth in Section 2.05(c) hereof.

“Interest Period” means, with respect to any Note Portion, the period commencing on the date of such purchase of such Note Portion and ending on the numerically corresponding day in the calendar month that is a one week, two week, one month, two month, three month, four month, five month, six month or seven month period thereafter, as the City may elect pursuant to the terms hereof; provided, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (b) any Interest Period (other than a one week or two week Interest Period) that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last

calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period.

“JPMC” has the meaning assigned to that term in the introductory paragraph of this Agreement.

“LIBOR Rate” means, with respect to any Note Portion for any Interest Period, the rate appearing on Reuters Screen LIBOR01 (or on any successor or substitute page of such Service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such Service, as determined by JPMC from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period and such rate shall be rounded to the fifth decimal place. In the event that such rate is not available at such time for any reason, then the “LIBOR Rate” with respect to such Interest Period shall be the rate at which dollar deposits in the approximate amount of principal outstanding on such date and for a maturity comparable to such Interest Period are offered by the principal London office of JPMC in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement).

“Margin Stock” has the meaning provided in Regulation U of the Board of Governors of the Federal Reserve System.

“Maximum Rate” means ten percent (10%) per annum.

“Note” has the meaning assigned to that term in the introductory paragraph of this Agreement and as further described in Section 2.04 hereof.

“Note Portion” means an undivided beneficial interest in the Note and includes the Initial Note Portion.

“Notice” or “notice” means any form of written communication or a communication by means of electronic mail, facsimile device, telegraph or cable and confirmed telephonically.

“Notice Office” means the office of JPMC as set forth in Section 7.09 herein, or such other office or mail code as JPMC may hereafter designate in writing as such to the City. Any Notice of a change in the Notice Office shall become effective on the fifth calendar day after the delivery of Notice thereof to the City.

“Obligations” means all amounts owing to JPMC pursuant to the terms of this Agreement and the Note.

“Parent” has the meaning assigned to that term in Section 2.07(b) hereof.

“Payment Fund” has the meaning assigned to that term in Section 2.05(c).

“Payment Office” means the office of JPMC as set forth in Section 7.09 herein, or such other office or account as JPMC may hereafter designate in writing as such to the City. Any Notice of a change in the Payment Office shall become effective on the fifth calendar day after the delivery of Notice thereof to the City.

“Person” means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or a political subdivision or an agency or instrumentality thereof.

“Pledged Property” has the meaning assigned to that term in Section 2.11(b) hereof.

“Prime Rate” means the rate of interest per annum announced from time to time by JPMC as its prime rate. The Prime Rate is a variable rate and each change in the Prime Rate is effective from and including the date the change is announced as being effective. THE PRIME RATE IS A REFERENCE RATE AND MAY NOT BE JPMC’S LOWEST RATE.

“Purchase Date” means, (a) with respect to the Initial Note Portion, the Effective Date, and (b) with respect to future Note Portions, the date, which shall be a Business Day, on which JPMC is required to purchase such Note Portion as set forth in the applicable Purchase Notice.

“Purchase Notice” has the meaning assigned to that term in Section 2.02 hereof.

“Related Documents” means the Note and the Resolution.

“Repayment Account” has the meaning assigned to that term in Section 2.11(a) hereof.

“Resolution” means Resolution No. R-*[insert number]* adopted by the City Council of the City on [June 22], 2010, as amended, modified and supplemented from time to time.

“Revenues” means all secured ad valorem property tax payments that the City receives from the County of Santa Clara, California during Fiscal Year 2010-2011.

“Section 5.05 Documents” means the documents required by Section 5.05 hereof.

“State” means the State of California.

“Taxes” has the meaning assigned to that term in Section 2.13 hereof.

“Term Sheet” means the term sheet, dated April 9, 2010, requesting proposals from private placement purchasers for the City’s tax and revenue anticipation notes.

“Unutilized Commitment” means, on the Effective Date, \$35,000,000, and, thereafter at any time, means \$35,000,000 less the aggregate principal amount of all Note Portions purchased by JPMC after the Initial Note Portion.

“Usury Rate” has the meaning assigned to that term in Section 2.05(d) hereof.

Section 1.02 Construction. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (d) all references herein to Articles, Sections and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Agreement.

## ARTICLE II NOTES

### Section 2.01 Initial Note Portion; Commitment to Purchase Note Portions.

(a) On the basis of the representations, warranties and covenants contained herein, but subject to the terms and conditions herein set forth, JPMC hereby agrees to purchase from the City, and the City hereby agrees to sell to JPMC, up to \$75,000,000 in principal amount of the Note at a purchase price of 100% of the principal amount thereof. The initial Note Portion (the “Initial Note Portion”) purchased by JPMC hereunder is \$40,000,000. The Interest Period for the Initial Note Portion is one week at the LIBOR Rate plus the Applicable Margin, and the first Interest Payment Date due hereunder is August 2, 2010. The wiring instructions for the Initial Note Portion are as follows:

Wells Fargo Bank, N.A.  
Government & Institutional Banking  
ACH/Wire Routing # 121000248  
Benefit of: City of San Jose  
Account Number 4121-893267  
Re: 2010 Tax And Revenue Note Proceeds

(b) Subject to and upon the terms and conditions set forth herein, including but not limited to, the provisions of Section 2.11(a) hereof, JPMC agrees, at any time and from time to time prior to the Commitment Termination Date at the written request of the City, to purchase additional Note Portions issued by the City in an aggregate principal amount not to exceed the Unutilized Commitment at such time.

(c) The aggregate principal amount of each Note Portion purchased hereunder shall be not less than \$5,000,000 and integral multiples of \$1,000,000 in excess thereof.

Section 2.02 Purchase Notice. Whenever the City desires for JPMC to purchase a Note Portion hereunder, it shall give JPMC at its Notice Office prior written notice of such purchase no later than five (5) Business Days preceding the applicable Purchase Date. Each such notice (each a "Purchase Notice") shall be in the form of Exhibit A attached hereto, appropriately completed to specify the aggregate principal amount of the Note Portion to be purchased, the applicable Purchase Date (which shall be a Business Day) and the initial Interest Period to be applicable thereto. Notwithstanding any provisions of the Resolution or this Agreement to the contrary, the City may not deliver more than one Purchase Notice per week.

Section 2.03 Disbursement of Proceeds. No later than 3:00 p.m. California time on the applicable Purchase Date, so long as the conditions precedent to such purchase as set forth in Section 3.02 are satisfied at such time on such date, JPMC will make available to the order of the City the principal amount of the Note Portion in Dollars and in immediately available funds.

Section 2.04 Note. The City's obligation to pay the principal of, and interest on, the Note Portions purchased by JPMC shall be evidenced by a City of San José 2010 Tax and Revenue Anticipation Note in the form of a note duly executed and delivered by the City substantially in the form attached to the Resolution appropriately completed in conformity herewith (as the same may be amended from time to time, the "Note"). The Note shall (i) be registered in the name of JPMC and be dated the Effective Date; (ii) be in a principal amount equal to an amount not to exceed \$75,000,000 and be payable in the principal amount of the Note Portions evidenced thereby, including the Initial Note Portion; (iii) mature, with respect to each Note Portion evidenced thereby, on June 30, 2011; (iv) bear interest for the Interest Periods provided herein at the LIBOR Rate in effect for such Interest Period plus the Applicable Margin; and (v) be entitled to the benefits of this Agreement and the Resolution. JPMC will note on the principal log attached to the Note the amount of each Note Portion purchased by JPMC and each principal payment in respect thereof. Failure to make any such notation shall not affect the City's obligations in respect of the Note Portions.

Section 2.05 Interest; Establishment of Payment Fund. The City agrees to pay interest in respect of the unpaid principal amount of the Note as follows:

(a) The City agrees to pay interest in respect of the unpaid principal amount of each Note Portion from the date the proceeds thereof are made available to the City until the earliest of (i) the date such Note Portion is paid in full, or (ii) the Commitment Termination Date, in each case, at a rate per annum which shall, during each Interest Period applicable thereto, be equal, subject to Section 2.05(d) below, to the product of the LIBOR Rate in effect for such Interest Period plus the Applicable Margin.

(b) Overdue principal and, to the extent permitted by law, overdue interest in respect of each Note Portion shall, subject to Section 2.05(d) below, bear interest at a rate per annum equal to 4.00% per annum in excess of the applicable rate for such Note Portion during the Interest Period. Any other overdue amount payable by the City hereunder and from and after the termination of the Interest Period in which the City failed to pay principal and interest shall bear interest at a rate per annum equal, subject to Section 2.05(d) below, to 4.00% per annum in excess of the Prime Rate (the "Default Rate").

(c) Interest shall be payable: (i) on each Interest Payment Date for the interest accrued on the Note from and including the preceding Interest Payment Date to but excluding such Interest Payment Date as set forth in an invoice of JPMC (each an "Interest Invoice") delivered to the City no later than ten (10) Business Days prior to such Interest Payment Date; provided that failure of delivery of an Interest Invoice shall not affect the City's obligations in respect of such interest; provided further that to the extent that the interest set forth in an Interest Invoice is either below or above the actual interest amount, the difference shall be either credited or debited in the next succeeding Interest Invoice and, in the case of a deficiency, as long as the City pays such interest pursuant to the provisions of the following paragraph, such interest shall not be considered overdue as set forth in Section 2.05(b) above; and (ii) in respect of each Note Portion, on any prepayment (on the amount prepaid), on the Commitment Termination Date and, after the Commitment Termination Date, on demand.

JPMC shall establish and maintain, at its Payment Office, a special purpose fund, which shall be designated "City of San José 2010 Tax and Revenue Anticipation Note Payment Fund" (the "Payment Fund"). On each Interest Payment Date, the City shall deposit in the Payment Fund the amount set forth in each Interest Invoice.

(d) If the rate of interest payable hereunder, including amounts payable under Sections 2.07 and 2.13 hereof, shall exceed the Maximum Rate or, if less, any maximum interest rate payable by law for any period for which interest is payable (the "Usury Rate"), then (i) interest at such Maximum Rate or the Usury Rate, as the case may be, shall be due and payable with respect to such Interest Period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and (B) such Maximum Rate or the Usury Rate, as the case may be (the "Excess Interest"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed such Maximum Rate or the Usury Rate, as the case may be, at which time the City shall pay or cause to be paid to JPMC, with respect to amounts then payable to JPMC that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to JPMC to equal such Maximum Rate or the Usury Rate, as the case may be, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until the earlier of (x) the date all deferred Excess Interest is fully paid to JPMC or (y) the Commitment Termination Date.

(e) All computations of interest (other than interest that is determined by reference to the Prime Rate as set forth in Section 2.05(b) hereof) shall be made on the basis of a 360-day year and actual days elapsed.

Section 2.06 Interest Periods. At the time it gives any Purchase Notice in respect of the making of a new Note Portion (in the case of the initial Interest Period applicable thereto) and on each Determination Date thereafter with respect to such Note Portion and the Initial Note Portion, the City shall have the right to elect, by giving Notice to JPMC at its Notice Office thereof, the Interest Period applicable to such Note Portion, which Interest Period shall, at the option of the City, be a one week, two week, one month, two month, three month, four month, five month, six month or seven month period; provided that if the City does not provide JPMC with notice of the Interest Period on a Determination Date, the next succeeding Interest Period

shall be a one week period; provided further that no Interest Period shall extend beyond the Commitment Termination Date.

Section 2.07 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, JPMC; or

(ii) impose on JPMC or the London interbank market any other condition affecting this Agreement, the Resolution or the purchase of Note Portions by JPMC;

and the result of any of the foregoing shall be to increase the cost to JPMC for purchasing Note Portions (or of maintaining its obligation to purchase Note Portions) or to increase the cost or to reduce the amount of any sum received or receivable by JPMC (whether of principal, interest or otherwise), then, subject to Section 2.07(c) and Section 2.07(d) hereof, the City will pay to JPMC such additional amount or amounts as will compensate JPMC for such additional costs incurred or reduction suffered.

(b) If JPMC determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on JPMC's capital or on the capital of JPMC's holding company (the "Parent"), as a consequence of this Agreement, the Resolution or the purchase of the Note Portions by JPMC to a level below that which JPMC or the Parent could have achieved but for such Change in Law (taking into consideration JPMC's policies with respect to capital adequacy), then, subject to Section 2.07(c) and Section 2.07(d) hereof, from time to time the City will pay to JPMC, such additional amount or amounts as will compensate JPMC or the Parent for any such reduction suffered.

(c) A certificate of JPMC setting forth the amount or amounts necessary to compensate JPMC or the Parent, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the City and shall be conclusive absent manifest error. The City shall pay JPMC the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) Failure or delay on the part of JPMC to demand compensation pursuant to this Section shall not constitute a waiver of JPMC's right to demand such compensation; provided that the City shall not be required to compensate JPMC pursuant to this Section for any increased costs or reductions incurred more than two hundred seventy (270) days prior to the date that JPMC notifies the City of the Change in Law giving rise to such increased costs or reductions and of JPMC's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.08 Compensation; Breakage Fees. (a) The City shall compensate JPMC, upon its written request (which request shall set forth the basis for requesting such compensation and shall, absent manifest error, be final and conclusive and binding on all the parties hereto), for all reasonable losses, expenses and liabilities (including, without limitation, any loss, expense or

liability incurred by reason of the liquidation or reemployment of deposits or other funds required by JPMC to fund its Note Portions) which JPMC may sustain: (i) if for any reason (other than a default by JPMC) a purchase of a Note Portion does not occur on a date specified therefor in a Purchase Notice (whether or not withdrawn by the City); (ii) if any prepayment of any Note Portion is not made on any date specified in a notice of prepayment given by the City to JPMC; or (iii) as a consequence of any other default by the City to pay the principal of and interest on the Note Portions when required by the terms of this Agreement and the Note.

(b) In connection with any prepayment or repayment of a portion of the Note or a Note Portion made on a day other than the last day of the applicable Interest Period, whether such prepayment or repayment is voluntary, mandatory, by demand, acceleration or otherwise, the City shall pay to JPMC all funding costs through the last day of the applicable Interest Period which may arise in connection with such prepayment or repayment, as calculated by JPMC. JPMC will provide a certificate setting forth the additional amount or amounts to be paid to JPMC hereunder and the method by which such amounts are determined.

Section 2.09 Voluntary Termination of Unutilized Commitment. Upon at least five (5) Business Days' prior notice to JPMC at its Notice Office, the City shall have the right, without premium or penalty, to terminate the Unutilized Commitment in whole or in part, in integral multiples of \$1,000,000; provided however that, upon such voluntary termination of the Unutilized Commitment, the amount thereof shall not be reinstated or available to the City.

Section 2.10 Prepayments. The City shall have the right to prepay any Note Portion, without premium or penalty, in whole or in part from time to time on the last day of the applicable Interest Period with respect to a Note Portion; provided however, that if such date is not a Business Day, then such prepayment shall occur on the next succeeding Business Day; provided further however, that prior to any prepayment, the City shall provide notice to JPMC at least five Business Days prior to such prepayment date. With respect to each prepayment of the Note pursuant to this Section 2.10: (i) the City shall designate the Note Portions which are to be prepaid and the specific Interest Periods applicable thereto and the amount or amounts to be prepaid; (ii) each prepayment shall be in an aggregate principal amount of at least \$5,000,000 and integral multiples of \$1,000,000 in excess thereof; provided that no partial prepayment of Note Portions shall reduce the outstanding principal amount of such Note Portion to an amount less than \$5,000,000 and integral multiples of \$1,000,000 in excess thereof; and (iii) if the City elects to prepay Note Portions on a Business Day other than the last day of the Interest Period applicable thereto, the City agrees, subject to Section 2.05(d) hereof, to pay to JPMC the amounts, if any, determined in accordance with Section 2.08 hereof. The principal amount of any prepayment hereunder will not be reinstated and available to the City in connection with the issuance of future Note Portions under the Resolution. All prepayments shall be deposited by the City into the Payment Fund.

Section 2.11 Repayment Account; Security Interest.

(a) As security for the payment of the principal of and interest on the Note, the City agrees and covenants to deposit in trust into a separate account in the City's General Fund to be held by the City, designated as the "2010-2011 Tax Anticipation Note-Repayment Account" (the "Repayment Account"), all Revenues received by the City on and after April 1,

2011; provided however that if such Revenues are, or thereafter become, insufficient to enable the City to make such transfers or to pay amounts owed to JPMC under the Note, the City shall thereafter transfer Additional Revenues to the Repayment Account so that the amounts in the Repayment Account are at least equal to the amounts required to pay the principal of and interest on the Note as they become due; provided further however that if the City is required to transfer Additional Revenues hereunder then the Unutilized Commitment shall automatically terminate.

(b) Pursuant to the Resolution, the City has pledged all Revenues, the Additional Revenues (if applicable), the Repayment Account and all amounts held therein (collectively, the "Pledged Property") to the payment of the principal of and interest on the Note. The pledge is valid and binding in accordance with the terms of the Resolution, and the Pledged Property shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Pledged Property and be effective, binding, and enforceable against the City, its successors, purchasers of the Pledged Party, creditors, and all others asserting the rights therein, to the extent set forth, and in accordance with, the Resolution irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Amounts deposited in the Repayment Account may not be used for any purpose other than payment of the Note and may be invested in legal investments which are permitted by the City's Investment Policy and which mature not later than the maturity date of the Note; provided that the earnings on any such investment shall be transferred by the City to the City's General Fund.

Section 2.12 Method and Place of Payment. All payments under this Agreement or the Note shall be made to JPMC not later than 12:00 Noon (New York time) on the date when due and shall be made in Dollars in immediately available funds at the Payment Office. Whenever any payment to be made hereunder or under the Note shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable at the applicable rate during such extension.

Section 2.13 Net Payment. All payments made by the City hereunder or under the Note will be made without setoff, counterclaim or other defense. All such payments will be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein (but excluding, except as provided below, any tax imposed on or measured by the net income of JPMC pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) in which the Applicable Lending Office of JPMC is located) and all interest, penalties or similar liabilities with respect thereto (collectively, "Taxes"). Subject to Section 2.05(d) hereof, the City shall also reimburse JPMC, upon the written request of JPMC, for taxes imposed on or measured by the net income of JPMC pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) in which the Applicable Lending Office of JPMC is located as JPMC shall determine are payable by JPMC in respect of amounts paid to or on behalf of JPMC pursuant to the preceding sentence. If any Taxes are so levied or imposed, the City agrees, subject to Section 2.05(d) hereof, to pay the full amount of such Taxes and such additional amounts as may be necessary so that every payment of all amounts due hereunder or under the Note, after withholding or deduction for or on account of any Taxes, will

not be less than the amount provided for herein or in the Note. The City will furnish to JPMC, within forty-five (45) days after the date the payment of any Taxes is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by the City. To the extent permitted by law, the City hereby agrees, subject to Section 2.05(d) hereof, to indemnify and hold harmless JPMC, and reimburse JPMC upon its written request, for the amount of any Taxes so levied or imposed and paid by JPMC.

Section 2.14 Transfers of the Note. Unless the City shall otherwise consent in writing, JPMC shall not transfer the Note to any Person other than the Parent.

Section 2.15 JPMC Records. All transactions relating to the Unutilized Commitment and the Note Portions including, without limitation, prepayments, repayments, interest charges and reductions and terminations of the Unutilized Commitment and the Note Portions shall be reflected in the books and records of JPMC, which records shall be conclusive and binding upon the City absent manifest error.

### ARTICLE III CONDITIONS PRECEDENT

Section 3.01 Conditions to JPMC's Entering Into Agreement. It shall be a condition precedent to JPMC's entering into this Agreement and purchasing the Initial Note Portion that all proceedings taken in connection with the transactions contemplated hereby and all documents incident thereto, including the Related Documents, shall be in form and substance satisfactory to JPMC and that the conditions enumerated in this Section 3.01 have been fulfilled to the satisfaction of JPMC. Delivery by JPMC of fully executed signature pages to this Agreement shall constitute acknowledgment and acceptance by JPMC that all such conditions have been met or waived.

(a) Representations. On the Effective Date, (i) there shall exist no Event of Default or Default; (ii) all representations and warranties made by the City herein or in any of the Related Documents shall be true and correct with the same effect as though such representations and warranties had been made at and as of such time; and (iii) each of the Related Documents to which the City is a party, as amended (if applicable), is in full force and effect and has not been amended, modified or changed.

(b) Documents. On or prior to the Effective Date, JPMC shall have received, in form and substance satisfactory to JPMC, the following:

- (i) True and complete executed originals of this Agreement and the Note;
- (ii) The Resolution certified as of the Effective Date by the City Clerk;
- (iii) Signature and incumbency certificates, dated the Effective Date, of the signatories of the City executing this Agreement and the Note;

(iv) A certificate of an Authorized Representative, dated the Effective Date, confirming that the 2010-11 budget has been approved by the City Council and making the representations set forth in Section 3.01(a) with respect to the City;

(v) Executed copies of (A) the legal opinion of counsel to the City; and (B) the legal opinion of Orrick, Herrington & Sutcliffe, which opinions, in each case, shall (x) be in form and substance satisfactory to JPMC and (y) be delivered with reliance letters addressed to JPMC;

(vi) A copy of the City's comprehensive annual financial report ("CAFR") for the City's 2008-2009 Fiscal Year;

(vii) A synopsis of the meeting at which the City Council approved annual budget for the City's 2010-2011 Fiscal Year certified by an Authorized Representative;

(viii) A copy of the City's monthly cash flow projections for the City's 2010-2011 Fiscal Year (the "Cash Flow Projections"); and

(ix) Such further documentation, certificates or opinions as JPMC may reasonably request in connection with the matters arising under this Agreement and the Related Documents.

(c) Absence of Material Adverse Change. JPMC shall be satisfied that, on the Effective Date, no material adverse change in or effect upon the financial condition of the City shall have occurred since *[insert date]* or the City's ability to perform its obligation under this Agreement and the Related Documents. In addition, on or prior to the Effective Date, no change shall have occurred in any law, rule or regulation or in any interpretation thereof that, in the opinion of counsel to JPMC, would make it illegal for JPMC to execute and deliver this Agreement or for the City to execute, deliver and perform under the terms of this Agreement and the Note.

(d) Payment. The City shall have paid the fees and expenses of counsel to JPMC as provided in Section 7.06 hereof.

(e) Other Matters. All other legal matters pertaining to the execution and delivery of this Agreement and the Related Documents shall be satisfactory to JPMC, and JPMC shall have received such other statements, certificates, agreements, documents and information with respect to the City and matters contemplated by this Agreement as JPMC may reasonably request.

Section 3.02 Conditions to Purchase. The obligation of JPMC to purchase a Note Portion (other than the Initial Note Portion) on any day is subject to the satisfaction of the following conditions on such date:

(a) Unutilized Commitment. The Unutilized Commitment shall not have expired or been terminated on or prior to such day.

(b) Purchase Notice. JPMC shall have timely received the required Purchase Notice duly completed by an Authorized Representative, with respect to such Note Portion.

(c) No Default; Representations and Warranties. At the time such Note Portion is to be purchased and also after giving effect thereto:

(i) no Default or Event of Default shall have occurred and be continuing,

(ii) except as otherwise provided in clause (iii) hereinbelow, all representations and warranties contained herein shall be true, correct and complete in all material respects with the same effect as though such representations and warranties had been made on and as of such date except to the extent a representation or warranty relates specifically to an earlier date, in which case, such representation and warranty shall have been true and correct as of such earlier date, and

(iii) (1) the City certifies as of the applicable Purchase Date that a true, correct and complete copy of each of the Section 5.05 Documents provided on or prior to such Purchase Date has been furnished to JPMC; (2) the City certifies that the information contained in such Section 5.05 Documents (excluding any budget materials or any projected Revenues included in the statement required by Section 5.05(d)) provided on or prior to such Purchase Date was accurate as of the respective dates of such information; and (3) the Director of Finance represents as of the Purchase Date that, to his actual knowledge, without any investigation, the information contained in the Section 5.05 Documents (excluding any budget materials or any projected Revenues included in the statement required by Section 5.05(d)) is complete in all material respects with respect to the Revenues.

#### ARTICLE IV REPRESENTATIONS OF THE CITY

The City makes the following representations and warranties to JPMC as of the date hereof, the Effective Date and as of each Purchase Date:

Section 4.01 Valid Existence. The City is a municipal corporation duly organized and existing under and by virtue of the laws of the State and its Charter and has the necessary power and authority to execute and deliver this Agreement and the Related Documents, to perform its obligations hereunder and thereunder.

Section 4.02 Authorization and Validity. The execution, delivery and performance by the City of this Agreement, the Note and the other Related Documents have been duly authorized by proper proceedings of the City, and no further approval, authorization or consents are required by law or otherwise. This Agreement, the Note and the Resolution constitute the legal, valid and binding obligations of the City enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally and principles of equity and public policy.

Section 4.03 Compliance with Laws and Contracts. Neither the execution and delivery by the City of this Agreement, the Note and the Resolution, nor the consummation of the

transactions herein and therein contemplated, nor compliance with the provisions hereof or thereof will (a) violate any provision of its Charter, (b) violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the City, (c) result in any breach of, or default under the provisions of any material indenture, resolution, instrument or agreement to which the City is a party or is subject, or by which it or its property is bound, or (d) conflict with or result in the creation or imposition of any Lien pursuant to the terms of any such indenture, instrument or agreement.

Section 4.04 Litigation. There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending with service of process accomplished or, to the knowledge of the City's Director of Finance, threatened against or affecting the City (a) wherein an unfavorable decision, ruling or finding would materially adversely affect (i) the transactions contemplated by or the validity of this Agreement, the Note or any of the other Related Documents, or (ii) the City's ability to perform its obligations hereunder or under the Note, or the other Related Documents; or (b) which in any way contests the existence, organization or powers of the City or the titles of the officers of the City to their respective offices.

Section 4.05 No Event of Default. No Event of Default or Default has occurred and is continuing.

Section 4.06 Projections and Budget Material. The City represents that (a) the Cash Flow Projections, (b) the proposed budget for Fiscal Year 2010-11 in the form considered by the City Council at its meeting on June 15, 2010 and (c) the information contained in Table 2 for the 2009-10 and 2010-11 Fiscal Years and Table 4 of the Term Sheet were prepared on the basis of information and estimates that the City believed on the Effective Date to be reasonable.

Section 4.07 Accurate and Complete Disclosure. The City certifies as of the Effective Date that a true, correct and complete copy of the documents listed in Exhibit B has been furnished to JPMC. The City also certifies that the information contained in the documents listed in Exhibit B was accurate as of the respective dates of such information. The Director of Finance certifies that he has not failed to disclose any material information relating to the Revenues of which he has actual knowledge, without any investigation, where such omission would reasonably be expected to impact JPMC's decision to enter into the Note Purchase Agreement.

Section 4.08 Regulatory Approvals. Each authorization, consent, approval, license or formal exemption from or filing, declaration or registration with, any court, governmental agency or regulatory authority (federal, state or local), required to be obtained by the City in connection with the City's execution and delivery of, and performance under this Agreement, the Note and the other Related Documents has been obtained or made and is in full force and effect.

Section 4.09 Prospective Change in Law. To the knowledge of the City's Director of Finance, there is no amendment, or proposed amendment certified for placement on a ballot, to the City Charter or the Constitution of the State or any published administrative interpretation of the Constitution of the State or any State law, or any legislation which has passed either house of the State legislature or is under consideration by any conference or similar committee, or any

published judicial decision interpreting any of the foregoing, the effect of which is to invalidate, eliminate or materially reduce the Revenues.

Section 4.10 Sovereign Immunity. Under California law and subject to Section 7.03(d) hereto, the City cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement and the Note.

Section 4.11 Priority of Pledge. The Resolution provides JPMC with a valid pledge of the Pledged Property, the priority of which is set forth in the Resolution, and JPMC is required to take no further action to perfect or maintain this pledge.

Section 4.12 Resolution. The Resolution is in full force and effect. The Resolution has not been amended or supplemented except by such amendments or supplements as have previously been delivered to JPMC.

Section 4.13 City Charter. The City Charter is in full force and effect and has not been amended or supplemented except by such amendments or supplements as have previously been delivered to JPMC.

Section 4.14 Note. As of the Effective Date, the Note has been duly and validly issued under the Resolution and is entitled to the benefits thereof.

Section 4.15 Usury. The terms of this Agreement, the Note and the other Related Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

## ARTICLE V COVENANTS OF THE CITY

During the term of this Agreement, and until the Obligations are paid in full, including full payment of the Note, unless JPMC shall otherwise consent in writing, the City covenants and agrees as follows:

Section 5.01 Notice of Default. As soon as practicable but in any event not more than three (3) Business Days after an Authorized Representative of the City shall have obtained knowledge of the occurrence of an Event of Default or Default provide to JPMC the written statement of an Authorized Representative setting forth the details of each such Event of Default or Default and, to the extent the City has made any determination with respect thereto, the action which the City proposes to take with respect thereto.

Section 5.02 Compliance With Laws. The City shall comply with all laws, rules and regulations, and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject; provided, however, that the City may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect the City's power and authority to execute and deliver this Agreement, to perform its obligations and pay all amounts payable by it hereunder or under the Note, or to execute and deliver the other Related Documents and to perform its obligations thereunder.

Section 5.03 Resolution. The City agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Resolution, each of which covenants and agreements is, by this reference, incorporated into this Agreement in its entirety together with all defined terms and construction provisions necessary for a correct understanding thereof. The City shall not amend, modify, terminate or grant, or permit the amendment, modification, termination or grant of, any waiver under, or consent to, or permit or suffer to occur any action or omission which results in, or is equivalent to, an amendment, termination, modification, or grant of a waiver under the Resolution which would materially impair the ability of the City to perform its obligations under this Agreement without the prior written consent of JPMC.

Section 5.04 No Impairment. The City will not take any action that would materially impair the City's ability to perform its obligations under this Agreement, the Note and the other Related Documents.

Section 5.05 Budgets; Financial Statements; Reports, Certificates and Other Information. The City shall provide or cause to be provided to JPMC copies of:

(a) As soon as available, a copy of the City's annual budget for the City's 2010-2011 Fiscal Year, as said budget shall have been adopted by the City Council;

(b) As soon as available, the CAFR for Fiscal Year 2009-2010 together with an opinion of the independent accountants who conducted the audit of the financial statements of the City contained in the CAFR, which opinion shall contain no qualifications other than qualifications relating to the implementation of rules issued by the Government Accounting Standards Board (the failure to comply with which would not, in the opinion of JPMC in its sole discretion, individually or in the aggregate, have a material impact on any financial statement line item);

(c) Concurrently with the furnishing of the financial statements described under Section 5.05(b) hereof, a certificate signed by an Authorized Representative stating that (i) the City has complied with all of the terms, provisions and conditions of this Agreement and the other Related Documents, (ii) to the best of his/her knowledge, the City has kept, observed, performed and fulfilled each and every covenant, provision and condition of this Agreement and the other Related Documents on the City's part to be performed and (iii) no Default or Event of Default has occurred or, if such Default or Event of Default has occurred, specifying the nature of such Default or Event of Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Default or Event of Default;

(d) As soon as available and, in any event, within fifteen (15) days of the end of each calendar month (commencing with November, 2010), a statement setting forth the Revenues actually received by the City during such calendar month and the Revenues projected by the City for such calendar month;

(e) As soon as available and, in any event, within ten (10) Business Days after adoption by the City Council any changes to the 2010-2011 annual budget for the City,

including, but not limited to, all interim budget reports, if any, but only to the extent that such changes relate to Revenues;

(f) Promptly, notice of any action, suit or proceeding known to it at law or in equity or by or before any governmental instrumentality, entity or other agency which, if adversely determined, would materially impair the ability of the City to carry out its obligations under this Agreement, the Note or any other Related Document or any other document, instrument or agreement required hereunder or thereunder, or would materially and adversely affect its assets or financial condition; and

(g) Promptly, notice of any matter or event which may result in a material adverse change in the City's financial condition or operations.

Section 5.06 Inspection Rights. At any reasonable time and from time to time the City shall permit JPMC or any agents or representatives thereof to examine and make copies of the records and books of account related to the Revenues and the transactions contemplated by this Agreement, the Note and the other Related Documents, to visit the City's properties and to discuss its affairs, finances and accounts with any of its officers and independent accountants.

Section 5.07 Use of Proceeds. The City shall use the proceeds of each Note Portion solely for the cash flow needs of the City for the 2010-2011 Fiscal Year of the City. Without limiting the preceding sentence, the City agrees that no part of the proceeds of any Note Portion will be used by the City to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock.

Section 5.08 Existence. The City shall maintain its legal existence and shall not merge or consolidate with or into any other Person.

Section 5.09 Indebtedness and Liens. The City shall not create or suffer to exist any Indebtedness secured by a Lien upon, or with respect to, any of the Pledged Property, except as permitted pursuant to the Resolution.

Section 5.10 Assignments. The City shall not assign, transfer or otherwise convey any interest in the Pledged Property without the prior written consent of JPMC.

Section 5.11 Patriot Act; Government Regulation. The City shall not (a) be or become subject at any time to any law, regulation or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits JPMC from making any advance or extension of credit to the City or from otherwise conducting business with the City or (b) fail to provide documentary and other evidence of the City's legal organizational documents or other identifying documents or to comply with any applicable law or regulation including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

Section 5.12 Further Assurances. From time to time hereafter, the City will execute and deliver such additional instruments, certificates or documents, and will take all such actions as JPMC may reasonably request for the purposes of implementing or effectuating the provisions

of this Agreement and the Related Documents or for the purpose of more fully perfecting or renewing JPMC's rights with respect to the Pledged Property.

Section 5.13 Certain Information. The City shall not include in any amendment or supplement to any offering or disclosure document with respect to any Indebtedness, whether offered publicly or private, any information concerning JPMC that is not supplied in writing, or otherwise consented to, by JPMC expressly for inclusion therein, other than JPMC's name and a brief description of this Agreement, which may be included in such offering or other document without JPMC's prior written consent.

Section 5.14 Accuracy of Information. The City agrees that it shall provide JPMC with true, correct and complete copies of the Section 5.05 Documents. The City also agrees that the information contained in the Section 5.05 Documents (excluding any budget materials or any projected Revenues included in the statement required by Section 5.05(d)) will be accurate as of the respective dates of such information. The Director of Finance agrees that, to his actual knowledge, without any investigation, the information contained in the Section 5.05 Documents (excluding any budget materials or any projected Revenues included in the statement required by Section 5.05(d)) will be complete in all material respects with respect to the Revenues.

Section 5.15 No Immunity. The City agrees that under California law and subject to Section 7.03(d) hereto it cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement or the Note.

## ARTICLE VI EVENTS OF DEFAULT; REMEDIES

Section 6.01 Events of Default. Each of the following events shall constitute an "Event of Default" hereunder:

(a) Payments. The City shall (i) default in the payment when due of any principal of the Note; or (ii) default, and such default shall continue unremedied for two (2) or more days, in the payment when due of any interest on the Note or any other Obligation.

(b) Representations Untrue. Any representation, warranty, certification or statement made by the City in this Agreement or in the Resolution shall (in any such case) have been incorrect or untrue in any material respect when made or deemed to have been made.

(c) Covenant Defaults.

(i) The City shall default in the due performance on or observance of any term, covenant or agreement contained in Sections 5.01, 5.03, 5.04, 5.08, 5.09, 5.10 and 5.15 of this Agreement.

(ii) The City shall default in the due performance on or observance of any term, covenant or agreement contained in Section 5.05 of this Agreement and such default, if capable of being remedied, shall remain unremedied for ten (10) days after written notice thereof shall have been given to the City by JPMC.

(iii) The City shall default in the due performance or observance of any term, covenant or agreement contained herein or incorporated herein (other than those described in other provisions of this Section 6.01) and such default, if capable of being remedied, shall remain unremedied for sixty (60) days after written notice thereof shall have been given to the City by JPMC.

(d) Cross Default. The City shall (i) default in any payment of the general obligation Indebtedness described in Exhibit C hereto (collectively, the "GO Indebtedness") beyond the period of grace (not to exceed thirty (30) days), if any, provided in the instrument or agreement under which such GO Indebtedness was created or (ii) default in the observance or performance of any agreement or condition relating to any GO Indebtedness (other than the Note) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such GO Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such GO Indebtedness to become due prior to its stated maturity.

(e) Cross Acceleration. Any GO Indebtedness shall be declared to be due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof.

(f) Invalidity; Repudiation.

(i) Any material provision of this Agreement, the Note, the Authorizing Law or the Resolution is declared to be null and void by a final non-appealable judgment of court of competent jurisdiction; or

(ii) The City, pursuant to official action on the part of its City Council, shall deny that it has any or further liability or obligation under this Agreement, the Note, the Authorizing Law or the Resolution.

(g) Insolvency, Etc. The City shall become insolvent or admit in writing its inability to pay its debts as they mature or shall declare a moratorium on the payment of its debts or apply for, consent to or acquiesce in the appointment of a trustee, custodian, liquidator or receiver for itself or any substantial part of its property, or shall take any action to authorize or effect any of the foregoing; or in the absence of any such application, consent or acquiescence, a trustee, custodian, liquidator or receiver shall be appointed for it or for a substantial part of its property or revenues and shall not be discharged within a period of ninety (90) days; or the State or any other Governmental Authority having jurisdiction over the City imposes a debt moratorium, debt restructuring, or comparable restriction on repayment when due and payable of the principal of or interest on any debt by the City; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding shall be instituted by or against the City (or any action shall be taken to authorize or effect the institution by it of any of the foregoing) and if instituted against it, shall be consented to or acquiesced in by it, or shall not be dismissed within a period of ninety (90) days.

(h) Pledge, Etc. The pledge of the Pledged Property created by the Resolution shall fail to provide JPMC, as Note holder, with the security interest in the Pledged Property purported to be provided, or JPMC, as Note holder, shall cease to have a valid security interest in the Pledged Property.

(i) Resolution Default. The City shall default in the due performance or observance of any material term, covenant or agreement contained in the Resolution and the same shall not have been cured within any applicable cure period.

(j) Certain Unsatisfied Judgments. A judgment or court order for the payment of money in excess of \$10,000,000 shall be rendered against the City that is payable from the City's general fund, and such judgment or court order shall continue unsatisfied and in effect for a period of sixty (60) consecutive days without being vacated, discharged, satisfied, or stayed or bonded pending appeal.

(k) Ratings. (i) The long-term rating assigned by Moody's, Fitch or S&P to any long-term, unenhanced GO Indebtedness of the City is reduced below "A3" (or its equivalent), "A-" (or its equivalent) or "A-" (or its equivalent), respectively or (ii) the long-term rating assigned by Moody's, Fitch and S&P to any long-term, unenhanced GO Indebtedness of the City shall be withdrawn or suspended, in either case, due to credit-related reasons.

Section 6.02 Remedies. If any Event of Default shall have occurred and be continuing, the interest on any Note Portion outstanding shall automatically accrue interest at the Default Rate, and JPMC may by Notice to the City take any or all of the following actions, without prejudice to the rights of JPMC to enforce its claims against the City (provided, that, if an Event of Default specified in Section 6.01(g) shall occur, the result which would occur upon the giving of Notice by JPMC to the City as specified in clauses (i) and (ii) below shall occur automatically without the giving of any such Notice): (i) declare the Unutilized Commitment terminated, whereupon the Unutilized Commitment shall forthwith terminate immediately; (ii) declare the principal of and any accrued interest in respect of the Note and all other Obligations owing hereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the City; and/or (iii) exercise any other rights or remedies JPMC may have under the Resolution, at law or in equity.

Section 6.03 No Waiver; Cumulative Remedies. No failure or delay on the part of JPMC in exercising any right, power or privilege hereunder, under the Note or under any other Related Document and no course of dealing between the City and JPMC shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder, under the Note or under any other Related Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein, under the Note or in any other Related Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which JPMC would otherwise have. No notice to or demand on the City in any case shall entitle the City to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of JPMC to any other or further action in any circumstances without notice or demand.

ARTICLE VII  
MISCELLANEOUS

Section 7.01 Amendments. No provision of this Agreement may be amended, modified, changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the parties hereto.

Section 7.02 Assignments. (a) This Agreement shall be binding upon and inure to the benefit of the City and JPMC and their respective successors, endorsees and assigns, except that neither party hereto may assign or transfer their respective rights or obligations hereunder without the prior written consent of the other party except as provided in Section 2.14 hereof. JPMC may grant a participation to any financial institution in all or any part of, or any interest (undivided or divided) in, JPMC's rights and benefits under this Agreement, the Note and the other Related Documents and, to the extent of that participation, such participant shall, except as set forth in the following clause (ii), have the same rights and benefits against the City hereunder and the Note as it would have had if such participant were a direct party hereto; provided that (i) no such participation shall affect the obligations of JPMC to purchase Note Portions as herein provided; (ii) the City shall be required to deal only with JPMC with respect to any matters under this Agreement and no such participant shall be entitled to enforce directly against the City any provision hereunder; (iii) no participant shall be entitled to recover amounts hereunder in excess of any amounts to which JPMC is entitled to recover hereunder; and (iv) such participant shall not be any Person registered as an investment company under the Investment Company Act of 1940, as amended.

(b) Notwithstanding the foregoing provisions of this Section 7.02(a), (i) JPMC may assign and pledge all or any portion of the amounts owing to it with respect to the Note to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank; and (ii) any payment in respect of such assigned amounts owed with respect to the Note made by the City to JPMC in accordance with the terms thereof shall satisfy the City's obligations thereunder in respect of such assigned obligation to the extent of such payment. No such assignment shall release JPMC from its obligations hereunder.

Section 7.03 Governing Law; Waiver of Jury Trial; Waiver of Special Damages; Sovereign Immunity.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE.

(b) THE CITY AND JPMC (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) BETWEEN THE CITY AND JPMC ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE NOTE AND THE OTHER RELATED DOCUMENTS. THIS PROVISION IS A MATERIAL

INDUCEMENT TO JPMC TO PROVIDE THE FINANCING EVIDENCED BY THIS AGREEMENT.

(c) THE CITY WAIVES, TO THE EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE UNDERSIGNED MAY HAVE TO CLAIM OR RECOVER FROM JPMC IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

(d) THE BANK HEREBY RECOGNIZES THAT THE PROCEDURAL REQUIREMENTS APPLICABLE TO COMMENCING AN ACTION AGAINST THE CITY DIFFERS FROM REQUIREMENTS APPLICABLE TO NONGOVERNMENTAL ENTITIES.

Section 7.04 Severability. If any provision of this Agreement shall be held or deemed to be or shall in fact be illegal, inoperative or unenforceable the same shall not affect any other provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

Section 7.05 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

Section 7.06 Expenses. The City shall pay the reasonable fees and costs of counsel for JPMC not to exceed \$20,000. The City shall also pay (a) all reasonable out-of-pocket expenses of JPMC, including reasonable fees and expenses of counsel retained by JPMC in connection with any waiver or consent hereunder or under any Related Documents or any amendment hereof or thereof and (b) if any Default or Event of Default occurs, all out-of-pocket expenses incurred by JPMC, including the fees and disbursements of counsel and experts retained by JPMC in connection with such Default or Event of Default and collection and other enforcement proceedings resulting therefrom.

Section 7.07 Indemnification.

(a) To the extent permitted by law, the City agrees to indemnify and hold harmless JPMC and its officers, directors, employees and their agents (each, an "Indemnitee") from and against any and all claims, damages, penalties, actions, losses, liabilities, judgments, suits and reasonable costs or expenses (including, without limitation, reasonable attorney's fees and expenses) whatsoever which an Indemnitee may incur (or which may be claimed against an Indemnitee by any person or entity whatsoever) by reason of or in connection with any action, proceeding or investigation (whether or not JPMC is a party thereto) arising from the entering into and/or performance of this Agreement or any Related Document or the use of the proceeds of the Note or the consummation of any transactions contemplated herein or in any Related Document, including, without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such action, proceeding or investigation (but excluding any such claims, damages, penalties, actions, losses, liabilities, judgments, suits and reasonable costs or expenses, to the extent incurred by reason of the gross negligence or willful misconduct of the Indemnitee).

(b) Promptly after receipt by an Indemnitee of notice of the commencement of any action, proceeding or investigation in respect of which indemnity or reimbursement may be sought as provided above (each, an "Indemnified Claim"), such Indemnitee will notify the City in writing of the receipt or commencement thereof, but the failure of an Indemnitee to notify the City with respect to a particular action, proceeding or investigation shall not relieve the City from any obligation or liability which it may have pursuant to this Section 7.07 with respect to such action, proceeding or investigation, or which it may have otherwise than pursuant to this Agreement with respect to any action, proceeding, or investigation.

(c) The City shall be entitled, at its own expense, to participate in and control the defense of any action, proceeding or investigation with counsel reasonably satisfactory to such Indemnitee. Notwithstanding the preceding sentence, an Indemnitee will be entitled to employ counsel separate from counsel for the City and from any other party in such action, proceeding or investigation and to participate in the action, proceeding, or investigation, and the City shall bear the fees and expenses of such separate counsel (and shall pay such fees and expenses as and when incurred), only if either (i) the Indemnitee shall have reasonably concluded that there may be one or more legal defenses available to it which are different from or additional to those available to the City, or (ii) the City shall not have employed counsel reasonably satisfactory to the Indemnitee to represent the Indemnitee within a reasonable time after the City shall have notice of the institution of any such action, proceeding or investigation. Each Indemnitee shall cause its counsel to cooperate with the City in the defense of any action, proceeding or investigation to the extent consistent with its professional responsibilities. The City shall not be liable for the settlement by any Indemnitee of any action, proceeding or investigation effected without its consent, which consent will not be unreasonably or untimely withheld. The City shall not settle or compromise any action, proceeding or investigation, or permit a default or consent to the entry of any judgment with respect thereto, unless such settlement, compromise, default or consent includes, as an unconditional term thereof, the giving by the party other than the City thereto of an unconditional general release to all Indemnitees from all liability in respect of such action, proceeding, or investigation.

(d) To the extent permitted by law, the City agrees to indemnify and hold JPMC and its officers, directors, employees and their agents harmless (on a net after-tax basis) from any present or future claim or liability for stamp, transfer, documentary, excise or other similar tax and any penalties or interest with respect thereto, which may be assessed, levied or collected by any jurisdiction in connection with the execution, delivery and performance of, or any payment made under, this Agreement, the Note and the other Related Documents, or any amendment thereto.

Section 7.08 Term of the Agreement. The obligation of JPMC to purchase Note Portions under this Agreement shall terminate on the Commitment Termination Date. Except for the City's obligations to indemnify JPMC and each Indemnitee, this Agreement shall terminate when (a) the Unutilized Commitment shall have expired or terminated and (b) all Obligations have been paid in full.

Section 7.09 Notice. Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the City or JPMC shall be deemed or have been sufficiently given or filed for all purposes, if any, when delivered by hand

or three (3) Business Days after being sent by registered mail, return receipt requested, postage prepaid, and if given by telecopy or telegraphic means shall be deemed given when transmitted (receipt confirmed):

If to the City:

City of San José – Finance  
200 East Santa Clara Street, 13<sup>th</sup> Floor  
San José, California 95113  
Attention: Debt Management  
Telephone: (408) 535-7010  
Facsimile: (408) 292-6482  
E-mail: [debt.management@sanjoseca.gov](mailto:debt.management@sanjoseca.gov)

If to JPMC:

For purposes of Purchase Notices and other Notices:

JPMorgan Chase Bank, N.A.  
MM West and Expansion States  
1125 17<sup>th</sup> Street, Fl 3  
Denver, CO 80202-2060  
Attention: David Rowe  
E-mail: [david.x.rowe@chase.com](mailto:david.x.rowe@chase.com)  
Telephone: 303-244-3006  
Fax: 303-294-0384 (the “Notice Office”)

AND

JPMorgan Chase Bank, N.A.  
MM West and Expansion States  
560 Mission Street, FL 4  
San Francisco, CA 94105-2907  
Attention : Jeffrey Kajisa  
Telephone : 415-315-3900  
E-mail: [jeffrey.s.kajisa@chase.com](mailto:jeffrey.s.kajisa@chase.com)  
Fax: 415-315-8535 (the “Applicable Lending Office”)

For Payments:

JPMorgan Chase Bank, N.A.  
MM West and Expansion States  
1125 17<sup>th</sup> Street, Fl 3  
Denver, CO 80202-2060  
Attention: David Rowe  
E-mail: [david.x.rowe@chase.com](mailto:david.x.rowe@chase.com)  
Telephone: 303-244-3006  
Fax: 303-294-0384 (the “Payment Office”)

or to such other address, telephone number or facsimile number as one party hereto shall notify to the other party hereto.

Section 7.10 Holidays. Except as otherwise provided herein, whenever any payment or action to be made or taken hereunder shall be stated to be due on a day which is not a Business Day, such payment or action shall be made or taken on the next following Business Day, and such extension of time shall be included in computing interest or fees, if any, in connection with such payment or action.

Section 7.11 Survival. All representations, warranties, covenants and agreements of the City contained in this Agreement as amended or supplemented from time to time or made in writing in connection herewith shall survive the execution and delivery hereof shall continue in full force and effect until payment in full of the Obligations, it being understood that the agreements of the City found in Sections 2.07, 2.08, 2.13 and 7.06 hereof shall survive the termination of this Agreement and payment in full of the Obligations.

Section 7.12 USA PATRIOT ACT NOTIFICATION. The following notification is provided to the City pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for the City: When the City opens an account, if the City is an individual JPMC will ask for the City's name, taxpayer identification number, residential address, date of birth, and other information that will allow JPMC to identify the City, and if the City is not an individual JPMC will ask for the City's name, taxpayer identification number, business address, and other information that will allow JPMC to identify the City. JPMC may also ask, if the City is an individual to see the City's driver's license or other identifying documents, and if the City is not an individual to see the City's legal organizational documents or other identifying documents.

Section 7.13 No Liability. The City agrees that none of JPMC, its officers, directors, employees and their agents shall have any liability or responsibility for the acts or omissions of the City in respect of its use of this Agreement or any amounts made available by JPMC hereunder. JPMC agrees that none of the City, its officers, City Council members, employees and their agents shall have any liability or responsibility for the acts or omissions of JPMC in respect of the performance of JPMC's obligations under this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement, effective as of the day and year first above written.

CITY OF SAN JOSE

By: \_\_\_\_\_  
Name:  
Title:

Approved as to form:

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, N.A.

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT A  
[FORM OF]  
PURCHASE NOTICE

[insert date]

JPMorgan Chase Bank, N.A.

[insert address]

Attention: [insert contact]

Ladies and Gentlemen:

The undersigned, City of San José, California (the "City"), refers to the Note Purchase Agreement, dated July 1, 2010 (as amended from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), between the undersigned and JPMorgan Chase Bank, N.A. ("JPMC"), and hereby gives you notice, irrevocably, pursuant to Section 2.01(b) of the Agreement, that the undersigned hereby desires to sell to JPMC, and requests that JPMC purchase, the Note Portion described below:

- (i) The Purchase Date is \_\_\_\_\_;
- (ii) The aggregate principal amount of the Note Portion to be purchased is *[\$insert an amount not less than \$5,000,000 and integral multiples of \$1,000,000 in excess thereof];*
- (iii) The initial Interest Period is *[insert one of the following: one week, two week, one month, two months, three months, four months, five months, six months or seven months];*
- (iv) The wire instructions are as follows:

ABA# \_\_\_\_\_

Account # \_\_\_\_\_

Account Name: \_\_\_\_\_

Name and Address of bank: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The City hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Purchase Date before and after giving effect to the purchase and sale of the Note Portion described in this Purchase Notice:

- (A) The Unutilized Commitment has not expired or been terminated;
- (B) (i) No Default or Event of Default has occurred and is continuing, (ii) except as otherwise provided in clause (iii) hereinbelow, all representations and warranties contained in the Agreement and in the other Related Documents are true, correct and complete in all material respects with the same effect as though such representations and warranties had been made on and as of the date hereof except to the extent a representation or warranty relates specifically to an earlier date, in which case, such representation and warranty shall have been true and correct as of such earlier date, and (iii) (1) the City certifies as of the Purchase Date that a true, correct and complete copy of each of the Section 5.05 Documents provided on or prior to the Purchase Date has been furnished to JPMC; (2) the City certifies that the information contained in the Section 5.05 Documents (excluding any budget materials or any projected Revenues included in the statement required by Section 5.05(d)) provided on or prior to the Purchase Date was accurate as of the respective dates of such information; and (3) the Director of Finance represents as of the Purchase Date that to his actual knowledge, without any investigation, that the information contained in the Section 5.05 Documents (excluding any budget materials or any projected Revenues included in the statement required by Section 5.05(d)) is complete in all material respects with respect to the Revenues.

Very truly yours,

CITY OF SAN JOSE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Director of Finance

**EXHIBIT B**

**LIST OF INFORMATION PROVIDED BY THE CITY TO THE BANK  
PURSUANT TO SECTION 4.07**

1. City's CAFR for the Fiscal Years 2006-2007, 2007-2008 and 2008-2009.
2. Term Sheet, dated April 9, 2010, requesting proposals for private placement purchases for Tax and Revenue Anticipation Notes) (excluding the information contained in Table 2 for the 2009-10 and 2010-11 Fiscal Years and Table 4 of the Term Sheet).

**EXHIBIT C****LIST OF GENERAL OBLIGATION INDEBTEDNESS OF THE CITY**

1. Series 2001 (Libraries and Parks Project);
2. Series 2002 (Libraries, Parks and Public Safety Projects);
3. Series 2004 (Libraries, Parks and Public Safety Projects);
4. Series 2005 (Libraries and Public Safety Projects);
5. Series 2006 (Libraries and Parks Projects);
6. Series 2007 (Parks and Public Safety Projects);
7. Series 2008 (Libraries and Parks Projects); and
8. Series 2009 (Public Safety Projects).

CITY CLERK'S CERTIFICATE

I, Lee Price, City Clerk of the City of San José, hereby certify as follows:

The foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of the City Council of said City duly, regularly and legally held at the San José City Hall, 200 E. Santa Clara Street, San José, California, on June 22, 2010 and entered into the minutes thereof, of which meeting all of said members of the Council had due notice and at which a quorum thereof were present.

At said meeting said resolution was adopted by the following vote:

Ayes:

Noes:

Absent:

Disqualified:

An agenda of said meeting was posted at least 72 hours before said meeting at 200 E. Santa Clara Street, San José, California, a location freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda.

I have carefully compared the foregoing with the original synopsis of said meeting on file and of record in my office. Said original resolution has not been amended, modified or rescinded since the date of its adoption, and the same is now in full force and effect.

Dated: \_\_\_\_\_, 2010.

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City Clerk of the City of San José, California