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RESOLUTION 2012-58

RESOLUTION APPROVING ISSUANCE AND SALE BY THE EL CERRITO PUBLIC FINANCING AUTHORITY OF NOT TO EXCEED \$3,405,600 PRINCIPAL AMOUNT OF 2012 RECYCLING CENTER LEASE REVENUE REFUNDING BONDS; APPROVING FORM AND SUBSTANCE OF A SITE LEASE AND A LEASE/PURCHASE AGREEMENT, AUTHORIZING MODIFICATIONS THEREOF AND EXECUTION AND DELIVERY THEREOF AS MODIFIED; APPROVING THE FORM AND SUBSTANCE OF A FISCAL AGENT AGREEMENT, AND AN ASSIGNMENT AGREEMENT; AND AUTHORIZING RELATED ACTIONS NECESSARY TO IMPLEMENT THE PROPOSED REFUNDING PROGRAM

WHEREAS, on November 1, 2010 the City entered into that certain site lease and lease purchase agreement with Holman Capital Corporation for the purpose of financing (the "Prior Financing") a portion of the cost of construction of a recycling facility (the "Project"); and

WHEREAS, by separate resolution adopted by its Governing Board (the "Authority Resolution"), the Authority has authorized the issuance of its El Cerrito Public Financing Authority 2012 Lease Revenue Refunding Bonds (the "Bonds") in a principal amount not to exceed \$3,405,600 to provide funds needed to implement the refunding of the remaining outstanding Prior Financing (the "Refunding Program") and, for said purpose, has approved the form and substance of a Site Lease, dated as of October 1, 2012 (the "Site Lease"), between the Authority and the City, a Lease Purchase Agreement, dated as of October 1, 2012 (the "Lease Purchase Agreement"), between the City and the Authority, a Fiscal Agent Agreement, dated as of October 1, 2012 (the "Fiscal Agent Agreement"), between the Authority and the Administrative Services Director of the City of El Cerrito (the "City"), as Fiscal Agent; and

WHEREAS, the Authority has received a proposal from JPMorgan Chase Bank, NA (the "Bank"), dated August 9, 2012 (the "Proposal"), a copy of which is attached to the Authority Resolution as Exhibit A thereto, to purchase the Bonds by private placement, subject to certain conditions, and the Authority has authorized the sale of the Bonds to the Bank on terms and conditions substantially the same as those set forth in the Proposal; and

WHEREAS, among the conditions of the Proposal is that the Bonds be designated as "qualified tax-exempt obligations" within the meaning of Section 265(b) of the Internal Revenue Code of 1986 (the "Code"), and this City Council of the City (this "City Council") concurs in the finding set forth in the Authority Resolution that neither the City nor any subordinate entity of the City, including but not limited to the Authority, expects or intends to provide for the issuance of more than \$10,000,000 aggregate principal amount of tax-exempt obligations during calendar year 2012; and

WHEREAS, the Bonds will be payable from rental payments made by the City from the Integrated Waste Management System Fund (the "Revenues") and the City Council agrees to pledge the Revenues to secure the payment of the rental payments; and

WHEREAS, the Authority has determined that all things necessary to make the Bonds, when executed on behalf of the Authority and authenticated by the Fiscal Agent, as provided in the Fiscal Agent Agreement, the valid, binding and legal obligations of the Authority according to the import thereof and hereof have been done and performed; and

WHEREAS, in furtherance of implementing the Refunding Program, there has been filed with the City Clerk for consideration and approval by this City Council forms of the following:

(a) the Site Lease, under the terms of which the City leases to the Authority for a nominal consideration the real property on which the Project has been constructed (the "Site");

(b) the Lease Purchase Agreement, under the terms of which the Authority leases back to the City the Site, as improved by the Project (together, the "Leased Property"), and the City agrees to make certain rental payments (the "Base Rental Payments" and the "Additional Payments") for the use and enjoyment of the Leased Property;

(c) the Fiscal Agent Agreement, under the terms of which the Bonds are to be issued and the Revenues (as said term is defined in the Fiscal Agent Agreement) are to be administered to pay the principal of and interest on the Bonds; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito as follows:

Section 1. The foregoing recitals are true and correct, and this City Council so finds and determines.

Section 2. This City Council hereby finds and determines that the implementation of the Refunding Program, including issuance by the Authority of the Bonds and sale thereof to the Bank, as provided by the Authority Resolution, and the resulting redemption of the Prior Financing will result in significant public benefits, including demonstrable savings in effective interest rate, bond preparation, bond underwriting and bond issuance costs.

Section 3. This City Council hereby approves of the issuance of the Bonds by the Authority and the sale thereof to the Bank, as more fully provided by the Authority Resolution.

Section 4. The forms of the Site Lease and Lease Purchase Agreement, substantially in the form on file with the City Clerk, are hereby approved, subject to such changes as the City Manager or designee shall approve, such approval to be conclusively established by the execution thereof on behalf of the City. The City Manager is authorized and directed to execute the Site Lease and the Lease Purchase Agreement and each of them on behalf of the City.

Section 5. The forms of Fiscal Agent Agreement and Assignment Agreement, substantially in the form on file with the City Clerk, are hereby approved, with such changes as the Authority shall approve prior to execution thereof.

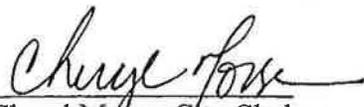
Section 6. All actions heretofore taken by the officers and agents of the City with are hereby approved, confirmed and ratified. Notwithstanding any provision of this resolution authorizing the City Manager to take any action or execute any document to the contrary, in the absence of the City Manager or in lieu of the City Manager, the person designated in writing by the City Manager, may take such action or execute such document with like effect as fully as though named in this resolution instead of the City Manager.

Section 7. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this resolution and to implement the refunding program. Such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

I CERTIFY that at the regular meeting on August 21, 2012, the El Cerrito City Council passed this resolution by the following vote:

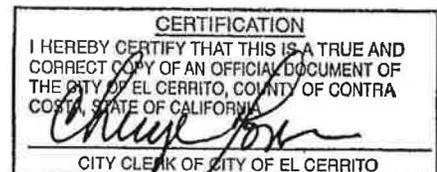
AYES: Councilmembers Abelson, Benassini, Cheng, Lyman and Mayor Jones
NOES: None
ABSENT: None
ABSTAIN: None

IN WITNESS of this action, I sign the document and affix the corporate seal of the City of El Cerrito on August 22, 2012


Cheryl Morse, City Clerk

APPROVED:


William Jones, III, Mayor



FISCAL AGENT AGREEMENT

by and among the

EL CERRITO PUBLIC FINANCING AUTHORITY,

and the

**ADMINISTRATIVE SERVICES DIRECTOR OF THE
CITY OF EL CERRITO,
as Fiscal Agent**

Dated as of September 1, 2012

**relating to the
\$3,405,600
2012 Recycling Center Lease Revenue Refunding Bonds**

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FISCAL AGENT AGREEMENT

This Fiscal Agent Agreement (this “**Agreement**”) is made and entered into as of September 1, 2012, by and among the EL CERRITO PUBLIC FINANCING AUTHORITY (the “**Authority**”), a joint powers authority, duly organized and existing under the laws of the State, and the ADMINISTRATIVE SERVICES DIRECTOR OF THE CITY OF EL CERRITO (the “**Administrative Services Director**”), as Fiscal Agent (the “**Fiscal Agent**”).

WITNESSETH

In the joint and mutual exercise of their powers, in consideration of the mutual covenants herein contained, and for other valuable consideration, the parties hereto recite and agree as follows:

ARTICLE I

RECITALS

1.01. The Prior Financing. On November 1, 2010 the City of El Cerrito (the “**City**”) entered into that certain site lease and lease purchase agreement with Holman Capital Corporation for the purpose of financing (the “**Prior Financing**”) a portion of the cost of construction of a recycling facility (the “**Project**”).

1.02. Refunding of the Prior Financing. By its Resolution No. 2012-58, entitled “Resolution of the Governing Board of the El Cerrito Public Financing Authority Authorizing the Issuance and Sale by Private Placement to JPMorgan Chase Bank N.A. (the “**Purchaser**”), of Not to Exceed \$3,405,600 Principal Amount of 2012 Recycling Center Lease Revenue Refunding Bonds Designating the Bonds as Qualified Tax-Exempt Obligations Pursuant to Section 265(b) of the Internal Revenue Code Of 1986; Approving the Form and Substance of a Site Lease, a Lease Purchase Agreement, a Fiscal Agent Agreement and an Assignment Agreement and Authorizing the Making of Modifications Thereto and the Execution and Delivery Thereof as Modified; and Authorizing Related Actions Necessary to Implement the Proposed Refunding Program” (the “**Resolution**”), adopted on August 21, 2012, the Board of Directors of the Authority (the “**Board**”) has authorized the issuance and sale to the Purchaser of not to exceed \$3,405,600 principal amount of the City’s 2012 Recycling Center Lease Revenue Refunding Bonds (the “**Bonds**”) for the purpose of refunding the remaining outstanding Prior Financing on September 19, 2012 (the “**Redemption Date**”).

1.03. Terms and Conditions of Purchase and Sale of the Bonds. The Purchaser has provided the Authority with its proposal, dated August 10, 2012 (the “**Proposal**”), setting forth the terms and conditions of its purchase of the Bonds, and the Board has accepted the Proposal and authorized the execution and delivery of a modified version of the Proposal (the “**Final Proposal**”), subject to the approval of the Final Proposal by the Executive Director; provided that the interest rate specified in the Final Proposal shall not exceed the interest rate in the Proposal by more than 50 basis points; and further provided that the Purchaser shall provide the Authority with an executed copy of a Certificate of Bond Purchaser in form and content substantially as provided by Exhibit C, attached hereto and by this reference incorporated herein.

1.04. Issuance of the Bonds Pursuant to this Fiscal Agent Agreement. The Authority wishes to provide for the issuance, sale, delivery and administration of the Bonds pursuant to and subject to the terms and conditions of this Agreement.

1.05. Conditions Precedent Satisfied. All things, conditions and acts required by law to exist, happen and be performed precedent to and in connection with the execution and entering into of this Agreement and in connection with the issuance, sale and delivery of the Bonds pursuant to this Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law and the parties hereto are now duly empowered to execute and enter into this Agreement.

ARTICLE II

DEFINITIONS AND RULES OF CONSTRUCTION

2.01. Definitions. The terms defined herein shall have the meanings, for the purpose of this Fiscal Agent Agreement, ascribed to them below unless the context clearly requires some other meaning. The term “**this Agreement**” as used herein means this Fiscal Agent Agreement unless the context clearly requires some other meaning.

“**Administrative Services Director**” means the person who is the duly appointed and acting Administrative Services Director of the City.

“**Authority**” means the El Cerrito Public Financing Authority created under the Joint Exercise of Powers Act (Government Code Sections 6500 et seq.) and under that certain agreement between the City and the Redevelopment Agency of the City of El Cerrito dated as of October 1, 1990, and its successors and assigns.

“**Business Day**” means any day on which federal and state banks in San Francisco, California, are open for business, except Saturday and Sunday.

“**Bond Register**” means the books for registration of the Bonds maintained by the Fiscal Agent pursuant to Section 3.09 of this Agreement.

“**Bonds**” means the Bonds prepared and delivered by the Authority, pursuant to Section 3.01 hereof, to the Purchaser, as the original purchaser thereof, and to any subsequent Owner thereof, pursuant to Sections 3.07 and 3.08 of this Agreement.

“**Certificate of Bond Purchaser**” means a certificate executed by the Purchaser, as the original purchaser of the Bonds, and executed by any proposed transferee of the registered ownership of the Bonds in substantially the form and containing substantially the same contents as set forth in Exhibit C hereto.

“**City**” means the City of El Cerrito, a municipal corporation, duly organized and existing under the laws of the State.

“**City Manager**” means the person who is the duly appointed City Manager of the City.

“City Council” means the City Council for the City of El Cerrito.

“Closing Date” means the date on which the Bonds are delivered to the original purchaser thereof in exchange for payment of the purchase price for the Bonds.

“Code” means the Internal Revenue Code of 1986 and the regulations issued thereunder.

“Event of Default” means an event of default under the Lease Purchase Agreement as set forth in Section 7.1 of the Lease Purchase Agreement.

“Federal Securities” means United States Treasury notes, bonds, bills or bonds of indebtedness or obligations for which the full faith and credit of the United States are pledged for the payment of principal and interest.

“Fiscal Agent” means the Administrative Services Director, together with any co-Fiscal Agent, if any, appointed and acting pursuant to this Agreement, or any successor in interest acting as Fiscal Agent under this Agreement.

“Fiscal Agent Agreement” or **“Agreement”** means this Fiscal Agent Agreement, dated as of September 1, 2012, between the Authority and the Fiscal Agent, as executed or hereafter amended.

“Fiscal Year” means the period beginning on July 1 in any calendar year and ending on June 30 of the following calendar year.

“Interest Payment Date” means January 1, April 1, July 1 and October 1, of each year, commencing on January 1, 2013, as set forth in Exhibit B hereto.

“Operation and Maintenance Costs” means the reasonable and necessary costs and expenses paid by the City for operating and maintaining the Project, including but not limited to the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Project in good repair and working order, and including but not limited to administrative costs of the City attributable to the Project and the financing thereof, but in all cases excluding depreciation, replacement and obsolescence charges or reserves therefor and excluding amortization of intangibles or other bookkeeping entries of a similar nature.

“Outstanding” when used with reference to the Bonds and as of any particular date means all Bonds theretofore delivered except any Bond in lieu of or in substitution for which another Bond shall have been delivered pursuant to this Agreement.

“Owner” or **“Bond Owner”** or **“Owners of Bonds”** or any similar term, when used in either the singular or the plural with respect to the Bonds, means any person who is the registered owner of any Outstanding Bond as shown on the Bond Register.

“Payment Date” means any date which is a Principal Payment Date or an Interest Payment Date or both.

“Permitted Investments” means:

(a) Federal Securities and any investment fund, including money market funds or other investment policy arrangement which purchases and holds exclusively Federal Securities;

(b) Obligations issued by federal land banks or federal home loan banks; or obligations, participations, or other instruments issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or obligations, participations, or other instruments issued by a federal agency or a United States government-sponsored enterprise;

(c) Investments in repurchase agreements under the terms of which the underlying collateral is transferred to the possession of the Fiscal Agent of any securities authorized by paragraphs (b) and (c) above which have a fair market value (valued at cost) at least equal to 103% of the amount invested in the repurchase agreement and are free of third party claims;

(d) Nonnegotiable Bonds of deposit issued by a nationally chartered bank, a bank chartered by the State of California or a foreign banking corporation, authorized pursuant to Section 1756 of the California Financial Code to transact business in the State of California by accepting deposits, or a State of California or federal savings and loan association, provided that such Bonds of deposit are fully collateralized in the manner required for collateralization of trust funds; and

(e) Any investment agreement, guarantee or other investment vehicle or security issued by, secured by or otherwise representing the general obligations of a financial institution whose long-term unsecured, uninsured and unguaranteed obligation or claims-paying ability is rated AA or better by any Rating Agency at the time of its issuance, provided that: (i) the agreement is not subordinated to any other obligations of such financial institution; and (ii) if the financial institution fails to maintain a rating of AA or better (without regard to gradations), the Authority shall have the right to demand collateral in the form of securities authorized by paragraphs (a) and (b) above pledged to secure the investment agreement. Such collateral shall be pledged through the Fiscal Agent and shall have a fair market value (valued at cost) of at least 103% of the value of funds remaining in the investment agreement. Further, the Authority shall have the right to withdraw all funds without penalty should the financial institution fail to provide collateral as required under this paragraph;

(f) Investments otherwise defined in Section 53601 of the California Government Code, as amended from time to time; provided that the Fiscal Agent is obligated to invest in any form of investment pursuant to this subparagraph (f) except upon receipt of a Bond of an Authorized Officer of the Authority that any directed investment to be made pursuant to this subparagraph (f) meets this definition as set forth in this subparagraph (f).

“Principal Payment Date” means January 1, April 1, July 1 and October 1, (being a date on which a prescribed portion of the principal amount of the Bonds is payable as a mandatory partial redemption) of each year, commencing on January 1, 2013, as set forth in Exhibit B hereto.

“Principal Office” means, with respect to the period during which the Administrative Services Director is functioning as the Fiscal Agent, the office of the Administrative Services Director located in the City Hall of the City, which at the time of execution of this Fiscal Agent Agreement is 10890 San Pablo Avenue, El Cerrito, California 94530; and in the event that a successor Fiscal Agent is appointed, such location as shall be prescribed by such successor Fiscal Agent.

“Prior Financing” means the remaining outstanding principal component of the lease payments due to Capital One Public Funding, LLC, under that certain Lease/Purchase Agreement dated November 1, 2010, by and between the City and Holman Capital Corporation, as assigned to Capital One Public Funding, LLC pursuant to an Assignment Agreement dated November 1, 2010 between Holman Capital Corporation and Capital One Public Funding, LLC.

“Purchaser” means JPMorgan Chase Bank N.A.

“Record Date” means the close of business on the fifteenth day of the month preceding any Payment Date, whether or not such fifteenth day is a Business Day.

“Resolution” means Resolution No. 2012-58, adopted by the Authority on August 21, 2012, as described in Section 1.02 of this Agreement.

“Revenue Fund” means the fund by that name established pursuant to Section 4.02.

“Revenues” means (i) all Base Rental Payments and other payments paid by or for the benefit of the City pursuant to Section 4.1 of the Lease Purchase Agreement (but not Additional Payments) and received by the Fiscal Agent, as irrevocable assignee and transferee of the Authority, and (ii) all interest or other income from any investment, or in any other fund or account established pursuant to this Agreement or the Lease Purchase Agreement (other than the Rebate Fund, if any).

“Special Counsel” means an attorney or a firm of attorneys, acceptable to the Authority, of nationally recognized standing in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America.

“State” means the State of California.

“Tax Certificate” means the certificate by that title, executed on behalf of the Authority on the Closing Date, and addressing matters pertaining to compliance with the requirements and limitations imposed by the Code with respect to establishing and preserving the tax-exempt status of the interest on the Bonds.

“Term Bond” means the Bond for which prescribed portions of the principal thereof are subject to mandatory partial redemption on Principal Payment Dates preceding the final maturity date of such Bonds.

2.02. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context

otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

ARTICLE III

THE BONDS

3.01. Preparation and Delivery of Bonds. The Fiscal Agent is hereby authorized to prepare the Bonds, designated “El Cerrito Public Financing Authority 2012 Recycling Center Lease Revenue Refunding Bonds” in an aggregate principal amount of Three Million Four Hundred Five Thousand Six Hundred Dollars (\$3,405,600). The Fiscal Agent is hereby directed, upon written request from the Authority, to execute and deliver the Bonds to the Purchaser, as the original purchaser thereof, in said aggregate principal amount. The Authority hereby certifies, recites and declares that all things, conditions and acts required by the constitution and statutes of the State and this Agreement to exist, to have happened and to have been performed precedent to and in the delivery of the Bonds, exist, have happened and have been performed in due time, form and manner as required by law.

3.02. Form; Denomination; Payment Dates; Medium of Payment. The Bonds shall be delivered in the form of a single, fully-registered Term Bond, registered in the name of the Purchaser, in the principal amount of \$3,405,600 and substantially in the form set forth in Exhibit A hereto attached and by this reference herein incorporated, maturing on October 1, 2025. In accordance with the Proposal, the principal amount of the Term Bond shall be payable on January 1, April 1, July 1 and October 1, in each year, commencing January 1, 2013. Interest on the outstanding principal amount, calculated at the rate of two and forty-three one hundredths percent (2.43%) per annum, shall be payable on January 1, April 1, July 1 and October 1, in each year, commencing on January 1, 2013. No Bonds shall be delivered, exchanged or substituted by the Fiscal Agent under this Agreement without prior receipt by the Fiscal Agent of an executed Certificate of Purchaser as set forth in Exhibit C attached to this Agreement and incorporated herein by this reference.

The Bonds shall be payable in lawful money of the United States of America, which at the time of payment is legal tender for the payment of public and private debts. The Bonds shall not have a CUSIP number issued for them, nor shall the Authority or the Fiscal Agent be required to execute and submit any application or letter of representations to The Depository Trust Company to qualify the Bonds for “book entry” or similar procedures of any third party respecting paperless transfer of the ownership of the Bonds or positions in the Bonds.

3.03. Date of Bond. The Bonds shall be dated as of the date of delivery to the Purchaser.

3.04. Payment of Principal and Interest with Respect to Bonds. The amount of principal of the Bonds and the amount of interest payable on the Bonds on the respective dates is set forth in the Debt Service Payment Schedule, attached hereto as Exhibit B and by this reference herein incorporated.

3.05. Place of Payment. The principal with respect to the Bonds shall be payable at maturity upon presentment of the Bonds at the Principal Office of the Fiscal Agent; provided that the principal or sinking fund amount of the Bonds payable, shall be made to the Owner without presentment of the Bonds. Interest with respect to the Bonds shall be payable by check mailed first class to the Owner on the applicable Interest Payment Date.

3.06. Execution and Authentication. The Bonds shall be executed in the name of the Authority by the manual signature of the Executive Director and the Secretary, and the Bonds shall be authenticated by the manual signature of the Fiscal Agent.

3.07. Transfer and Exchange of Bonds.

(a) The registration of each Bond shall be transferable only upon the Bond Register, which shall be kept for that purpose at the Principal Office of the Fiscal Agent, upon surrender thereof together with a written instrument of transfer satisfactory to the Fiscal Agent duly executed by the Owner or his duly authorized attorney, together with an executed copy of a Certificate of Bond Purchaser, executed by an authorized representative of the proposed transferee. Upon the registration of the transfer, and the surrender, of any such Bond, the Fiscal Agent shall prepare, in the name of the transferee, a new Bond or Bonds, of the same aggregate principal amount, Principal Payment Date and interest rate as the surrendered Bond.

(b) Bonds may be exchanged at the Principal Office of the Fiscal Agent for a like aggregate principal amount of Bonds of other authorized denominations payable as to principal on the same Principal Payment Date and at the same interest rate as the principal of the exchanged Bonds. Upon the written request for exchange, and the surrender, of any Bonds, the Fiscal Agent shall prepare in the name of the Owner requesting exchange a new Bond or Bonds of the same aggregate principal amount, Principal Payment Date, and interest rate as the Bonds being exchanged.

3.08. Regulation with Respect to Exchange and Transfers. In all cases of registration of transfer or exchange of Bonds, the Fiscal Agent shall execute and deliver Bonds in accordance with the provisions of this Article. All Bonds surrendered in any transfer or exchange shall forthwith be cancelled and delivered upon the written order of the Authority by the Fiscal Agent. Notwithstanding any other provision of this Agreement, the cost of preparing each new Bond upon the registration of transfer or exchange following delivery pursuant to Section 3.01 hereof, and any other expenses of the Authority or the Fiscal Agent incurred in connection therewith (except any applicable tax, fee or other governmental charge other than one imposed by the Authority) shall be paid by the Authority.

3.09. Bond Register.

(a) The Fiscal Agent shall keep or cause to be kept at its Principal Office a Bond Register, which shall upon reasonable notice and at reasonable times during normal business hours on any Business Day be open to inspection by the Authority and Owners of Bonds, and, upon presentation for such purpose, the Fiscal Agent shall, under such reasonable regulations as it may prescribe, register the transfer on the Bond Register of Bonds as hereinbefore provided.

(b) The Fiscal Agent shall deem and treat the person in whose name any Outstanding Bond shall be registered upon the Bond Register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal and interest payments with respect to such Bond and for all other purposes, and all such payments so made to any such Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Authority nor the Fiscal Agent shall be affected by any notice to the contrary. The Authority agrees to indemnify the Fiscal Agent or cause the Fiscal Agent to be indemnified against any and all loss, cost, charge, expense, judgment or liability incurred by it, while acting in good faith and without negligence hereunder.

3.10. Temporary Bonds. Pending preparation of the definitive Bonds, any Bonds delivered under this Agreement may be initially delivered in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Authority, shall be without coupons and may contain such reference to any of the provisions of this Agreement as may be appropriate. Every temporary Bond shall be executed by the Fiscal Agent and be delivered by the Fiscal Agent upon the same conditions and in substantially the same manner as definitive Bonds. If the Fiscal Agent delivers temporary Bonds, it shall execute and furnish definitive Bonds without delay and, thereupon the temporary Bonds shall be surrendered for cancellation at the Principal Office of the Fiscal Agent, and the Fiscal Agent shall deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations and of the same Principal Payment Date and interest rate or rates. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Agreement as definitive Bonds delivered pursuant hereto.

3.11. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Fiscal Agent, at the expense of the Owner of said Bond, shall execute and deliver a new Bond of like tenor, Principal Payment Date, and interest rate, in exchange and substitution for the Bond so mutilated, but only upon surrender to the Fiscal Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Fiscal Agent shall be cancelled by it and delivered upon the order of the Authority to such person as the Authority shall direct.

If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Fiscal Agent, and, if such evidence is satisfactory to the Fiscal Agent and if an indemnity satisfactory to the Fiscal Agent shall be given, the Fiscal Agent, at the expense of the Bond Owner, shall execute and deliver a new Bond of like tenor, Principal Payment Date, and interest rate, and numbered as the Fiscal Agent shall determine in lieu of and in substitution for the Bond so lost, destroyed or stolen.

The Fiscal Agent may require payment of an appropriate fee for each new Bond delivered under this Section and of the expenses which may be incurred by the Fiscal Agent in carrying out the duties under this Section 3.11. Any Bond delivered under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Agreement with all other Bonds delivered under this Agreement. The Fiscal Agent shall not be required to treat both the original Bond and any duplicate Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be

delivered hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and duplicate Bond shall be treated as one and the same.

Notwithstanding any other provision of this Section 3.11, in lieu of delivering a new Bond for which principal has or is about to become due for a Bond which has been mutilated, lost, destroyed or stolen, the Fiscal Agent may make payment of such Bond in accordance with its terms.

3.12. Evidence of Signatures of Bond Owners and Ownership of Bonds. Any request, consent, revocation of consent, or other instrument in writing required or permitted by this Agreement to be signed or executed by Bond Owners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Bond Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the ownership of Bonds shall be sufficient for any purpose of this Agreement (except as otherwise herein provided), if made in the following manner:

(a) The fact and date of the execution by any Bond Owner or his attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in such jurisdictions that the persons signing such instruments acknowledged before him the execution thereof. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such Bond shall also constitute sufficient proof of his authority.

(b) The fact of the ownership of Bonds by any Bond Owner and the amount, the Principal Payment Date, and interest rate and the numbers of such Bonds and the date of his ownership of the same shall be proved by the Bond Register held by the Fiscal Agent under the provisions of this Agreement.

Nothing contained in this Section shall be construed as limiting the Fiscal Agent to such proof, it being intended that the Fiscal Agent may accept any other evidence of the matters herein stated which may seem sufficient. Any request or consent of the Owner of any Bond shall bind every future Owner of the same Bond in respect of anything done or suffered to be done by the Authority or the Fiscal Agent in pursuance of such request or consent.

ARTICLE IV

PLEDGE OF REVENUES; FLOW OF FUNDS

4.01. Pledge of Revenues. The Bonds shall be secured by a first pledge of all of the Revenues. In addition, the Bonds shall be secured by a pledge of all of the moneys in the Revenue Fund and the Bond Service Fund, including all amounts derived from the investment of such moneys. The payment of the principal of and the interest on the Bonds on the respective Principal Payment Dates and Interest Payment Dates shall be and are secured by an exclusive

pledge, charge and lien upon the Revenues and such moneys. So long as the Bonds are Outstanding, the Revenues shall be applied solely as provided by Section 4.02.

4.02. Establishment of Revenue Fund; Deposit and Application of Revenues. The Authority has established and, so long as any of the Bonds are Outstanding, will maintain the Revenue Fund, which shall be maintained and applied for the purposes and uses set forth herein. The Authority covenants for the benefit of the Owners of the Bonds that it shall deposit all Revenues in the Revenue Fund promptly upon the receipt thereof. Amounts in the Revenue Fund shall be applied solely for the uses and purposes set forth herein.

The Authority shall withdraw amounts on deposit in the Revenue Fund and apply such amounts at the times and for the purposes, and in the priority, as follows:

(a) Bond Service Fund. On or before the twenty-fifth (25th) calendar day of the month preceding each Payment Date, so long as any of the Bonds remain Outstanding hereunder, the Authority shall withdraw from the Revenue Fund and pay to the Fiscal Agent for deposit into the Bond Service Fund (which the Fiscal Agent shall establish and hold in trust hereunder) an amount which, together with other available amounts then on deposit in the Bond Service Fund, is at least equal to the aggregate amount of principal of and interest coming due and payable on the Bonds on such Payment Date.

Amounts in the Bond Service Fund shall be applied by the Fiscal Agent first to the payment of interest on the Outstanding Bonds, when and as such interest becomes due and payable on an Interest Payment Date, and upon having paid all such interest, shall be applied second to the payment of principal of the Outstanding Bonds when and as such principal comes due and payable on a Principal Payment Date.

If, after all of the Bonds have been paid or deemed to have been paid, there are moneys remaining in the Bond Service Fund, such moneys shall be transferred by the Fiscal Agent to the Authority for deposit in the Revenue Fund.

(b) Reserve Fund. In accordance with the terms and conditions of the Final Proposal, no provision is made in this Agreement for the establishment or maintenance of a reserve fund for the Bonds.

The Authority shall manage, conserve and apply moneys in the Revenue Fund in such a manner that all deposits required to be made pursuant to this Section 4.02 will be made at the times and in the amounts so required. Subject to the foregoing, and so long as no Event of Default shall have occurred and be continuing hereunder, upon making the deposits to the Bond Service Fund in accordance with Section 4.01(a), the Authority may use and apply moneys in the Revenue Fund for: (i) the payment of the Operation and Maintenance Costs of the Project; (ii) the acquisition and construction of extensions and betterments to the Project; and (iii) any other lawful purpose for the Project.

4.03. Investments. All moneys in the Revenue Fund may be invested by the Authority from time to time in any Permitted Investments. All moneys in the Bond Service Fund may be invested by the Fiscal Agent in any Permitted Investments. All investment earnings derived

from the investment of amounts in either the Revenue Fund or the Bond Service Fund shall be retained in and made a part of such fund.

4.04. Redemption of the Bonds.

(A) Extraordinary Redemption. The Bonds are subject to redemption by the Authority on any date prior to maturity, upon notice as hereinafter provided, as a whole, or in part by lot within “each stated maturity” in integral multiples of five thousand dollars (\$5,000) of principal, from prepayments made by the City pursuant to Section 6.4 of the Lease Purchase Agreement, at a prepayment price equal to the sum of the principal amount thereof, without premium, plus accrued interest thereon to the redemption date. For purposes of the foregoing sentence, the phrase “each stated maturity” shall include each date for which a prescribed portion of the principal amount of the Term Bonds is scheduled for mandatory partial redemption. Whenever less than all of the outstanding Bonds are to be redeemed on any one date, the Fiscal Agent shall select the Bonds to be redeemed in part from the outstanding Bonds on a pro rata basis so that the aggregate annual debt service on Bonds which shall be payable after such redemption date shall be as nearly proportional as practicable to the aggregate annual debt service on Bonds Outstanding prior to such redemption date.

(B) Optional Redemption. The Bonds are also subject to optional redemption in whole or in part on any date on and after October 1, 2017, prior to the maturity date of October 1, 2025, from any source of funds lawfully available for such purpose and deposited by the Authority or the City, upon thirty (30) days notice to the Owners thereof, without premium, together with accrued interest to the date fixed for redemption.

If less than all Outstanding Bonds are to be optionally redeemed at any one time, the Fiscal Agent shall select the Bonds of “each maturity date” to be redeemed in the same manner as prescribed in the foregoing subsection (A) for extraordinary redemption and shall promptly notify the Authority in writing of the amount of the Bonds so selected for redemption. For purposes of such selection, Bonds shall be deemed to be composed of five thousand dollars (\$5,000) multiples of principal, and any such multiple may be separately redeemed.

(C) Mandatory Partial Redemption of Term Bonds. The Term Bonds, maturing on October 1, 2025, shall be subject to mandatory partial redemption each Payment Date, commencing on January 1, 2013, and concluding on July 1, 2025, with the final principal amount of the Term Bonds being payable at maturity, in accordance with the schedule attached to this Agreement as Exhibit B.

(D) Notice of Redemption. For the period during which the Purchaser is the Holder of all of the Bonds, notice of redemption shall be provided by electronic means or by first-class mail by the Fiscal Agent to the Purchaser, not less than thirty (30) prior to the redemption date.

If notice of redemption has been duly given as aforesaid and money for the payment of the redemption price of the Bonds called for the redemption is held by the Fiscal Agent, then on the redemption date designated in such notice Bonds so called for redemption shall become due and payable, and from and after the date so designated interest on such Bonds shall cease to

accrue, and the Holders of such Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

All Bonds redeemed pursuant to the provisions of this Section shall be cancelled by the Fiscal Agent and shall be destroyed with a certificate of destruction furnished to the Authority upon its request and shall not be reissued.

ARTICLE V

APPLICATION OF PROCEEDS

5.01. Proceeds of Sale of the Bonds. The proceeds received from the sale of the Bonds (the “**Proceeds**”), in the amount of \$3,405,600, shall be deposited in trust with the Fiscal Agent.

5.02. Application of Funds. In order to provide for: (a) the redemption in advance of maturity on the Redemption Date of the purchase option price of the Prior Financing in the amount of \$3,439,500.54; and (c) payment of costs of issuance of the Bonds, the Authority and the Fiscal Agent shall provide for the following upon receipt of the Proceeds by the Fiscal Agent:

(a) The Fiscal Agent shall transfer to Capital One Public Funding, LLC, Proceeds in the amount of \$3,405,600 for deposit in the Redemption Fund, and amounts received from the City in the amount of \$33,800.54, resulting in total deposits to the Redemption Fund of \$3,439,500.54, which is equal to the purchase option price of the Prior Financing on the Closing Date.

(b) The Fiscal Agent shall use funds deposited by the City with the Fiscal Agent in the amount of \$46,424.21 to pay the costs of issuance of the Bonds in accordance with a certificate of the Authority duly executed and delivered to the Fiscal Agent on the Closing Date.

5.03. No Provision Made for Reserve Fund. In accordance with the terms and conditions of the Final Proposal, no provision is being made for a reserve fund for the Bonds.

ARTICLE VI

COVENANTS

6.01. Punctual Payment; Compliance with Documents. The Authority shall punctually pay or cause to be paid the principal of and the interest on the Bonds as the same become due and payable in strict conformity with the terms of this Agreement and the Bonds, and will faithfully observe and perform all of the conditions, covenants and requirements of this Agreement. Without limiting the generality of the foregoing sentence, the Authority covenants for the benefit of the Owners of the Bonds to deposit all Revenues into the Revenue Fund forthwith upon receipt.

6.02. Discharge of Claims. The Authority covenants that, in order to fully preserve and protect the priority and security of the Bonds, the Authority shall pay from the Revenues and discharge all lawful claims for labor, materials and supplies furnished for or in connection with

the Project which, if unpaid, may become a lien or charge upon the Revenues prior or superior to the lien of the Bonds and impair the security for the Bonds. The Authority shall also pay from the Revenues all taxes, assessments or other governmental charges, if any, lawfully levied or assessed upon or in respect of the Project or upon any part thereof or upon any of the Revenues derived therefrom.

6.03. Operation of the Project in Efficient and Economical Manner. The Authority covenants and agrees to operate the Project in an efficient and economical manner and to operate, maintain and preserve the Project in good repair and working order.

6.04. Sale of the Project. The Authority covenants that the Project shall not be encumbered, sold, leased, pledged or otherwise disposed of, in whole or substantial part, if such encumbrance, sale, lease, pledge or other disposition would materially impair the ability of the City to pay the principal of or the interest on the bonds or would materially adversely affect its ability to comply with the terms of this Agreement.

6.05. Accounting Records and Statements. The Authority and the Fiscal Agent shall keep proper books of record and account in accordance with trust accounting standards in which complete and correct entries shall be made of all transactions relating to the receipt, investment, disbursement, allocation and application of the Revenues and the proceeds of the Bonds or the obligations which they represent. Such records shall specify, among other things, the account or fund to which each investment (or portion thereof) is to be allocated and shall set forth, in the case of each investment: (a) its purchase price; (b) identifying information, including par amount, interest rate, and payment dates; (c) the amount received at maturity or its sale price, as the case may be; (d) the amounts and dates of any payments made with respect thereto; and (e) such documentation as is required to be obtained by the Authority or the Fiscal Agent as evidence to establish that all investments have been purchased in arms'-length transactions with no amounts paid to reduce the yield on the investments.

Such records of the Authority and the Fiscal Agent shall be open to inspection by any Owner at any reasonable time during regular business hours of the Authority and the Fiscal Agent on reasonable notice.

The Authority shall provide the Purchaser with audited annual financial statements of the City, free of significant deficiencies or material weakness, and prepared by an Independent Certified Public Accountant, within two hundred seventy (270) days of the close of the City's Fiscal Year. Additionally, the Authority will provide the Purchaser with a copy of the City's annual budget, as adopted or amended, within thirty (30) days of adoption or amendment; provided that copies of amendments thereof need be provided to the Purchaser only if such amendments affect the Revenues or the Revenue Fund. The Authority shall provide other forms of financial reporting as the Purchaser may request from time to time, including without limitation copies of any long-term capital improvement plans pertaining to the Project.

6.06. Further Assurances. Whenever and so often as requested to do so by the Fiscal Agent, the Authority will promptly execute and deliver, or cause to be executed and delivered, all such other and further assurances, documents or instruments and promptly do or cause to be done all such other and further things as may be necessary or reasonably required in order to

further and more fully vest in the Fiscal Agent and the Owners the benefit, protection and security conferred, or intended to be conferred, upon them hereby.

6.07. Certain Tax Covenants. The Authority shall not directly or indirectly use or permit the use of any proceeds of the Bonds or other funds of the Authority or take or omit to take any action that would cause the obligations that the Bonds evidence and represent to be “arbitrage bonds” within the meaning of Section 148 of the Code (“**Section 148**”). To that end, the Authority shall comply with all requirements of Section 148 to the extent applicable to such obligations. In the event that at any time the Authority is of the opinion that for purposes of this Section 6.07 it is necessary to restrict or to limit the yield on the investment of any moneys held by the Fiscal Agent under this Agreement, the Authority shall so instruct the Fiscal Agent in writing, and the Fiscal Agent shall take such action as may be necessary in accordance with such instructions.

The Authority specifically covenants that it will pay or cause to be paid the Rebate Requirement (as defined in the Tax Certificate) as provided in the Tax Certificate. For purposes of the foregoing, capitalized terms have the meanings ascribed to them in the Tax Certificate which is incorporated herein by reference.

In further satisfaction of the Rebate Requirement, but only to the extent specified by the Tax Certificate, the Fiscal Agent shall establish and maintain a fund separate from any other fund established and maintained hereunder designated the Rebate Fund. The Authority shall cause to be deposited in the Rebate Fund the Rebate Requirement as provided in the Tax Certificate. Subject to the provisions of this Section 6.07, moneys held in the Rebate Fund are hereby pledged to secure payments to the United States government, and neither the Authority nor the Owners shall have any rights in or claim to such moneys. The Fiscal Agent shall invest all amounts held in the Rebate Fund pursuant to the written directions of the Authority.

The Fiscal Agent shall conclusively be deemed to have complied with the provisions of this Section 6.07 if it follows the directions of the Authority and shall not be required to take any actions thereunder in the absence of instructions from the Authority. The Fiscal Agent shall have no responsibility to make the rebate calculations or to independently verify or review such calculations.

Notwithstanding any provision of this Section 6.07, if the Authority shall provide to the Fiscal Agent any Opinion of Counsel that any specified action required under this Section 6.07 is no longer required or that some further or different action is required to maintain the exclusion of the interest evidenced and represented by the Bonds from gross income for federal income tax purposes, the Fiscal Agent and the Authority may conclusively rely on such opinion in complying with the requirements of this Section 6.07, and the covenants hereunder shall be deemed to be modified to that extent.

6.08. No Additional Bonds. The Authority covenants that, for so long as any of the Bonds remain outstanding, the Authority will issue no additional bonds or other payment obligations secured by a pledge of the Revenues and/or the Revenue Fund, whether such pledge be senior to, on a parity with or subordinate to, the pledge of the Revenues and the Revenue

Fund which secures the Bonds without the express written consent of the Purchaser, such consent not to be unreasonably withheld.

ARTICLE VII

DEFAULT; LIMITATIONS OF LIABILITY

7.01. Events of Default. Any one or more of the following events shall constitute an “**Event of Default**”:

(a) Default in the payment of the interest on or the principal of any Bond when and as the same shall become due and payable; and

(b) Default by the Authority in the observance of any of the other agreements, conditions or covenants on its part contained in this Agreement or in the Bonds, and the continuation of such default for a period of thirty (30) days after the Authority shall have been given notice in writing of such default by the Owners of not less than twenty-five percent (25%) of the Outstanding Bonds, provided that if within thirty (30) days the Authority has commenced curing of the default and diligently pursues elimination thereof, such period shall be extended to permit such default to be eliminated.

7.02. Remedies of Owners. Following the occurrence of an Event of Default, any Owner shall have the right for the equal benefit and protection of all Owners similarly situated:

(a) By mandamus or other suit or proceeding at law or in equity to enforce his or her rights against the Authority and any of the members, officers and employees of the Authority, and to compel the Authority or any such members, officers or employees to perform and carry out their duties under the Refunding Bond Law, and any other law and their agreements with the Owners as provided in this Agreement;

(b) By suit in equity to enjoin any actions or things which are unlawful or violate the rights of the Owners; or

(c) Upon the happening of an event of default (as defined in Section 7.01), by a suit in equity to require the Authority and its members, officers and employees to account as the trustee of an express trust.

Nothing in this Article or in any other provision of this Agreement, or in the Bonds, shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the interest on and principal of the Bonds to the respective Owners of the Bonds at the respective Payment Dates, as herein provided, out of the Revenues pledged for such payment, or affect or impair the right of action, which is also absolute and unconditional, of such Owners to institute suit to enforce such payment by virtue of the contract embodied in the Bonds and in this Agreement.

A waiver of any default or breach of duty or contract by any Owner shall not affect any subsequent default or breach of duty or contract, or impair any rights or remedies on any such subsequent default or breach. No delay or omission by any Owner to exercise any right or power

accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Owners by this Article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Owners.

If any suit, action or proceeding to enforce any right or exercise any remedy is abandoned or determined adversely to the Owners, the Authority and the Owners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken. No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by law.

ARTICLE VIII

THE FISCAL AGENT

8.01. The Fiscal Agent. The Fiscal Agent is hereby appointed and shall serve as the Fiscal Agent for the Bonds for the purpose of receiving all money which the Authority is required to deposit with the Fiscal Agent hereunder and for the purpose of allocating, applying and using such money as provided herein for the purpose of paying the interest on and principal of the Bonds as provided herein, with the rights and obligations provided herein. The Authority agrees that it will at all times maintain a Fiscal Agent having a principal office in El Cerrito or San Francisco, California.

If at any time there exists any Event of Default, the Purchaser may direct the removal of the Fiscal Agent initially appointed or any successor thereto and may appoint a successor or successors thereto by an instrument in writing; provided that any such successor shall be a bank or trust company doing business and having a principal office in Los Angeles or San Francisco, California, having a combined capital (exclusive of borrowed capital) and surplus of at least fifty million dollars (\$50,000,000) and subject to supervision or examination by a federal or State agency. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining agency above referred to, then for the purpose of this section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Fiscal Agent may at any time resign by giving written notice of such resignation to the Authority and by mailing first class to the Owners notice of such resignation. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Fiscal Agent by an instrument in writing. Any removal or resignation of a Fiscal Agent and appointment of a successor Fiscal Agent shall become effective only upon the acceptance of appointment by the successor Fiscal Agent. If within thirty (30) days after notice of the removal or resignation of the Fiscal Agent no successor Fiscal Agent shall have been appointed and shall have accepted such appointment, the removed or resigning Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as

may be required by law, appoint a successor Fiscal Agent having the qualifications required hereby.

The Fiscal Agent is hereby authorized to pay principal of the Bonds payable on each Payment Date and upon presentation of the Bonds on the final maturity date. The Fiscal Agent shall cancel all Bonds upon payment thereof on such maturity date or upon the surrender thereof by the Authority and shall destroy such Bonds, and a certificate of destruction shall be delivered to the Authority. The Fiscal Agent shall keep accurate records of all Bonds paid, discharged and canceled by it.

The Authority shall from time to time, subject to any agreement between the Authority and the Fiscal Agent then in force, pay to the Fiscal Agent compensation for its services, reimburse the Fiscal Agent for all its advances and expenditures including but not limited to advances to and fees and expenses of independent accountants and in-house and other counsel or other experts employed by it and reasonably required in the exercise and performance of its rights and obligations hereunder, and, to the extent permitted by law, indemnify and hold the Fiscal Agent and its officers, directors, employees and agents harmless against any claim, loss, liability, damages, expenses (including legal fees and expenses) or advances not arising from the Fiscal Agent's own active or passive negligence, willful misconduct or breach of fiduciary duty, which the Fiscal Agent may incur in the exercise and performance of its rights and obligations hereunder. The obligations of the Authority under this paragraph to compensate, indemnify, reimburse and hold the Fiscal Agent harmless shall constitute additional indebtedness hereunder, and such indebtedness shall have priority over the Bonds in respect of all property and funds held or collected by the Fiscal Agent as such, except the Rebate Fund and funds held in trust by the Fiscal Agent for the benefit of the Owners of particular Bonds, including, without limitation, funds held by the Fiscal Agent in trust to redeem all or a portion of Outstanding Bonds prior to their respective maturities for which a notice of prepayment has been sent as provided herein.

8.02. Liability of Fiscal Agent. The recitals of facts, agreements and covenants herein and in the Bonds shall be taken as recitals of facts, agreements and covenants of the Bonds, and the Fiscal Agent assumes no responsibility for the use of any proceeds of the Bonds, the correctness of the same, or the collection of the Revenues. The Fiscal Agent does not make any representation as to the sufficiency or validity of this Agreement, of the Bonds or any security therefor, and shall not incur any responsibility in respect thereof other than in connection with the rights or obligations assigned to or imposed upon it herein, in the Bonds or in law or equity. The Fiscal Agent shall not be liable in connection with the performance of its duties hereunder except for its own negligence, willful misconduct or breach of fiduciary duty.

Whenever the Fiscal Agent shall deem it necessary or desirable that a factual or legal matter be established or proved prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate conforming to the requirements herein or an opinion of counsel, which certificate or opinion shall be full warrant to the Fiscal Agent for any action taken or suffered under the provisions hereof upon the faith thereof, but in its discretion the Fiscal Agent may in lieu thereof accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

In accepting the trust hereby created, the Fiscal Agent acts solely as Fiscal Agent for the Owners and not in its individual capacity, and all persons, including without limitation the Owners and the Authority, having any claim against the Fiscal Agent arising from this Agreement not attributable to the Fiscal Agent's negligence or willful misconduct shall look only to the funds and accounts held by the Fiscal Agent hereunder for payment except as otherwise provided herein. The duties and obligations of the Fiscal Agent shall be determined solely by the express provisions of this Agreement, the Fiscal Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations (fiduciary or otherwise) shall be read into this Agreement against the Fiscal Agent. The Fiscal Agent shall not be liable with respect to any action taken or not taken hereunder in good faith in accordance with the direction of the Owners of not less than sixty percent (60%) in aggregate principal amount of the Bonds at the time Outstanding. The Fiscal Agent shall, during the existence of any Event of Default (which has not been cured), exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of its own affairs. The permissive right of the Fiscal Agent to do things enumerated in this Agreement shall not be construed as a duty and it shall not be answerable for other than its negligence or willful misconduct. The immunities and exceptions from liability of the Fiscal Agent shall extend to its officers, directors, employees and agents and such immunities and exceptions and its right to payment of its fees and expenses shall survive its resignation or removal and the final payment and discharge of the Bonds and this Agreement. Under no circumstances shall the Fiscal Agent be liable in its individual capacity for the obligations evidenced by the Bonds. The Fiscal Agent, in its individual or any other capacity, may become the Owner of any Bonds or other obligations of any party hereto with the same rights which it would have if it were not the Fiscal Agent. The Fiscal Agent shall not be required to give any bond or surety in respect of the execution of said trusts and powers or otherwise in respect of the premises. Before taking or refraining from any action hereunder at the request or direction of the Owners, the Fiscal Agent may require that an indemnity bond satisfactory to the Fiscal Agent be furnished to it and be in full force and effect.

None of the provisions contained herein shall require the Fiscal Agent to expend for risk its own funds or continue to do so or otherwise incur individual financial liability in the performance of any of its duties or in the exercise of any of its rights or powers if it shall reasonably believe that repayment of such funds or adequate indemnity against such risk or liability is not assured to it. The Fiscal Agent may rely and shall be protected in acting or failing to act upon any paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Notwithstanding any other provision hereof, the Fiscal Agent shall have the right, but shall not be required, to demand any showings, certificates, opinions, appraisals or other information, or official action or evidence thereof, in addition so that by the terms hereof required as a condition of such action, by the Fiscal Agent deemed desirable for the purpose of establishing the rights of the Fiscal Agent with respect to the authentication of any Bonds, the withdrawal of any cash, the release of any property or the taking of any other action by the Fiscal Agent.

8.03. Appointment of Agent; Appointment of Co-Fiscal Agent. The Fiscal Agent may and, shall upon the written direction of the Purchaser, appoint an agent to exercise any of the powers, rights or remedies granted to the Fiscal Agent under this Agreement, and to hold title to

property or to take any other action which may be desirable or necessary. Without limiting the generality of the foregoing, upon the occurrence of an Event of Default as defined in Section 7.01 hereof, it is the intention of the Fiscal Agent to appoint an agent or co-Fiscal Agent pursuant to this Section 8.03, for the purpose of selecting and implementing one or more of the available remedies on default.

At any time for the purpose of meeting any legal requirements of any jurisdiction in which any part of the trust estate may at any time be located, the Fiscal Agent shall have the power to appoint an additional institution or individual as a separate or co-Fiscal Agent, without the consent of the Authority, which shall join with the Fiscal Agent in the execution, delivery, and performance of all instruments and agreements necessary or proper to appoint such institution or individual to act as co-Fiscal Agent jointly with the Fiscal Agent or as a separate Fiscal Agent of all or any part of the trust estate, and to vest in such person or institution, in such capacity, such title to the trust estate, or any part thereof, and such rights, powers, trusts, duties or obligations as the Fiscal Agent may consider necessary or desirable, subject to the provisions of this Section 8.03.

The Fiscal Agent and the Authority shall execute and deliver all such instruments as may be reasonably required by such co-Fiscal Agent or separate Fiscal Agent for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-Fiscal Agent or separate Fiscal Agent.

Every co-Fiscal Agent or separate Fiscal Agent shall be appointed subject to the following terms:

(a) All rights, powers, trusts, duties and obligations conferred upon the Fiscal Agent may be conferred or imposed upon or exercised or performed by the Fiscal Agent, by the Fiscal Agent and such co-Fiscal Agent, or by the separate Fiscal Agent, either jointly or severally, individually or together, as shall be provided in the instrument appointing such separate or co-Fiscal Agent, except to the extent the Fiscal Agent shall be incompetent, unqualified or otherwise unable to perform such act or acts, in which event such separate or co-Fiscal Agent shall perform such act or acts.

(b) No Fiscal Agent shall be liable for the acts or omissions of any other Fiscal Agent hereunder.

(c) The Fiscal Agent may, at any time, by an instrument in writing, accept the resignation of and/or remove any co-Fiscal Agent or separate Fiscal Agent, and a successor to any co-Fiscal Agent or separate Fiscal Agent may be appointed in the manner provided in this Section 8.03.

(d) Any co-Fiscal Agent or separate Fiscal Agent shall be entitled to the provisions of this Article affording compensation, protections, indemnification and limitations from liability to the Fiscal Agent.

(e) Authority and Fiscal Agent must receive written approval from Purchaser prior to appointment of a co-Fiscal Agent or a separate Fiscal Agent.

ARTICLE IX

AMENDMENTS

9.01. Amendment. This Agreement may be amended in writing by agreement among all of the parties, but no such amendment shall become effective as to the Owners of Bonds then Outstanding unless and until approved by a majority in aggregate principal amount with respect to Bonds Outstanding; provided that no such amendment shall adversely affect the interests of the Owners. Notwithstanding the foregoing, this Agreement and the rights and obligations provided thereby may also be modified or amended at any time without the consent of any Owners of the Bonds, but only (1) for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Agreement, (2) in regard to questions arising under this Agreement which the Authority may deem necessary or desirable and not inconsistent with this Agreement, or (3) to add to the rights and privileges of the Fiscal Agent; provided that the Authority and the Fiscal Agent may rely in entering into any such amendment hereof upon the opinion of Special Counsel stating that the requirements of this sentence shall have been met with respect to such amendment, and further stating that such amendment shall not cause the interest on the Bonds when paid by the Authority to become subject to Federal income taxes or State of California personal income taxes.

ARTICLE X

ADMINISTRATIVE PROVISIONS

10.01. Funds. Any fund required to be established and maintained herein by the Authority may be established and maintained in the accounting records of the Authority either as an account or a fund, and may, for the purpose of such accounting records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or a fund; but all such records with respect to any such fund shall at all times be maintained in accordance with sound accounting practice and with due regard for the protection of the security of the Bonds and the rights of the Owners of such Bonds.

10.02. Notices. All written notices, certificates, reports or statements to be given under this Agreement shall be given by mail or personal delivery to the party entitled thereto, with a copy to each of the other parties to this Agreement, at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective upon deposit in the United States mail, postage prepaid, or, in the case of personal delivery, upon delivery, to the address set forth below.

If to the Authority:

El Cerrito Public Financing Authority
10890 San Pablo Avenue
El Cerrito, CA 94530
Attention: Executive Director

If to the Fiscal Agent:

Administrative Services Director
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

10.03. Business Days. Any act or thing required to be done or to exist on any date set forth herein which does not constitute a Business Day in any year shall be deemed to be done or to exist on such date if such act or thing is done or exists on the next date which constitutes a Business Day.

10.04. Headings. Headings preceding the text of the several Articles and Sections hereof, and the table of contents, are solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect.

10.05. California Law. Except to the extent provided otherwise in Section 10.09 below, this Agreement shall be construed and governed in accordance with the laws of the State of California.

10.06. Severability. Any provision of this Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Agreement.

10.07. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

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

10.09. Dispute Resolution. The Bonds are being purchased on the Closing Date by Purchaser. As a material inducement for the Purchaser paying the purchase price of and accepting delivery of the Bonds on the Closing Date, the Authority and the Fiscal Agent hereby accept and agree to be bound by the following provisions pertaining to the resolution of any disputes arising under or in any way resulting from this Agreement.

Except to the extent expressly provided in Section 7.02 respecting the right of the Purchaser, while the Owner of the Bonds, to exercise the remedies provided therein upon the occurrence of an Event of Default, any dispute, controversy or claim (any “**Dispute**”) between or among the Authority, the Fiscal Agent and the Purchaser shall, upon the mutual agreement of the parties, acting in their sole and absolute discretion, be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U.S. Code; herein the “**Federal Arbitration Act**”). The Federal Arbitration Act will apply even though the provisions of Section 10.05 above provides that this Agreement shall be construed and governed in accordance with the laws of the State of California. To the extent that any Disputes are not arbitrated, the Disputes shall be resolved in court by a judge without a jury, except any Disputes which are

brought in California state court shall be determined by judicial reference. Any Dispute which is not arbitrated and which is brought in California state court will be resolved by a general reference to a referee (or a panel of referees) as provided in California Code of Civil Procedure Section 638. The referee (or presiding referee of the panel) shall be a retired judge or justice. The referee (or panel of referees) shall be selected by mutual written agreement of the parties to the Dispute.

10.10. Waiver of Immunity. To the fullest extent permitted by California law, the Authority expressly waives and agrees not to claim sovereign immunity in any suits or judicial proceedings in connection with the provision by the Purchaser of products or services to the Authority during the time that any of the Bonds remain outstanding.

ARTICLE XI

REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY AND THE FISCAL AGENT

11.01. Representations and Warranties of the Authority.

(a) The Authority hereby represents, warrants and covenants that: (i) the Authority is, and will be on the Closing Date, a joint exercise of powers authority, duly organized and validly existing under and pursuant to the laws of the State, (ii) the Authority has full legal right, power and authority to adopt Resolution No. 2012-03, which was adopted by the Authority Board on August 21, 2012 (the “**Resolution**”) authorizing the execution and delivery of the Bonds to the Owner pursuant to this Agreement, and the execution, delivery and performance of its obligations, as the case may be, under the Resolution, this Agreement, the Lease Purchase Agreement, the Site Lease and the Assignment Agreement, (collectively, the “**Authority Agreements**”), and to carry out and consummate all transactions contemplated by each of the Authority Agreements, (iii) compliance with the provisions of the Authority Agreements will not materially conflict with or constitute a breach of or default under any applicable constitutional provision, law, administrative regulation, court order or consent decree or any applicable judgment or decree or any loan agreement, note, resolution, indenture, agreement or other instrument to which the Authority is a party or may be otherwise subject and (iv) the Resolution was adopted by a majority of the members of the Authority Board at a meeting duly called, noticed and conducted, at which a quorum was present and acting throughout, on August 21, 2012, and constitutes all action necessary to be taken by the Authority for the execution, delivery and due performance of the Authority Agreements;

(b) the Authority will duly execute and deliver the Authority Agreements, other than the Resolution, on or prior to the Closing Date, has duly authorized and approved the execution and delivery of the Bonds and the Authority Agreements, and when executed and delivered, the Authority Agreements, assuming due authorization, execution and delivery by the other respective parties thereto, will constitute the legally valid and binding obligations of the Authority enforceable in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or affecting creditors’ rights generally;

(c) to the best of knowledge of the undersigned Executive Director, the Authority is not in violation or breach of or default under any applicable constitutional provision, law or administrative rule or regulation of the State or the United States of America, or any agency or instrumentality of either of them, or any applicable judgment or decree, or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Authority is a party or is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both would constitute a violation or a breach of or a default under any such instrument;

(d) at the date hereof and on the Closing Date, the Authority will be in compliance in all respects with the material covenants and agreements contained in the Authority Agreements and no event has occurred and is continuing which, with the passage of time or giving of notice, or both, would constitute an event of default thereunder shall have occurred and be continuing;

(e) to the best knowledge of the undersigned Executive Director, after due investigation, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, or by or before any court, governmental agency, public board or body, pending or threatened against the Authority: (i) wherein an unfavorable decision, ruling or finding would adversely affect the existence of the Authority or the title of any official of the Authority to such person's office; (ii) seeking to restrain or enjoin the execution, sale or delivery of the Bonds, or the pledge of Revenues pursuant to this Agreement; (iii) in any way contesting or affecting the validity or enforceability of the Authority Agreements; (iv) contesting the power of the Authority or its authority with respect to the Bonds or the Authority Agreements; (v) contesting the exclusion of interest with respect to the Bonds from gross income for Federal income tax purposes; nor is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity of the Authority Agreements or the authorization, execution, delivery or performance by the Authority or the Authority Agreements;

(f) to the best of knowledge of the undersigned Executive Director, all approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the due performance by the Authority of its obligations under the Authority Agreements have been duly obtained or made, and are, and will be on the Closing Date, in full force and effect;

(g) any certificate signed by any officer of the Authority and delivered to the Purchaser pursuant to the Authority Agreements or any document contemplated thereby shall be deemed a representation and warranty by the Authority to the Purchaser as to the statements made therein and that such officer shall have been duly authorized to execute the same;

(h) to the best knowledge of the undersigned Executive Director, there is no public vote or referendum pending or proposed, the results of which could materially adversely affect the transactions contemplated by the Authority Agreements, or the validity or enforceability of the Authority Agreements;

(i) pursuant to Section 265(b)(3)(iii) of the Code, the Authority specifically designates the Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code; and

(j) in compliance with Section 265(b)(3)(iii) of the Code, the Authority represents and covenants that it will not designate more than Ten Million Dollars (\$10,000,000) of obligations issued by the Authority in calendar year 2012 as “qualified tax-exempt obligations.”

11.02. Representations and Warranties of the Fiscal Agent.

(a) The Fiscal Agent hereby represents, warrants and covenants that: (i) the Fiscal Agent has full legal right, power and authority carry out and consummate all transactions contemplated by each of the Authority Agreements, and (ii) compliance with the provisions of the Authority Agreements will not materially conflict with or constitute a breach of or default under any applicable constitutional provision, law, administrative regulation, court order or consent decree or any applicable judgment or decree or any loan agreement, note, resolution, indenture, agreement or other instrument to which the Fiscal Agent is a party or may be otherwise subject;

(b) to the best knowledge of the undersigned Administrative Services Director, after due investigation, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, or by or before any court, governmental agency, public board or body, pending or threatened against the Fiscal Agent wherein an unfavorable decision, ruling or finding would adversely affect the existence of the Fiscal Agent;

(c) any certificate signed by the Administrative Services Director or her designee and delivered to the Purchaser pursuant to the Authority Agreements or any document contemplated thereby shall be deemed a representation and warranty by the Fiscal Agent to the Purchaser as to the statements made therein and that such person shall have been duly authorized to execute the same.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Fiscal Agent Agreement by their duly authorized officers as of the date first above written.

EL CERRITO PUBLIC FINANCING
AUTHORITY,
a municipal corporation

By: 
Scott Hanin
Executive Director

ATTEST:

By: 
Cheryl Morse
Authority Secretary

ADMINISTRATIVE SERVICES DIRECTOR
OF THE CITY OF EL CERRITO, as Fiscal
Agent

By: 
Mary Dodge
Administrative Services Director

EXHIBIT A

FORM OF 2012 RECYCLING CENTER LEASE REVENUE REFUNDING BOND

**EL CERRITO PUBLIC FINANCING AUTHORITY
2012 RECYCLING CENTER LEASE REVENUE REFUNDING BONDS**

No. R-1

\$ _____

NEITHER THE FULL FAITH AND CREDIT OF THE AUTHORITY NOR CITY OF EL CERRITO IS PLEDGED FOR THE PAYMENT OF THE INTEREST ON OR PRINCIPAL OF THE BONDS AND NO TAX OR OTHER SOURCE OF FUNDS OTHER THAN THE REVENUES HEREINAFTER REFERRED TO IS PLEDGED TO PAY THE INTEREST ON OR PRINCIPAL OF THE BONDS. NEITHER THE PAYMENT OF THE PRINCIPAL OF NOR INTEREST ON THE BONDS CONSTITUTES A DEBT, LIABILITY OR OBLIGATION OF THE EL CERRITO PUBLIC FINANCING AUTHORITY.

INTEREST RATE
_____%

MATURITY DATE

DATED DATE
_____, 2012

REGISTERED OWNER: JPMORGAN CHASE BANK N.A.

PRINCIPAL AMOUNT:

THE EL CERRITO PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority, duly organized and existing under and pursuant to the laws of the State of California (the “**Authority**”), for value received hereby, promises to pay (but only out of the Revenues hereinafter referred to) to the registered owner identified above or registered assigns, on the maturity date specified above (subject to any right of prior redemption hereinafter provided for) the principal sum specified above, together with interest on such principal sum from the interest payment date next preceding the date of registration of this Bond (unless this Bond is registered as of an interest payment date or during the period from the sixteenth day of the month preceding an interest payment date to such interest payment date, in which event it shall bear interest from such interest payment date, until the principal hereof shall have been paid, such interest to be paid at the interest rate per annum specified above, payable on January 1, 2013 and quarterly thereafter on each January 1, April 1, July 1 and October 1. Interest due on or before the maturity or prior redemption of this Bond shall be payable only by check mailed by first-class mail on each Interest Payment Date to the registered owner hereof; provided that upon the written request of a Holder of \$1,000,000 or more in aggregate principal amount of Bonds received by the Fiscal Agent prior to the applicable record date, interest shall be paid by wire transfer in immediately available funds. The principal hereof is payable in lawful money of the United States of America at the office of the Administrative Services Director, as Fiscal Agent, in El Cerrito, California, or such other place as designated by the Fiscal Agent.

This Bond represents the entire issue of bonds of the Authority designated as its “ El Cerrito Public Financing Authority 2012 Recycling Center Lease Revenue Refunding Bonds” (the “**Bonds**”), in the aggregate principal amount of _____ Dollars (\$ _____), authorized pursuant to Marks-Roos Local Bond Pooling Act of 1985 (Sections 6584 and following, California Government Code; hereafter the “Act”), and issued pursuant to a Fiscal Agent Agreement, dated as of _____, 2012 (the “Fiscal Agent Agreement”), between the Authority and the Fiscal Agent. Copies of the Fiscal Agent Agreement are available at the office of the Fiscal Agent in El Cerrito, California.

The Authority has designated the Bonds as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986.

The Bonds are issued for the purpose of enabling the Authority to refinance the Prior Financing between the City of El Cerrito (the “**City**”) and Holman Capital Corporation. The Bonds are limited obligations of the Authority and are payable, as to interest thereon and principal thereof, solely from certain proceeds of the Bonds held in certain funds and accounts pursuant to the Fiscal Agent Agreement and the revenues (the “**Revenues**”) derived from Rental Payments made by the City, and all interest or other investment income, pursuant to the Lease Purchase Agreement, dated as of _____ 1, 2012 (the “**Lease Purchase Agreement**”), by and between the Authority and the City, and the Authority is not obligated to pay interest or premium, if any, on and principal of Bonds except from the Revenues. All Bonds are equally and ratably secured in according to the terms and conditions of the Fiscal Agent Agreement by a pledge, lien and charge on the Revenues, and the Revenues constitute a trust fund for the security and payment of the interest or premium, if any, on and principal of the Bonds as provided in the Fiscal Agent Agreement. The full faith and credit of the Authority and the City are not pledged to the payment of the interest or premium, if any, on or principal of the Bonds. No tax other than the City’s Measure A Special Tax (as said term is defined in the Lease Purchase Agreement) shall ever be levied or collected to pay the interest on or principal of the Bonds. The Bonds are not secured by a legal or equitable pledge of or charge or lien upon any property of the Authority or any of its income or receipts except the Revenues, and neither the payment of the interest on nor principal of the Bonds is a debt, liability or general obligation of the Authority. Additional bonds payable from the Revenues may be issued which will rank equally as to security with the Bonds, but only subject to the conditions and upon compliance with the procedures set forth in the Fiscal Agent Agreement. Reference is hereby made to the Act and to the Fiscal Agent Agreement and any and all amendments thereof and supplements thereto for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Revenues, the rights of the registered owners of the Bonds, security for payment of the Bonds, remedies upon default and limitations thereon, and amendment of the Fiscal Agent Agreement (with or without consent of the registered owners of the Bonds); and all the terms of the Fiscal Agent Agreement are hereby incorporated herein and constitute a contract between the Authority and the registered owner of this Bond, to all the provisions of which the registered owner of this Bond, by acceptance hereof, agrees and consents.

The Bonds are subject to redemption by the Authority on the dates, at the prices, and pursuant to the terms and provisions set forth in the Fiscal Agent Agreement.

The Bonds are subject to mandatory partial redemption on January 1, April 1, July 1 and October 1 of the years set forth in the following table, in the principal amount set forth at a redemption price equal to 100% of the principal amount thereof:

<u>Redemption Date</u>	<u>Amount</u>
[To Come]	[To Come]

Notice to the Owner of the Bonds of the scheduled mandatory partial redemptions shall not be required, and interest shall cease to accrue from and after each redemption date on the principal amount of the Bonds payable by mandatory partial redemption on said redemption date.

If an Event of Default (as that term is defined in the Fiscal Agent Agreement) shall occur, any Owner of any of the Bonds shall have the right, for the equal benefit and protection of all Owners similarly situated, to exercise the remedies prescribed by the Fiscal Agent Agreement.

This Bond is transferable by the Owner hereof, in person or by his attorney duly authorized in writing, at the office of the Fiscal Agent or such other place as designated by the Fiscal Agent, but only in the manner, subject to the limitations provided in the Fiscal Agent Agreement, and upon payment of the charges provided in the Fiscal Agent Agreement and surrender of this Bond together with a written instrument of transfer satisfactory to the Fiscal Agent duly executed by the registered owner or his duly authorized attorney, whereupon a new fully registered Bond or Bonds in the same aggregate principal amount in authorized denominations will be issued to the transferee in exchange therefor. The Authority and the Fiscal Agent may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of the interest hereon and principal hereof and for all other purposes, whether or not this Bond shall be overdue, and neither the Authority nor the Fiscal Agent shall be affected by any notice or knowledge to the contrary; and payment of the interest on and principal of this Bond shall be made only to such registered owner, which payments shall be valid and effectual to satisfy and discharge liability on this Bond to the extent of the sum or sums so paid.

The Fiscal Agent Agreement and the rights and obligations of the City and of the owners of the Bonds and of the Fiscal Agent may be modified or amended from time to time and at any time in the manner, to the extent, and upon the terms provided in the Fiscal Agent Agreement; provided that no such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the City to pay the principal of or the interest on the Bonds at the time and place and at the rate and in the currency provided therein without the express written consent of the Owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Fiscal Agent, all as more fully set forth in the Fiscal Agent Agreement.

This Bond shall not be entitled to any benefit, protection or security under the Fiscal Agent Agreement or become valid or obligatory for any purpose until the certificate of

authentication and registration hereon endorsed shall have been executed and dated by the Fiscal Agent.

It is hereby certified that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Constitution or laws of the State of California and is not in excess of the amount of Bonds permitted to be issued under the Fiscal Agent Agreement.

IN WITNESS WHEREOF, the El Cerrito Public Financing Authority has caused this Bond to be executed in its name and on its behalf by the manual signature of the Chairman of the Authority and countersigned by the manual signature of the Secretary of said Authority, and has caused this Bond to be dated as of the Dated Date specified above.

EL CERRITO PUBLIC FINANCING AUTHORITY

By: _____
Chair

[SEAL]
Attest:

By: _____
Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This is one of the Bonds described in the within-mentioned Fiscal Agent Agreement which has been authenticated on _____, 2012.

ADMINISTRATIVE SERVICES DIRECTOR
as Fiscal Agent

By: _____
Mary Dodge

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto (Taxpayer Identification Number: _____) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Note: The signature to this Assignment must correspond with the name as written on the face of the Bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed: _____

Notice: Signature must be guaranteed by a eligible guarantor institution.

EXHIBIT B

DEBT SERVICE SCHEDULE

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	Total Debt Service <u>Payable</u>
1/1/2013	\$53,200	\$23,447.56	\$76,647.56
4/1/2013	\$56,300	\$20,365.83	\$76,665.83
7/1/2013	\$56,600	\$20,023.81	\$76,623.81
10/1/2013	\$57,000	\$19,679.96	\$76,679.96
1/1/2014	\$57,300	\$19,333.69	\$76,633.69
4/1/2014	\$57,600	\$18,985.59	\$76,585.59
7/1/2014	\$58,000	\$18,635.67	\$76,635.67
10/1/2014	\$58,400	\$18,283.32	\$76,683.32
1/1/2015	\$58,700	\$17,928.54	\$76,628.54
4/1/2015	\$59,100	\$17,571.94	\$76,671.94
7/1/2015	\$59,400	\$17,212.91	\$76,612.91
10/1/2015	\$59,800	\$16,852.05	\$76,652.05
1/1/2016	\$60,100	\$16,488.77	\$76,588.77
4/1/2016	\$60,500	\$16,123.66	\$76,623.66
7/1/2016	\$60,900	\$15,756.12	\$76,656.12
10/1/2016	\$61,200	\$15,386.15	\$76,586.15
1/1/2017	\$61,600	\$15,014.36	\$76,614.36
4/1/2017	\$62,000	\$14,640.14	\$76,640.14
7/1/2017	\$62,400	\$14,263.49	\$76,663.49
10/1/2017	\$62,700	\$13,884.41	\$76,584.41
1/1/2018	\$63,100	\$13,503.51	\$76,603.51
4/1/2018	\$63,500	\$13,120.18	\$76,620.18
7/1/2018	\$63,900	\$12,734.42	\$76,634.42
10/1/2018	\$64,300	\$12,346.22	\$76,646.22
1/1/2019	\$64,700	\$11,955.60	\$76,655.60
4/1/2019	\$65,100	\$11,562.55	\$76,662.55
7/1/2019	\$65,500	\$11,167.07	\$76,667.07
10/1/2019	\$65,900	\$10,769.15	\$76,669.15
1/1/2020	\$66,300	\$10,368.81	\$76,668.81
4/1/2020	\$66,700	\$9,966.04	\$76,666.04
7/1/2020	\$67,100	\$9,560.84	\$76,660.84
10/1/2020	\$67,500	\$9,153.20	\$76,653.20
1/1/2021	\$67,900	\$8,743.14	\$76,643.14
4/1/2021	\$68,300	\$8,330.65	\$76,630.65
7/1/2021	\$68,700	\$7,915.73	\$76,615.73
10/1/2021	\$69,100	\$7,498.37	\$76,598.37
1/1/2022	\$69,600	\$7,078.59	\$76,678.59
4/1/2022	\$70,000	\$6,655.77	\$76,655.77

7/1/2022	\$70,400	\$6,230.52	\$76,630.52
10/1/2022	\$70,800	\$5,802.84	\$76,602.84
1/1/2023	\$71,300	\$5,372.73	\$76,672.73
4/1/2023	\$71,700	\$4,939.58	\$76,639.58
7/1/2023	\$72,100	\$4,504.01	\$76,604.01
10/1/2023	\$72,600	\$4,066.00	\$76,666.00
1/1/2024	\$73,000	\$3,624.95	\$76,624.95
4/1/2024	\$73,500	\$3,181.48	\$76,681.48
7/1/2024	\$73,900	\$2,734.97	\$76,634.97
10/1/2024	\$74,300	\$2,286.02	\$76,586.02
1/1/2025	\$74,800	\$1,834.65	\$76,634.65
4/1/2025	\$75,300	\$1,380.24	\$76,680.24
7/1/2025	\$75,700	\$922.79	\$76,622.79
10/1/2025	\$76,200	\$462.92	\$76,662.92

EXHIBIT C

FORM OF CERTIFICATE OF BOND PURCHASER

El Cerrito Public Financing Authority
2012 Recycling Center Lease Revenue Refunding Bonds

Certificate of Bond Purchaser

This certificate is delivered by an authorized representative of JPMorgan Chase Bank N.A., as purchaser (the "**Purchaser**") of the \$3,405,600 aggregate principal amount of City of El Cerrito 2012 Recycling Center Lease Revenue Refunding Bonds (the "**Bonds**"), dated the date of this certificate.

The Purchaser certifies the following:

(1) The Bonds are being purchased in a direct, private placement transaction, and the terms of the purchase and sale have been established through negotiations between the Purchaser and the City in an arm's-length transaction.

(2) The Purchaser is holding the Bonds for its own account as an investor and/or for deposit into a trust for the purpose of selling interests in the trust.

(3) The Purchaser will not receive any commission or fee in connection with such purchase.

(4) The relationship between the Purchaser and the City with respect to the Bonds is intended to be that of creditor-debtor only. No term in the documents relating to the Bonds, and no course of dealing between the Purchaser and the City is intended to be deemed to create any relationship of agency, partnership or joint venture between the Purchaser and any other party, or create any fiduciary duty by the Purchaser to any other party.

(5) The Purchaser is purchasing the Bonds as par.

(6) The Purchaser is the first buyer of the Bonds and is buying the Bonds as an investment for its own account with no intention to resell the bonds.

(7) The purchase price of the Bonds is not less than the fair market value of the Bonds as of the date the Purchaser agreed to buy the Bonds.

The undersigned is authorized to execute this certificate on behalf of JPMorgan Chase Bank N.A.

Date: September 19, 2012

JPMORGAN CHASE BANK N.A.

By: _____
Authorized Representative

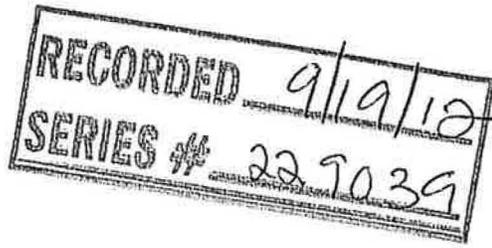
Recorded at the Request of
Old Republic Title Company

Oakland
11/17/2012

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

El Cerrito Public Financing Authority
10890 San Pablo Avenue
El Cerrito, CA 94530
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§ 6103, 27383



APN : 505-010-012 (portion)
505-090-015-7

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

LEASE PURCHASE AGREEMENT

between

EL CERRITO PUBLIC FINANCING AUTHORITY

and the

CITY OF EL CERRITO

Dated: September 1, 2012

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LEASE PURCHASE AGREEMENT

This Lease Purchase Agreement (this “**Agreement**”) dated as of September 1, 2012, by and between the El Cerrito Public Financing Authority, a California joint exercise of powers authority (the “**Authority**”), as lessor, and the City of El Cerrito (the “**City**”), a municipal corporation duly organized and validly existing under and by virtue of the laws of the State of California, as lessee, is entered into with reference to the following recitals:

WHEREAS, on November 1, 2010 the City, entered into that certain site lease and that certain lease purchase agreement with Holman Capital Corporation for the purpose of financing (the “**Prior Financing**”) a portion of the cost of construction of a recycling facility (the “**Project**”); and

WHEREAS, the City received a proposal from JPMorgan Chase Bank N.A., (the “**Bank**”), dated August 10, 2012 to purchase by private placement not to exceed \$3,405,600 El Cerrito Public Financing Authority Lease Revenue Refunding Bonds for the purpose of providing for the refinancing of the Project; and

WHEREAS, the Government Code of the State of California authorizes the City to provide for the financing of facilities for the use of the City; and

WHEREAS, the El Cerrito Public Financing Authority (the “**Authority**”) is a joint exercise of powers authority duly organized and existing under the laws of the State of California, with the power to assist local agencies in financing projects and programs that involve the leasing of property for certain public improvements whenever a local agency determines that there are significant public benefits from so doing; and

WHEREAS, the City owns the Site (as defined below) and intends to lease the Site to the Authority pursuant to that certain Site Lease, dated as of September 1, 2012, by and between the City, as lessor, and the Authority, as lessee (the “**Site Lease**”), and the Authority intends to lease the Leased Facilities (as defined below) back to the City under this Agreement; and

WHEREAS, the Authority has agreed to assist the City in refinancing the Project through the issuance of its El Cerrito Public Financing Authority Lease Revenue Refunding Bonds (the “**Bonds**”) and by entering into this Agreement, pursuant to which the Authority will lease to the City the property located at 1520 Arlington Boulevard in El Cerrito, commonly known as Fire Station and 7501 Schmidt Lane, El Cerrito, commonly known as the Recycling Center, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference, together with all present and future improvements located thereon and furniture installed or located therein (collectively, the “**Leased Property**”) for the Rental Payments described herein; and

WHEREAS, the Authority desires to lease the Leased Property to the City and the City desires to lease the Leased Property from the Authority subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, the City is authorized to enter into this Agreement for the purposes and subject to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereby agree as follows:

**ARTICLE 1.
DEFINITIONS; OTHER PROVISIONS OF GENERAL APPLICABILITY**

Section 1.1 Definitions. For all purposes of this Agreement and of any certificate, opinion, or other document herein mentioned, unless the context otherwise requires:

(A) The terms defined in this Section have the meanings herein specified and include the plural as well as the singular. All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles.

(C) All references herein to “generally accepted accounting principles” refer to such principles as they exist at the date of applicability thereof.

(D) All references herein to “Articles,” “Sections,” and other subdivisions are to the designated Articles, Sections, and other subdivisions of this Agreement as originally executed or as it may be supplemented or amended from time to time.

(E) The words “herein,” “hereof,” “hereby,” “hereunder,” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or other subdivision.

(F) Words of any gender include words of all other genders.

“Applicable Environmental Laws” means and shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 USC Sections 9601 et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 USC Sections 6901 et seq.; the Federal Water Pollution Control Act, 33 USC Sections 1251 et seq.; the Clean Air Act, 42 USC Sections 7401 et seq.; the California Hazardous Waste Control Law (“HWCL”), California Health & Safety Code Sections 25100 et seq.; the Hazardous Substance Account Act (“HSAA”), California Health & Safety Code Sections 25300 et seq.; the Porter-Cologne Water Quality Control Act (the “Porter-Cologne Act”), California Water Code Sections 1300 et seq.; the Air Resources Act, California Health & Safety Code Sections 3900 et seq.; the Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 et seq.; and the regulations under each thereof; and any other local laws, state laws, or federal laws or regulations, whether currently in existence or hereafter enacted, that govern:

- (1) the existence, cleanup, and/or remedy of contamination on property;
- (2) the protection of the environment from spilled, deposited, or otherwise emplaced contamination;

- (3) the control of hazardous wastes; or
- (4) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

“Authority” means the El Cerrito Public Financing Authority, a California joint exercise of powers authority, or its successors or assigns as lessee under the Site Lease and lessor hereunder.

“Bank” means JPMorgan Chase Bank N.A. as the original purchaser and registered owner of all of the Bonds.

“Business Day” means any day on which federal and state banks in San Francisco, California, are open for business, except Saturday and Sunday.

“City” means the City of El Cerrito, a municipal corporation, duly organized and existing under the laws of the State.

“Code” means the Internal Revenue Code of 1986 and the regulations applicable to or issued thereunder.

“Effective Interest Rate” means the rate of interest per annum specified on Exhibit B.

“Event of Default” means any of the events specified in Section 7.1 (Events of Default).

“Leased Property” means the improved real property described in Exhibit A attached to this Agreement together with all present and future improvements located thereon.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30 or any other twelve-month period hereafter selected and designated as the official fiscal year period of the City.

“Funding Date” means the date payment is made by the Authority to or for the account of the City under the Site Lease.

“Hazardous Substance” means any substance that shall, at any time, be listed as “hazardous” or “toxic” in any Applicable Environmental Law or that has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Laws; and also means, without limitation, raw materials, building components, the products of any manufacturing, or other activities on the Leased Property, wastes, petroleum, and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC Sections 3011 et seq.).

“Insurance Consultant” means any independent person having experience in consulting on the insurance requirements of governmental entities of the general size and character of the City, selected by the City.

“Lease Purchase Agreement” means this Agreement by and between the Authority and the City, dated as of September 1, 2012, wherein the Authority leases the Leased Property to the City, as originally executed and as it may from time to time be supplemented, modified, or amended pursuant to the provisions hereof.

“National Flood Insurance Program” means the insurance program created by the National Flood Insurance Act of 1968 and administered by the Federal Emergency Management Agency.

“Net Proceeds” means the amount remaining from the gross proceeds of any insurance claim or condemnation award made in connection with the Leased Property, after deducting all expenses (including attorneys’ fees) incurred in the collection of such claim or award.

“Opinion of Counsel” means a written opinion of a law firm experienced in matters relating to obligations the interest on which is excludable from gross income for federal income tax purposes, selected by the City.

“Payment Date” means January 1, April 1, July 1, and October 1 in each year, commencing January 1, 2013.

“Person” means a corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

“Rental Payments” means the Rental Payments payable by the City pursuant to the provisions of this Lease Purchase Agreement.

“Site” means the improved real property located at 1520 Arlington Boulevard in El Cerrito, commonly known as a Fire Station, and 7501 Schmidt Lane, El Cerrito, commonly known as the Recycling Center, as more particularly described on Exhibit A attached hereto.

“Site Lease” means the Site Lease by and between the City and the Authority, dated as of September 1, 2012, wherein the City leases the Leased Property to the Authority, as originally executed and as it may from time to time be supplemented, modified, or amended pursuant to the provisions hereof and thereof.

“State” means the State of California.

“Statement,” “Certificate,” “Request,” “Requisition,” and **“Order of the City”** mean, respectively, a written statement, certificate, request, requisition, or order signed in the name of the City by the City Manager or any other person authorized by the City to execute such instruments. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“Tax Certificate” means the tax certificate delivered by the City at the time of the execution and delivery of this Agreement, as the same may be further amended or supplemented in accordance with its terms.

Section 1.2 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to:

City: City of El Cerrito
10890 San Pablo Avenue
El Cerrito, California 94530
Attention: City Manager

Authority: El Cerrito Public Financing Authority
10890 San Pablo Avenue
El Cerrito, California 94530
Attention: Executive Director

The City and the Authority may, by notice given hereunder, designate any further or different address to which subsequent notices shall be sent.

Section 1.3 Successors and Assigns. Whenever in this Agreement either the City or the Authority is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by, on behalf of, or for the benefit of the City or the Authority shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 1.4 Benefits of Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to give to any person other than the City and the Authority any legal or equitable right, remedy, or claim under or in respect of this Agreement or any covenant, condition, or provision therein or herein contained; and all such covenants, conditions, and provisions are and shall be held to be for the sole and exclusive benefit of the City and the Authority.

Section 1.5 Amendments. This Agreement may only be amended, or modified in writing as may be mutually agreed by the Authority and the City with the written consent of Bank.

Section 1.6 Effect of Headings and Table of Contents. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, or effect of this Agreement.

Section 1.7 Validity and Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality, or unenforceability shall

not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

If for any reason it is held that any of the covenants and conditions of the City hereunder, including the covenant to make Rental Payments hereunder, is unenforceable for the full term hereof, then and in such event this Agreement is and shall be deemed to be a lease from year to year under which the Rental Payments are to be paid by the City annually in consideration of the right of the City to possess, occupy, and use the Leased Property, and all of the Rental Payments and other terms, provisions, and conditions of this Agreement, except to the extent that such terms, provisions, and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

Section 1.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 1.9 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

ARTICLE 2. REPRESENTATIONS OF AUTHORITY AND CITY

Section 2.1 Representations of Authority. The Authority represents and covenants for the benefit of the City and its assignees as follows:

(A) Valid Existence. The Authority has been duly organized and is validly existing as a joint exercise of powers authority under the laws of the State of California and will maintain its existence during the term of this Agreement.

(B) Power to Enter into Lease Purchase Agreement. The Authority is authorized to enter into this Agreement and perform all of its obligations hereunder.

(C) Due Authorization. This Agreement has been duly authorized by all necessary action on the part of the Authority.

(D) Enforceability of Lease Purchase Agreement. The Authority represents, covenants, and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement (except as such enforceability may be limited by bankruptcy, insolvency, or other laws affecting creditors' rights generally and by the application of equitable principles).

Section 2.2 Representations of City. The City hereby represents to the Authority as follows:

(A) Valid Existence. The City has been duly organized and is validly existing as a municipal corporation under the laws of the State of California.

(B) Power to Enter into Lease Purchase Agreement. The City is authorized under the California Government Code to enter into this Agreement and perform all of its obligations hereunder.

(C) Due Authorization. This Agreement has been duly authorized by all necessary action on the part of the City.

(D) Enforceability of Lease Purchase Agreement. The City represents, covenants, and warrants that this Agreement is a valid and binding obligation of the City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and by the application of equitable principles.

(E) No Violation of Law or Breach of Contract. The execution and delivery of this Agreement and compliance with the provisions hereof will not (i) violate any applicable provision of statutory law or regulation, (ii) breach or otherwise violate any existing obligation of the City under any court order or administrative decree to which the City is subject, or (iii) breach, or result in a default under, any loan agreement, note, resolution, indenture, contract, agreement, or other instrument to which the City is a party or is otherwise subject or bound.

(F) No Adverse Litigation. To the best knowledge of the City, there are no legal or governmental proceedings or litigation pending or overtly threatened in writing wherein an unfavorable decision, ruling, or finding might adversely affect the transaction contemplated in or the validity of this Agreement.

(G) No Defaults. To the best knowledge of the City, the City has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any financing lease of the same general nature as this Agreement, or under any of its bonds, notes, or other debt obligations.

(H) Fee Title. The City is the owner in fee of title to the Leased Property. No lien or encumbrance on the Leased Property materially impairs the City's use of the Leased Property for the purposes for which they are, or may reasonably be expected to be, held. The City has owned fee title to the Leased Property since 1956 in the case of the Recycling Center and 1996 in the case of the Fire Station.

(I) Use of the Leased Property. The City hereby agrees and covenants during the term of this Agreement that, except as hereinafter provided, it will use the Leased Facilities for public purposes of the City so as to afford the public the benefits contemplated by this Agreement.

(J) Value of Leased Property. The City estimates that the fair rental value of the Leased Property (land and improvements) is at least \$3,500,000.

(K) To the best knowledge of the City, all approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the due performance by the City of its obligations under this Agreement

have been duly obtained or made, and are, and will be on the Funding Date, in full force and effect.

(L) Any certificate signed by an officer of the City and delivered to the Bank pursuant to this Agreement, the Site Lease or the Fiscal Agent Agreement or any document contemplated thereby shall be deemed a representation and warranty by the City to the Bank as to the statements made therein and that such officer shall have been duly authorized to execute such certificate.

(M) To the best knowledge of the City, there is no public vote or referendum pending or proposed, the results of which could materially adversely affect the transactions contemplated by this Agreement, the Site Lease or the Fiscal Agent Agreement or the validity or enforceability of this Agreement, the Site Lease or the Fiscal Agent Agreement.

ARTICLE 3. LEASE OF LEASED PROPERTY

Section 3.1 Lease of Leased Property. The Authority hereby leases to the City, and the City hereby leases from the Authority, the Leased Property in accordance with the provisions of this Agreement. The City will take possession of the Leased Property upon commencement of the term of this Agreement.

Section 3.2 Lease Term. The term of this Agreement shall commence on the Funding Date and shall end on October 1, 2025, unless such term is extended or sooner terminated as hereinafter provided. If on October 1, 2025 the City has defaulted in its payment of rental hereunder or any Event of Default has occurred and continues without cure by the City, then the term of this Agreement shall be extended for so long as the default remains uncured, but not to exceed ten (10) years. When the aggregate rental paid under this Agreement equals the total rental originally scheduled herein, and the City has paid and performed in full all of its other obligations under this Agreement, the term of this Agreement shall end ten (10) days thereafter or ten (10) days after written notice by the City to the Authority, whichever is earlier.

Section 3.3 Modifications to the Leased Property. Subject to Section 5.5 (Liens) hereof, the City shall, at its own expense, have the right to remodel, make alterations or improvements to, or attach fixtures, structures, or signs to the Leased Property if the alterations, improvements, fixtures, structures, or signs are necessary or beneficial for the use of the Leased Property by the City, provided, however, that such actions by the City shall not materially adversely affect the value of the Leased Property.

ARTICLE 4. RENTAL PAYMENTS

Section 4.1 Rental Payments. The City agrees to pay to the Authority, its successor or assigns, as annual rental for the use of the Leased Property the following amounts, at the following times, in the manner hereinafter set forth:

(A) Amount and Timing. The City shall pay Rental Payments, comprising principal and interest components, in installments of the amounts and at the times set forth in the Schedule of Rental Payments attached as Exhibit B hereto. The interest components of the Rental Payments shall be paid by the City as and constitute interest paid on the principal components of the Rental Payments.

(B) Extension of Lease Term. If the term of this Agreement shall have been extended pursuant to Section 3.2 (Lease Term) hereof Rental Payments shall continue to be due as described herein. Rental Payment installments shall continue to be payable in installments on January 1, April 1, July 1 and October 1 in each year, continuing to and including the date of termination of this Agreement. Upon such extension of this Agreement, the principal and interest components of the Rental Payments shall be established so that the principal components will, in the aggregate, be sufficient to pay all unpaid principal components and the interest components will be sufficient to pay all unpaid interest components plus interest on the extended principal components at the Effective Interest Rate, computed on the basis of a 360-day year composed of twelve 30-day months.

(C) Rental Period. Each payment of Rental Payments shall be for the use of the Leased Property for the twelve-month period commencing on October 2 of the period in which such installments are payable and ending on October 1 of the following year, except that the rental period shall begin on the Funding Date and end on October 1, 2013.

(D) Place of Payment. Each installment of rental payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Authority.

(E) Rate on Overdue Payments. Any Rental Payment installment that is not paid when due shall bear interest at the rate of twelve percent (12%), or such lesser rate allowed by law, from the date the Rental Payment was due hereunder until paid by the City.

Section 4.2 Allocation of Rental Payments. All Rental Payments received shall be applied first to the interest components of the Rental Payments due hereunder, then to the principal components of the Rental Payments due hereunder, but no such application of any payments that are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

Section 4.3 Additional Payments. The City shall also pay such amounts (the "**Additional Payments**") as may be required for the payment of all costs and expenses incurred for the execution, performance or enforcement of this Agreement, its interest in the Leased Facilities and the lease of the Leased Facilities to the City, including but not limited to payment of all fees, costs and expenses and all administrative costs related to the Leased Facilities, including, without limiting the generality of the foregoing, salaries and wages of employees, all expenses, fees of auditors, accountants, attorneys or architects, and all other necessary administrative costs or charges required to be paid by the City in order to maintain its existence or to comply with the terms of this Agreement, but not including in Additional Payments amounts required to pay the Rental Payments

Section 4.4 No Offsets. Notwithstanding any dispute between the Authority and the City, the City shall make all Rental Payments when due without deduction or offset of any kind and shall not withhold any Rental Payments pending the final resolution of such dispute. In the event of a determination that the City was not liable for the Rental Payments or any portion thereof, the payments or excess payments, as the case may be, shall, at the option of the City, be credited against subsequent Rental Payments due hereunder or be refunded at the time of such determination.

Section 4.5 Covenant to Budget and Appropriate. The City covenants and agrees to take such action as may be necessary to include all Rental Payments and Additional Payments due hereunder in its annual budgets and to make the necessary annual appropriations for all such Rental Payments and Additional Payments. Annually within thirty (30) days of the adoption of the budget, the City will furnish to the Authority a Certificate of the City certifying that such budget contains the necessary appropriation for all Rental Payments. If requested in writing by the Authority, the City will furnish a copy of such budget.

The agreements and covenants on the part of the City herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the agreements and covenants in this Agreement agreed to be carried out and performed by the City.

Section 4.6 No Abatement of Rental. The City hereby waives any right that it may have under the laws of the State of California to abatement of Rental Payments in full or in part in the event there is substantial interference with the use and right to possession by the City of the Leased Property or portion thereof as a result of material damage, destruction, or condemnation.

Section 4.7 Prepayment. On any Payment Date after October 1, 2017, the City may prepay its obligations hereunder in whole by paying to the Authority the amount shown for such date in the column headed "Purchase Option Price" on Exhibit B, together with the Rental Payment due on such date, plus the amount of any Rental Payments that have not been otherwise paid during an extension of the lease term, plus any Rental Payments then in default. Upon such prepayment, the term of this Agreement shall terminate.

The City shall, at least thirty 30 days prior to such prepayment, notify the Authority of its intention to prepay its obligations hereunder. The City agrees that, if following such prepayment the Leased Property are damaged or destroyed or taken by eminent domain, it is not entitled to, and by such prepayment waives the right of, abatement of such prepaid Rental Payments and shall not be entitled to any reimbursement of such Rental Payments.

ARTICLE 5. COVENANTS

Section 5.1 Quiet Enjoyment. The Authority hereby covenants to provide the City during the term of this Agreement with quiet use and enjoyment of the Leased Property and the City shall during the term of this Agreement peaceably and quietly have, hold, and enjoy the

Leased Property without suit, trouble, or hindrance from the Authority, so long as the City observes and performs its covenants and agreements and is not in default hereunder.

Section 5.2 Right of Entry. The Authority and its assignees shall have the right (but not the duty) to enter the Leased Property during reasonable business hours (and in emergencies at all times) (a) to inspect the same, (b) for any purpose connected with the Authority's or the City's rights or obligations under this Agreement, and (c) for all other lawful purposes.

Section 5.3 Maintenance of the Leased Property by City. The City agrees that, at all times during the term of this Agreement, the City will, at the City's own cost and expense, maintain, preserve, and keep the Leased Property and every portion thereof in good repair, working order, and condition and that the City will from time to time make or cause to be made all necessary and proper repairs, replacements, and renewals.

Section 5.4 Taxes and Other Governmental Charges; Utility Charges; Contest of Charges.

(A) Taxes and Other Governmental Charges on the Leased Property. The parties to this Agreement contemplate that the Leased Property will be used for governmental purposes of the City and, therefore, that the Leased Property will be exempt from all taxes presently assessed and levied with respect to property. If the use, possession, or acquisition by the City or the Authority of the Leased Property is found to be subject to taxation in any form, the City will pay during the term of this Agreement, as the same respectively become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Leased Property, and any equipment or other property acquired by the City in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Leased Property; provided that, with respect to any governmental charges or taxes that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are accrued during such time as this Agreement is in effect.

(B) Utility Charges. The City shall pay or cause to be paid all gas, water, steam, electricity, heat, power, air conditioning, telephone, utility, and other charges incurred in the operation, maintenance, use, occupancy, and upkeep of the Leased Property.

(C) Contest of Charges. The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, or other charges and, in the event of any such contest, may permit the taxes, assessments, or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority shall notify the City that, in the opinion of independent counsel, by nonpayment of any such items, the interest of the Authority in the Leased Property will be materially endangered or the Leased Property, or any part thereof, will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments, or charges or provide the Authority with full security against any loss that may result from nonpayment, in form satisfactory to the Authority.

Section 5.5 Liens. In the event the City shall at any time during the term of this Agreement cause any changes, alterations, additions, improvements, or other work to be done or

performed or materials to be supplied, in or upon the Leased Property, the City shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, or equipment furnished or alleged to have been furnished to or for the City in, upon or about the Leased Property and shall keep the Leased Property free of any and all mechanics' or materialmen's liens or other liens against the Leased Property or the Authority's interest therein. In the event any such lien attaches to or is filed against the Leased Property or the Authority's interest therein, the City shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the City desires to contest any such lien it may do so in good faith. If any such lien is reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and the stay thereafter expires, the City shall forthwith pay (or cause to be paid) and discharge such judgment. The City agrees to and shall, to the maximum extent permitted by law, indemnify and hold the Authority and its directors, agents, successors and assigns, harmless from and against, and defend each of them against, any claim, demand, loss, damage, liability or expense (including attorney's fees) as a result of any such lien or claim of lien against the Leased Property or the Authority's interest therein.

Section 5.6 Environmental Covenants.

(A) Compliance with Laws; No Hazardous Substances. The City will comply with all Applicable Environmental Laws with respect to the Leased Property and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the Leased Property.

(B) Notification of the Authority. The City will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the Leased Property and any operations conducted thereon or any conditions existing thereon to the Authority, and the City will notify the Authority in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the Leased Property, or the people, structures, or other property thereon, provided that no such notification shall create any liability or obligation on the part of the Authority.

(C) Access for Inspection. The City will permit the Authority, its agents, or any experts designated by the Authority to have full access to the Leased Property during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Authority has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

Section 5.7 Assignment and Subleasing by City. Neither this Agreement nor any interest of the City hereunder shall be mortgaged, pledged, assigned, sublet, or transferred by the City by voluntary act or by operation of law or otherwise, except with the prior written consent of the Authority and the Bank, which, in the case of subletting, shall not be unreasonably withheld; provided such subletting shall not affect the tax-exempt status of the interest components of the Rental Payments payable by the City hereunder. No such mortgage, pledge, assignment,

sublease, or transfer shall in any event affect or reduce the obligation of the City to make the Rental Payments required hereunder.

Section 5.8 City Consent to Assignments. The Authority will be entering into an assignment agreement with the Administrative Services Director of the City, as fiscal agent, or with another entity (the “Assignee”) in order to assign its rights under this Agreement, including the right to receive and enforce payment of the Rental Payments. The City hereby consents to such assignment. The City agrees to execute all documents, including notices of assignment and financing statements, that may be reasonably requested by the Assignee to protect its interests in the Leased Property and in this Agreement.

Section 5.9 Authority’s Disclaimer of Warranties. THE AUTHORITY MAKES NO AGREEMENT, WARRANTY, OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, HABITABILITY, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR FITNESS FOR USE OF THE LEASED PROPERTY, OR WARRANTY WITH RESPECT THERETO. THE CITY ACKNOWLEDGES THAT THE AUTHORITY HAS NOT CONSTRUCTED THE LEASED PROPERTY AND IS NOT A REAL ESTATE BROKER, THAT THE CITY LEASES THE LEASED PROPERTY AS-IS, ITS BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event shall the Authority be liable for any incidental, indirect, special, or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning, or the City’s use of the Leased Property or any item or products or services provided for in this Agreement.

Section 5.10 Authority Not Liable; Indemnification of the Authority. The Authority and its directors, officers, agents, and employees shall not be liable to the City or to any other party whomsoever for any death, injury, or damage that may result to any person or property by or from any cause whatsoever in, on or about the Leased Property.

The City shall to the full extent then permitted by law, indemnify, protect, hold harmless, save, and keep harmless the Authority and its assignees and their directors, officers, and employees from and against any and all liability, obligations, losses, claims, and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into of this Agreement or any other agreement entered into in connection herewith or therewith, the design or ownership of the Leased Property, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage, or return of any part of the Leased Property, or any accident in connection with the operation, use, condition, possession, storage, or return of any item of the Leased Property resulting in damage to property or injury to or death to any person including, without limitation, any claim alleging latent and other defects, whether or not discoverable by the City or the Authority; any claim for patent, trademark, or copyright infringement; and any claim arising out of strict liability in tort. The indemnification arising under this section shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the term of this Agreement for any reason. The City and the Authority mutually agree to promptly give notice to each other and the Authority of any claim or liability hereby indemnified against following either’s learning thereof.

Section 5.11 Federal Income Tax Covenants. The City and the Authority will not make any use of the proceeds of the Bonds or any other funds of the City or the Authority which will cause such obligations to be “arbitrage bonds” subject to federal income taxation by reason of Section 148 of the Code. The City and the Authority will not make any use of the proceeds of the Bonds or any other funds of the City or the Authority which will cause such obligations to be “federally guaranteed” and subject to inclusion in gross income for federal income tax purposes by reason of Section 149(b) of the Code. To that end, so long as any Rental Payments are unpaid, the City and the Authority, with respect to such proceeds and such other funds, will comply with all requirements of such Sections 148 and 149(b) and all regulations of the United States Department of the Treasury issued thereunder to the extent that such requirements are, at the time, applicable and in effect.

The City further covenants that it will not use or permit the use of the Leased Property or the Project by any person not an “exempt person” within the meaning of Section 141(a) of the Code or by an “exempt person” (including the City) in an “unrelated trade or business”, in such manner or to such extent as would result in the inclusion of interest on the Bonds in gross income for federal income tax purposes under Section 103 of the Code.

If at any time the City is of the opinion that for purposes of this Section it is necessary to restrict or limit the yield on or change in any way the investment of any moneys held by the Fiscal Agent or the City or the Authority under this Lease or the Fiscal Agent Agreement, the City shall so instruct the Fiscal Agent or the appropriate officials of the City in writing, and the Fiscal Agent or the appropriate officials of the City, as the case may be, shall take such actions as may be necessary in accordance with such instructions.

The Authority has designated the Bonds as “qualified tax-exempt obligations” pursuant to Section 265(b) of the Code. In furtherance of such designation, the City and the Authority hereby represent and warrant, for themselves and any other entity which constitutes a subordinate entity of either of them, that neither of them has the expectation or intention to issue additional tax-exempt obligations during calendar year 2012 in a principal amount, which when aggregated with the principal amount of the Bonds and any tax-exempt obligations issued by the other or any subordinate entity of either during calendar year 2012, will be in excess of \$10,000,000.

Section 5.12 Further Assurances. The City and the Authority agree that they will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered such supplements hereto and such further instruments as may be necessary or proper to carry out the intention or to facilitate the performance of this Agreement.

Section 5.13 Financial Statements. During the term of this Agreement, the City shall, at the request of the Authority, furnish or cause to be furnished to the Authority, at the City’s expense, as soon as available, the audited financial statements of the City and any interim or unaudited financial statements that may be reasonably requested by the Authority.

Section 5.14 Pledge of Integrated Waste Management Fund Revenues.

(A) Pledge of Revenues. The City hereby pledges the revenues from the operation of its integrated waste management (recycling) system (the “**Integrated Waste Management**

Fund”) to the payment of the Rental Payments hereunder. This pledge shall rank on a parity with the pledge of the Integrated Waste Management Fund that secures the payment of the amounts payable under that certain Lease Purchase Agreement, Recycling Equipment by and between First Municipal Leasing Corporation and the City dated December 19, 2008.

(B) Additional Debt Secure by Integrated Waste Management Fund. The City hereby covenants not to issue any debt secured by a pledge of the Integrated Waste Management Fund that is on parity or senior to the pledge of the Integrated Waste Management fund under this Agreement without prior written consent of Bank; provided, however, that consent of Bank is not necessary if there are sufficient monies in the Integrated Waste Management Fund to cover all debt service secured by the Integrated Waste Management fund by at least 1.25 times on an annual basis.

Section 5.15 Covenant to Maintain Existence. The City and the Authority hereby covenant to substitute a new member for the Successor Agency to the Redevelopment Agency of the City of El Cerrito (the “**Successor Agency**”) prior to any action under California Health and Safety Code Section 34187(b) or any other action to dissolve the Successor Agency.

ARTICLE 6. INSURANCE; EMINENT DOMAIN

Section 6.1 Insurance Coverage. At its own expense, the City shall maintain (i) casualty insurance insuring the Leased Property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State of California and any other risks reasonably required by the Authority in an amount equal to 100% of the replacement cost without deduction for depreciation; (ii) liability insurance that protects the Authority from liability in all events in a reasonable amount satisfactory to the Authority; (iii) workers’ compensation insurance covering all employees working on, in, near or about the Leased Property; provided that, with the Bank and Authority’s prior written consent, the City may self-insure against such risks, which self-insurance may include participation with other public agencies in mutual or other cooperative insurance or other risk management programs, including those made available through joint exercise of powers agencies. At its own expense, the City shall also maintain insurance insuring the Leased Property against loss or damage by flood in an amount equal to the least of (i) the maximum amount of National Flood Insurance Program flood insurance available, (ii) the unpaid principal components of the Rental Payments, and (iii) 100% of the replacement cost of the Leased Property. All insurance proceeds from casualty losses shall be payable as hereinafter provided. The City shall, at the Authority’s request, furnish to the Authority certificates evidencing such coverage.

Section 6.2 Form of Policies. All such insurance shall be with insurers that are authorized to issue such insurance in the State of California, (other than the workers’ compensation insurance) shall name the Authority as an additional insured, and shall contain a provision to the effect that such insurance shall not be cancelled or modified materially and adversely to the interest of the Authority without first giving written notice thereof to the Authority at least ten (10) days in advance of such modification or cancellation. Such changes shall not become effective without the Bank and Authority’s prior consent, which consent shall

not be unreasonably withheld. All such casualty insurance shall contain a provision making any losses payable to the Authority and the City as their respective interests may appear.

Section 6.3 Advances. In the event the City shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Leased Property in good repair and operating condition, the Authority may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and the City agrees to reimburse the Authority all amounts so advanced within thirty (30) days of a written request therefor.

Section 6.4 Damage, Destruction, and Condemnation. If (a) the Leased Property or any portion thereof is damaged or destroyed, in whole or in part, or (b) title to, or the temporary use of, the Leased Property or any part thereof is taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or Authority acting pursuant to governmental authority, the City and the Authority shall cause the proceeds of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the prompt repair, reconstruction, or replacement of the Leased Property, unless the City has exercised its right to prepay this Agreement as provided herein. Any balance of the proceeds not required for such repair, reconstruction, or replacement shall be paid to the City.

ARTICLE 7. DEFAULT AND REMEDIES

Section 7.1 Events of Default. The following events shall be Events of Default:

(A) Payment Default. Failure of the City to pay any Rental Payments payable hereunder when the same become due and payable, time being expressly declared to be of the essence of this Agreement;

(B) Breach of Covenant. Failure of the City to keep, observe, or perform any other term, covenant or condition contained herein to be kept or performed by the City for a period of thirty (30) days after notice of the same has been given to the City by the Authority;

(C) Transfer of City's Interest. Assignment or transfer of the City's interest in this Agreement or any part hereof without the written consent of the Authority and the Bank, either voluntarily or by operation of law or otherwise;

(D) Bankruptcy or Insolvency. Institution of any proceeding under the United States Bankruptcy Code or any federal or state bankruptcy, insolvency, or similar law or any law providing for the appointment of a receiver, liquidator, trustee, or similar official of the City or of all or substantially all of its assets, by or with the consent of the City, or institution of any such proceeding without its consent that is not permanently stayed or dismissed within sixty (60) days, or agreement by the City with the City's creditors to effect a composition or extension of time to pay the City's debts, or request by the City for a reorganization or to effect a plan of reorganization, or for a readjustment of the City's debts, or a general or any assignment by the City for the benefit of the City's creditors;

(E) Abandonment of the Leased Property. Abandonment by the City of any part of the Leased Property.

Section 7.2 Remedies on Default. Upon the occurrence and during the continuance of an Event of Default, it shall be lawful for the Authority to exercise any and all remedies available pursuant to law or granted pursuant to this Agreement and, without terminating this Agreement, to collect each installment of rent as it becomes due and enforce any other term or provision hereof to be kept or performed by the City, regardless of whether or not the City has abandoned the Leased Property.

Section 7.3 No Acceleration. Notwithstanding anything herein to the contrary, there shall be no right under any circumstance to accelerate the Rental Payments or otherwise declare any Rental Payments not yet due to be immediately due and payable.

Section 7.4 No Remedy Exclusive. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies. If any statute or rule of law validly shall limit the remedies given to the Authority hereunder, the Authority nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

Section 7.5 Authority Defaults; City Remedies.

(A) Authority Defaults. The Authority shall in no event be in default in the performance of any of its obligations hereunder or imposed by any statute or rule of law unless and until the Authority shall have failed to perform such obligation within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by the City to the Authority properly specifying wherein the Authority has failed to perform any such obligation.

(B) City Remedies. The Authority's failure to perform any of its obligations hereunder shall not be an event permitting the nonpayment of rent by the City. The parties hereto agree that the performance of the Authority is unique, that the remedies at law for the Authority's nonperformance would be inadequate, and that the City shall institute a suit for specific performance by the Authority upon any default by the Authority.

Section 7.6 Attorneys' Fees. If the Authority prevails in any action brought to enforce any of the terms and provisions of this Agreement, the City agrees to pay a reasonable amount as and for attorneys' fees incurred by the Authority in attempting to enforce any of the remedies available to the Authority hereunder, whether or not a lawsuit has been filed and whether or not any lawsuit culminates in a judgment.

Section 7.7 No Additional Waiver. Failure of the Authority to take advantage of any default on the part of the City shall not be, or be construed as, a waiver thereof, nor shall any custom or practice that may grow up between the parties in the course of administering this Agreement be construed to waive or to lessen the right of the Authority to insist upon performance by the City of any term, covenant or condition hereof, or to exercise any rights

given the Authority on account of such default. A waiver of a particular default shall not be deemed to be a waiver of the same or any subsequent default. The acceptance of rent hereunder shall not be, nor be construed to be, a waiver of any term, covenant or condition of this Agreement.

Section 7.8 Application of Amounts Collected. All amounts collected by the Authority under this Article shall be credited towards the Rental Payments in order of Payment Dates.

Section 7.9 Dispute Resolution. The Bonds are being purchased on the Closing Date by Bank. As a material inducement for the Bank paying the purchase price of and accepting delivery of the Bonds on the Closing Date, the Authority and the Fiscal Agent hereby accept and agree to be bound by the following provisions pertaining to the resolution of any disputes arising under or in any way resulting from this Agreement.

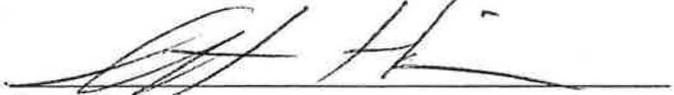
Except to the extent expressly provided in Section 7.02 respecting the right of the Bank, while the Owner of the Bonds, to exercise the remedies provided therein upon the occurrence of an Event of Default, any dispute, controversy or claim (any “**Dispute**”) between or among the Authority, the Fiscal Agent and the Purchaser shall, upon the mutual agreement of the parties, acting in their sole and absolute discretion, be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U.S. Code; herein the “**Federal Arbitration Act**”). The Federal Arbitration Act will apply even though the provisions of Section 10.05 above provides that this Agreement shall be construed and governed in accordance with the laws of the State of California. To the extent that any Disputes are not arbitrated, the Disputes shall be resolved in court by a judge without a jury, except any Disputes which are brought in California state court shall be determined by judicial reference. Any Dispute which is not arbitrated and which is brought in California state court will be resolved by a general reference to a referee (or a panel of referees) as provided in California Code of Civil Procedure Section 638. The referee (or presiding referee of the panel) shall be a retired judge or justice. The referee (or panel of referees) shall be selected by mutual written agreement of the parties to the Dispute.

Section 7.10 Waiver of Immunity. To the fullest extent permitted by California law, the Authority expressly waives and agrees not to claim immunity in any suits or judicial proceedings in connection with the provision by the Purchaser of products or services to the Authority during the time that any of the Bonds remain outstanding.

SIGNATURES ON FOLLOWING PAGE

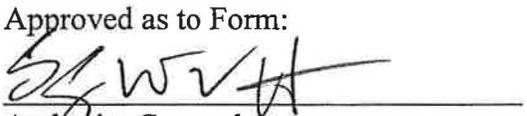
IN WITNESS WHEREOF, the Authority has executed this Agreement in its name and the City has caused this Agreement to be executed in its name by its duly authorized officer, all as of the date first above written.

EL CERRITO PUBLIC FINANCING AUTHORITY, Lessor

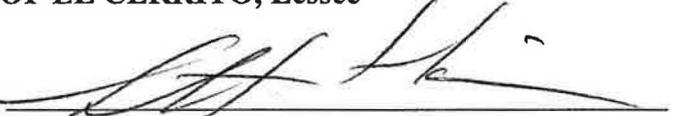
By: 
Scott Hanin,
Executive Director

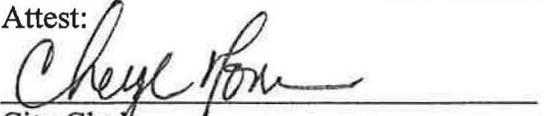
Attest:

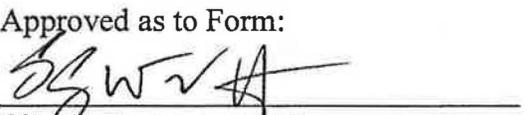
Cheryl Row
Authority Secretary

Approved as to Form:

Authority Counsel

CITY OF EL CERRITO, Lessee

By: 
Scott Hanin
City Manager

Attest:

Cheryl Row
City Clerk

Approved as to Form:

City Attorney

SIGNATURES MUST BE NOTARIZED

STATE OF CALIFORNIA)
)
COUNTY OF CONTRA COSTA)

On SEPTEMBER 13, 2012, before me, DAVID SANFORD, Notary Public, personally appeared SCOTT HANIN, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that ~~she~~^{he} executed the same in ~~her~~^{his} authorized capacity, and that by ~~her~~^{his} signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: *David Sanford*

(seal)

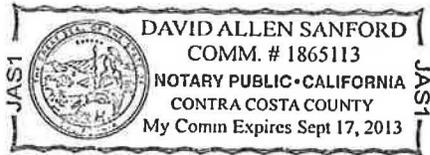


EXHIBIT A

PROPERTY DESCRIPTION

The following described real property in the City of El Cerrito, County of Contra Costa, State of California:

Being a portion of Lot 3, as designated on the Map entitled "Map of the San Pablo Rancho, Accompanying and Forming a part of the Final Report of the Referees in Partition," which Map was filed for record in the Office of the Recorder of the County of Contra Costa, State of California, on March 1, 1894, described as follows:

Beginning at the northeast corner of the parcel of land described in the Deed to the City of El Cerrito, recorded January 31, 1949, in Book 1346 at Page 321, Contra Costa County Records.

Thence along the North line of said City of El Cerrito Parcel (1346 or 321) and along the westerly prolongation of said North line, North 86° 00' 15" West 100.41 feet; thence North 2° 00' 00" West 95.00 feet; thence North 88° 00' 00" East 62.00 feet; thence South 51° 22' 19" east 49.89 feet; thence South 2° 00' 00" east 43.00 feet to the northwest corner of Parcel A as shown on the Record of Survey filed March 23, 1966, in Book 40 of Land Surveyor Maps, at Page 49; thence along the West line of said Parcel A (40 LSM 49) South 2° 00' 00" East 30.00 feet to the point of beginning.

APN: 505-010-012 (portion)

Such property is commonly known as Fire Station, 1520 Arlington Boulevard, El Cerrito, California.

Lots 31 and 32, as said lots are shown on the "Map of Schmidt Village", being a portion of lots 16 and 17 of the final partition of the San Pablo Rancho, Contra Costa County, filed June 27, 1896, in the office of the County Recorder of Contra Costa County.

EXCEPTING therefrom the following:

(1) That certain portion of lots 31 and 32 conveyed to Scott W. Bonds and Catherine O. Bonds, his wife, by Forrest E. Brown by deed dated April 2, 1952 and recorded April 2, 1952 in book 1913 of official records of Contra Costa County, at page 474.

(2) That certain portion of lot 31 conveyed to the City of El Cerrito by Forrest E. Brown by deed dated May 7, 1954, and recorded May 21, 1954, in book 2320 of official records of Contra Costa County, at page 157.

APN: 505-090-015-7

Such property is commonly known as Recycling Center, 7501 Schmidt Lane, El Cerrito, California.

EXHIBIT B

SCHEDULE OF RENTAL PAYMENTS

<u>Due Date</u>	<u>Amount Attributable to Principal</u>	<u>Amount Attributable to Interest</u>	<u>Total Rental Payment</u>
------------------------	--	---	--

Effective Interest Rate: _____%

Recorded at the Request of
Old Republic Title Company
Oakland

11/7/2012

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

El Cerrito Public Financing Authority
10890 San Pablo Avenue
El Cerrito, CA 94530
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§ 6103, 27383

CERTIFIED A TRUE COPY OF THE ORIGINAL
RECORDED IN THE OFFICIAL RECORDS OF
CONTRA COSTA COUNTY ON September 19, 2012
Under Recorder's Serial No. 2012-022903 8
Old Republic Title Company

By: *[Signature]*

APN : 505-010-012 (portion)
505-090-015-7

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

SITE LEASE

between the

CITY OF EL CERRITO

and the

EL CERRITO PUBLIC FINANCING AUTHORITY

Dated September 1, 2012

SITE LEASE

This Site Lease, (this “**Lease**”) dated September 1, 2012, between the City of El Cerrito, a municipal corporation duly organized and validly existing under and pursuant to the Constitution and laws of the State of California (the “**City**”), as lessor, and El Cerrito Public Financing Authority, a California joint exercise of powers authority (the “**Authority**”), as lessee;

RECITALS

WHEREAS, on November 1, 2010 the City, entered into that certain site lease and that certain lease purchase agreement with Holman Capital Corporation (the “**Prior Financing**”) for the purpose of financing a portion of the cost of construction of a recycling facility (the “**Project**”); and

WHEREAS, the City received a proposal from JPMorgan Chase Bank N.A. (the “**Bank**”), dated August 10, 2012, to purchase by private placement not to exceed \$3,405,600 El Cerrito Public Financing Authority Lease Revenue Refunding Bonds for the purpose of providing for the refinancing of the Project; and

WHEREAS, the Government Code of the State of California authorizes the City to provide for the financing of facilities for the use of the City; and

WHEREAS, the Authority is a joint exercise of powers authority duly organized and existing under the laws of the State of California, with the power to assist local agencies in financing projects and programs that involve the leasing of property for certain public improvements whenever a local agency determines that there are significant public benefits from so doing; and

WHEREAS, the refinancing will be accomplished by (i) the Authority’s entering into this Lease with the City, (ii) the Authority’s leasing back the property leased hereunder to the City pursuant to the Lease Purchase Agreement dated October 1, 2012, pursuant to which the City will be obligated to make Rental Payments to the Authority, and (iii) the issuance by the Authority of \$3,405,600 El Cerrito Public Financing Authority Lease Revenue Refunding Bonds that will be placed with the Bank.

NOW THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereby agree as follows:

Section 1. Leased Property. The City hereby leases to the Authority, and the Authority hereby hires from the City, on the terms and conditions hereinafter set forth, the real property located in the County of Contra Costa, State of California, described in Exhibit A attached hereto and made a part hereof (the “**Leased Property**”) and the improvements located thereon.

Section 2. Term. The term of this Lease shall commence on the date of its execution and shall end on October 1, 2025, unless such term is extended or sooner terminated as hereinafter provided. If on October 1, 2025, the City shall have defaulted in its payment of rental or any other Event of Default has occurred thereunder and continues without cure by the City,

then the term of this Lease shall be extended for a period not to exceed ten (10) years, such term to be co-terminus with the term of the Lease Purchase Agreement. If the full amount of the originally scheduled Rental Payments shall be fully paid, or provision therefor made, the term of this Lease shall end ten (10) days thereafter or ten (10) days after written notice by the City to the Authority, whichever is earlier.

Section 3. Rental. As and for advance rental hereunder for the entire term hereof, the Authority shall transfer to the Administrative Services Director of the City, as Fiscal Agent, for for the benefit of the City, the sum of Three Million Four Hundred Five Thousand and Six Hundred Dollars (\$3,405,600), on or before the date of commencement of the term of this Lease. The Authority hereby waives any right that it may have under the laws of the State of California to a rebate of such rental in full or in part in the event there is substantial interference with the use and right to possession by the Authority of the Leased Property or portion thereof as a result of material damage, destruction, or condemnation.

Section 4. Purpose. The Authority shall use the leased property solely for the purpose of leasing the Leased Property, including the improvements thereon, to the City pursuant to the Lease Purchase Agreement and for such purposes as may be incidental thereto; provided that in the Event of Default by the City under the Lease Purchase Agreement the Authority may exercise the remedies provided in the Lease Purchase Agreement.

Section 5. Owner in Fee. The City covenants that it is the owner in fee of the Leased Property described on Exhibit A.

Section 6. Successors and Assigns; Assignment. Whenever in this Lease either the City or the Authority is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements contained in this Lease by, on behalf of, or for the benefit of the City or the Authority shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not. As provided in the Lease Purchase Agreement, the Authority may assign its rights under this Lease.

Section 7. Right of Entry. The City reserves the right for any of its duly authorized representatives to enter upon the Leased Property at any reasonable time to inspect the same or to make any repairs, improvements, or changes necessary for the preservation thereof.

Section 8. Surrender of Possession. The Authority agrees, upon the termination of this Lease, to quit and surrender the Leased Property to the City, without warranty as to condition.

Section 9. Default. If the Authority defaults in the performance of any obligation on its part to be performed under the terms of this Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Authority, the City may exercise any and all remedies granted by law; provided, however, that the City shall have no power to terminate this Lease by reason of any default on the part of the Authority.

Section 10. Quiet Enjoyment. The Authority at all times during the term of this Lease shall peaceably and quietly have, hold and enjoy all of the Leased Property.

Section 11. Waiver of Personal Liability. All liabilities under this Lease on the part of the Authority shall be solely liabilities of the Authority, and the City hereby releases each and every incorporator, director and officer of the Authority of and from any personal or individual liability under this Lease unless such person acted outside of the scope of his or her duties. No incorporator, director or officer of the Authority shall at any time or under any circumstances be individually or personally liable under this Lease to the City or to any other party whomsoever for anything done or omitted to be done by the Authority hereunder.

Section 12. Taxes. The City covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Leased Property (including both land and improvements).

Section 13. Eminent Domain. If the whole or any part of the improvements on the Leased Property is taken by eminent domain proceedings, the effect of such taking hereunder shall be in accord with the provisions of the Lease Purchase Agreement relating thereto.

Section 14. Partial Invalidity. If any one or more of the terms, provisions, covenants, or conditions of this Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provision, covenants and conditions of this Lease shall be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 15. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given upon delivery, or if mailed, by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

City: City of El Cerrito
10890 San Pablo Avenue
El Cerrito, California 94530
Attention: City Manager

Authority: El Cerrito Public Financing Authority
10890 San Pablo Avenue
El Cerrito, California 94530
Attention: Executive Director

or to such other addresses as the respective parties may from time to time designate by notice in writing.

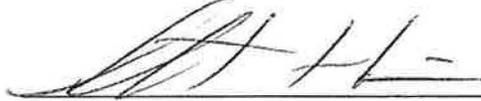
Section 16. Section Headings. All section headings contained herein are for convenience or reference only and are not intended to define or limit the scope of any provision of this Lease.

Section 17. Execution in Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same lease. It is also agreed that separate counterparts of this Lease may separately

be executed by the City and the Authority, all with the same force and effect as though the same counterpart had been executed by both the City and the Authority.

IN WITNESS WHEREOF, the City and the Authority have caused this Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written. **EL CERRITO PUBLIC FINANCING AUTHORITY, Lessee**

By:



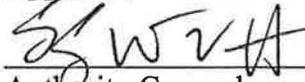
Scott Hanin,
Executive Director

Attest:



Authority Secretary

Approved as to Form:



Authority Counsel

CITY OF EL CERRITO, Lessor

By:



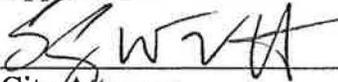
Scott Hanin
City Manager

Attest:



City Clerk

Approved as to Form:



City Attorney

SIGNATURES MUST BE NOTARIZED

STATE OF CALIFORNIA)
)
COUNTY OF CONTRA COSTA)

On SEPTEMBER 13, 2012, before me, DAVID SANFORD, Notary Public, personally appeared SCOTT HANIN, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that ~~she~~^{HE} executed the same in ~~her~~^{HIS} authorized capacity, and that by ~~her~~^{HIS} signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: *David Sanford* (seal)

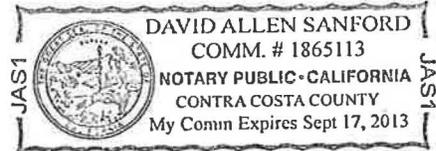


EXHIBIT A

LEASED PROPERTY

The following described real property in the City of El Cerrito, County of Contra Costa, State of California:

The following described real property in the City of El Cerrito, County of Contra Costa, State of California, described as follows:

Being a portion of Lot 3, as designated on the Map entitled "Map of the San Pablo Rancho, Accompanying and Forming a part of the Final Report of the Referees in Partition," which Map was filed for record in the Office of the Recorder of the County of Contra Costa, State of California, on March 1, 1894, described as follows:

Beginning at the northeast corner of the parcel of land described in the Deed to the City of El Cerrito, recorded January 31, 1949, in Book 1346 at Page 321, Contra Costa County Records.

Thence along the North line of said City of El Cerrito Parcel (1346 or 321) and along the westerly prolongation of said North line, North 86° 00' 15" West 100.41 feet; thence North 2° 00' 00" West 95.00 feet; thence North 88° 00' 00" East 62.00 feet; thence South 51° 22' 19" east 49.89 feet; thence South 2° 00' 00" east 43.00 feet to the northwest corner of Parcel A as shown on the Record of Survey filed March 23, 1966, in Book 40 of Land Surveyor Maps, at Page 49; thence along the West line of said Parcel A (40 LSM 49) South 2° 00' 00" East 30.00 feet to the point of beginning.

APN: 505-010-012 (portion)

Such property is commonly known as Fire Station, 1520 Arlington Boulevard, El Cerrito, California.

The following described real property in the City of El Cerrito, County of Contra Costa, State of California, described as follows:

Lots 31 and 32, as said lots are shown on the "Map of Schmidt Village", being a portion of lots 16 and 17 of the final partition of the San Pablo Rancho, Contra Costa County, filed June 27, 1896, in the office of the County Recorder of Contra Costa County.

EXCEPTING therefrom the following:

(1) That certain portion of lots 31 and 32 conveyed to Scott W. Bonds and Catherine O. Bonds, his wife, by Forrest E. Brown by deed dated April 2, 1952 and recorded April 2, 1952 in book 1913 of official records of Contra Costa County, at page 474.

(2) That certain portion of lot 31 conveyed to the City of El Cerrito by Forrest E. Brown by deed dated May 7, 1954, and recorded May 21, 1954, in book 2320 of official records of Contra Costa County, at page 157.

APN: 505-090-015-7

Such property is commonly known as Recycling Center, 7501 Schmidt Lane, El Cerrito, California.