

File No. 160364

Committee Item No. 4

Board Item No. 15

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date April 27, 2016

Board of Supervisors Meeting

Date May 3, 2016

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Public Notice</u>           |
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Completed by: Linda Wong Date April 22, 2016

Completed by: Linda Wong Date April 28, 2016

AMENDED IN COMMITTEE  
4/27/16

FILE NO. 160364

RESOLUTION NO.

1 [Certificates of Participation - Interim Financing for Phase 1 of the Transbay Transit Center  
2 Project - Not to Exceed \$260,000,000]

3 **Resolution approving and authorizing the execution and delivery of Tax Exempt and/or**  
4 **Taxable Lease Revenue Commercial Paper Certificates of Participation and Tax Exempt**  
5 **and/or Taxable Direct Placement Revolving Certificates of Participation in a combined**  
6 **aggregate principal of amount not to exceed \$260,000,000 to provide interim financing**  
7 **for Phase 1 of the Transbay Transit Center Project; approving and authorizing**  
8 **execution of one or more trust agreements, site leases, subleases, a leaseback, one or**  
9 **more letters of credit and reimbursement agreements and/or lines of credit, and one or**  
10 **more certificate purchase agreements and related documents; and Declaring the**  
11 **Official Intent of the City to reimburse itself from proceeds of Tax-Exempt Obligations**  
12 **in accordance with the Internal Revenue Code of 1986, as amended; and making**  
13 **certain public benefit findings for the Transbay Transit Center Project under California**  
14 **Government Code, Section 6586.5.**

15  
16 WHEREAS, The City and County of San Francisco (the "City"), the Alameda-Contra  
17 Costa Transit District and the Peninsula Corridor Joint Powers Board have heretofore  
18 executed a Joint Powers Agreement, dated as of April 4, 2001 (the "Joint Powers  
19 Agreement"), which Joint Powers Agreement creates and establishes the Transbay Joint  
20 Powers Authority (the "TJPA"); and

21 WHEREAS, The Joint Powers Agreement and state law charge TJPA with financing,  
22 design, development, construction, and operation of the Transbay Transit Center Program  
23 (the "Transbay Center Project"), which includes: (1) the design and construction of a  
24 temporary terminal and then the permanent Transbay Transit Center, including open space on  
25 the roof of the Transit Center, a bus ramp and a bus storage facility, and the train box

1 component of the rail extension ("Phase 1"); (2) the extension of Caltrain tracks from their  
2 current San Francisco terminus at Fourth and Townsend Streets to a new underground  
3 terminus beneath the Transbay Transit Center to accommodate Caltrain and California High  
4 Speed Rail ("Phase 2"); and (3) activities related to implementation of the Redevelopment  
5 Plan for the Transbay Redevelopment Project Area, in coordination with the Office of  
6 Community Investment and Infrastructure; and

7 WHEREAS, The Transbay Center Project will be located within the geographic  
8 boundaries of the City; and

9 WHEREAS, This Board of Supervisors (the "Board") has previously adopted Resolution  
10 No. 350-14, establishing the Community Facilities District No. 2014-1 ("CFD") for the purpose  
11 of financing certain public capital facilities, and pursuant to state law the City and the TJPA  
12 have executed a Joint Community Facilities Agreement, which permits the City to provide  
13 project management oversight with respect to facilities funded by the CFD in connection with  
14 the Transbay Center Project; and

15 WHEREAS, The TJPA requires additional funding in an amount not to exceed  
16 \$260,000,000 in order to fund the Phase 1 budget, including the contingency recommended  
17 by the Metropolitan Transportation Commission (the "MTC") (herein, the "Interim Financing");  
18 and

19 WHEREAS, Pursuant to Section 9.113(e) of the Charter, the Board has the power to  
20 borrow money through commercial paper and other short-term indebtedness; and

21 WHEREAS, In order to provide additional funds for Phase 1, the City has determined to  
22 cause to be executed and delivered tax exempt and taxable lease revenue commercial paper  
23 certificates of participation (the "Commercial Paper Certificates") and tax exempt and taxable  
24 direct placement revolving certificates of participation (the "Direct Placement Certificates" and,  
25 together with the Commercial Paper Certificates, the "Short-Term Certificates") under and

1 pursuant to the provisions of the Trust Agreement and the Delivery and Paying Agent  
2 Agreement (as such terms are defined herein); and

3 WHEREAS, Pursuant to a Site Lease—City Property (the "Site Lease—City Property"),  
4 the City, as lessor, will lease the property described therein, including the improvements  
5 located thereon (collectively, the "City Property") to the trustee (the "Trustee") named therein,  
6 as lessee; and pursuant to a Site Lease—TJPA Property (the "Site Lease—TJPA Property"),  
7 the TJPA, as lessor, will lease the property described therein (the "TJPA Property" and  
8 together with the City Property, the "Property") to the Trustee, as lessee; and, in return and in  
9 consideration of the lease of the Property pursuant to the Site Leases, the Trustee will apply,  
10 or caused to be applied, a portion of the proceeds of the Short-Term Certificates to the  
11 acquisition, construction and equipping of Phase 1 of the Transbay Center Project; and

12 WHEREAS, Pursuant to a Sublease—City Property (the "Sublease—City Property"),  
13 the Trustee will lease-back the City Property to the City, as sublessee, and pursuant to a  
14 Sublease—TJPA Property (the "Sublease—TJPA Property" and together with the Sublease-  
15 City Property, the "Subleases") the Trustee will lease the TJPA Property to the City, as  
16 sublease, and the City, pursuant to the Subleases, will pay to the Trustee base rental lease  
17 payments (the "Base Rental Payments") for the use and occupancy of the Property, which  
18 Base Rental Payments will be used to (i) reimburse the Banks (as hereinafter defined) or  
19 other credit support provider for payments made by the Banks under Credit Facilities (as  
20 hereinafter defined) with respect to the Commercial Paper Certificates, if any, (ii) if necessary,  
21 make payments on the Commercial Paper Certificates; if any, and (iii) make payments on the  
22 Direct Placement Certificates, if any; and

23 WHEREAS, The payment of principal of and interest on the Commercial Paper  
24 Certificates, if utilized, will be supported by irrevocable direct pay letters of credit (the "Credit  
25 Facilities") issued by a financial institution or institutions selected by the Director of Public



1 Finance (each, a "Bank") pursuant to the terms of letter of credit and reimbursement  
2 agreements (collectively, the "Reimbursement Agreements") between the City, and the Bank,  
3 including, if appropriate, the terms of fee agreements (the "Fee Agreements") related thereto;  
4 and

5 WHEREAS, The Commercial Paper Certificates, if utilized, will be placed initially by one  
6 or more investment banking firms (each, a "Dealer") selected or to be selected pursuant to the  
7 terms of a request for qualifications issued by the Director of Public Finance; and

8 WHEREAS, The financial institutions and the other entities, which entities may include  
9 Wells Fargo Bank, National Association ("Wells") and MTC, purchasing the Direct Placement  
10 Certificates will each enter into a certificate purchase agreement or similar agreement (each,  
11 a "Purchase Agreement") with the City setting forth the terms and conditions pursuant to  
12 which such entities will purchase the Direct Placement Certificates; and

13 WHEREAS, Section 6586.5 of the Government Code, which is part of the Marks-Roos  
14 Local Bond Pooling Act of 1985 (the "Bond Act"), requires the City, as the local agency within  
15 whose boundaries a public capital improvement is located is required to hold a public hearing  
16 prior to approving a financing and to make a finding of significant public benefit in accordance  
17 with the criteria specified in Section 6586 of the Bond Act after holding a public hearing;

18 WHEREAS, In order to satisfy the requirements set forth in Section 6586.5 of the Bond  
19 Act, the TJPA has requested that the Board of Supervisors: (i) cause a public hearing to be  
20 held, after giving the notice required by the Bond Act; (ii) make a finding of significant public  
21 benefit in accordance with the criteria specified in Section 6586 of the Bond Act; and (iii)  
22 approve the TJPA's request for Interim Financing under the terms of the certain site lease and  
23 sublease agreements (as described above);

24 WHEREAS, The City caused a notice to be published on April 22, 2016, in a  
25 newspaper of general circulation in the City and County of San Francisco for the public

1 hearing required under Section 6586.5 of the Bond Act with respect to the execution and  
2 delivery of the certificates of participation contemplated by this Resolution, and such hearing  
3 was held by the Budget and Finance Committee on April 27, 2016; and

4 WHEREAS, In connection with the Interim Financing, on April 22, 2016, the TJPA  
5 Board of Directors approved a proposed agreement between the TJPA and the City entitled  
6 the "Transbay Project Construction Management and Oversight Services Intergovernmental  
7 Agreement," granting SF Public Works exclusive authority, subject to TJPA Board  
8 supervision, to oversee all aspects of construction of the Transbay Project, defining the roles  
9 and responsibilities of the TJPA and the City, and establishing the terms and conditions under  
10 which the City will provide services to the Transbay Project; and

11 WHEREAS, In connection with the Interim Financing and for the entire term that the  
12 Commercial Paper Certificates are outstanding, representatives of the City, TJPA and MTC  
13 will participate in a Cost Review Committee (the "Committee"), as provided in a separate  
14 agreement entitled the Transbay Project Cost Oversight Agreement (the "Cost Oversight  
15 Agreement") between the TJPA, the City and MTC, the form of which is on file with the Clerk  
16 of the Board in File No. 160364; and

17 WHEREAS, Membership of the Committee shall be the City's Controller, the Executive  
18 Director of the MTC, and the Executive Director or Chief Financial Officer of the TJPA, and  
19 the Committee will provide recommendations to help ensure that the Interim Financing is  
20 timely repaid and to oversee the proper expenditure by the TJPA of the proceeds of the  
21 Interim Financing, as further set forth in the Cost Oversight Agreement; and

22 WHEREAS, The City and/or the TJPA have paid, no earlier than 60 days prior to the  
23 date hereof and will pay, on and after the date hereof, certain moneys (the "Expenditures") in  
24 connection with the acquisition, construction and/or equipping of the Transbay Center Project,  
25 including Phase 1 thereof; and

1           WHEREAS, The Board has determined that funds are required to pay Expenditures  
2 related to Phase 1 on a short-term basis, and it will therefore be necessary to reimburse the  
3 City and/or the TJPA for the Expenditures made either from the proceeds of the Short-Term  
4 Certificates from the proceeds of one or more issuances of certificates of participation, tax-  
5 exempt increment financing or tax-exempt special tax financing (the "Long-Term Obligations")  
6 in the combined aggregate principal amount of not to exceed \$300,000,000;

7           WHEREAS, This Board has duly considered such transactions and wishes at this time  
8 to approve said transactions in the public interests of the City; now, therefore, be it

9           RESOLVED, by the Board of Supervisors of the City and County of San Francisco, as  
10 follows:

11           Section 1. Delivery of Short-Term Certificates: Approval of Trust Agreement; Approval  
12 of Delivery and Paying Agent Agreement. The Board hereby authorizes the execution and  
13 delivery of taxable and tax-exempt Short-Term Certificates, including both Commercial Paper  
14 Certificates and Direct Placement Certificates, from time to time, in an aggregate total  
15 principal amount not to exceed \$260,000,000 hereunder for the purpose of providing moneys  
16 which will be sufficient, together with other funds (i) to pay costs of Phase 1; (ii) to fund  
17 capitalized interest with respect to the Short-Term Certificates; (iii) to fund associated fees  
18 and expenses; and (iv) to pay costs incurred in connection with the sale and delivery of the  
19 Short-Term Certificates; provided, however, that the interest rate on any Short-Term  
20 Certificate shall not exceed the maximum rate permitted by law, the Commercial Paper  
21 Certificates shall mature not later than 270 days from the date of execution and delivery  
22 although each certificate may be marketed for a subsequent period(s) also not to exceed 270  
23 days from the date of execution and delivery and provided further the Direct Placement  
24 Certificates shall not be outstanding for a period not to exceed 15 years from their date of  
25 initial execution and delivery. The Short-Term Certificates shall be executed and delivered

1 pursuant to one or more Trust Agreement(s) (the "Trust Agreement") between the City and  
2 the Trustee, and, if applicable, one or more Delivery and Paying Agent Agreement (s) (the  
3 "Delivery and Paying Agent Agreement") between the City and the Trustee, acting as delivery  
4 and paying agent. This Board hereby approves the Trust Agreement and the Delivery and  
5 Paying Agent Agreement in the forms on file with the Clerk of the Board, together with such  
6 additions thereto and changes therein as the Controller shall deem necessary, desirable or  
7 appropriate upon consultation with the City Attorney, the execution of which by the City shall  
8 be conclusive evidence of the approval of any such additions and changes. The Controller  
9 and the Director of the Office of Public Finance (each, a "Designated Officers"), each acting  
10 alone, are hereby authorized to execute the final form of the Trust Agreement and the final  
11 form of the Delivery and Paying Agent Agreement for and in the name and on behalf of the  
12 City. This Board hereby authorizes the performance by the City of its obligations under the  
13 Trust Agreement and the Delivery and Paying Agent Agreement.

14 Section 2. Approval of Leases. This Board hereby approves the form of the  
15 Sublease—City Property, the form of Sublease—TJPA Property and the form of the Site  
16 Lease—City Property, in each case in the form on file with the Clerk of the Board, together  
17 with such additions thereto and changes therein as the Controller shall deem necessary,  
18 desirable or appropriate upon consultation with the City Attorney, the execution of which by  
19 the City shall be conclusive evidence of the approval of any such additions and changes. The  
20 properties that may be leased under the Sublease—City Property and the Site Lease—City  
21 Property include, but are not limited to, a portion of the campus of San Francisco General  
22 Hospital and a portion of the campus of the Laguna Honda Hospital. The properties that may  
23 be leased under the Sublease—TJPA Property include, but are not limited to, TJPA's train  
24 box (the "Train Box"). The Designated Officers, each acting alone, are hereby authorized to  
25 execute the final form of the Sublease-City Property, the final form of Sublease—TJPA

1 Property and the final form of the Site Lease—City Property for and in the name of and on  
2 behalf of the City. This Board hereby authorizes the performance by the City of its obligations  
3 under the Sublease—City Property, the Sublease—TJPA Property and the Site Lease—City  
4 Property.

5 Section 3. Approval of Reimbursement Agreements, Fee Agreements and Purchase  
6 Agreements. This Board hereby approves the form of the Reimbursement Agreement, the  
7 form of the Fee Agreement and the form of Purchase Agreement, in the forms on file with the  
8 Clerk of the Board, together with such additions thereto and changes therein as the  
9 Designated Officers shall deem necessary, desirable or appropriate upon consultation with  
10 the City Attorney, the execution of which by the City shall be conclusive evidence of the  
11 approval of any such additions and changes. The Designated Officers, each acting alone, are  
12 hereby authorized to execute the Reimbursement Agreements, Fee Agreements and  
13 Purchase Agreements with the Banks, for and in the name of and on behalf of the City. This  
14 Board hereby authorizes the performance by the City of its obligations under the  
15 Reimbursement Agreements, the Fee Agreements and the Purchase Agreements.  
16 Notwithstanding anything herein to the contrary, the term of the Credit Facilities shall not be  
17 less than one year, the interest on any unreimbursed draws on the Credit Facility shall not  
18 exceed 12%, and the fees paid for any Credit Facilities shall not exceed the formula set forth  
19 in the Fee Agreements for the respective Credit Facilities and the Reimbursement  
20 Agreements.

21 Section 4. Dealer Agreement. This Board hereby authorizes and directs the Designated  
22 Officers to negotiate dealer agreements (each, a “Dealer Agreement” with one or more  
23 Dealers on such terms on such terms as the Designated Officers shall deem necessary,  
24 advisable or appropriate upon consultation with the City Attorney.

5

1           Section 5. Extension of Credit Facilities. The Board hereby delegates the authority to  
2 the Designated Officers, each acting alone, to execute and deliver one or more extensions to  
3 the Credit Facilities or the commitment available under the Credit Facilities and the  
4 Reimbursement Agreement for any duration of time that they deem necessary, advisable or  
5 prudent, provided that no such extension shall, without approval of this Board, (i) increase the  
6 principal amount of Short-Term Certificates authorized hereunder, or (ii) require an annual fee  
7 in excess of the formula set forth in any related Fee Agreements for the respective  
8 Reimbursement Agreement. In connection with obtaining such extension, the Designated  
9 Officers shall be authorized to execute such amendments or modifications as are necessary  
10 or advisable to obtain such extensions, provided that such amendments or modifications  
11 reflect customary provisions in letter of credit and reimbursement agreements being executed  
12 at the time the extension is obtained.

13           Section 6. Extension of Direct Placement Certificates. The Board hereby delegates the  
14 authority to the Designated Officers, each acting alone, to execute and deliver one or more  
15 extensions to the Purchase Agreements or the commitment available under the Purchase  
16 Agreements for any duration of time that they deem necessary, advisable or prudent, provided  
17 that no such extension shall, without approval of this Board, (i) increase the principal amount  
18 of Short-Term Certificates authorized hereunder, or (ii) require an annual fee in excess of  
19 formula set forth in the Fee Agreements for the respective under the Purchase Agreement . In  
20 connection with obtaining such extension, the Designated Officers shall be authorized to  
21 execute such amendments or modifications as are necessary or advisable to obtain such  
22 extensions, provided that such amendments or modifications reflect customary provisions in  
23 direct placement certificate of participation agreements being executed at the time the  
24 extension is obtained.  
25

1           Section 7. Reimbursement. The Board hereby declares the City's intent to reimburse  
2 the City and/or the TJPA, in whole or in part, with the proceeds of tax-exempt contemplated  
3 hereby for the Expenditures with respect to Phase 1 made on and after a date is no more than  
4 60 days prior to the date hereof. The City reasonably expects on the date hereof that it will  
5 reimburse the Expenditures, in whole or in part, with proceeds of tax exempt obligations, and  
6 that each Expenditure was and will be either (a) of a type properly chargeable to a capital  
7 account under general federal income tax principles (determined in each case as of the date  
8 of the Expenditure), (b) a cost of issuance with respect to the Short-Term Certificates, (c) a  
9 nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a  
10 party that is not related to or an agent of the City and/or the TJPA, so long as such grant does  
11 not impose any obligation or condition (directly or indirectly) to repay any amount to or for the  
12 benefit of the City and/or the TJPA. The City or the TJPA, as applicable, will make a  
13 reimbursement allocation, which is a written allocation by the City that evidences the City's  
14 use of proceeds of the Short-Term Certificates or the Long-Term Obligations to reimburse an  
15 Expenditure, no later than 18 months after the later of the date on which the Expenditure is  
16 paid or Phase 1 is placed in service or abandoned, but in no event more than three years after  
17 the date on which the Expenditure is paid. The City recognizes that exceptions are available  
18 for certain "preliminary expenditures," costs of issuance, certain *de minimis* amounts, and  
19 expenditures for construction projects of at least 5 years.

20           Section 8. Approval of Leaseback or other Form of Pledge Agreement. This Board  
21 hereby approves the form of Train Box Leaseback, between the City, as sublessor, and the  
22 TJPA, as sublessee (the "Train Box Leaseback"), in the form on file with the Clerk of the  
23 Board, together with such additions thereto and changes therein as the Controller shall deem  
24 necessary, desirable or appropriate upon consultation with the City Attorney, the execution of  
25 which by the City shall be conclusive evidence of the approval of any such additions and

1 changes. The City shall be authorized to enter into the Train Box Leaseback in order to  
2 sublease the Train Box to the TJPA, which will occupy and operate the Train Box. The  
3 Designated Officers, each acting alone, are hereby authorized to execute the final form of the  
4 Train Box Leaseback for and in the name of and on behalf of the City. This Board hereby  
5 authorizes the performance by the City of its obligations under the Train Box Leaseback. In  
6 the event that the Train Box is not subleased, the Designated Officers, each acting alone, are  
7 hereby authorized to execute one or more agreements with the TJPA relating to the pledge,  
8 on parity with TJPA's other lenders, of net tax increment generated by certain State-owned  
9 parcels in the Transbay Redevelopment Project Area, future contributions from the Alameda-  
10 Contra Costa Transit District, and interest income for the reimbursement to the City by the  
11 TJPA for all of the City's costs, including the payment of principal and interest, with respect to  
12 the Short-Term Certificates.

13       Section 9. Separate Documentation. In the event the Controller or the Director of  
14 Public Finance deem it advisable or necessary, the purchase of Direct Placement Certificates  
15 by Wells and the MTC may be accomplished pursuant to separate documentation, including  
16 separate Trust Agreements, separate Site Leases, separate Subleases, and separate  
17 Purchase Agreements, provided that all such agreements shall otherwise comply with the  
18 provisions of this resolution.

19       Section 10. Delivery of Long-Term Certificates. The Board hereby authorizes the  
20 execution and delivery of long term certificates of participation (the "Long-Term Certificates of  
21 Participation"), including both Tax-Exempt Certificates of Participation and Taxable  
22 Certificates of Participation, from time to time, in an aggregate total principal amount of not to  
23 exceed \$300,000,000 hereunder for the purpose of refinancing the Short-Term Certificates;  
24 provided, however, that the interest rate on any Long-Term Certificate of Participation shall  
25 not exceed the maximum rate permitted by law, and the Long-Term Certificates of



1 Participation shall be outstanding for a period not to exceed 35 years from their date of initial  
2 execution and delivery. Prior to the delivery of the Long-Term Certificates of Participation, all  
3 approvals required for the issuance of said Long-Term Certificates of Participation shall have  
4 been obtained, including any prior approval by this Board of Supervisors.

5 Section 11. Transbay Project Cost Oversight Agreement. This Board hereby approves  
6 the form of the Cost Oversight Agreement, substantially in the form on file with the Clerk of the  
7 Board, together with such additions thereto and changes therein as the Controller shall deem  
8 necessary, desirable or appropriate upon consultation with the City Attorney, the execution of  
9 which by the City shall be conclusive evidence of the approval of any such additions and  
10 changes. The Designated Officers, each acting alone, are hereby authorized to execute the  
11 Cost Oversight Agreement, for and in the name of and on behalf of the City.

12 Section 12. Significant Public Benefit Findings. In accordance with 6586.5 of the Bond  
13 Act, this Board finds that the execution and delivery of the Certificates of Participation of will  
14 result in significant public benefits to the City because it will, among other things, provide for a  
15 lower cost of financing for Phase 1 of the Transbay Center Project and allow the TJPA to  
16 undertake and continue construction of Phase 1 of the Transbay Center Project in a timely  
17 fashion, resulting in the creation of significant construction jobs and employment benefits in  
18 the City, and result in more efficient delivery of improved public transit services to the City's  
19 residential and commercial development through the timely completion of Phase 1 of the  
20 Transbay Center Project at First and Mission Streets;

21 Section 13. Official Actions. The Controller, the Director of the Office of Public Finance,  
22 the Clerk of the Board and any and all other officers of the City are hereby authorized, for and  
23 in the name of and on behalf of the City, to do any and all things and take any and all actions,  
24 including execution and delivery of any and all documents, assignments, certificates,  
25 requisitions, agreements, notices, consents, instruments of conveyance, warrants and

1 documents, which they, or any of them, may deem necessary or advisable in order to  
2 consummate the lawful execution, delivery and sale of the Short-Term Certificates and the  
3 consummation of the transactions as described herein, including without limitation, such  
4 documents, assignments, certificates and agreements as may be required by the Trust  
5 Agreement(s), the Delivery and Paying Agent Agreement(s), Subleases, Site Leases, Train  
6 Box Leaseback, the Dealer Agreements, the Reimbursement Agreements, the Fee  
7 Agreements, the Purchase Agreements or Cost Oversight Agreement. Any authority  
8 delegated under this resolution to a specified official may also be exercised by either the  
9 Controller or by the specified official's authorized designee.

10           Section 14. General Authority. The Controller, the Director of the Office of Public  
11 Finance, the Clerk of the Board and any and all other officers of the City are hereby  
12 authorized, for and in the name of and on behalf of the City, to do any and all things and take  
13 any and all actions, including execution and delivery of any and all documents, assignments,  
14 certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants  
15 and documents, which they, or any of them, may deem necessary or advisable in order to  
16 consummate the lawful issuance and sale of the Commercial Paper Certificates and the  
17 consummation of the transactions as described herein, including without limitation, such  
18 documents, assignments, certificates and agreements as may be required by the Trust  
19 Agreement(s), the Delivery and Paying Agent Agreement(s), Subleases, Site Leases, Train  
20 Box Leaseback, the Dealer Agreements, the Reimbursement Agreements, the Fee  
21 Agreements, the Purchase Agreements or Cost Oversight Agreement. Any authority  
22 delegated under this resolution to a specified official may also be exercised by either the  
23 Controller or by the specified official's authorized designee. Any such actions are solely  
24 intended to further the purposes of this Resolution, and are subject in all respects to the terms  
25 of the Resolution. No such actions shall increase the risk to the City or require the City to

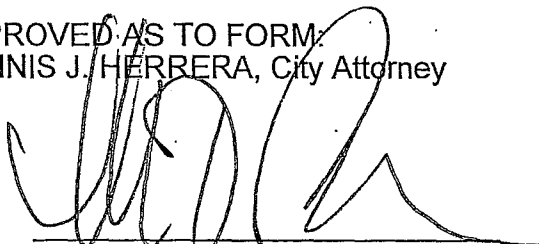
1 spend any resources not otherwise granted herein. Final versions of any such documents  
2 shall be provided to the Clerk of the Board for inclusion in the official file within 30 days of  
3 execution (or as soon thereafter as final documents are available) by all parties.

4 Section 15. Ratification. All actions authorized and directed by this Resolution,  
5 consistent with any documents presented herein, and heretofore taken are hereby ratified,  
6 approved and confirmed by this Board.

7 Section 16. File. All documents referenced herein as being on file with the Clerk of  
8 the Board are located in File No. 160364, which is hereby declared to be a part of this  
9 Resolution as if set forth fully herein.

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11 APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

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13  
14 By:


  
MARK D. BLAKE  
Deputy City Attorney

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**CITY AND COUNTY OF SAN FRANCISCO**  
**BOARD OF SUPERVISORS**  
**BUDGET AND LEGISLATIVE ANALYST**

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April 22, 2016

**TO:** Budget and Finance Committee  
**FROM:** Budget and Legislative Analyst   
**SUBJECT:** April 27, 2016 Budget and Finance Committee Meeting

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4 & 5	16-0364	Certificates of Participation – Interim Financing for Phase 1 of the Transbay Transit Center Project – Not to Exceed \$260,000,000	
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<b>Items 4 and 5</b> <b>Files 16-0364 and 16-0357</b>	<b>Departments:</b> Controller's Office of Public Finance
<b>EXECUTIVE SUMMARY</b>	
<b>Legislative Objectives</b>	
<ul style="list-style-type: none"> <li>• <u>File 16-0364</u>: Resolution authorizing the City to issue tax exempt and/or taxable lease revenue commercial paper Certificates of Participation (COPs) and tax exempt and/or taxable direct placement revolving COPs in a combined aggregate principal amount not to exceed \$260,000,000 to fund a projected shortfall in Phase 1 of the Transbay Project.</li> <li>• <u>File 16-0357</u>: Ordinance appropriating \$260,000,000 of COPs to the Transbay Project.</li> </ul>	
<b>Key Points</b>	
<ul style="list-style-type: none"> <li>• Phase I of the Transbay Project is the initial development of a new six-story Transbay Transit Center consisting of retail, bus station, and below-grade infrastructure for Caltrain and high-speed rail service. The Phase 1 Transbay Project estimated costs have increased by \$1,070,400,000 or 90% from the initial estimate in 2008 of \$1,189,000,000 to the current estimate of \$2,259,400,000. Based on the current estimated cost of \$2,259,400,000, there is a projected shortfall of \$247,500,000.</li> </ul>	
<b>Fiscal Impact</b>	
<ul style="list-style-type: none"> <li>• In order to provide sufficient funding to complete Phase I, the City will issue up to \$260,000,000 of COPs, with an estimated \$247,500,000 to fund the Phase 1 shortfall and \$12,500,000 for financing costs. Of the total \$260 million, \$160 million is with Wells Fargo Bank up to three years and \$100 million is held by Metropolitan Transportation Commission up to ten years.</li> <li>• Debt service on the COPs will be paid by Community Facility District (CFD) special taxes and tax increment over the next ten years. There are likely sufficient projected CFD taxes through 2020 and net tax increment revenues through 2024. However, the City will have credit exposure for the initial six to ten years, depending on the pace of development within the Transbay area. If revenues are not sufficient, the City's General Fund will be liable to pay the debt service.</li> </ul>	
<b>Policy Consideration</b>	
<ul style="list-style-type: none"> <li>• The City is not obligated to provide financing to the Transbay Project because the Transbay Joint Powers Authority, which oversees the Transbay Project, is a separate legal entity. However, there could be significant negative impacts without this financing.</li> <li>• An Intergovernmental Agreement with the City's Department of Public Works will provide construction management and a recently approved Transbay Project Cost Oversight Agreement would create a new Cost Review Committee to provide financial oversight.</li> </ul>	
<b>Recommendations</b>	
<ul style="list-style-type: none"> <li>• Amend the proposed resolution (File 16-0364) to reference the addition of an Intergovernmental Agreement between the City and the TJPA for DPW to provide construction management and oversight services for the Transbay Project, subject to approval by the TJPA Board of Directors at the special meeting on April 22, 2016.</li> <li>• Approval of the proposed resolution, as amended, and the proposed ordinance are policy decisions for the Board of Supervisors.</li> </ul>	

**MANDATE STATEMENT**

City Charter Section 9.113(e) provides that the Board of Supervisors has the power to borrow money through the use of commercial paper or other short-term indebtedness. Administrative Code Section 10.62 provides that the Board of Supervisors may authorize the issuance of Certificates of Participation (COPs) and other lease financing debt as funding sources for capital projects. Administrative Code Section 10.62(c)(1) also provides that the Director of Public Finance may issue tax-exempt and/or taxable commercial paper to provide interim funds to finance the acquisition, construction and rehabilitation of capital improvements and capital equipment, after prior approval of the project and financing plan by the Board of Supervisors and the Mayor.

City Charter Section 9.105 provides that amendments to the Annual Appropriations Ordinance, after the Controller certifies the availability of funds, are subject to Board of Supervisors approval by ordinance.

**BACKGROUND**Transbay Development Project Overview

On June 21, 2005, the Board of Supervisors approved the Transbay Redevelopment Plan<sup>1</sup>, which provided for the redevelopment of a 40-acre area generally bounded by Mission, Main, Second and Folsom Streets, and included redevelopment of the previous Transbay Terminal at First and Mission Streets (File 05-0184). A separate joint powers agency, the Transbay Joint Powers Authority (TJPA)<sup>2</sup>, was created to finance, design, develop, construct and operate the Transbay Transit Center Project (Transbay Project). The Transbay Project includes

- (a) Phase 1: design and construction of a temporary terminal, demolition of the old Transbay Terminal and subsequent development of a permanent new six-story Transbay Transit Center with concourse retail and circulation level, above-grade bus level, rooftop park, and two below-grade levels to serve future Caltrain and California High Speed Rail services (Train Box), a new off-site bus storage facility and new dedicated bus ramps to connect the Transbay Transit Center, the bus storage facility and the San Francisco-Oakland Bay Bridge;

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<sup>1</sup> The Transbay Redevelopment Plan was initiated by the San Francisco Redevelopment Agency, which was dissolved by State mandate in 2012. A successor agency, the Office of Community Investment and Infrastructure (OCII) is now obligated to complete implementation of major redevelopment projects in San Francisco, including the Transbay Redevelopment Plan.

<sup>2</sup> The Transbay Joint Powers Authority created on April 4, 2001, is currently comprised of representatives from the San Francisco Municipal Transportation Agency (SFMTA), the Mayor's Office and the Board of Supervisors as well as from the Alameda-Contra Costa Transit District (AC Transit) and the Peninsula Corridor Joint Powers Board-Caltrain, which is composed of the City and County of San Francisco, San Mateo County Transit District (Samtrans) and Santa Clara Valley Transportation Authority.

- (b) Phase 2: extension of Caltrain rail tracks from their current San Francisco terminus at Fourth and Townsend Streets to a new underground terminus beneath the Transbay Transit Center, generally bounded by Mission, Howard, Beale and 2<sup>nd</sup> Streets, for Caltrain and California High Speed Rail; and
- (c) Transbay Redevelopment Plan: specified activities to implement the Transbay Redevelopment Plan, in coordination with the Office of Community Investment and Infrastructure (OCII).

Construction of Phase 1 began in 2008, the previous Transbay Terminal was demolished in 2010 and completion of Phase 1 is anticipated in 2017. In 2008, Phase 1 of the Transbay Project was estimated to cost \$1,189,000,000. A picture of the new Transbay Center Project is shown below.



The Board of Supervisors has previously approved the following agreements pertaining to the Transbay Project:

- Cooperative Agreement

On July 8, 2003, the Board of Supervisors approved a Cooperative Agreement between the TJPA, the California Department of Transportation (Caltrans), and the City and County of San Francisco (File 03-0997) authorizing the transfer of certain State-owned parcels within the Transbay Redevelopment Project Area, at no cost, from Caltrans to the City and the TJPA for use in construction of the Transbay Project or to sell in order to fund the Transbay Project construction costs.

- Tax Increment Revenue

On May 9, 2006, the Board of Supervisors approved a Tax Increment Allocation and Sales Proceeds Pledge Agreement (File 06-0347), which pledged tax increment revenue from the State-owned parcels in the Transbay Redevelopment Project Area to the TJPA for 45 years. Tax increment financing is a project financing strategy, in which the public agency (1) issues debt (tax allocation bonds), subject to Board of Supervisors approval, and uses future incremental ad valorem tax revenues (tax increment), primarily property tax revenues, to repay such debt. As a result, the increases in property tax revenue within a redevelopment project area are used to finance the redevelopment project.

- Community Facilities District (CFD) Special Tax Proceeds

In 2014, the Board of Supervisors approved the formation of a Transbay Transit Center Community Facilities District (CFD) to provide funding for certain public infrastructure improvements related to the Transbay Project (Resolution No. 350-14). In 2015, the Board of Supervisors approved the levy and collection of special taxes from the CFD and issuance of up to \$1,400,000,000 of CFD special tax bonds (Resolution No. 2-15). However, there is a cap of \$380 million on CFD special tax proceeds that can be used for the Transbay Project, which includes \$328 million to finance the Caltrain extension and \$52 million to finance the rooftop park. As shown in Table 2 below, special tax revenues from this CFD are projected to provide \$146,615,000<sup>3</sup> of funding for Phase 1 of the Transbay Project, once the CFD bonds are issued in 2017, although the funding is dependent on the schedule of development within the CFD.

### Cost of Transbay Project

As noted above, in 2008, the Phase 1 Transbay Project was estimated to cost \$1,189,000,000. In 2010, the Train Box component was transferred from Phase 2 to Phase 1 and a \$400 million Federal ARRA grant was received to fund construction of the Train Box. Phase 1 of the Transbay Project has experienced significant cost increases, and based on a review conducted in September 2015 by the Metropolitan Transportation Commission (MTC), Phase 1 is currently

<sup>3</sup> 2013 TJPA budget projections estimated that \$194.1 million in CFD special tax proceeds would be available to fund Phase 1 of the Transbay Project through 2017, such that current CFD projections of \$146.6 million are \$47.5 million less than previously projected.



estimated to cost \$2,259,400,000, an increase of \$1,070,400,000 or 90%, as summarized in Table 1 below.

**Table 1: Estimated Costs of Phase 1 of Transbay Project**

Date	Estimated Cost	\$ Change from Prior Estimate	% Change from Prior Estimate
January 2008	\$1,189,000,000	-	-
November 2010	1,589,000,000	\$400,000,000	33.6%
July 2013	1,899,400,000	310,400,000	19.5%
July 2015	2,146,318,000	246,918,000	11.5%
April 2016	2,259,400,000	<u>113,082,000</u>	<u>5.2%</u>
Total		\$1,070,400,000	90.0%

According to the MTC report, the main reasons for the Transbay Project cost increases were:

- Inaccurate engineering estimates due to low costs, inaccurate and missed items and scope;
- Complex design led to fewer qualified bidders;
- Optimistic production rates which did not match actual fabrication rates;
- Optimistic escalation cost factors which did not reflect today’s actual market trends;
- Lack of competitive bidders due to the improved Bay Area economy;
- Higher bid margins due to greater number of competing projects for material and labor;
- Design changes required to incorporate risk and vulnerability assessment; and
- Different risk model which did not fully assess costs appropriately for this project.

Current Funding Sources for Transbay Project and Projected Shortfall

As shown in Table 2 below, the current committed funding sources for Phase 1 of the Transbay Project include a combination of federal, state and local sources, which total \$2,011,900,000. Based on the current projected Phase 1 project cost of \$2,259,400,000, there is a current projected shortfall of \$247,500,000 to complete Phase 1 of the Transbay Project.

**Table 2: Current Funding Sources and Projected Shortfall**

Private Bridge Loan	\$153,964,720
TIFIA Loan	171,000,000
San Francisco Proposition K Sales Taxes	139,344,000
San Mateo Sales Taxes	4,497,061
AC Transit Capital Contribution	39,552,002
Lease and Interest Income	8,243,599
Other Local Revenues	4,456,401
MTC Regional Measure 1*	54,400,000
MTC Regional Measure 2*	143,016,000
AB 1171 (Other Bridge Tolls)**	150,000,000
State Regional Transportation Improvement Program (RTIP)	10,153,000
Land Sales	515,590,925
FTA Section 1601	8,795,355
High Priority-Bus Funding	29,136,832
Federal Projects of National Regional Significance (PNRS)	24,459,605
American Recovery and Reinvestment Act (ARRA)	400,000,000
Federal Rail Relocation Funds	2,650,000
One Bay Area Transit Grant (OBAG)	6,000,000
Tax Increment	25,500
Community Facility District (CFD) Special Taxes	146,615,000
<b>Total Sources of Funding</b>	<b>\$2,011,900,000</b>
<b>Current Estimated Phase 1 Project Costs</b>	<b>(2,259,400,000)</b>
<b>Phase 1 Funding Shortfall</b>	<b>\$247,500,000</b>

\*Regional Measures 1 and 2 set tolls on Bay Area bridges to pay for transportation projects.

\*\*AB 1171 was adopted by the California legislature to fund the cost of seismic retrofit of Bay Area toll bridges.

The major funding issues are as follows:

- Land Sales, Including Parcel F Sale

As shown in Table 2 above, the largest funding source is proceeds from the sale of State-owned land parcels, which is projected to generate \$515,590,925 of revenue for the Transbay Project.

On March 10, 2016, the TJPA also approved the sale of Parcel F<sup>4</sup> for an additional \$160,000,000<sup>5</sup> in land sale proceeds. However, the sale of Parcel F for \$160,000,000 is subject to approval of an option agreement by the OCII Commission and the Board of Supervisors regarding the sale of Block 4<sup>6</sup>. This option agreement is anticipated to come

<sup>4</sup> Parcel F, which is located on Howard Street near Second Street, is currently zoned for office development.

<sup>5</sup> Of the \$160 million, approximately \$6 million was counted in the \$515.6 million in land sales, shown in Table 2 above, and \$153,964,720 will be used to pay off the private bridge loan shown in Table 2 above.

<sup>6</sup> Block 4, which is located at Howard and Main Streets, and currently occupies a portion of the temporary bus terminal, is currently designated for development of affordable housing. Block 4 will be available for sale and

before the Board of Supervisors in May 2016. Subject to approval of the option agreement by OCII and the Board of Supervisors, completion of the sale of Parcel F and receipt of the \$160,000,000 by the TJPA is anticipated to occur in June 2016, which will allow the TJPA to use the Parcel F proceeds to pay-off a private Bridge Loan (discussed below).

- TIFIA Loan

On November 24, 2009, the Board of Supervisors authorized the TJPA to enter into a not-to-exceed \$171,000,000 loan agreement under the Federal Highway Administration Transportation Infrastructure Finance and Innovation Act (TIFIA Loan) to fund a portion of the Transbay Project costs (File 09-1333). The disbursement requirements of the TIFIA Loan include: (1) TJPA receives gross land sales proceeds of at least \$429,000,000 from the State-owned parcels; (2) TJPA receives an investment-grade rating on the TIFIA Loan; and (3) evidence that Phase 1 of the Transbay Project is fully funded. The first two requirements have been fulfilled. However, the third requirement, that Phase 1 of the Transbay Project be fully funded, as evidenced by Table 2 above, has not yet been achieved. As a result, the TIFIA Loan cannot be disbursed, such that TJPA does not have access to this \$171,000,000 in loan proceeds.

Under the proposed resolution and ordinance, the City will provide interim financing for the TJPA for Phase 1 of the Transbay Project, such that, together with the sale of Parcel F for \$160,000,000, the TJPA will be able to demonstrate that the Project is fully funded and be able to access the \$171,000,000 TIFIA Loan. Once the TJPA receives the \$171,000,000 TIFIA Loan, the interest rate will be 4.57% annually and must be repaid by February 1, 2052, or within 35 years after completion of Phase 1. The TJPA anticipates being able to accept and begin to draw on this loan in FY 2016-17 to fund completion of the construction and begin repaying the TIFIA Loan by February 2020. The TJPA intends to repay this loan with: (a) net tax increment funds generated from the State-owned parcels in the Transbay Redevelopment Project Area, (b) future contributions from AC Transit related to the use of the new Transbay Center, and (c) interest income from (a) and (b).

- Private Bridge Loan

Because the TJPA could not access the \$171 million of TIFIA Loan proceeds needed to fund ongoing construction of the Transbay Project, in January 2015, the TJPA entered into a \$171 million private Bridge Loan with Goldman Sachs and Wells Fargo for a term of four years, which can be repaid without penalty any time after January 22, 2016. The private Bridge Loan has a variable interest rate, based on the 3-month adjusted London Interbank Offered Rate (LIBOR), plus a 2.25 percent margin which increases 0.5 percent each year that the loan is outstanding. Total interest and expense for this loan is estimated at approximately \$32 million over the four year term of the loan. This private Bridge Loan is currently secured by tax increment, AC Transit contributions and interest

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development in 2018 after the opening of the new Transbay Transit Center and closure of the temporary bus terminal. Proceeds from Block 4 sale will also be used for the Transbay Project.

income as well as Parcel F, two parcels adjacent to Parcel F and Block 4 real estate. The proceeds from the sale of any of these parcels are required to be held by the banks as collateral for the Bridge Loan. However, the \$160 million proceeds from the sale of Parcel F are anticipated to pay off this private Bridge Loan, such that the deed of trust on parcel F and the other Transbay parcels will be released. As shown in Table 2 above, the \$171 million private Bridge Loan is estimated to result in \$153,964,720 of proceeds for the Transbay Project, plus an estimated \$17,035,280 of interest and expenses, which assumes this Bridge Loan, is fully repaid once Parcel F sales proceeds of \$160 million are received in FY 2016-17.

The proposed resolution and ordinance would provide short-term financing through the City to cover the current funding gap of \$247,500,000, shown in Table 2 above, to complete construction of the Phase 1 Transbay Project.

#### DETAILS OF PROPOSED LEGISLATION

File 16-0364: Resolution approving and authorizing the execution of tax exempt and taxable lease revenue commercial paper Certificates of Participation (COPs) and tax exempt and/or taxable direct placement revolving COPs in a combined aggregate principal amount not to exceed \$260,000,000 relating to Phase 1 of the Transbay Center Project; approving and authorizing execution of one or more trust agreements, site leases, subleases, a leaseback, one or more letter of credit and reimbursement agreements and/or lines of credit, and one or more certificate purchase agreements and related documents; and declaring the official intent of the City to reimburse itself from proceeds of tax-exempt obligations in accordance with 1986 Internal Revenue Code, as amended.

File 16-0357: Ordinance appropriating \$260,000,000 of proceeds from short-term Certificates of Participation to General City Responsibility for interim financing related to the Transbay Transit Center Project in FY 2015-16.

The proposed resolution would

- Approve and authorize the execution and delivery of tax exempt and/or taxable<sup>7</sup> lease revenue commercial paper Certificates of Participation (COPs) and tax exempt and/or taxable direct placement revolving COPs<sup>8</sup> in an aggregate principal amount not to exceed \$260,000,000 to provide funds for interim financing for Phase 1 of the Transbay Center Project. Interim financing includes (a) costs of Phase 1 Project; (b) capitalized interest for short-term certificates; (c) capitalized fees and expenses; and (d) costs incurred with sale and delivery of certificates.

<sup>7</sup> While tax exempt debt has lower interest rates and associated costs, because the Transbay Project includes potential retail services, the issuance of debt may not qualify for tax-exempt status. The proposed resolution would allow the Office of Public Finance the flexibility to issue tax exempt and/or taxable debt, as necessary.

<sup>8</sup> This authorization allows the Office of Public Finance the flexibility to (a) issue commercial paper, which involves a bank and a third party, both which receive fees and must be renewed every 270 days and/or (b) direct placement of revolving credit, which is similar to a bank line of credit, and results in lower fees on the amount drawn.

- Approve one or more Trust Agreements and Delivery and Paying Agent Agreements between the City and County of San Francisco (City) and the Trustee, and authorize the City's obligations under these Agreements.
- Approve the form of a Sublease for City Property, Sublease for TJPA Property and Site Lease for City Property.
- Approve the form of Reimbursement Agreements, Fee Agreements and Purchase Agreements between the City and the designated banks.
- Authorize the Controller and the Director of the Office of Public Finance to negotiate dealer agreements.
- Authorize one or more extensions to Credit Facilities, Reimbursement Agreements and Purchase Agreements for duration of time necessary, provided such extensions do not increase the principal amount or require annual fees in excess of amounts authorized.
- Declares the City's intent to reimburse the City and/or TJPA with the subject proceeds contemplated for Phase 1 Transbay Project expenditures, such that the City or the TJPA will make a reimbursement allocation no later than three years after the expenditure is paid.
- Approve the form of a Train Box Leaseback between the City as sub-lessor and the TJPA as sub-lessee, which authorizes the City to sublease the Train Box to the TJPA, which will occupy and operate the Train Box.
- Grant general authority to the Controller and Director of Public Finance and other public officials to take necessary actions as necessary regarding these Direct Placement Certificates by Wells Fargo and the Metropolitan Transportation Commission (MTC), or any of the other Trust Agreements, Paying Agent Agreements, Site Leases, Subleases, Train Box Leaseback, Purchase Agreements, and approve required modifications to the documents, such that they comply with the provisions of this resolution.
- Authorize the execution and delivery of long term Certificates of Participation (COPs) in an aggregate total principal amount not to exceed \$300 million to refinance the short-term certificates, subject to future separate Board of Supervisors approval.

#### **Purchase Agreements**

The proposed resolution would authorize a not to exceed \$260,000,000 aggregate principal debt be issued for interim financing for the Transbay Project. Financing of \$260,000,000 comes from purchase agreements with Wells Fargo Bank and Metropolitan Transportation Commission.

Wells Fargo Bank: \$160,000,000

Ms. Nadia Sesay, Director of the Office of Public Finance, advises that Wells Fargo Bank has been selected, based on a prior competitive solicitation process, to provide up to \$160 million of commercial paper and/or revolving credit for the subject interim financing. The Purchase Agreement with Wells Fargo Bank is anticipated have annualized floating interest rate of 70% of LIBOR plus 0.32% if tax exempt (currently 0.621%) and LIBOR plus 0.56% if taxable (currently 0.995%) of the principal amount drawn, payable over three years. A 0.20% annual interest rate would be paid on the principal amount not yet drawn.

Metropolitan Transportation Commission: \$100,000,000

In addition to the up to \$160 million with Wells Fargo Bank, the Office of Public Finance anticipates entering into similar Purchase Agreements with the Metropolitan Transportation Commission (MTC) to provide the balance of up to \$100 million of interim financing. The Purchase Agreement with MTC would have annualized floating interest of LIBOR plus 0.61% (currently 1.045%) payable annually over five years. This funding would be renewable for up to an additional five years, or a total of ten years. Ms. Sesay notes that MTC is prohibited from funding the TJPA transaction directly, but MTC has sufficient reserve revenues to provide this \$100 million of funding. This transaction is consistent with MTC's investment policies, and given that the Transbay Project is a regional endeavor, it would be beneficial to have the MTC public regional partner directly involved in this transaction.

Ms. Sesay notes that the Purchase Agreements with Wells Fargo and MTC would terminate and the amounts owed will be immediately due and payable if the City's General Fund secured obligations credit ratings decline significantly. These Agreements may also be terminated at the City's option for any reason, with payment of up to one year termination fee of the floating rate.

**Trust Agreements**

Based on the interim financing agreements noted above, the City would enter into separate Trust Agreements with Wells Fargo Bank and MTC to address the required short-term obligations regarding payments, disbursements and remedies. In addition, under the proposed resolution, the City would enter into a third party Trust Agreement with U.S. Bank, which provides the terms for the short-term commercial paper, prepayment and default provisions, remedies, and other related administrative provisions. U.S. Bank would hold the proceeds on behalf and for the benefit of the certificate holders, and disburse payments for the Transbay Project costs as directed by the City.

**City Property Lease and Sublease**

Under the proposed City Property Lease, the City would lease City-owned properties that have a market value at or above the par value of the Certificates of Participation, to the third party trustee, US Bank. In accordance with the City Sublease, the City would then lease back the same City-owned properties, from the third party trustee, by making annual base rent or debt service

payments to repay the short-term certificates. When the Certificates of Participation are fully repaid, the City Property Lease and Sublease between the City and the trustee will terminate. Ms. Sesay advises that she is currently working with Mr. John Updike, Director of Real Estate to value and determine which specific City properties would be leased; the properties likely to be leased include a portion of San Francisco General Hospital and/or Laguna Honda Hospital.

#### **TJPA Property Lease, Sublease and Leaseback**

Under the proposed TJPA Property Lease, the TJPA will lease the Train Box real property within the Transbay Project to the third party trustee, in this case the MTC. Under the proposed TJPA Sublease, the City will sublease the Train Box from the trustee. Under the Leaseback, the City will then leaseback the Train Box to the TJPA for their operation and management. Within these agreements, the TJPA grants the City a security interest and lien on the Train Box. When the short-term certificates are fully repaid, the TJPA Property Lease, Sublease and Leaseback agreements would all terminate.

#### **FISCAL IMPACT**

The proposed resolution would authorize a not-to-exceed \$260 million of financing to fund the TJPA's estimated interim shortfall of \$247,500,000 in Phase 1 of the Transbay Project, as shown in Table 2 above. To achieve the most cost efficient borrowing, the Office of Public Finance is proposing that the City issue the not-to-exceed \$260 million of short-term debt at times and in amounts necessary to meet the Phase 1 Transbay Project construction requirements. Of the total not to exceed \$260 million, up to \$160 million certificates would be issued with Wells Fargo Bank for up to three years, and up to \$100 million certificates would be held by MTC for a maximum of ten years, based on the terms described above.

The Office of Public Finance anticipates that the TJPA will need the \$247,500,000 to pay for construction over the next two fiscal years, as shown in Table 3 below.

**Table 3: Projected Transbay Project Interim Funding Needed by Year**

FY 2016-17	\$149,000,000
FY 2017-18	98,500,000
Total	\$247,500,000

With respect to this short-term debt, the TJPA would pledge their Community Facility District (CFD) special taxes and tax increment revenues generated by the State-owned parcels in the Transbay Redevelopment Project Area to pay debt service and reimburse the City likely over the next ten years. However, if these revenue sources are not sufficient, the City's General Fund would be liable to pay the debt service on the short-term debt. Long term debt would be issued in the future by the TJPA or the City, subject to separate Board of Supervisors approval, to retire the short-term debt. This long-term debt would also be repaid from the TJPA's CFD

special taxes and tax increment as well as future contributions from the Alameda-Contra Costa Transit District (AC Transit) and interest income.

As shown in Table 4 below, the proposed resolution would authorize a not to exceed \$260 million to provide the \$247,500,000 interim financing for the Transbay Project and up to \$12.5 million to fund the cost of issuance, capitalized interest and expenses and provide sufficient flexibility for market uncertainty from the date of Board of Supervisors approval of the proposed resolution through the term of the short-term certificates.

**Table 4: Projected Sources and Uses for not to exceed \$260 Million**

<b>Sources</b>	
Certificate Par Amount – Wells Fargo Bank	\$158,157,549
Certificate Par Amount – MTC	<u>100,000,000</u>
Subtotal Sources	\$258,157,549
Reserve for Market Uncertainty	<u>1,842,451</u>
<b>Total Sources</b>	<b>\$260,000,000</b>
<b>Uses</b>	
Project Fund	\$247,500,000
Cost of Issuance	800,000
Capitalized Interest and Expenses	<u>9,857,549</u>
Subtotal Uses	\$258,157,549
Reserve for Market Uncertainty	<u>1,842,451</u>
<b>Total Uses</b>	<b>\$260,000,000</b>

Based on current floating interest rates, Ms. Sesay estimates the base rental or debt service payments would be \$2.5 million per year of interest only. The TJPA intends to make these debt service payments from net tax increment proceeds from the State-owned parcels of land. In addition, Ms. Sesay advises that CFD special tax bond proceeds could partially pay down the principal of the outstanding short-term debt beginning in 2017, which will reduce the principal amount that will ultimately have to be refinanced with longer-term debt.

However, given that these short-term certificate obligations would be paid back from tax increment proceeds, or increases in property taxes on the State-owned parcels in the Transbay Redevelopment Area, the timely completion of these planned developments and inclusion on the property tax rolls is critical to avoid the City’s General Fund being liable for repayment of these short-term obligations.

Projections for Pay Back of Short Term Debt

The Controller’s Office conducted due diligence on the status of the development on the State-owned parcels within the Transbay Redevelopment Project Area and the CFD Plan Area, and the projected tax increment revenues and CFD special taxes to be generated. Based on their analysis, the Controller’s Office advises that there is likely to be sufficient Transbay-related development to support the requested interim financing with projected CFD taxes through 2020 and net tax increment revenues through 2024. However, the City will have credit exposure for the initial six to ten years, depending on the pace of development within the



Transbay Redevelopment Project Area and the CFD Plan Area. In the event development is delayed, the City would have higher outstanding short-term certificates for a longer period of time, but for no more than ten years. This short-term financing is then anticipated to be replaced with long-term financing by the TJPA, when the tax increment increases over the next ten years.

#### Long-Term Debt

The proposed resolution primarily addresses the interim short-term needs for financing Phase 1 of the Transbay Project. However, once sufficient tax increment revenue is generated, which is projected to occur in 2024, or approximately eight years, the City or the TJPA will issue long-term financing, which would be used to pay off the short-term debt with Wells Fargo and MTC. Under the proposed resolution, the Board of Supervisors would be authorizing the execution and delivery of long term Certificates of Participation (COPs) in an aggregate total principal amount not to exceed \$300 million to refinance the short-term certificates, subject to future separate Board of Supervisors approval. However, Ms. Sesay advises that it is anticipated that the TJPA would be able to issue its own long-term debt at that time, without having to rely on the City's creditworthiness.

#### Transbay Operations

The cost to operate the Transbay Center will be the responsibility of the TJPA and are separate from these Transbay Project capital budget projections. The TJPA will use Regional Measure 2 operating grants and lease, advertising and retail revenues to pay for ongoing operations. In addition, AC Transit is obligated to cover shortfalls between operating revenues and expenses.

#### Appropriation Ordinance

If the proposed resolution is approved, the proposed supplemental appropriation ordinance would appropriate the proceeds from the issuance of short-term certificates as shown under the Uses in Table 4 above. In accordance with this ordinance, the appropriation of such proceeds would be placed on Controller's Reserve pending the authorization and sale of the short-term certificates.

### **POLICY CONSIDERATION**

#### Potential Negative Impacts on Transbay Project

As noted above, the TJPA is responsible for the financing, design, development, construction and operation of the Transbay Project. Due to numerous errors, including inaccurate engineering estimates, the cost for Phase 1 of the Transbay Project has risen from \$1,189,000,000 in 2008 to \$2,259,400,000 in 2016, an increase of \$1,070,400,000 or 90%. Because of these significant cost increases, the TJPA is currently facing a shortfall of \$247,500,000 to complete construction of Phase 1 of the Transbay Project, which is scheduled to be completed by the end of 2017.

While San Francisco has representatives on the TJPA, and the Transbay Project is located in San Francisco, the TJPA is a regional separate joint powers agency, such that the City is not obligated or responsible for providing short-term or long-term direct funding for this project. However, if the City does not provide the requested up to \$260 million of interim funding for the TJPA, there are potential significant negative impacts for the Project as detailed below:

- Potential inability to complete or further delays in completion of the Transbay Project.
- Potential further cost increases, due to delays in completion of construction.
- Additional unknown problems related to construction and/or cost control factors.
- Problems with TJPA's ability to secure the TIFIA Loan of \$171 million and pay off the existing higher cost private bridge loan.
- Potential related problems with the sale and revenues to be realized from adjacent parcels for construction of housing, including affordable housing.

#### Construction Management and Financial Oversight

Given the construction and financial history of this Project, coupled with this unique request for the City to provide interim financing for the TJPA for Phase 1 of the Transbay Project, the Board of Supervisors must have assurances of direct construction management and financial oversight of this Project by the City. In that regard, the TJPA Board will consider on April 22, 2016 an Intergovernmental Agreement with the City and County of San Francisco for the Department of Public Works (DPW) to provide all construction management and project control oversight services for the Transbay Project. The proposed resolution should be amended to indicate that DPW will provide construction management and project control oversight services for the Transbay Project.

In addition, a Transbay Project Cost Oversight Agreement, between the City, the MTC and the TJPA, approved on April 14, 2016 by the TJPA Board, would create a new Cost Review Committee, comprised of the City Controller, Executive Director of the MTC and Executive Director Chief Financial Officer of the TJPA. This Committee would be authorized to make recommendations to the TJPA Board regarding financial and budgetary issues, any new or amended contract over \$250,000, internal controls and can conduct financial or performance audits as deemed necessary. This Cost Review Committee would terminate when the indebtedness under the proposed interim financing is fully repaid and the TJPA through its Board of Directors would still retain ultimate responsibility for the Transbay Project. The proposed resolution would approve this Cost Oversight Agreement.

#### Additional Approvals

On April 11, 2016, the City's Capital Planning Committee approved the proposed resolution and supplemental appropriation ordinance to provide up to \$260 million of short-term certificate proceeds for Phase 1 Transbay Transit Center Project.

On April 13, 2016, the Bay Area Toll Authority Oversight Committee of the MTC approved the direct investment of \$100,000,000 City short-term Certificates of Participation pending subsequent approval at the MTC meeting on April 27, 2016.

#### Phase 2 of Transbay Project

As discussed above, Phase 2 of the Transbay Project would extend Caltrain from the current terminus at Fourth and Townsend Streets to the Transbay Transit Center together with California High Speed Rail. Based on a cost review and project procurement alternatives analysis conducted by MTC in 2015, Phase 2 Transbay Project costs have also increased significantly, to approximately \$3.9 billion assuming a 2024 completion date, or in approximately eight years. To date, the TJPA has identified \$3.6 billion to \$4.3 billion of potential funding sources for Phase 2; however, most of these funds are subject to future federal, state and local approvals.

### **RECOMMENDATIONS**

1. Amend the proposed resolution (File 16-0364) to reference the addition of an Intergovernmental Agreement between the City and the TJPA for DPW to provide construction management and oversight services for the Transbay Project, subject to approval by the TJPA Board of Directors at the special meeting on April 22, 2016.
2. Approval of the proposed resolution, as amended, and the proposed ordinance are policy decisions for the Board of Supervisors.





**CITY AND COUNTY OF SAN FRANCISCO**  
**OFFICE OF THE CONTROLLER**

**Ben Rosenfield**  
**Controller**

**Todd Rydstrom**  
**Deputy Controller**

**Nadia Sesay**  
**Director**  
**Office of Public Finance**

**MEMORANDUM**

**TO:** Honorable Members, Board of Supervisors

**FROM:** Ben Rosenfield, City Controller *BR*  
Nadia Sesay, Public Finance Director *NS*

**SUBJECT:** Legislation Approving the Proposed Interim Financing in Connection with the Transbay Transit Center Project and the Appropriation of such Proceeds

**DATE:** Thursday, April 7, 2016

**Recommended Action:**

The Controller's Office respectfully recommends approval of the attached Resolution, Supplemental Appropriation Ordinance and supporting documents by the Budget and Finance Committee in connection with the proposed plan of interim financing for the Transbay Project. The proposal includes the execution and delivery of tax-exempt and/or taxable direct placement revolving certificates of participation in a combined aggregate principal of amount not exceeding \$260 million.

**Executive Summary:**

- The Phase 1 of the Transbay Project has increased by \$360 million, to \$2.259 billion from \$1.899 billion, following a cost review performed by the MTC.
- The City, in partnership with the MTC, is proposing to provide short-term interim financing in an amount not to exceed \$260 million to cover the funding gap of approximately \$250 million for Phase 1 of the Transbay Project.
- As part of the interim financing, the City and MTC will establish a Cost Review Committee. In addition, in November 2015, pursuant to an amendment to the bylaws of the TJPA, the Department of Public Works will provide construction, management and oversight services to the TJPA board. Such intergovernmental agreement is pending approval at the TJPA Board's next regularly scheduled meeting.

**The Transbay Project:**

The Transbay Joint Powers Authority ("TJPA") is a joint powers agency responsible for financing, design, development, construction, and the operation of the Transbay Transit Center Program

("Transbay Project"). The Transbay Project includes (1) the design and construction of a temporary terminal and then the permanent Transbay Transit Center, including open space on the roof of the Transit Center, a bus ramp, bus storage facility and the Train Box component of the rail extension ("Phase 1"); (2) the extension of Caltrain rail tracks from their current San Francisco terminus at Fourth and Townsend Streets to a new underground terminus beneath the Transbay Transit Center to accommodate Caltrain and California High Speed Rail ("Phase 2"); and (3) in coordination with the Office of Community Investment and Infrastructure ("OCII"), certain activities related to implementation of the Redevelopment Plan for the Transbay Redevelopment Project Area.

Phase 1 will create a new six-story Transit Center with above-grade bus level, rooftop park, above grade bus level, concourse retail and circulation level, ground-floor, two below-grade rail levels serving Caltrain and future California High Speed Rail (the exterior shell of the two below-grade levels collectively referred to as the "Train Box") a new off-site bus storage facility and a new bus ramp that will connect the Transit Center the bus storage facility and the San Francisco-Oakland Bay Bridge. Completion of Phase 1 is anticipated in fall 2017.

**Proposed Interim Financing:**

In 2015, the Metropolitan Transportation Commission ("MTC") conducted a cost and risk review of Phase 1 of the Transbay Project. The cost review included an assessment of current costs, risk management practices, and the adequacy of contingencies to deliver Phase 1 on time. Following this review, MTC recommended a budget increase to replenish TJPA's Phase 1 project reserves and contingencies.

Implementing the MTC recommendation would result in an approximately \$250 million funding shortfall for Phase 1 of the Transbay Project and would prevent the TJPA from satisfying a financing condition required to access the TIFIA Loan. Accordingly, the City, in partnership with MTC, is proposing to provide short-term financing to cover the funding gap for Phase 1. In order to achieve the most cost efficient borrowing, it is proposed that the City issue short-term variable rate notes at the times and in the amounts necessary to meet the Phase 1 project construction draws. A portion of the notes could either be sold publicly, similar to the City's existing lease-backed Commercial Paper ("CP") program, or could be privately placed with institutional investors. Under the proposed package, a portion of the notes (up to \$100 million) will be held by the MTC. Funding will begin in fiscal year 2017 and the maximum amount of the required financing is estimated not to exceed \$260 million (including financing fees and expenses and potentially capitalized interest). The short-term notes are expected to be repaid in part from CFD special taxes and tax increment. Long-term debt will be issued to retire the notes, and such long-term debt is also expected to be repaid from such sources.

**Phase 1 Background:**

Phase 1 construction is facing a significant funding shortfall during construction. In 2013, the TJPA board approved a revised budget of \$1.899 billion ("2013 Budget"). In 2015, MTC recommended that TJPA revise its estimate of Phase 1 construction costs upward by \$360 million, to \$2.259 billion from \$1.899 billion, as shown below. Based on MTC's

recommendation, the TJPA board approved an interim revised baseline budget for Phase 1 of the project of \$2.064 billion, an increase of \$165 million from the 2013 Budget to correspond with the then-projected sales price for Parcel F. TJPA intends to seek a final budget increase when financing becomes available to support this increase.

**Project Budget History (\$ in millions)\***

Year	Budget Amount	Change from Prior Budget	% Change
2008	1,189.0	-	
2010	1,589.0	400.0	34%
2013	1,899.4	310.4	20%
2016	2,259.4	360.0	19%

\* The 2010 increase was the result of receiving \$400 million in ARRA grant for the Train Box. In 2015, TJPA board approved an interim revised budget of \$2,064.4 million.

As part of the 2013 Budget, \$194.1 million in CFD special tax proceeds were projected to become available through 2017. Current projections of CFD special tax proceeds through 2017 are estimated to be \$146.6 million, \$47.5 million less than prior projections. As shown in the table below, the estimated size of the funding shortfall during construction including the projected \$47.5 million reduction in CFD special taxes and including the revised expected sales price for Parcel F is approximately \$250 million.

**Short-Term Funding Required (\$ in millions)**

TJPA Approved Budget (2013)	1,899.4
MTC Recommendation (2015)	2,259.4
Total Shortfall	(360.0)
Approved Parcel F Transaction Consideration	160.0
Net Shortfall	(200.0)
Plus CFD Special Tax Proceeds Shortfall	(47.5)
Total Short-Term Certificates Required	(247.5)

**Phase 1 Plan of Finance:**

The funding plan for Phase 1 of the Transbay Project relies on a combination of federal, state, and local sources; in part on a pay-as-you-go basis and in part through borrowing. The largest sources of revenue through fiscal year 2015 have been Federal American Recovery and Reinvestment Act of 2009 monies ("ARRA"), Bay Area bridge tolls, proceeds of the sale of State-owned land parcels, and local sales tax revenues. The City formed Communities Facilities District No. 2014 ("CFD") to raise funds to pay for certain public infrastructure costs (as described below). Special taxes from the CFD are expected to provide a significant source of project funding once CFD special tax bonds are issued. In addition, future tax increment

revenues to be received by the TJPA from the State-owned parcels within the Transbay Redevelopment Project Area have been leveraged to provide project funding. These tax increment revenues provide the primary security for a TIFIA Loan (as described below) and a Bridge Loan (as described below) provided by Goldman Sachs Bank USA and Wells Fargo Bank, N.A.

*A. Land Sale Proceeds from State-owned Parcels:* Proceeds of the sale of State-owned parcels are expected to provide a significant source of funding for Phase 1. The State-owned parcels consist of Block 2, Block 3, Block 4, Block 5, Block 6/7, Block 8, Block 9, Parcel T and Parcel F. To date, the TJPA has sold five (5) parcels generating approximately \$510 million. (One (1) of the parcels is being developed for 100% affordable housing and another parcel is planned for 100% affordable housing in the future. One (1) of the parcels scheduled to be developed as open space/park.) The developer F4 Transbay Partners LLC submitted an offer for Parcel F of cash sufficient to retire the Bridge Loan (when combined with funds remaining in Bridge Loan debt service accounts), not contingent on entitlements, a \$15 million assemblage bonus, and the commitment to set aside the number of residential units for affordable housing on both Parcel F and Block 4 as mandated by the City and OCII Commission. On March 10, 2016, the TJPA approved the cash offer pre-entitlements for Parcel F in an amount currently equivalent to \$160 million, pending the approval of an option agreement in connection with Block 4 by the OCII Commission and the Board of Supervisors. The approval of such option agreement and closing is anticipated in May/June 2016. Upon the closing of the Parcel F transaction, the TJPA would then have generated approximately \$670 million in land sale proceeds not including Block 4. Block 4, which currently occupies a portion of the TJPA's Temporary Terminal, will be available for development in 2018 following the opening of the new Transit Center and the closure of the Temporary Terminal. The sales proceeds from Block 4 will also be applied to the Transbay Project.

*B. CFD Special Tax Proceeds:* In 2014, the Board approved the formation of the CFD for the purpose of providing funding to pay for the costs of certain public infrastructure to be built as a result of the Transbay Project. In 2015, the Board approved the levy and collection of special taxes and the issuance of CFD special tax bonds. Pursuant to the Joint Community Facilities Agreement, the City is required to make available approximately 82.6% of the CFD special tax proceeds to partially finance the Rooftop Park and the Caltrain Downtown Extension, including the Train Box, elements of the Transbay Project. The cap on the use of CFD special tax proceeds for Phase 1 is assumed to be \$380 million (\$328 million in remaining funding over the amount funded by ARRA, for the Train Box, and an estimated \$52 million for the Rooftop Park). The source of this funding is expected to begin in 2017.

*C. The TIFIA Loan:* In 2010, TJPA entered into a Transportation Infrastructure Finance and Innovation Act (TIFIA) Loan Agreement with the US Department of Transportation, pursuant to which TJPA pledged as a source of repayment (i) net tax increment generated by certain State-owned parcels in the Transbay Redevelopment Area and (ii) future contributions from Alameda-Contra Costa Transit District ("AC Transit") related to use of the new Transit Center; and (iii) interest income on (i) and (ii) (together the "Pledged Revenues"). The maximum



amount of the TIFIA Loan is \$171 million, and the Loan Agreement contains a variety of disbursement conditions which include, among other things, the requirement that TJPA receive gross land sales proceeds of \$429 million from the State-owned parcels (or allocation of alternative funding acceptable to TIFIA); and evidence that Phase 1 of the Transbay Project is fully funded.

Once drawn, the TIFIA Loan will bear interest at a rate of 4.57% and must be repaid in full by Feb. 1, 2052 (no more than 35 years after substantial completion of Phase 1). The current schedule calls for loan repayment to begin by February 2020, two years after substantial completion of Phase 1. The TIFIA Loan may be prepaid in part or in whole at any time without penalty. To date, the TJPA has not been able to satisfy the fully funded condition to draw on the TIFIA Loan.

*D. The Bridge Loan:* Without the ability to draw on the TIFIA Loan to fund ongoing construction, in January 2015, the TJPA entered into a \$171 million Bridge Loan with Goldman Sachs and Wells Fargo (collectively, the "Banks"). The loan has a term of four years and can be prepaid without penalty in part or in full any time after January 22, 2016. The Bridge Loan is on parity with the TIFIA Loan and is similarly secured by Pledged Revenues, as well as by a first priority lien on and security interest in real estate collateral comprising Parcel F, two parcels adjacent to Parcel F, and Block 4. Prior to repayment of the Bridge Loan, proceeds from the sale of any of these parcels are required to be held by the Banks as collateral for the Bridge Loan.

The interest rate on the Bridge Loan is variable. For the first year of the financing (through January 21, 2016), the rate is based upon 3-month LIBOR plus a spread of 2.25%. This spread increases by 0.50% each year that the loan is outstanding, reaching 3.75% in year four. Estimated interest and expenses on the loan for the full four-year term (approximately \$32 million) was capitalized from the loan proceeds at the time of closing. Under the Bridge Loan terms, upon repayment of the Bridge Loan, any unused amount of capitalized interest or expense reserve would be returned to the TJPA. Upon closing the sale of Parcel F, the proceeds from the sale and the balance of the unused amount set aside for capitalized interest, and expense reserve will pay down the Bridge Loan in full.

**Proposed Interim Financing:**

In order to obtain the lowest cost funding, the City is proposing the use of short-term notes to meet the Phase 1 cash flow needs. Currently, the TJPA's only credit rating is for the TIFIA Loan and while it is an investment grade credit rating, the City's credit rating permits borrowing at more cost effective rates. Sufficient funding to complete Phase 1 is expected to be available once CFD special taxes and tax increment revenue streams mature and provide additional borrowing capacity, but this is projected to occur after substantial completion of Phase 1.

The City, in partnership with MTC, would provide short-term financing to TJPA in order to complete Phase 1. The short-term notes will be repaid from Pledged Revenues and CFD special taxes, likely in the coming ten (10) years. The City would issue short-term variable rate certificates at times and in amounts necessary to meet the project construction draws, a

portion of which would be purchased by MTC and a portion of which would be privately placed with Wells Fargo Bank, N.A. ("Wells Fargo"). The program would ramp up beginning fiscal year 2017 and the maximum amount required financing is estimated to be \$260 million, depending in part on the timing of the construction draw and the amount of special tax bond issuance during the construction period, as shown below and whether interest is capitalized at any point during the financing.

**Project Budget Funding Required (\$ millions)**

<u>Fiscal Year</u>	<u>Budget Shortfall</u>
2017	149.0
2018	98.5
	<u>247.5</u>

The borrowing has been structured such that special tax bond proceeds will pay down a portion of the short-term certificates and projected tax increment revenues would be sufficient to pay debt service on the outstanding balance. However if those revenue sources are insufficient, the City's general fund resources would be expected to pay the debt service on the short-term certificates. Leveraging the City's strong credit in this manner would afford Phase 1 access to flexible low cost borrowing to complete construction.

*Plan of Finance:* Following a competitive solicitation, the Controller's Office of Public Finance selected and is negotiating currently with Wells Fargo on the terms and conditions of a revolving credit facility in an amount not to exceed \$160 million. The City expects to enter a Certificate Purchase Agreement ("Agreement") with the Wells Fargo and the annualized floating rate of 70% of 1-month LIBOR plus 0.375%, currently at 0.6795%, if tax-exempt, and LIBOR plus 0.56%, currently at 0.995%, if taxable, of the drawn principal amount of the revolving credit facility, payable annually in arrears over three (3) years. The annualized floating rate on the undrawn revolving credit facility is 0.20%.

Additionally, the City expects to enter into a similar agreement with MTC on the terms and conditions of a revolving credit facility in an amount not to exceed \$100 million and the annualized floating rate to be paid is 1-month LIBOR plus 0.61%, currently at 1.045% of the drawn principal amount of the revolving credit facility, payable annually in arrears over five (5) years. The MTC partnership allows for renewal in five (5) years for up to an additional five (5) years with spreads reflective of the market at the time of the renewal. Also, MTC's participation allows the City to minimize the financial impact to the City's General Fund, guarding against future credit facility capacity limitations which could have potential impacts to the City's existing CP program.

The current fee structure presumes that the City's general fund secured obligations credit rating remains at its current rating levels of Aa3/AA-/AA- by Moody's Investors Service ("Moody's"), Standard & Poor's ("S&P"), and Fitch Ratings, respectively (collectively, the "Rating Agencies"). The floating rate may be increased in increments of 0.075% - 0.30% for

every notch rating downgrade, depending on the rating, by two rating agencies below Aa3/AA-/AA-. Should the City's general fund secured obligations credit rating fall below Baa1/BBB+/BBB+, the Agreement would terminate and amounts owing to the Bank would be immediately due and payable, subject to the limits concerning maximum rent set forth in the Sublease in accordance with State law, which would allow for several years to repay the financing.

The Agreement may be terminated at the option of the City for any reason, subject to a termination fee of up to one (1) year of the floating rate due to the Bank, or for any optional termination by the City within the first year of the Agreement, the remaining unpaid balance of the first year's floating rate. After the first anniversary of closing, there would be no termination fee.

In connection with this transaction, the Board of Supervisors ("Board") will approve forms of Trust Agreements, Site Lease, Train-Box Site Lease, Subleases, and a Leaseback Lease and related Agreements (as described below).

*Trust Agreements:* Pursuant to the Trust Agreement between the City and U.S. Bank, N.A. ("Trustee"), acting on behalf and for the benefit of Certificates holders, the trustee administers and disburses Certificate payments and enforces the covenants and remedies in the event of a default by the City. The Trust Agreement provides for the terms of the Certificates, prepayment provisions, events of default, remedies in the event of default, and other related administrative provisions. The Trustee holds proceeds derived from the sale of the Certificates and disburses payments for the costs incurred for the Project, as directed by authorized City representatives. There would be a separate Trust Agreement for the short-term obligations purchased by MTC and the short-term obligations purchased by Wells Fargo. Additionally, the Trust Agreements allow for the issuance of letter of credit backed commercial paper certificates if, in the future, it is necessary or advisable to convert the direct purchase Certificates to a commercial paper mode.

*Site Lease-City Property and Sublease - Wells Fargo:* Pursuant to the Site Lease-City Property, the City leases a City-owned property to Trustee. Pursuant to the Sublease, the City leases back the leased property from Trustee. The City makes annual base rental payments to Trustee in amounts required to pay debt service on the Certificates. When the Certificates are repaid in full, the Site Lease-City Property and Sublease terminate. The City's general fund secures the repayment of the Certificates. This is the structure that will be utilized for the Wells Fargo purchased short-term certificates.

*Site Lease-TJPA Property, Sublease and Leaseback Lease - MTC:* Pursuant to the Site Lease-TJPA Property, the TJPA leases real property within the City to Trustee. Pursuant to a Sublease, the City leases back the Train Box from the Trustee. Pursuant to the Leaseback Lease, the City leases the Train Box to the TJPA. Additionally, the TJPA grants to the City a security interest and continuing lien on the TJPA's right, title, and interest, which include, among other things, Pledged Revenues (as defined above). When the Certificates are repaid in full, the Site Lease-

TJPA Property, Sublease and Leaseback lease terminate. This is the structure that will be utilized for the MTC purchased short-term certificates.

*The Leased Property:* It is anticipated that a portion of the campus at the Zuckerberg San Francisco General Hospital or a portion of the campus at the Laguna Honda Hospital and TJPA's Train Box (the "Leased Property") will serve as the Leased Property for the short-term certificates.

*Short-Term Certificates:* The proceeds of the short-term certificates will partially pay costs of Phase 1, cost of issuance and fees and expenses. See sources and uses as shown in the table below.

**Estimated Sources and Uses from Short-Term Certificates (\$)**

<b>Maximum Not to Exceed Amount</b>	<b>260,000,000</b>
<i>Reserve for Market Uncertainty</i>	1,842,451
<b>Sources:</b>	
Certificate Par Amount (Wells Fargo)	158,157,549
Certificate Par Amount (MTC)	<u>100,000,000</u>
<b>Total Sources:</b>	<b>258,157,549</b>
<b>Uses:</b>	
Project Fund	247,500,000
Cost of Issuance	800,000
Capitalized Fees and Expenses	<u>9,857,549</u>
<b>Total Uses</b>	<b>258,157,549</b>
<i>Reserve for Market Uncertainty</i>	1,842,451
<b>Maximum Not to Exceed Amount</b>	<b>260,000,000</b>

<sup>(1)</sup> Represents capitalized fees and expenses through the term of each Short-term Certificates

The additional \$1.8 million allows for fluctuations in market conditions from the date of Board approval through the term of the short-term certificates. Based on the current floating rate, the maximum annual base rental payment is estimated to be \$2.5 million.

TJPA will pay interest on outstanding short term certificates. It is anticipated this interest will be paid on an ongoing basis from net tax increment proceeds. It is also expected that CFD special tax bond proceeds will partially pay down principal on the outstanding short-term certificates beginning in fiscal year 2018, lowering the amount that ultimately will be refinanced with long-term debt.

One of the conditions to access the TIFIA Loan is that the TJPA demonstrate evidence that Phase 1 of the Transbay Project is fully funded. The City's proposed interim financing solution will assist the TJPA in satisfying that condition and enable the TJPA to access the TIFIA Loan. The combination of the Board approval of the delivery and execution of the short-term certificates and subsequent OCII and Board approval of the Block 4 option agreement, (which enables the close of the sale of Parcel F) achieves such condition. Upon approval of the Block 4 option agreement by OCII and the Board, the proceeds from the sale of Parcel F and any unused amount of capitalized interest and expense reserve will extinguish the Bridge Loan.

TJPA is in discussions with TIFIA to either give written consent or amend the TIFIA Loan agreement to permit the City's short-term certificates to be on parity with the TIFIA Loan. TIFIA is prepared to work with the TJPA on the proposal and may have comments or propose changes to the proposed interim financing and the TIFIA loan agreement.

*Long-term Tax Increment Bonds or Certificates:* Once sufficient tax increment revenue is generated, the City's short-term certificates would be taken out with long-term permanent financing. Based on current projections, this is anticipated to occur in fiscal year 2024. Such long-term financing may be issued by the TJPA or the City. The City will seek the necessary approvals required for the issuance of long-term certificates at a later date.

**Other Considerations:**

The City's short-term certificates will be repaid from Pledged Revenues and special taxes. Any delay in planned development will impact the timing of the availability of Pledged Revenues and special taxes, which will extend and/or increase the City's General Fund exposure. As such, the City has conducted significant due diligence on the status of development on State-owned properties within the redevelopment project area and within the CFD and will continue to monitor the status of such development.

As part of the interim financing proposal, the City and MTC will establish a Cost Review Committee to be staffed by representatives of the City, the TJPA and the MTC. The purpose of the Cost Review Committee will be to oversee the TJPA's budget and certain expenditures, as provided in a separate agreement entitled the Transbay Project Cost Oversight Agreement between the TJPA, the City and MTC. Additionally, following an amendment of the bylaws of the TJPA, an intergovernmental agreement with the TJPA and the Department of Public Works for construction management and oversight services is pending approval at the TJPA Board's next regularly scheduled meeting.

**Financing Timeline:**

**Milestones:**

	<u>Dates*:</u>
Consideration by Capital Planning Committee	April 11
Board Introduction of Interim Financing	April 12
Consideration by MTC (Bay Area Toll Authority Oversight Committee)	April 13
TJPA Board Approval	April 14
Board Introduction of Block 4 Option Agreement	April 19

Budget & Finance Committee Hearing	April 20
Board Approval of Resolution and 1 <sup>st</sup> Reading of Appropriation Ordinance	April 26
Final Board Approval (2 <sup>nd</sup> Reading)	May 3
Land Use Committee Hearing (Block 4 Option Agreement)	May 16
Board Approval of Block 4 Option Agreement	May 24
Closing of Sale of Parcel F	May/June
Short-Term Certificates Closing	June 30

\*Please note that dates are preliminary and may change.

**Additional Information:**

The related financing documents—including the Trust Agreement, Certificate Purchase Agreements, Site Lease, Sublease, Leaseback Lease, Train Box-Site Lease, Delivery and Paying Agent Agreement, Commercial Paper Dealer Agreement and Callable Commercial Paper Dealer Agreement—will also be submitted.

Your consideration of this matter is greatly appreciated. Please contact Ben Rosenfield or Nadia Sesay at 415-554-7500 if you have any questions.

CC: Angela Calvillo, Clerk of the Board of Supervisors  
Harvey Rose, Budget and Legislative Analyst  
Nicole Elliott, Director of Legislative & Government Affairs  
Melissa Whitehouse, Acting Mayor's Budget Director  
Mark Blake, Deputy City Attorney  
Steve Heminger, MTC Executive Director  
Brain Mayhew, MTC Chief Finance Officer  
Greg Harper, TJPA Board Chair  
Ed Reiskin, TJPA Board Member  
Maria Kaplan-Ayerdi, TJPA Executive Director  
Sara DeBord, TJPA Chief Finance Officer

CITY AND COUNTY OF FRANCISCO  
Commercial Paper Certificates

COMMERCIAL PAPER DEALER AGREEMENT

Dated: \_\_\_\_\_

[Name of Dealer]

[Address]

[Address]

Ladies and Gentlemen:

The City and County of San Francisco (the "City") proposes to cause the execution and delivery of Commercial Paper Certificates (as defined below) from time to time, and in connection therewith, proposes to enter into this agreement (this "Dealer Agreement") with [Name of Dealer], as a co-Dealer (the "Dealer") for the Commercial Paper Certificates.

1. Definitions.

(a) "Commercial Paper Certificates" means the City and County of San Francisco Lease Revenue Commercial Paper Certificates executed and delivered as Tax Exempt Commercial Paper Certificates and/or Taxable Commercial Paper Certificates, in an aggregate authorized principal amount as determined by the City and to be sold by the Dealer or any co-Dealer from time to time and executed and delivered from time to time in Authorized Denominations and with maturities of 270 days or less in the form of (i) certificated certificates substantially in the forms attached to the Trust Agreement or (ii) book-entry obligations evidenced by a Master Note substantially in the forms attached to the Trust Agreement and registered in the name of DTC or its Nominee. (b) "Reimbursement Agreements" has the meaning given in the Trust Agreement.

(b) "Delivery and Paying Agent Agreement" means the Second Amended and Restated Delivery and Paying Agent Agreement, dated as of April 1, 2013, by and between the City and Deutsche Bank National Trust Company, as issuing and paying agent (the "Delivery and Paying Agent"), relating to the Commercial Paper Certificates, as such agreement may be modified, amended or otherwise supplemented from time to time. Any other defined terms used and not defined herein shall have the meanings given to them in the Reimbursement Agreements or, if not defined therein, in the Trust Agreement.

(c) "Offering Memorandum" means the offering memoranda for the Commercial Paper Notes.

(d) "Reimbursement Agreements" has the meaning given in the Trust Agreement.

(e) "Trust Agreement" means the Trust Agreement, dated as of [June] 1, 2016, by and between the City and \_\_\_\_\_, as trustee (the "Trustee"), relating to the Commercial Paper Certificates, as such agreement may be modified, amended or otherwise supplemented from time to time.

2. Appointment; Sale, Execution and Delivery of Commercial Paper Certificates.

(a) Subject to the terms and conditions herein, the City hereby appoints [Name of Dealer], as a co-Dealer for the Commercial Paper Certificates, and [Name of Dealer] hereby accepts such appointment. [Name of Dealer], as a co-Dealer, acknowledges that the City has appointed, and may from time to time appoint, other co-Dealers for the Commercial Paper Certificates. The Dealer hereby agrees to use its best efforts to solicit purchases of the Commercial Paper Certificates. If the Dealer is unable to find purchasers for the Commercial Paper Certificates allocated to it and the City does not reallocate such Commercial Paper Certificates to another Dealer, at its discretion the Dealer may (but is not obligated to) purchase such Commercial Paper Certificates for its own account, with the principal amount of Commercial Paper Certificates to be purchased, the interest rate or yield applicable thereto and the maturity thereof determined by negotiation and agreement between the Dealer and the City. The parties hereby agree that the City has and shall have no obligation to sell Commercial Paper Certificates to the Dealer and the Dealer shall have no obligation to purchase the Commercial Paper Certificates from the City unless and until any such purchase is agreed to by the Dealer and the City from time to time in accordance with the terms hereof. The parties hereto agree that in any case where the Dealer purchases Commercial Paper Certificates from the City, or arranges for the sale of Commercial Paper Certificates by the City, such Commercial Paper Certificates will be purchased or sold by the Dealer in reliance on the representations, warranties, covenants and agreements of the City contained herein or made pursuant hereto and on the terms and conditions and in the manner provided herein.

(b) The City will pay the Dealer a fee for each purchase of Commercial Paper Certificates by the Dealer or sale of Commercial Paper Certificates arranged by the Dealer on behalf of the City, at a rate of \_\_\_\_\_ ( ) basis points per annum for the Commercial Paper Certificates (computed on the average daily balance outstanding on the basis of a 365 or 366 day year). Such fee will be payable by the City quarterly in arrears upon presentation of a statement by the Dealer on the 1st day of [January, April, July and October], commencing on [ ] 1, 20[ ].

(c) Pricing scales for the marketing of all Commercial Paper Certificates shall be established by consensus reached between the City and the Dealer.

(d) With respect to all Commercial Paper Notes marketed by the Dealer or purchased for the Dealer's own account, the Dealer will provide to the City and the Delivery and Paying Agent no later than 1:00 p.m. on the date the Commercial Paper Certificates are to be issued the following trade information: (i) the amount of such Commercial Paper Certificates maturing on that date and (ii) the amount of such Commercial Paper Certificates sold, and with respect to such Commercial Paper Certificates sold, the proposed final maturities, prices and interest rates or yields and CUSIP number of such Commercial Paper Certificates, and whether such Commercial Paper Notes are Tax Exempt Governmental Commercial Paper Notes or Taxable Commercial Paper Notes, interest bearing or sold at a discount, and whether sold at a public or private sale. This trade information will be delivered to the Authorized Representative and the Issuing and Paying Agent through an electronic communication reporting platform utilized by the Issuing and Paying Agent.

(e) The Dealer shall pay the Delivery and Paying Agent for the Commercial Paper Certificates sold by the Dealer (or purchased by the Dealer for its own account) in immediately available funds by no later than 2:15 p.m. on the Business Day such Commercial Paper Certificates are delivered to the Dealer (provided that such Commercial Paper Certificates are to be delivered to the Dealer by no later than 2:45 p.m. on such Business Day). All Tax Exempt



Governmental Commercial Paper Certificates will be sold at par, and Taxable Commercial Paper Certificates may be sold either at a discount or at par; provided that Taxable Commercial Paper Certificates that are Callable Commercial Paper Certificates shall only be sold at par (and not sold at a discount). All Commercial Paper Certificates will be evidenced by one or more global Master Notes immobilized with The Depository Trust Company, New York, New York or will be executed and delivered in the manner provided for in the Trust Agreement and the Delivery and Paying Agent Agreement.

3. Representations and Warranties of the City.

The City represents and warrants that:

(a) The Commercial Paper Certificates have been duly authorized and, when executed and delivered as provided in the Delivery and Paying Agent Agreement and paid for, will be duly and validly issued and delivered and will constitute legal, valid and binding obligations of the City.

(b) The City is a chartered city and county duly organized and validly existing under the laws of the State of California and has all requisite power and authority to execute, deliver and perform its obligations under this Dealer Agreement, the Delivery and Paying Agent Agreement, the Trust Agreement and any other agreements executed and delivered by the City in connection with the executed and delivered of the Commercial Paper Certificates (the "Financing Documents").

(c) The Financing Documents have been duly authorized, executed and delivered by the City and constitute legal, valid and binding obligations of the City, enforceable against the City in accordance with their terms, except to the extent enforceability may be limited by the City's bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, and by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(d) There are no consents, authorizations or approvals of, or filings with, any Federal or state government authority (other than the City) required in connection with the issuance or sale by the City of the Commercial Paper Certificates or the performance of its obligations thereunder except as may be required by state securities laws and those which have already been obtained or made.

(e) The execution, delivery and performance by the City of the Commercial Paper Certificates and the Financing Documents will not result in a breach or violation of, conflict with, or constitute a default under any law, regulation, order, judgment, agreement or instrument to which the City is a party or by which the City or any of its property is bound.

(f) Each delivery of Commercial Paper Certificates to the Dealer shall be deemed a representation and warranty by the City, as of the date thereof, that (i) the Commercial Paper Certificates issued on such date have been duly authorized, issued and delivered and, upon payment therefor, will constitute legal, valid and binding obligations of the City, enforceable against the City in accordance with their terms, and (ii) the representations and warranties of the City set forth in paragraphs (b) through (e) of this Section 3 are true and correct as if made on such date.

4. Covenants and Agreements of the City.

The City covenants and agrees that:

(a) The City will give the Dealer notice forthwith of the occurrence of (i) any Events of Default or (ii) any event which, with notice or lapse of time or both, could become an Event of Default if, in any case set forth in (ii) that requires notice, such notice has been received by the City.

(b) The City will comply with the requirements set forth in, and will provide the Dealer with any notices or instructions required by, Section 7.13 of the Trust Agreement.

(c) The City will not permit to become effective any amendment to or modification of the Financing Documents which could reasonably be expected to affect adversely the interests of the Owner of any Commercial Paper Certificates then Outstanding. The City will give the Dealer notice of any material amendment to or modification of the Financing Documents prior to the effective date thereof.

(d) The City will provide, upon the request of the Dealer, all currently available public financial information and all final offering documents prepared in connection with any offering or sale of securities by the City. The City further agrees to notify the Dealer promptly upon the occurrence of any event that would render any material fact disclosed in any financial or other report or document provided by the City hereunder untrue or misleading in any material respect.

(e) The City will not sell Commercial Paper Certificates to the Dealer hereunder in the event that opinions from Special Counsel delivered in connection with the initial execution and delivery of the Commercial Paper Certificates have been withdrawn, adversely modified or retracted.

(f) The City will take all action within its control necessary to maintain the exclusion of interest on the Tax Exempt Lease Revenue Certificates from the gross income of the Owners thereof for Federal income tax purposes.

(g) The City will notify the Dealer of the replacement or substitution of any LC Bank in accordance with Section 7.02 of the Trust Agreement.

5. Conditions Precedent.

At or promptly following the execution of this Dealer Agreement and as a condition precedent to any obligations of the Dealer hereunder, the City shall furnish to the Dealer the following documents, in form and substance satisfactory to the Dealer:

(a) Certified copies of the Trust Agreement, the Delivery and Paying Agent Agreement and documents authorizing the execution and delivery of this Dealer Agreement.

(b) An opinion of Special Counsel to the City substantially in the form of Appendix A to the Offering Memorandum for the Commercial Paper Certificates.

(c) All other pertinent legal documents supporting this transaction.

6. Miscellaneous.

(a) The representations and warranties of the City contained herein shall survive the delivery of the Commercial Paper Certificates and shall remain in full force and effect regardless of any termination or cancellation of this Dealer Agreement or any investigation made by or on behalf of any party hereto.

(b) All notices required under the terms and provisions hereof shall be in writing, given in person, by mail (postage prepaid), electronically or by facsimile, and any such notice shall be effective when received at the address specified below (or at such other address as such recipient may designate from time to time by notice to the other party):

If to the City: City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place,  
Room 316  
San Francisco, California 94102  
Attention: City Controller

If to the Dealer: [Name of Dealer]  
[Address]  
[Address]

(c) This Dealer Agreement shall be governed by and construed in accordance with the laws of the State of California.

(d) The terms of this Dealer Agreement shall not be waived, altered, modified, amended or supplemented in any manner whatsoever except by written instrument signed by each of the parties hereto.

(e) If any provision of this Dealer Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering any other provision or provisions of this Dealer Agreement invalid, inoperative or unenforceable to any extent whatsoever.

(f) This Dealer Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

(g) Unless otherwise expressly stated, all times referred to in this Dealer Agreement shall be New York City time.

(a) This Dealer Agreement shall become effective on the date hereof and shall continue in full force and effect until the cessation of the Commercial Paper Certificates program, subject to the right of termination as provided herein. This Dealer Agreement may be cancelled by the Dealer or the City at any time on written notice. To be effective, such written notice must be given, except as provided below, no less than sixty (60) days prior to such cancellation date if cancelled by the Dealer and no less than one day prior to such cancellation date if cancelled by the City. The Dealer may cancel this Dealer Agreement on thirty (30) day's notice for failure of the City to comply with Section 4(a)(i) and 4(d) of this Dealer Agreement after reasonable notice by the Dealer to the City of its failure to comply and failure of the City to cure such default within a reasonable time period thereafter. Upon cancellation of this Dealer Agreement, the City shall give immediate written notice to Moody's and Standard & Poor's of the occurrence thereof pursuant to Section 7.05 of the Trust Agreement. The Dealer shall assign and deliver this Dealer Agreement to its successor if requested by the City.

8. No Advisory or Fiduciary Role.

(a) The City acknowledges and agrees that: (a) the transactions contemplated by this Dealer Agreement are arm's-length commercial transactions between (i) the City and (ii) the Dealer; (b) the Dealer is acting solely as a co-Dealer for the Commercial Paper Certificates and as a principal in connection with the matters contemplated by and all communications under this Dealer Agreement, and is not acting as the agent or fiduciary or Municipal Advisor (as defined in Section 158 of the Securities and Exchange Act of 1934) of the City and its advisors in connection with the matters contemplated by this Dealer Agreement; and (c) the Dealer has financial and other interests that differ from those of the City.

9. City Requirements.

Additional requirements of the City with respect to this Dealer Agreement are attached as Exhibit A and are incorporated by reference herein, and, by executing this Trust Agreement, the Trustee is agreeing to comply with those provisions.

[The remainder of this page intentionally left blank]

If you agree with the foregoing, please indicate your acceptance below, whereupon this letter shall become a binding agreement between the Dealer and the City as of the day and year first above written.

Very truly yours,

CITY AND COUNTY OF SAN FRANCISCO

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

Accepted and agreed:

[NAME OF DEALER]

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



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**TRUST AGREEMENT**

**Dated as of [June 1, 2016]**

**by and between**

**CITY AND COUNTY OF SAN FRANCISCO**

**and**

**U.S. BANK NATIONAL ASSOCIATION, as Trustee**

**Relating to**

**City and County of San Francisco Lease Revenue Certificates**

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## TRUST AGREEMENT

This **TRUST AGREEMENT**, dated as of [June 1, 2016] (as amended, supplemented or modified from time to time, the "**Trust Agreement**"), between the **CITY AND COUNTY OF SAN FRANCISCO**, a charter city and county organized and existing under the laws of the State of California (the "**City**"), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States (the "**Trustee**").

### BACKGROUND:

1. The City has determined to adopt and implement a program under which the City will provide a portion of the financing for the new Transbay Transit Center and related improvements (collectively, the "**Projects**") and, in connection therewith, desires to deliver certain short-term lease revenue certificates of participation (the "**Lease Revenue Certificates**").

2. Concurrently herewith, the City and the Trustee will enter into a Site Lease, dated as of the date hereof (as amended, supplemented or modified from time to time, the "**Site Lease**"), under which the Trustee will lease from the City certain Property (as defined therein) located in the City, including the buildings and improvements thereon owned by the City.

3. Concurrently herewith, the City and the Trustee will enter into a Sublease, dated as of the date hereof (as amended, supplemented or modified from time to time, the "**Sublease**"), under which the City will sublease the Property from the Trustee in furtherance of the City's public purposes.

4. The City has determined to enter into this Trust Agreement in order to provide for the authentication and delivery of the Lease Revenue Certificates, to establish and declare the terms and conditions upon which the Lease Revenue Certificates will be delivered and secured, and to secure the payment of the principal and interest with respect thereto.

5. The City will execute and deliver the Lease Revenue Certificates, evidencing proportionate interests in all of the rights of the Trustee under the Sublease, including the right to receive Base Rental payments payable thereunder, and will undertake such other responsibilities as are assigned to the Trustee under this Trust Agreement.

6. The City has determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Trust Agreement do exist, have happened and have been performed in due time, form and manner as required by law, and the parties hereto are duly authorized to execute and enter into this Trust Agreement.

### PLEDGE:

**NOW, THEREFORE**, in consideration of the premises, of the acceptance by the Trustee of its duties hereby imposed, and of the purchase and acceptance of the Lease Revenue Certificates by the Owners thereof, the receipt and adequacy of which are hereby acknowledged, and to secure the payment of all of the Lease Revenue Certificates at any time executed and delivered and Outstanding hereunder and the interest thereon according to their tenor, purport and effect, to secure the obligations of the City to the Credit Providers under each

Credit Provider Agreement and to secure the performance and observance of all of the covenants, agreements and conditions contained therein, herein and in the Site Lease and the Sublease, there is hereby pledged, for the benefit of the Owners and the Credit Providers, unto the Delivery and Paying Agent, the Trustee and the Credit Providers, and granted to the Delivery and Paying Agent (as defined herein), the Trustee and the Credit Providers a security interest in and lien on, all its right, title and interest in and to: (i) the Site Lease; (ii) the Sublease (except for its right to payment of expenses of the City under Section 3.1(g) of the Sublease, its right to indemnification under Section 11 of the Sublease and its right to receive notices under Section 15 of the Sublease), including the right to enforce remedies under the Sublease and all revenues, issues, income, rents, royalties, profits and receipts derived or to be derived by the Trustee from or attributable to the sublease of the Property to the City including all revenues attributable to the sublease of the Property or to the payment of the costs thereof received or to be received by the City under the Sublease or any part therefor any contractual arrangement with respect to the use of the Property, including the payment of Base Rental thereunder; (iii) the proceeds of any insurance, including the proceeds of any self-insurance covering loss relating to the Property; (iv) all amounts on hand from time to time in the funds and accounts established hereunder (other than the Excess Earnings Account of the Earnings Fund), provided that the proceeds of the sale of a Series of Commercial Paper Certificates on deposit in any such fund or account shall not secure any other Series of Lease Revenue Certificates and the proceeds of any drawing or payment under a Credit Facility for a Series or any Advance under a Direct Placement Revolving Credit Agreement of a Series shall not secure any other Series of Lease Revenue Certificates; (v) all proceeds of rental interruption insurance policies carried with respect to the Property pursuant to the Sublease or in accordance with this Trust Agreement; and (vi) any additional moneys or amounts that may from time to time, by delivery or by writing of any kind, be subjected to the lien hereof by the City or by anyone on its behalf, subject only to the provisions of this Trust Agreement, the Site Lease and the Sublease (clauses (i), (ii), (iii), (iv), (v) and (vi) of this sentence, collectively, the "Pledged Property").

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS TRUST AGREEMENT WITNESSETH:**

## ARTICLE I

### APPOINTMENT OF TRUSTEE; DEFINITIONS

**Section 1.01. Appointment of Trustee.** The Trustee is hereby appointed and employed to act solely as set forth herein, to receive, hold and disburse in accordance with the terms hereof the moneys to be paid to it, to apply and disburse payments received pursuant to the Sublease to the Owners of such Lease Revenue Certificates or the Credit Providers, as applicable, and to perform certain other functions, all as hereinafter provided. By executing and delivering this Trust Agreement, the Trustee accepts the duties and obligations provided herein, but only upon the terms and conditions herein set forth.

**Section 1.02. Definitions.** Unless the context otherwise requires, the terms defined in this Section 1.02 shall, for all purposes of this Trust Agreement, have the meanings set forth below. All other capitalized terms used herein without definition shall have the meanings given to such terms in the Sublease.

"**Additional Property**" has the meaning assigned to such term in Section 8.02 hereof.

"**Additional Rental**" means the amounts specified as such in Section 3.1(g) of the Sublease.

"**Additional Series**" means the Series of Lease Revenue Certificates executed and delivered pursuant to a Supplemental Trust Agreement.

"**Administrative Expense Account**" means the account of that name established within the Lease Revenue Payment Fund pursuant to Section 4.05 hereof.

"**Advance**" means (i) with respect to a Credit Facility, each advance or loan (whether a revolving loan or term loan) of funds made under and subject to the provisions contained in such Credit Facility or the related Reimbursement Agreement, as applicable, and (ii) with respect to a Direct Placement Revolving Credit Agreement, each advance or loan (whether a revolving loan or term loan) of funds made under and subject to the provisions contained in such Direct Placement Revolving Credit Agreement.

"**Alternate LC Bank**" means a provider or providers of an Alternate Credit Facility.

"**Alternate Credit Facility**" means an irrevocable letter of credit, a line or lines of credit, a noncancellable insurance policy or other credit facility provided by an Alternate LC Bank to facilitate the payment of a Series of Commercial Paper Certificates in accordance with the provisions of Section 7.02 hereof, as such alternate credit facility may be amended or supplemented from time to time.

"**Assumed Interest Rate**" means for purposes of each Base Rental Period, the lesser of (a) the Maximum Interest Rate, (b) with respect to Tax Exempt Commercial Paper Certificates, 125% of, (1) the amount of interest accrued with respect to such Tax Exempt Commercial Paper Certificates during the 12 months ended on the July 1 preceding the commencement of such Base Rental Period, divided by (2) the average daily balance of principal amount of such Tax Exempt Commercial Paper Certificates Outstanding during the 12 months ended on the July 1 preceding the commencement of such Base Rental Period, or (c) with respect to Taxable Commercial Paper Certificates, 125% of, (1) the amount of interest accrued with respect to such

Taxable Commercial Paper Certificates during the 12 months ended on the July 1 preceding the commencement of such Base Rental Period, divided by (2) the average daily balance of principal amount of such Taxable Commercial Paper Certificates Outstanding during the 12 months ended on the July 1 preceding the commencement of such Base Rental Period;

provided however, that the City may establish a rate that is higher than 125% of the Base Rental allocable to the prior Base Rental Period and less than the Maximum Interest Rate, if, in the City's judgment, it is prudent to do so;

(b) with respect to outstanding Advances, if any, evidenced by Revolving Certificates, the applicable rate set forth in the applicable Reimbursement Agreement; and

(c) with respect to outstanding Advances, if any, evidenced by Direct Placement Revolving Certificates, shall have the meaning ascribed thereto in the related Direct Placement Revolving Credit Agreement; provided however, that the City may establish a rate that is higher than 125% of the Base Rental allocable to the prior Base Rental Period and less than the Maximum Interest Rate, if, in the City's judgment, it is prudent to do so.

**"Authorized Denomination"** means \$100,000 and integral multiples of \$1,000 in excess thereof.

**"Authorized Representative"** means the Controller of the City, the Director of Public Finance of the City, the Public Finance Manager of the City, or another official designated by any such officer and authorized to act on behalf of the City under or with respect to this Trust Agreement and all other agreements related hereto.

**"Bank Reimbursement Account"** means the account of that name established within the Delivery and Paying Agent Fund pursuant to Section 4.06 hereof.

**"Base Rental"** means the amounts specified as such in Section 3.1(a) of the Sublease, as such amounts may be adjusted from time to time in accordance with the terms of the Sublease, but does not include Additional Rental.

**"Base Rental Account"** means the account of that name established within the Lease Revenue Payment Fund pursuant to Section 4.05 hereof.

**"Base Rental Payment Date"** means each July 1 commencing July 1, 2017, during the Sublease Term.

**"Base Rental Period"** means the period between one Base Rental Payment Date and the next Base Rental Payment Date; provided that the first Base Rental Period shall commence on \_\_\_\_\_, 2016 and end on June 30, 2017.

**"Business Day"** means any day other than (i) a Saturday or Sunday or a day on which banking institutions are authorized or required by law or executive order to be closed in the State for commercial banking purposes; (ii) a day on which the New York Stock Exchange is authorized or required by law or executive order to be closed; (iii) with respect to Certificates, a day upon which commercial banks are authorized or required by law or executive order to be closed in the cities and states in which demands for payment may be presented under the Credit Facilities supporting the repayment of the Commercial Paper Certificates; and (iv) with respect to Advances to the City under a Direct Placement Revolving Credit Agreement, a day

upon which the applicable Direct Placement Bank is authorized or required by law or executive order to be closed in the cities and states in which demands for Advances may be presented (and in certain circumstances, a day upon which certain requests may be made by the City or when interest rates may be determined by the Direct Placement Bank with respect to the making of, continuation of, conversion of and prepayment of Advances) under the Direct Placement Revolving Credit Agreements.

**"Call Exercise Period"** means, with respect to any Callable Commercial Paper Certificates, the period commencing on and including the 35th day immediately preceding the maturity date of such Callable Commercial Paper Certificates though and including the Business Day immediately preceding such maturity date.

**"Call Option"** with respect to any Callable Commercial Paper Certificates, shall mean the right of the City to redeem such Callable Commercial Paper Certificates prior to maturity, in whole but not in part, on the Redemption Date at the Redemption Price of such Callable Commercial Paper Certificates.

**"Call Option Exercise Notice"** with respect to any Callable Commercial Paper Certificates, shall mean a written notice, given by or on behalf of the City to the Delivery and Paying Agent on any Business Day at least two (2) Business Days but not more than ten (10) Business Days prior to the designated Redemption Date described therein, of the City's election to exercise the Call Option with respect to such Callable Commercial Paper Certificates.

**"Callable Commercial Paper Certificates"** means Commercial Paper Certificates designated by the City in written instructions of an Authorized Representative, pursuant to Section 2.15(a) hereof or designated by a Dealer on behalf of the City pursuant to the last paragraph of Section 2. 15(a) hereof, to be subject to a Call Option by the City pursuant to Section 2. 15(a) hereof.

**"Capitalized Fees Account"** means the account of that name established within the Project Fund pursuant to Section 4.04 hereof.

**"Capitalized Interest Account"** means the account of that name established within the Project Fund pursuant to Section 4.04 hereof.

**"Category"** means one of the following categories of Lease Revenue Certificates: (i) Certificates; and (ii) Direct Placement Revolving Certificates.

**"Certificate"** means any Commercial Paper Certificate or Revolving Certificate, and **"Certificates"** means the Commercial Paper Certificates and the Revolving Certificates.

**"City"** means the City and County of San Francisco.

**"Closing Date"** means the first date on which Lease Revenue Certificates are executed and delivered hereunder by the City.

**"Code"** means (the Internal Revenue Code of 1986, as amended, including regulations, rulings and judicial decisions promulgated thereunder.

**"Commercial Paper Certificates"** means, collectively, (a) any Tax Exempt Commercial Paper Certificates, (b) any Taxable Commercial Paper Certificates, and (c) the City and County

of San Francisco Lease Revenue Commercial Paper Certificates of Participation of any Additional Series. Any Commercial Paper Certificates described in the preceding sentence designated to be subject to a Call Option by the City pursuant to Section 2.15(a) hereof shall be further designated as Callable Commercial Paper Certificates.

**"Commercial Paper Certificates Payment Account"** means the account of that name established within the Delivery and Paying Agent Fund pursuant to Section 4.06 hereof.

**"Costs of Issuance"** means all the costs of preparing, executing and delivering the Lease Revenue Certificates and other costs related to the financing provided thereby, including, but not limited to, all printing and document preparation expenses in connection with this Trust Agreement, the Site Lease, the Sublease, the Lease Revenue Certificates and any offering materials pertaining to the Commercial Paper Certificates; rating agency fees; CUSIP Service Bureau charges; consultant fees; market study fees; title insurance and appraisal fees; legal fees and expenses of counsel; any computer and other expenses incurred in connection with the execution and delivery of the Lease Revenue Certificates; the initial fees and expenses of the Trustee and the Delivery and Paying Agent (including, without limitation, origination fees and first annual fees payable in advance); and other costs, fees and expenses incurred in connection with the execution and delivery of the Lease Revenue Certificates or the implementation of the financing provided thereby, to the extent such fees and expenses are approved by an Authorized Representative.

**"Costs of Issuance Fund"** means the account of that name established pursuant to Section 4.08 hereof.

**"Credit Facility"** means (a) any irrevocable letter of credit, a line or lines of credit, a noncancellable insurance policy or other credit facility provided by an LC Bank to facilitate the payment of Commercial Paper Certificates of a Series and (b) any Alternate Credit Facility.

**"Credit Provider"** means any LC Bank or any Direct Placement Bank.

**"Credit Provider Agent"** has the meaning assigned to that term in Section 9.03(d) hereof.

**"Credit Provider Agreement"** means any Reimbursement Agreement or any Direct Placement Revolving Credit Agreement.

**"Dealer"** with respect to each Series of Commercial Paper Certificates, any dealer or any co-dealer appointed by the City in its discretion, or any successor, alternate or additional dealer or co-dealer appointed by the City in its discretion with respect to the Commercial Paper Certificates of such Series.

**"Dealer Agreement"** means, as applicable each dealer agreement entered into with respect to any Additional Series of Commercial Paper Certificates, as it may be amended, supplemented or otherwise modified from time to time, or any dealer agreement with a substitute, alternate, additional or successor dealer or dealers.

**"Delivery and Paying Agent"** means, initially U.S. Bank National Association, acting as the agent of the Trustee, or any successor trustee appointed pursuant to Article V hereof or any other issuing and paying agent appointed pursuant to Article VI hereof.



**"Delivery and Paying Agent Agreement"** means the Delivery and Paying Agent Agreement, if any, between the City and the Delivery and Paying Agent.

**"Delivery and Paying Agent Fund"** means the fund of that name established pursuant to Section 4.06 hereof.

**"Depository"** means DTC or if (a) the Depository resigns from its functions as securities depository of the Commercial Paper Certificates, or (b) the City discontinues use of the Depository pursuant to Section 2.09 hereof, any other securities depository which agrees to follow procedures required to be followed by a securities depository in connection with the Commercial Paper Certificates and which is selected by the City with the consent of the Trustee.

**"Direct Placement Bank"** means, as applicable, (a) the Series A Direct Placement Bank, and (b) any other provider obligated to make Advances to the City under a Direct Placement Revolving Credit Agreement evidenced by one or more Direct Placement Revolving Certificate(s) executed and delivered as an Additional Series pursuant to the provisions of this Trust Agreement.

**"Direct Placement Revolving Credit Agreement"** means, as applicable, (a) the Series A Direct Placement Revolving Credit Agreement, and (b) any other revolving credit agreement and related fee letter agreement entered into among the City and a Direct Placement Bank providing for Advances made by such Direct Placement Bank to the City evidenced by one or more Direct Placement Revolving Certificate(s) executed and delivered as an Additional Series pursuant to the provisions of this Trust Agreement.

**"Direct Placement Revolving Certificates"** means, as applicable, (a) the Series A Direct Placement Revolving Certificates, and (b) one or more other promissory notes executed and delivered as an Additional Series pursuant to the provisions of this Trust Agreement evidencing Advances made by a Direct Placement Bank to the City pursuant to a Direct Placement Revolving Credit Agreement.

**"Direct Placement Revolving Certificates Payment Account"** means the account of that name established within the Lease Revenue Payment Fund pursuant to Section 4.05 hereof.

**"DTC"** means The Depository Trust Company, New York, New York, and its successors and assigns.

**"Earnings Fund"** means the fund of that name established pursuant to Section 4.07 hereof.

**"Electronic Notice"** means notice transmitted through a time-sharing terminal, by facsimile transmission, by email or by telephone (promptly confirmed in writing or by facsimile transmission), or, with respect to notices to the Depository, a written notice transmitted electronically by email to the email address provided by the Depository in accordance with the DTC Operational Arrangements, as amended from time to time, or the operational arrangements of any successor Depository.

**"EMMA"** means the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System, or any successor thereto.

**"Event of Default"** has the meaning assigned to such term in Section 9.01.

**"Excess Earnings Account"** means the account of that name established within the Earnings Fund pursuant to Section 4.07 hereof.

**"Excess Earnings Subaccount"** means each subaccount established within the Earnings Account of the Earnings Fund pursuant to Section 4.07 hereof.

**"Failed Remarketing"** means, with respect to any Callable Commercial Paper Certificates for which a Call Option Exercise Notice has been given by or on behalf of the City, the failure of the applicable Dealer to find purchasers for new Callable Commercial Paper Certificates (or if directed by the City, new Commercial Paper Certificates that are not subject to a Call Option), the proceeds of which will be used to pay the Redemption Price of the existing Callable Commercial Paper Certificates proposed to be redeemed, in accordance with the terms of the applicable Dealer Agreement, this Trust Agreement and any direction from the City for all Callable Commercial Paper Certificates subject to redemption on the designated Redemption Date as described in the related Redemption Notice and to provide notice to the Delivery and Paying Agent of the relevant issuance terms thereof, by 1:00 P.M. on the Business Day immediately preceding such designated Redemption Date.

**"Failed Settlement"** means, with respect to any Callable Commercial Paper Certificates for which a Call Option Exercise Notice has been given by or on behalf of the City, moneys sufficient to pay the Redemption Price of such Callable Commercial Paper Certificates subject to redemption are not on deposit with the Delivery and Paying Agent by 12:30 P.M. on such designated Redemption Date.

**"Final Drawing Notice"** has the meaning set forth in the related Credit Facility.

**"Fitch"** means Fitch Ratings, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, except that if such corporation shall no longer perform the functions of a securities rating agency for any reason, the term **"Fitch"** shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

**"Funding Commitment"** means, with respect to an LC Bank, the then available stated amount of its respective Credit Facility plus the principal amount of Advances evidenced by its Revolving Certificate and, with respect to a Direct Placement Bank, the then available commitment of such Direct Placement Bank under its Direct Placement Revolving Credit Agreement plus the principal amount of Advances evidenced by its Direct Placement Revolving Certificates.

**"Government Obligations"** means (a) direct obligations issued by the United States Treasury; (b) noncallable obligations of a state, a territory or a possession of the United States of America, or any political subdivision of any of the foregoing, or of the District of Columbia, within the meaning of Section 103(c) of the Code, which are rated AAA by S&P and Aaa by Moody's and which are not guaranteed directly or indirectly by direct or indirect obligations of the United States of America within the meaning of Section 149(b) of the Code; (c) noncallable obligations guaranteed by the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage City or the Government National Mortgage Association; or (d) such other federal securities rated AAA by S&P and Aaa by Moody's as may be permitted under

regulations issued pursuant to Section 149(b) of the Code which, in the opinion of Special Counsel, will not impair the exclusion from gross income for federal income tax purposes of interest with respect to any Tax Exempt Lease Revenue Certificates.

**"Investment Earnings"** means interest received in respect of the investment of moneys on deposit in any fund or account maintained hereunder.

**"Investment Earnings Account"** means the account of that name established within the Earnings Fund pursuant to Section 4.07 hereof.

**"Investment Earnings Subaccount"** means each subaccount of that name established within the Earnings Fund pursuant to Section 4.07 hereof.

**"LC Banks"** means, collectively, each LC Bank.

**"LC Bank"** means any issuer of a Credit Facility for a Series of Commercial Paper Certificates, or any Alternate LC Bank issuing the Credit Facility.

**"Lease Revenue Certificate"** means any Commercial Paper Certificate, any Revolving Certificate or any Direct Placement Revolving Certificate, and **"Lease Revenue Certificates"** means the Commercial Paper Certificates, the Revolving Certificates and the Direct Placement Revolving Certificates. A Series of Lease Revenue Certificates consisting of Commercial Paper Certificates shall also include the related Revolving Certificates.

**"Master Certificate"** means, collectively, the Tax Exempt Master Certificate and the Taxable Master Certificate.

**"Maximum Interest Rate"** means [12]% per annum.

**"Maximum Lawful Rate"** means the maximum rate of interest with respect to the relevant obligations permitted by applicable law.

**"Maximum Principal Amount"** means, as of any date of calculation, the greatest principal amount of indebtedness which, if it bore interest at the Maximum Interest Rate and principal and such interest were payable annually on the first day of each Base Rental Period (commencing on the first day of the first Base Rental Period to commence after the date of calculation), could be fully retired from amounts then payable by the City as Maximum Base Rental (adjusted for any abatement pursuant to Section 3.5 of the Sublease) during the remaining term of the Sublease.

**"Moody's"** means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, except that if such corporation shall no longer perform the functions of a securities rating agency for any reason, the term **"Moody's"** shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

**"Non-Issuance Notice"** means a notice from the LC Bank to the Delivery and Paying Agent not to issue any additional Commercial Paper Certificates of the applicable Series and (b) in the case of Commercial Paper Certificates of an Additional Series, a notice from the LC Bank or LC Banks that have issued the Credit Facility supporting payment of such Additional Series to

the Delivery and Paying Agent not to issue any additional Commercial Paper Certificates of such Additional Series.

**"Nominee"** means Cede & Co. or such other nominee of the Depository (which may be the Depository) as determined from time to time pursuant hereto.

**"Outstanding"** means, when used as of any particular time with respect to any Lease Revenue Certificate, as the context requires, such Lease Revenue Certificates theretofore executed and delivered by the City under this Trust Agreement, except:

(a) Lease Revenue Certificates theretofore cancelled or delivered to the Delivery and Paying Agent for cancellation and, in all cases, with the intent to extinguish the debt represented thereby; and

(b) Lease Revenue Certificates in lieu of, or in substitution for, which other Lease Revenue Certificates have been executed and delivered under Section 2.06 or 3.08 hereof; and

(c) Lease Revenue Certificates with respect to which all liability of the City shall have been discharged in accordance with Section 11.03 hereof.

**"Outstanding Credit Exposure"** means, as to any Credit Provider at any time, the aggregate principal amount of outstanding Advances evidenced by its Revolving Certificate or Direct Placement Revolving Certificates, as applicable.

**"Owner"** whenever used with respect to a Lease Revenue Certificate, means the Person in whose name such Lease Revenue Certificate is registered on the books of the Trustee; provided, that so long as any Master Certificate is executed and delivered and outstanding, then, with respect to the Commercial Paper Certificates, it means the Depository or its Nominee.

**"Participant"** means a member of, or participant in, the Depository.

**"Permitted Encumbrances"** means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may, pursuant to Section 4.4 of the Sublease, permit to remain unpaid; (ii) the Sublease, as it may be amended from time to time; (iii) the Site Lease, as it may be amended from time to time; (iv) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law or which the City may, pursuant to Section 4.4 of the Sublease, permit to remain unpaid; (v) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions, all of a non-monetary nature, which exist of record as of the Closing Date, or with respect to any property that is added to or substituted for any Component, as of the date any such property is added to or substituted for any such Component, and, in each case, included in the exceptions and exclusions set forth in the title policies delivered pursuant to Section 4.3 of the Sublease; and (vi) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions, all of a non-monetary nature, established following the Closing Date, or with respect to any property that is added to or substituted for any Component, as of the date any such property is added to or substituted for any such Component, and to which the City and the Credit Providers consent in writing.

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

**"Pledged Property"** has the meaning assigned to such term in the pledge clause immediately following the introductory "WHEREAS" clauses of this Trust Agreement.

**"Preliminary Call Option Exercise Notice"** with respect to any Callable Commercial Paper Certificates, shall mean a written notice, given by or on behalf of the City to the Delivery and Paying Agent on any Business Day at least three (3) Business Days but not more than eleven (11) Business Days prior to the designated Redemption Date described therein, of the City's intention to deliver or cause the applicable Dealer to deliver a Call Option Exercise Notice to the Delivery and Paying Agent not later than 11:00 A.M. on the second Business Day prior to the designated Redemption Date described therein.

**"Principal Office of the Trustee"** means the principal corporate trust office of the Trustee located at One California Street, Suite 100, San Francisco, California, 94111, Attention: Corporate Trust Services.

**"Pro Rata Basis"** means, as between Categories of Lease Revenue Certificates, pro rata among Categories based on the aggregate principal amount of such Category of Lease Revenue Certificates Outstanding at such time (and, for Revolving Certificates and Direct Placement Revolving Certificates, based on the aggregate principal amount of outstanding Advances evidenced by such Revolving Certificates or Direct Placement Revolving Certificates, as applicable) and, as between Series of a Category of Lease Revenue Certificates, pro rata among Series based on the aggregate principal amount of such Series of a Category of Lease Revenue Certificates Outstanding at such time (and, for Revolving Certificates and Direct Placement Revolving Certificates, based on the aggregate principal amount of outstanding Advances evidenced by such Series of Revolving Certificates or Direct Placement Revolving Certificates, as applicable).

**"Pro Rata Share"** means, with respect to a Category of Lease Revenue Certificates, a portion equal to a fraction the numerator of which is the maximum aggregate principal amount of such Category of Lease Revenue Certificates permitted to be Outstanding hereunder and the denominator of which is the Maximum Principal Amount; provided however, if the Funding Commitment of a Credit Provider has been terminated in accordance with its Credit Provider Agreement, then the portion of the maximum aggregate principal amount of such Category of Lease Revenue Certificates relating to the Funding Commitment of such Credit Provider shall be based upon such Credit Provider's Outstanding Credit Exposure at such time.

**"Project Costs"** means the costs of the acquisition, construction, development and financing or refinancing of the Projects, and includes, without limitation, the costs of engineering, architectural services, plans, specification, surveys and estimates of costs, the costs of any taxes or assessments paid or to be paid in connection with the transfer of any property related to the capital facilities; the costs of any indemnity or surety bonds or other insurance with respect to the acquisition, construction, development or financing or refinancing of Projects; Costs of Issuance of the Lease Revenue Certificates, including, without limitation, expenses relating to registering or qualifying the Commercial Paper Certificates for distribution in any jurisdiction of the United States, discounts, commissions, financing or refinancing charges and fees and expenses of underwriters, dealers, remarketing agents, rating agencies, attorneys, accountants, advisors and consultants, the premium payable with respect to any

insurance policy with respect to the Lease Revenue Certificates, the costs of audit and any credit enhancement facility; the cost of title insurance; any reimbursement payments to the City or the City; fees and expenses of the Trustee and the Delivery and Paying Agent; the fees and expenses of the Trustee and the Delivery and Paying Agent during construction; and such other costs, whether or not specified herein, as may be necessary or incidental to the acquisition, construction, development or financing or refinancing of the Projects and the placing of the same in operation.

**"Project Fund"** means the fund of that name established pursuant to Section 4.04 hereof.

**"Projects"** means the new Transbay Transit Center and related improvements.

**"Property"** has the meaning assigned to such term in the Sublease.

**"Qualified Investments"** mean with respect to moneys received by the Trustee pursuant to this Trust Agreement, the Site Lease and the Sublease, if and to the extent permitted by law and by any policy guidelines promulgated by the City:

(a) Obligations of, or guaranteed as to principal and interest by, the United States of America, or by any agency or instrumentality thereof when such obligations are backed by the full faith and credit of the United States of America.

(b) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

(i) Farmers Home Administration (FmHA) - Certificates of beneficial ownership;

(ii) Federal Housing Administration Debentures (FHA);

(iii) General Services Administration - Participation certificates;

(iv) Government National Mortgage Association (GNMA or "Ginnie Mae") - guaranteed mortgage backed bonds and GNMA guaranteed pass-through obligations (participation certificates);

(v) U.S. Maritime Administration - Guaranteed Title XI financing;

(vi) U.S. Department of Housing and Urban Development (HUD) - Project notes and local authority bonds; and

(vii) Any other agency or instrumentality of the United States of America;

(c) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit United States of America government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

(i) Federal Home Loan Bank System - Senior debt obligations (consolidated debt obligations);

(ii) Federal Home Loan Mortgage City (FHLMC or "Freddie Mac") - Participation certificates (mortgage-backed securities) and senior debt obligations rated in the highest rating category by Moody's and S&P;

(iii) Fannie Mae - mortgage-backed securities and senior debt obligations (excluding stripped mortgage securities which are valued greater than par on the portion of the unpaid principal) rated in the highest rating category by Moody's and S&P;

(iv) Student Loan Marketing Association (SLMA or "Sallie Mae") - Senior debt obligations;

(v) Resolution Funding Corp. (REFCORP) - Only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form;

(vi) Federal Farm Credit System - Consolidated systemwide bonds and notes; and

(vii) Any other agency or instrumentality of the United States of America;

(d) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, and having a rating by S&P of AAAM-G or AAAM and by Moody's of Aaa;

(e) Certificates of deposit issued by a state or national bank or a state or federal savings and loan; provided that such certificates of deposit will be either (i) continuously and fully insured by the FDIC; or (ii) have a maturity of not greater than 365 days and have the highest short-term letter and numerical ratings of Moody's and S&P;

(f) Savings accounts or money market deposits that are fully insured by FDIC;

(g) Investment Agreements, including guaranteed investment contracts, provided either (i) the long-term unsecured debt or claims ability of the issuer or guarantor thereof is rated in the highest rating category by Moody's and S&P by the terms of which all amounts invested thereunder are required to be withdrawn and paid to the Trustee, without penalty, in the event such rating at any time falls below the highest rating category, or (ii) such agreement is fully collateralized by Government Obligations or Government Certificates;

(h) Commercial paper of "prime" quality rated in the highest rating category by Moody's and S&P, which commercial paper is limited to issuing corporations that are organized and operating within the United States and which matures not more than 270 calendar days after the date of purchase;

(i) Bonds or notes issued by any state or municipality which are rated in the highest rating category by Moody's and S&P;

(j) Federal funds or bank acceptances which are eligible for purchases by members of the Federal Reserve System, drawn on any banks the short-term obligations of which are

rated in the highest rating category by Moody's and S&P; provided that the maturity cannot exceed 270 days;

(k) Repurchase agreements with maturities of either (a) 30 days or less, or (b) less than one year, provided that the collateral is marked-to-market daily, entered into with financial institutions such as banks or trust companies organized under state or federal law, insurance companies, or government bond dealers reporting to, or trading with, and recognized as a primary dealer by, the Federal Reserve Bank of New York and a member of SPIC, or with a dealer or parent holding company that is rated A or better by Moody's and S&P. The repurchase agreement must be in respect of Government Obligations or Government Certificates or obligations described in paragraph (b) herein, which, exclusive of accrued interest, will be maintained at least 100% of par. In addition, repurchase agreements will meet the following criteria: (i) the third party (who may not be the provider of the collateral) has possession of the repurchase securities and the Government Obligations or Government Certificates; (ii) failure to maintain the requisite collateral levels will require liquidation; and (iii) the third party having possession of the securities has a perfected, first priority security interest in the securities; and

(l) Any other debt or fixed income security specified by the City (except securities of the City and any agency, department, commission or instrumentality thereof) and rated in the highest rating category by Moody's and S&P, including prerefunded municipal obligations.

In connection with the purchase of any Qualified Investment, the City may enter into agreements, including forward purchase agreements, with the seller thereof.

**"Rating Agencies"** means Fitch, Moody's and S&P.

**"Redemption Date,"** with respect to any Callable Commercial Paper Certificates, shall mean the Business Day designated as the Redemption Date in the Call Option Exercise Notice, which Redemption Date shall occur during the related Call Exercise Period and be at least two (2) Business Days but not more than ten (10) Business Days following the date of the Delivery and Paying Agent's receipt of the related Call Option Exercise Notice from or on behalf of the City with respect to such Callable Commercial Paper Certificates.

**"Redemption Notice"** with respect to any Callable Commercial Paper Certificates, shall mean notice of redemption of such Callable Commercial Paper Certificates to the respective Owners of such Callable Commercial Paper Certificates as described in Section 2.16 hereof.

**"Redemption Price"** with respect to any Callable Commercial Paper Certificates, shall mean a redemption price equal to the principal amount of such Callable Commercial Paper Certificates.

**"Reimbursement Agreement"** means, collectively, (a) the Reimbursement Agreement and (b) any reimbursement agreement and related fee letter agreement entered into between the City and any LC Bank in connection with the delivery of any Credit Facility supporting the payment of an Additional Series of Commercial Paper Certificates.

**"Rental Payment"**, means all Minimum Required Rental Payments, Minimum Supplemental Rental Payments and Additional Rental payable under the Sublease.

**"Representation Letter"** has the meaning assigned to such term in Section 2.09 hereof.



**"Required Credit Providers"** means Credit Provider in the aggregate having greater than 50% of the Funding Commitments; provided, however, if the Funding Commitment of a Credit Provider has been terminated in accordance with its Credit Provider Agreement, then the Funding Commitment of such Credit Provider shall be based on such Credit Provider's Outstanding Credit Exposure at such time.

**"Required Principal Reduction Amount"** means, as of any date of calculation, the principal amount of Lease Revenue Certificates, if any, that must be paid (and not refunded, re-executed and delivered or remarketed) such that immediately after such retirement the aggregate principal amount of Lease Revenue Certificates Outstanding will not exceed the Maximum Principal Amount as of such date.

**"Revolving Certificate"** means, collectively, (a) any Revolving Certificate and (b) any promissory note or promissory notes executed and delivered pursuant to the provisions of this Trust Agreement and a Reimbursement Agreement in evidence of Advances made by an LC Bank under a Reimbursement Agreement to support the payment of Commercial Paper Certificates of an Additional Series, having the terms and characteristics contained therein and executed and delivered in accordance therewith.

**"S&P"** means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, an entity organized and existing under the laws of the State of New York, its successors and assigns, except that if such corporation shall no longer perform the functions of a securities rating agency for any reason, the term "S&P" shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

**"Securities Depositories"** means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the City may designate in a Written Certificate of the City filed with the Trustee.

**"Series"** means each series of Lease Revenue Certificates, including any Additional Series.

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**"Series A Advance"** means each advance of funds made under and subject to the provisions contained in the Series A Direct Placement Revolving Credit Agreement.

**"Series A Direct Placement Bank"** means, as applicable, Wells Fargo Bank, National Association or any other entity or entities providing credit under a revolving credit agreement and related fee letter agreement in replacement for the Series A Direct Placement Revolving Credit Agreement.

**"Series A Direct Placement Revolving Certificates"** means, collectively (a) the Series A Tax Exempt Direct Placement Revolving Certificate, and (b) the Series A Taxable Direct Placement Revolving Certificate, together constituting a Series of Direct Placement Revolving Certificates.

**"Series A Direct Placement Revolving Credit Agreement"** means the Certificate Purchase Agreement dated as of [June 1, 2016], between the City and the Series A Direct

Placement Bank, together with any related fee letter agreement between the City and the Series A Direct Placement Bank as the same may be amended, supplemented or otherwise modified from time to time, or such other revolving credit agreement and related fee letter agreement executed from time to time in replacement thereof.

**"Series A Tax Exempt Direct Placement Revolving Certificate"** means a Direct Placement Revolving Certificate substantially in the Form attached hereto as Exhibit C-1 evidencing Advances for the purpose of financing Project Costs of the Tax Exempt Projects.

**"Series A Taxable Direct Placement Revolving Certificate"** means a Direct Placement Revolving Certificate substantially in the Form attached hereto as Exhibit C-2 evidencing Advances for the purpose of financing Project Costs of the Taxable Projects and bearing interest which must be included in the gross income of the Owners thereof for federal income tax purposes.

**"Site Lease"** means that certain Site Lease, dated as of the date hereof, by and between the City and the Trustee, including any amendments or supplements thereto made or entered into in accordance with the terms hereof and of the Site Lease.

**"State"** means the State of California.

**"Sublease"** means that certain Sublease, dated as of the date hereof, by and between the Trustee and the City, including any amendments or supplements thereto made or entered into in accordance with the terms hereof and of the Sublease.

**"Special Counsel"** means an attorney or firm of attorneys of recognized national standing in the field of municipal finance selected by the City.

**"Sublease Term"** means the term of the Sublease with respect to the Property as provided in Section 2 thereof.

**"Substituted Property"** has the meaning given to such term in Section 8.02 hereof.

**"Supplemental Trust Agreement"** means any agreement amending or supplementing this Trust Agreement or another Supplemental Trust Agreement.

**"Tax Certificates"** means, collectively, the Certificate as to Arbitrage and the Certificate Regarding Use of Proceeds executed on the Closing Date, including any amendments or supplements thereto, and any other similar certificate of the City executed from time to time in connection with the issuance of any other Tax Exempt Lease Revenue Certificates or Advances evidenced thereby, including any amendments or supplements thereto.

**"Tax Exempt Capitalized Fees Subaccount"** means the subaccount within the Capitalized Fees Account of the Project Fund pursuant to Section 4.04 hereof.

**"Tax Exempt Capitalized Interest Subaccount"** means the subaccount within the Capitalized Interest Account of the Project Fund pursuant to Section 4.04 hereof.

**"Tax Exempt Commercial Paper Certificates"** means any of the Commercial Paper Certificates that bear interest that is excludable from the gross income of the Owners thereof for federal income tax purposes.

**"Tax Exempt Direct Placement Revolving Certificates"** means, as applicable, (a) the Series A Tax Exempt Direct Placement Revolving Certificate and (b) any Direct Placement Revolving Certificates executed and delivered as an Additional Series evidencing Advances for the purpose of financing Project Costs of the Tax Exempt Projects and bearing interest which is excludable from the gross income of the Owners thereof for federal income tax purposes.

**"Tax Exempt Lease Revenue Certificates"** means the Tax Exempt Commercial Paper Certificates, and the Tax Exempt Direct Placement Revolving Certificates.

**"Tax Exempt Master Certificate"** means a Tax Exempt Commercial Paper Certificate substantially in the Form of Exhibit B-1 hereto and registered in the name of the Depository thereof or its Nominee, or any successor or assign.

**"Tax Exempt Project"** means any particular capital project or improvements described in a Tax Certificate or otherwise satisfying the requirements set forth therein as a Tax Exempt Project.

**"Tax Exempt Project Subaccount"** means each subaccount established within the Project Fund in connection with a Tax Exempt Project pursuant to Section 4.04 hereof.

**"Taxable Capitalized Fees Subaccount"** means the subaccount within the Capitalized Fees Account of the Project Fund pursuant to Section 4.04 hereof.

**"Taxable Capitalized Interest Subaccount"** means the subaccount within the Capitalized Interest Account of the Project Fund pursuant to Section 4.04 hereof.

**"Taxable Commercial Paper Certificates"** means any of the Commercial Paper Certificates that bear interest that is not intended to be excluded from the gross income of the Owners thereof for federal income tax purposes.

**"Taxable Direct Placement Revolving Certificates"** means, as applicable, (a) the Series A Taxable Direct Placement Revolving Certificate and (b) any Direct Placement Revolving Certificates (other than Tax Exempt Direct Placement Revolving Certificates) executed and delivered as an Additional Series for the purpose of financing Project Costs of the Taxable Projects and bearing interest that is not intended to be excluded from the gross income of the Owners thereof for federal income tax purposes.

**"Taxable Lease Revenue Certificates"** means the Taxable Commercial Paper Certificates and the Taxable Direct Placement Revolving Certificates.

**"Taxable Master Certificate"** means a Taxable Commercial Paper Certificate substantially in the Form of Exhibit B-2 hereto and registered in the name of the Depository thereof or its Nominee, or any successor or assign.

**"Taxable Project"** means any particular capital project or improvements that is not a Tax Exempt Project.

**"Taxable Project Subaccount"** means each subaccount established within the Project Fund in connection with a Taxable Project pursuant to Section 4.04 hereof.

**"Trust Agreement"** means this Trust Agreement by and between the City and the Trustee, including any amendments or supplements hereto made or entered into in accordance with the terms hereof.

**"Trustee"** means U.S. Bank National Association, a national banking association organized and existing under the laws of the United States, or any successor trustee appointed pursuant to Article V hereof.

**Section 1.03. 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 shall include the plural and vice versa.

**Section 1.04. Authorization.** Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Trust Agreement, and has taken all actions necessary to authorize the execution and delivery of this Trust Agreement.

**Section 1.05. Trust Agreement a Contract.** In consideration of the acceptance of the Lease Revenue Certificates by the Owners thereof, this Trust Agreement shall be deemed to be and shall constitute a contract between the City the Owners from time to time of all Lease Revenue Certificates executed and delivered hereunder and then Outstanding and the Credit Providers to secure the full and final payment of the interest with respect to and principal of all Lease Revenue Certificates authorized, executed and delivered hereunder, subject to the agreements, conditions, covenants and provisions herein contained.

## ARTICLE II

### GENERAL TERMS OF COMMERCIAL PAPER CERTIFICATES

**Section 2.01. Authorization of Commercial Paper Certificates, Revolving Certificates and Advances.** From time to time, on or after the date of this Trust Agreement, the City may on any date, upon compliance with the terms of Section 2.15 hereof, execute and request that the Delivery and Paying Agent execute and deliver, one or more Series of Commercial Paper Certificates in an aggregate principal amount which, together with the amount of interest to accrue on such Commercial Paper Certificates to the respective maturity dates thereof, will equal the amount then available to be drawn under the Credit Facility for such Series or the Pro Rata Share of the Maximum Principal Amount attributable to such Category calculated as of such date at anyone time Outstanding for the purpose of (i) financing Project Costs, and (ii) refinancing, renewing or refunding Commercial Paper Certificates (and interest thereon), directly or indirectly, executed and delivered pursuant to the provisions hereof. Any Series of Revolving Certificates shall be and are hereby authorized to be executed and delivered, in accordance with the terms and conditions of the related Reimbursement Agreement for the purpose of evidencing Advances thereunder. Advances upon any such Revolving Certificate shall be and are hereby authorized to be drawn in accordance with the terms and conditions of such Revolving Certificate and the respective Reimbursement Agreement. The authorizations hereof are all in accordance with and subject to the terms, conditions and limitations contained herein and, with respect to any Revolving Certificate, in the related Reimbursement Agreement.

### Section 2.02. Terms of Commercial Paper Certificates.

(a) Subject to Section 2.15 of this Trust Agreement, a Series or multiple Series of Commercial Paper Certificates to be designated "City and County of San Francisco Lease Revenue Certificate Commercial Paper Certificates of Participation" may be sold and executed and delivered from time to time in such principal amounts as determined by an Authorized Representative in Authorized Denominations, numbered as the Delivery and Paying Agent shall determine or as is directed by the City, maturing and becoming due and payable on such dates as an Authorized Representative shall determine at the time of sale and subject to redemption prior to maturity if designated as Callable Commercial Paper Certificates pursuant to Section 2.15 hereof, shall be executed and delivered as Tax Exempt Commercial Paper Certificates or Taxable Commercial Paper Certificate, and may be further designated as Callable Commercial Paper Certificates in accordance with the instructions received by the Delivery and Paying Agent pursuant to Section 2.15 hereof; provided however, that no Commercial Paper Certificate shall (i) mature on a day that is not a Business Day, (ii) have a term in excess of two hundred seventy (270) days and, if designated as Callable Commercial Paper Certificates pursuant to Section 2.15 hereof, shall mature on a Business Day not earlier than thirty-eight (38) days following the related date of issue, (iii) have a maturity date less than five (5) days prior to the stated expiration or termination date of the applicable Credit Facility supporting the payment of such Series of Commercial Paper Certificates unless the City shall have arranged for an Alternate Credit Facility for such Series pursuant to Section 7.02 hereof, (iv) bear interest at a rate in excess of the Maximum Interest Rate, (v) be subject to redemption prior to maturity other than during a Call Exercise Period.

Subject to applicable terms, limitations and procedures contained herein, Commercial Paper Certificates herein authorized shall be dated as of their date of execution and delivery

and shall bear interest at such rate or rates per annum computed on the basis of actual days elapsed and on a 365-day or 366-day year, whichever is applicable, as may be determined by an Authorized Representative; provided however, that in no event shall the interest rate or effective yield to maturity exceed the Maximum Interest Rate. Subject to applicable terms, limitations and procedures set forth herein, Commercial Paper Certificates may be sold in such manner at public or private sale and at par, at a discount or at a premium as an Authorized Representative shall approve at the time of the sale thereof. Tax Exempt Commercial Paper shall be interest bearing. Taxable Commercial Paper Certificates may be executed and delivered and sold at a discount or may be interest bearing; provided that Taxable Commercial Paper Certificates that are Callable Commercial Paper Certificates shall only be executed and delivered as interest bearing (and not executed and delivered at a discount).

The City shall ensure that Commercial Paper Certificates and Advances evidenced by Revolving Certificates in an amount not less than the Pro Rata Share of the Required Principal Reduction Amount attributable to such Category shall be retired and not re-executed and re-delivered or shall be repaid or prepaid, as applicable, no later than July 1 of each Base Rental Period, commencing July 1, 2017, with any such Advances repaid or prepaid prior to retirement and non-re-execution and delivery of any such Commercial Paper Certificates. The Commercial Paper Certificates shall not be subject to redemption prior to maturity other than Callable Commercial Paper Certificates that are subject to a Call Option during a Call Exercise Period.

Principal of the Commercial Paper Certificates shall be payable at maturity, or on redemption prior thereto, in lawful money of the United States of America in immediately available funds, at the corporate trust office of the Delivery and Paying Agent to the Owner thereof. Interest on the Commercial Paper Certificates shall be payable at maturity, or on redemption prior thereto as set forth in the following sentence, in lawful money of the United States of America in immediately available funds, at the corporate trust office of the Delivery and Paying Agent to the Owner thereof. Accrued interest with respect to any Callable Commercial Paper Certificates upon redemption prior to maturity shall be payable on the Redemption Date in lawful money of the United States of America in immediately available funds, at the corporate trust office of the Delivery and Paying Agent to the Owner thereof; provided however, that upon a Failed Remarketing or a Failed Settlement and the rescission of the proposed redemption of such Callable Commercial Paper Certificates, (i) accrued interest with respect to such Callable Commercial Paper Certificates shall be payable at maturity rather than on the Redemption Date; and (ii) any amount drawn on the applicable Credit Facility for the payment of the accrued interest with respect to the applicable Callable Commercial Paper Certificates upon such designated Redemption Date shall be immediately returned to the related LC Bank as provided in Section 2.11 hereof.

The City and the Delivery and Paying Agent may treat the Owner as the absolute owner of any Commercial Paper Certificate for the purpose of receiving payment thereof and for all purposes, and the City and the Delivery and Paying Agent shall not be affected by any notice or knowledge to the contrary.

(b) The City may cause the execution and delivery of Commercial Paper Certificates from time to time under this Trust Agreement, and each such series may be executed and delivered as Tax Exempt Commercial Paper Certificates or Taxable Commercial Paper Certificates, and may be further designated as Callable Commercial Paper Certificates.

Commercial Paper Certificates executed and delivered as Tax Exempt Commercial Paper Certificates shall bear the designation "City and County of San Francisco Lease Revenue

Commercial Paper Certificates of Participation (Tax Exempt)" and shall be executed and delivered hereunder to pay Project Costs for Tax Exempt Projects and to refinance, renew or refund Commercial Paper Certificates executed and delivered pursuant to the provisions hereof, and if further designated as Callable Commercial Paper Certificates, to pay the Redemption Price of Callable Commercial Paper Certificates and to pay accrued interest with respect to Callable Commercial Paper Certificates upon redemption prior to maturity. Commercial Paper Certificates executed and delivered as Taxable Commercial Paper Certificates shall bear the designation "City and County of San Francisco Lease Revenue Commercial Paper Certificates of Participation (Taxable)" and shall be executed and delivered hereunder to pay Project Costs and to refinance, renew or refund Commercial Paper Certificates executed and delivered pursuant to the provisions hereof, and if further designated as Callable Commercial Paper Certificates to pay the Redemption Price of Callable Commercial Paper Certificates and to pay accrued interest with respect to Callable Commercial Paper Certificates upon redemption prior to maturity. Payment of the Commercial Paper Certificates will be supported by the Credit Facility pursuant to the terms and conditions of the Credit Facility.

Commercial Paper Certificates designated by the City to be subject to a Call Option by the City pursuant to Section 2.15(a) hereof, shall be designated as such in the written instructions of an Authorized Representative pursuant to Section 2.15(a) hereof or by a Dealer on behalf of the City pursuant to the last paragraph of Section 2.15(a) hereof; provided, however, that the City may only designate Commercial Paper Certificates to be subject to a Call Option only if the applicable Credit Facility is available to pay the accrued interest with respect to such Callable Commercial Paper Certificates payable upon redemption prior to maturity.

**Section 2.03. Revolving Certificates.** Subject to the limitations contained herein and in each Reimbursement Agreement, the City may execute, and request the Dealer and Paying Agent to execute, the Revolving Certificates in accordance with the terms of this Trust Agreement and each Reimbursement Agreement.

**Section 2.04. Form of Commercial Paper Certificates.** So long as the City uses the book-entry system with respect to the Commercial Paper Certificates, the Tax Exempt Commercial Paper Certificates shall be executed and delivered in the Form of a separate single fully registered Tax Exempt Master Certificate substantially in the Form set forth in Exhibit B-1 hereto, and the Taxable Commercial Paper Certificates shall be executed and delivered in the Form of a separate single fully registered Taxable Master Certificate substantially in the Form set forth in Exhibit B-2 hereto, and if the City determines to discontinue use of the book-entry system with respect to the Commercial Paper Certificates, the Tax Exempt Commercial Paper Certificates shall be substantially in the Form set forth in Exhibit A-1 hereto, and the Taxable Commercial Paper Certificates shall be substantially in the Form set forth in Exhibit A-2 hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are permitted or required by this Trust Agreement and may have such letters, numbers or other marks of identification and such legends, endorsements and opinions thereon as may, consistent herewith, be approved by an Authorized Representative. Any portion of the text of any Commercial Paper Certificates may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Commercial Paper Certificates. The Commercial Paper Certificates shall be printed, lithographed or engraved or produced in any other similar manner, or typewritten, all as determined and approved by an Authorized Representative.

**Section 2.05. Execution and Authentication of Certificates.** The Certificates shall be executed on behalf of the City with the signature of the Controller or the Director of Public Finance of the City. Each such signature may be executed manually or by facsimile.

In case any such officer whose signature or countersignature appears on the Certificates shall cease to be such officer before the Certificates so signed shall have been delivered, such signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until the delivery of the Certificates, and such Certificates shall be executed and delivered and outstanding hereunder and shall be as binding upon the City as though the Person who signed such Certificates had been such official on the date borne by the Certificates and on the date of delivery. Also, any Certificate may be signed and sealed on behalf of the City by such Person as at the actual date of execution of such Certificate shall be an Authorized Representative, although on the date borne by such Commercial Paper Certificate such Person shall not have been such official.

No Commercial Paper Certificate shall be entitled to any right or benefit under this Trust Agreement, or be valid or obligatory for any purpose unless there appears on such Commercial Paper Certificate a certificate of authentication, executed by the Delivery and Paying Agent by manual signature (which, so long as the City uses the book-entry system with respect to the Commercial Paper Certificates, shall be in substantially the form provided in Exhibit B hereto and if the City determines to discontinue use of the book-entry system with respect to the Commercial Paper Certificates, shall be in substantially the form provided in Exhibit A hereto), and such certificate upon any Commercial Paper Certificate shall be conclusive evidence that such Commercial Paper Certificate has been duly certified or registered, if applicable, and delivered.

Each Revolving Certificate shall be in substantially the form attached to the applicable Reimbursement Agreement.

**Section 2.06. Certificates Mutilated, Lost, Destroyed or Stolen.** If any Certificate shall become mutilated, the City, at the expense of the Owner of said Certificate, shall execute and deliver a new Certificate of like tenor, maturity, Series and tax-exempt status and for a like aggregate principal amount in exchange and in substitution for the Certificate so mutilated, but only upon surrender to the Delivery and Paying Agent of the Certificate so mutilated. If any Certificate shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and the Delivery and Paying Agent and if such evidence is satisfactory to the City and indemnity satisfactory to the Delivery and Paying Agent, the City and the City has been given, the Delivery and Paying Agent shall, at the expense of the Owner, execute and deliver a new Certificate of like tenor, maturity, Series and tax-exempt status and for a like aggregate principal amount in lieu of and in substitution for the Certificate so lost, destroyed or stolen. Any Certificate executed and delivered under the provisions of this Section 2.06 in lieu of any Certificate claimed to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Trust Agreement with all other Certificates. Neither the City nor the Delivery and Paying Agent shall be required to treat both the original Certificate and any duplicate Certificate as being Outstanding for the purposes of determining the principal amount of Certificates which may be executed and delivered hereunder or for any other purpose, but both the original and the duplicate Certificate shall be treated as one and the same.

Only a new Tax Exempt Commercial Paper Certificate may be exchanged for a Tax Exempt Commercial Paper Certificate mutilated, lost, destroyed or stolen, and only a new Taxable Commercial Paper Certificate may be exchanged for a Taxable Commercial Paper Certificate mutilated, lost, destroyed or stolen.



**Section 2.07. Cancellation of Certificates.** All Certificates which at maturity or, as provided in Section 2.16 hereof, upon redemption prior to maturity, are surrendered to the Delivery and Paying Agent for the collection of the principal and interest thereof or Redemption Price thereof, as applicable, shall, upon payment, be cancelled and destroyed by the Delivery and Paying Agent, and the Delivery and Paying Agent shall forthwith transmit to the City a certificate identifying such Certificates and stating that such Certificates have been duly cancelled and destroyed.

**Section 2.08. Transfer, Exchange and Registration of Certificates.** Whenever any Certificate shall be surrendered to the Delivery and Paying Agent for transfer, the City shall execute and the Delivery and Paying Agent shall authenticate and deliver a new Certificate, of like tenor, maturity, Series and tax-exempt status and for a like aggregate principal amount. The Delivery and Paying Agent shall require the Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer. Any Certificate may be exchanged for a new Certificate of like tenor, maturity, Series and tax-exempt status and for a like aggregate principal amount upon surrender thereof to the Delivery and Paying Agent. The Delivery and Paying Agent shall require the Owner requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange. The Trustee shall keep or cause to be kept sufficient books for the registration, transfer and exchange of the Certificates, which shall be available for inspection by the Delivery and Paying Agent, the City, any LC Bank and any Owner of Commercial Paper Certificates, or his agent or representative duly authorized in writing, at reasonable hours, and under reasonable circumstances; and, upon presentation of any Certificates for such purpose, the Trustee shall, under such reasonable procedures as it may prescribe, register, transfer or exchange, or cause to be registered, transferred or exchanged, such Certificates on such books as hereinabove provided. The City and the Trustee may treat the person in whose name a Certificate is registered in the registration books kept by the Trustee as the absolute owner of such Certificate for the purpose of receiving payment thereof and for all purposes, and the City and the Trustee shall not be affected by any notice or knowledge to the contrary.

**Section 2.09. Book-Entry System for Commercial Paper Certificates.** So long as the City uses the book-entry system with respect to the Commercial Paper Certificates, Tax Exempt Commercial Paper Certificates shall be initially executed and delivered in the form of a separate single fully registered Tax Exempt Master Certificate, the Form of which is set forth in Exhibit B-1 hereto, and Taxable Commercial Paper Certificates of each maturity shall be initially executed and delivered in the form of a separate single fully registered Taxable Master Certificate, the form of which is set forth in Exhibit B-2 hereto. Upon initial issuance and delivery, the ownership of each such Master Certificate shall be registered in the name of the Nominee as nominee of the Depository. So long as any Callable Commercial Paper Certificates are outstanding, the City shall use the book-entry system with respect to the Commercial Paper Certificates.

In order to qualify the Commercial Paper Certificates for the Depository's book-entry system, an Authorized Representative is hereby authorized to execute, seal, countersign and deliver, from time to time, on behalf of the City to such Depository a letter or letters from the City representing such matters as shall be necessary to so qualify the Commercial Paper Certificates (each a "Representation Letter"). The execution and delivery of a Representation Letter shall not in any way limit the provisions of this Section 2.09 hereof or in any other way impose upon the City any obligation whatsoever with respect to Persons having beneficial interests in the Commercial Paper Certificates other than the Owners. Such Representation Letter may provide the time, Form, content and manner of transmission, of notices to the Depository. In addition to the execution and delivery of the Representation Letter, an Authorized

Representative and all other officers of the City, and their respective designees, each are hereby authorized to take any other actions, not inconsistent with this Trust Agreement, to qualify the Commercial Paper Certificates for the Depository's book-entry program.

**Section 2.10. Transfers Outside Book-Entry System for Commercial Paper Certificates.** In the event (i) the Depository determines not to continue to act as securities depository for the Commercial Paper Certificates, or (ii) the City determines that the Depository shall no longer so act and delivers a written certificate to the Delivery and Paying Agent to that effect, then the City will discontinue the book-entry system with respect to the Commercial Paper Certificates with the Depository. If the City determines to replace the Depository with another qualified securities depository, the City shall prepare or direct the preparation of a new, single, separate, fully registered Master Certificate, registered in the name of such successor or substitute qualified securities depository or its nominee, or make such other arrangement acceptable to the City and the Depository as are not inconsistent with the terms of this Trust Agreement. If the City fails to identify another qualified securities depository to replace the Depository, the City shall deliver to the Delivery and Paying Agent for safekeeping, completion, authentication and delivery in accordance with the provisions hereof, Commercial Paper Certificates executed on behalf of the City, in reasonable quantity, with the date of issuance, principal amount, maturity date, owner and rate of interest left blank. Each such Commercial Paper Certificate shall be held in safekeeping by the Delivery and Paying Agent until authenticated and executed and delivered in accordance with the provisions of Section 2.15 hereof.

**Section 2.11. Draws Under Credit Facility for Commercial Paper Certificates.** At such time as the City determines to cause the execution and delivery of Commercial Paper Certificates, an Authorized Representative shall arrange for a Credit Facility to be delivered to the Delivery and Paying Agent with respect to each Series of Commercial Paper Certificates under which the Delivery and Paying Agent shall draw moneys, or demand payment, in accordance with the terms thereof in amounts necessary to make timely payment of the principal of and interest with respect to said Series of Commercial Paper Certificates upon the maturity thereof. In addition, with respect to a Series of Callable Commercial Paper Certificates, the Delivery and Paying Agent shall draw moneys, or demand payment, in accordance with the terms thereof under such Credit Facilities in amounts necessary to make timely payment of the accrued interest with respect to the applicable Callable Commercial Paper Certificates upon a designated Redemption Date; provided however, that in no event shall any Credit Facility be drawn upon to pay the Redemption Price of any Callable Commercial Paper Certificates. The Delivery and Paying Agent shall deposit the moneys received with respect to each drawing or payment under each such Credit Facility in the related subaccount in the Commercial Paper Certificates Payment Account established pursuant to Section 4.06 hereof and which account and subaccounts shall be maintained so long as any Commercial Paper Certificates have not been paid. Moneys in the applicable Credit Facility Proceeds Subaccount shall not be commingled with any other moneys and shall be used and applied only to pay the principal of or interest with respect to the Series of Commercial Paper Certificates for which the draw or payment under such Credit Facility was made and may be used and applied for no other purpose, including without limitation the payment of any Revolving Certificates or the interest thereon. Any monies in the applicable Credit Facility Proceeds Subaccount until applied for the purposes herein provided shall be held uninvested. Upon a Failed Remarketing or a Failed Settlement and the rescission of the proposed redemption of such Callable Commercial Paper Certificates, any amount drawn on the applicable Credit Facility for the payment of the accrued interest with respect to the applicable Callable Commercial Paper Certificates upon a designated Redemption Date shall be immediately returned to the related LC Bank.

## **Section 2.12. Priority of Moneys to Pay Commercial Paper Certificates.**

(a) Payment of principal and interest with respect to any Series of Commercial Paper Certificates at maturity will be derived only from the following sources in the following order of priority: (i) moneys drawn by the Delivery and Paying Agent under the applicable Credit Facility; (ii) the proceeds of the sale of any Commercial Paper Certificates; and (iii) Revenues derived from Pledged Property available for such purpose.

(b) Payment of accrued interest with respect to any Callable Commercial Paper Certificates upon redemption prior to maturity on the Redemption Date will be derived solely from the following sources in the following order of priority: (i) with respect to the Commercial Paper Certificates, moneys drawn by the Delivery and Paying Agent under the Credit Facility; and with respect to an Additional Series of Commercial Paper Certificates, moneys drawn by the Delivery and Paying Agent under the Credit Facility supporting payment of such Additional Series of Commercial Paper Certificates; (ii) the proceeds of the sale of any Commercial Paper Certificates; and (iii) Revenues derived from Pledged Property available for such purpose.

(c) Payment of the Redemption Price of any Callable Commercial Paper Certificates on the Redemption Date will be derived solely from the following sources in the following order of priority: (i) to the extent amounts sufficient to pay such Redemption Price have been deposited in the Refunding Proceeds Redemption Price Subaccount of the Commercial Paper Certificates Payment Account from the proceeds of any long-term bonds or certificates of participation fixed to maturity executed and delivered to pay such Redemption Price to such Owner on the Redemption Date, from such proceeds on deposit in the Refunding Proceeds Redemption Price Subaccount of the Commercial Paper Certificates Payment Account; and (ii) the proceeds of the sale of any Commercial Paper Certificates.

**Section 2.13. Credit Facilities for Commercial Paper Certificates.** The Delivery and Paying Agent shall hold and maintain each Credit Facility provided for the benefit of the Owners of each Series of Commercial Paper Certificates, other than any Revolving Certificates with respect to such Series, until the expiration or termination of such Credit Facility. The Delivery and Paying Agent shall draw on each Credit Facility as needed to pay the principal of and interest with respect to the Commercial Paper Certificates of the applicable Series upon the maturity thereof and shall draw on each Credit Facility as needed to pay accrued interest with respect to the applicable Series of Callable Commercial Paper Certificates upon redemption prior to maturity. The Delivery and Paying Agent shall diligently enforce all terms, covenants and conditions of each such Credit Facility, including payment when due of any draws on, or payment demands under, such Credit Facility, and will not consent to, agree to or permit any amendment or modification of any such Credit Facility which would materially adversely affect the rights or security of the Owners of such Series of Commercial Paper Certificates. If, at any time during the term of any such Credit Facility, any successor Delivery and Paying Agent shall be appointed and qualified under this Trust Agreement, the resigning or removing Delivery and Paying Agent shall request that each LC Bank transfer its respective Credit Facility to the successor Delivery and Paying Agent. In no event shall the Delivery and Paying Agent's removal or resignation become effective unless and until each Credit Facility is transferred to the successor Delivery and Paying Agent. If a Credit Facility consists of a letter of credit, then upon the expiration, termination or substitution thereof, and in accordance with its terms or the replacement thereof by an Alternate Credit Facility, the Delivery and Paying Agent shall immediately surrender such Credit Facility to the issuing LC Bank for cancellation.

**Section 2.14. Authorization of Series of Commercial Paper Certificates and Revolving Certificates.** At any time after the execution of this Trust Agreement, the City may authorize the issuance of an one or more Series of Commercial Paper Certificates and Revolving Certificates upon the execution by the City and the Trustee of a Supplemental Trust Agreement providing for the authorization of such Additional Series, provided, that the City shall deliver to the Trustee and the Delivery and Paying Agent each of the following:

- (a) An executed copy of the Supplemental Trust Agreement that provides:
  - (i) the terms of such Series of Commercial Paper Certificates; and
  - (ii) that Commercial Paper Certificates of such Series shall (A) not mature on a day that is not a Business Day, (B) not have a term in excess of two hundred seventy (270) days, (C) not have a maturity date less than five days prior to the expiration or termination of the Credit Facility supporting payment of such Series unless the City shall have arranged for an Alternate Credit Facility pursuant to Section 7.02 hereof supporting payment of such Series of Commercial Paper Certificates, and (D) not bear interest at a rate in excess of the Maximum Interest Rate;
- (b) A Credit Facility to support the payment of such Series of Commercial Paper Certificates;
- (c) An executed copy or copies of a Dealer Agreement or Dealer Agreements providing for the marketing of the Commercial Paper Certificates of such Series;
- (d) A written legal opinion from Special Counsel to the effect that the Commercial Paper Certificates of such Series are valid and binding obligations of the City and, with respect to Tax Exempt Commercial Paper Certificates of such Additional Series, are obligations the interest with respect to which is excludable from gross income of the Owners thereof for federal income tax purposes;
- (e) An executed copy of an Delivery and Paying Agent Agreement between the City and the Delivery and Paying Agent with respect to such Series of Commercial Paper Certificates;
- (f) to the following:
  - (i) no Event of Default under Section 9.01 of this Trust Agreement shall have occurred and is continuing as of such date;
  - (ii) the City has full power and authority to perform its duties and obligations with respect to the Commercial Paper Certificates of such Additional Series and the Reimbursement Agreement or other Credit Facility for the Additional Series; and
  - (iii) the City is in compliance with its covenants set forth in Article VII hereof as of such date; and (g) The prior written consent of 100% of the Credit Providers.

**Section 2.15. Sale, Execution and Delivery of Commercial Paper Certificates.** At any time after the execution of this Trust Agreement, the City may determine to execute and deliver a Series of Commercial Paper Certificates in accordance with telephonic, facsimile,

email or written instructions of an Authorized Representative delivered to the Delivery and Paying Agent in the manner specified below. Said instructions:

(a) (i) shall specify such Series, principal amounts, dates of issue, purchase price, maturities, rates of interest and other terms and conditions which are hereby authorized and permitted to be fixed by an Authorized Representative at the time of sale of the Commercial Paper Certificates, including, without limitation, a designation, if any, that such Commercial Paper Certificates shall be subject to a Call Option and are therefore Callable Commercial Paper Certificates; provided that Tax Exempt Commercial Paper Certificates and Callable Commercial Paper Certificates, shall only be executed and delivered as interest bearing (and not executed and delivered at a discount) and Callable Commercial Paper Certificates shall mature on a Business Day not earlier than thirty-eight (38) days following the related date of delivery; provided, however, that the City may only designate Commercial Paper Certificates to be subject to a Call Option only if the applicable Credit Facility is available to pay the accrued interest with respect to such Callable Commercial Paper Certificates payable upon redemption prior to maturity; and

(ii) shall specify whether such Series or amount of such Series shall be executed and delivered as Tax Exempt Commercial Paper Certificates or Taxable Commercial Paper Certificates.

(b) so long as the City uses the book-entry system with respect to the Commercial Paper Certificates of such Series, shall include a request to the Delivery and Paying Agent to debit the purchaser's account at the Depository against credit to the Delivery and Paying Agent's account at the Depository which purchase shall then be recorded on the books and records of the Delivery and Paying Agent maintained with respect to each Master Certificate;

(c) if the City is no longer using the book-entry system with respect to the Commercial Paper Certificates of such Series, shall include a request that the Delivery and Paying Agent execute Commercial Paper Certificates of such Series by countersignature of its authorized officer or employee and deliver them to the named purchaser or purchasers thereof upon receipt of payment in accordance with the custom then prevailing in the New York financial market in regard to Commercial Paper Certificates, and the rules of the New York Clearinghouse shall apply thereto;

(d) shall contain provisions representing that all action on the part of the City necessary for the valid delivery of the Commercial Paper Certificates of such Series then to be delivered has been taken, that all provisions of California law necessary for the valid issuance of such Commercial Paper Certificates of such Series with provision for interest exemption from California personal income taxation have been complied with, and, in the event of the issuance of Tax Exempt Commercial Paper Certificates of such Series, that all provisions of federal law for the valid issuance of such Tax Exempt Commercial Paper Certificates of such Series with provision for the exclusion of interest from gross income for federal income tax purposes have been complied with, and that such Commercial Paper Certificates of such Series in the possession of the Owners thereof will be valid and enforceable obligations according to their terms, subject to the exercise of judicial discretion in accordance with general principles of equity and bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted; and

(e) shall also certify that each of the following conditions has been satisfied:

(i) a Dealer Agreement or Dealer Agreements shall be in full force and effect providing for the remarketing of all the Commercial Paper Certificates of such Series Outstanding immediately after such issuance;

(ii) the interest rate on such Commercial Paper Certificates of such Series shall not exceed the Maximum Interest Rate;

(iii) a Credit Facility shall be in full force and effect with respect to all Commercial Paper Certificates of such Series Outstanding immediately after such issuance in an amount sufficient to pay the principal amount due and payable at the stated maturity of the Commercial Paper Certificates of such Series to be Outstanding and interest accrued or to accrue thereon through the maturity dates thereof and, additionally, for Callable Commercial Paper Certificates, a Credit Facility or Credit Facilities shall also permit the Delivery and Paying Agent to draw for the payment of accrued interest with respect to such Callable Commercial Paper Certificates upon redemption prior to maturity;

(iv) the sum of the aggregate principal amount of Commercial Paper Certificates Outstanding immediately after the issuance of such Commercial Paper Certificates of such Series shall not exceed the Pro Rata Share of the Maximum Principal Amount attributable to such Category calculated as of the date of such issuance;

(v) if the issuance of such Commercial Paper Certificates of such Series is for a purpose other than refinancing, renewing or refunding Commercial Paper Certificates of such Series or Advances with respect to such Series, the City shall have issued to the City a Debt Service Certificate - Additional Lease Revenue Certificates in the Form of Exhibit C-2 to the Sublease reflecting the issuance of such Commercial Paper Certificates and the City shall have complied with Section 3.1(c), if applicable, or Section 3.1(e) of the Sublease;

(vi) the City shall not have received advice from Special Counsel that the interest with respect to such Commercial Paper Certificates proposed to be executed and delivered may not be exempt from California personal income tax or interest with respect to the Tax Exempt Commercial Paper Certificates may not be excluded from gross income for federal income tax purposes;

(vii) the Delivery and Paying Agent shall not have received a No-Issuance Notice or a Final Drawing Notice from the LC Bank: for such Series;

(viii) no Event of Default under Section 9.01 of this Trust Agreement has occurred and is continuing as of the date of such instructions;

(ix) the City has full power and authority to perform its duties and obligations with respect to the Commercial Paper Certificates of such Series and the Reimbursement Agreement relating to such Series;

(x) the City is in compliance with its covenants set forth in Article VII hereof as of the date of such instructions;

(xi) the principal amount due and payable at the stated maturity of the Commercial Paper Certificates of such Series to be Outstanding and interest accrued or to accrue thereon through the maturity dates thereof as of the date of such issuance does not exceed the amount then available to be drawn under the applicable Credit Facility; and

(xii) the accrued interest with respect to Callable Commercial Paper Certificates of such Series to be Outstanding payable upon redemption prior to maturity does not exceed the amount then available to be drawn under the applicable Credit Facility.

With respect to a Series of Commercial Paper Certificates delivered (x) to refinance, renew or refund Commercial Paper Certificates (or to reimburse the related LC Bank therefor), or (y) to pay the Redemption Price of the applicable Series of Callable Commercial Paper Certificates, or (z) to pay accrued interest with respect to the applicable Series of Callable Commercial Paper Certificates upon redemption prior to maturity (or to reimburse the related LC Bank therefor), unless the City notifies the Dealer and the Delivery and Paying Agent to the contrary in writing, the City hereby authorizes and directs the applicable Dealer to direct the Delivery and Paying Agent to issue a Series of Commercial Paper Certificates in an amount equal to the principal of and interest with respect to maturing Commercial Paper Certificates or the Redemption Price of the applicable Series of Callable Commercial Paper Certificates or accrued interest with respect to the applicable Series of Callable Commercial Paper Certificates upon redemption prior to maturity, as applicable, and, if directed by the City, to designate on behalf of the City such Commercial Paper Certificates to be subject to a Call Option, and, in connection therewith, to provide the Delivery and Paying Agent with the necessary information required in Section 2.15(a) above; provided, however, that the applicable Dealer may only designate on behalf of the City such Commercial Paper Certificates to be subject to a Call Option only if the applicable Credit Facility is available to pay the accrued interest with respect to such Callable Commercial Paper Certificates payable upon redemption prior to maturity. In such event, the City will be deemed to be in compliance with the requirements of Section 2.15(e) (other than 2.15(e)(v)) unless the City has given notice to the Delivery and Paying Agent that it is not in compliance with those requirements.

**Section 2.16. Redemption of Callable Commercial Paper Certificates.** Subject to rescission as provided in Section 2.16(d) hereof, Callable Commercial Paper Certificates shall be subject to redemption prior to maturity solely with respect to all (but not part) of a maturity of Commercial Paper Certificates designated by its own separate CUSIP Number and only during the related Call Exercise Period, at the Redemption Price thereof on the designated Redemption Date.

(a) Preliminary Call Option Exercise Notice; Call Option Exercise Notice. In order to exercise its right to cause a redemption prior to maturity of any Callable Commercial Paper Certificates during the related Call Exercise Period, the City, at its option, shall (i) deliver or cause the applicable Dealer to deliver a Preliminary Call Option Exercise Notice to the Delivery and Paying Agent by Electronic Notice not later than 11:00 A.M. on the third Business Day immediately preceding the designated Redemption Date described in such Preliminary Call Option Exercise Notice and thereafter, (ii) deliver or cause the applicable Dealer to deliver a Call Option Exercise Notice to the Delivery and Paying Agent by Electronic Notice not later than 11:00 A.M. on the second Business Day immediately preceding such designated Redemption Date. The Call Option Exercise Notice shall specify the designated Redemption Date, the principal amount of the Callable Commercial Paper Certificates proposed to be redeemed, the

CUSIP Number for such Callable Commercial Paper Certificates and the Redemption Price of such Callable Commercial Paper Certificates on such designated Redemption Date and shall state that upon a Failed Remarketing or a Failed Settlement, the proposed redemption shall be rescinded for that Redemption Date, the Owners shall retain ownership of such Callable Commercial Paper Certificates, and all such Callable Commercial Paper Certificates shall remain subject to redemption prior to maturity on any subsequently designated Redemption Date (which is a Business Day remaining in the related Call Exercise Period) pursuant to a subsequently delivered Redemption Notice.

(b) Redemption Notice.

(i) If the Delivery and Paying Agent receives the Preliminary Call Option Exercise Notice not later than 12:00 P.M. on the third Business Day immediately preceding the designated Redemption Date described therein, upon the Delivery and Paying Agent's timely receipt of the related Call Option Exercise Notice, the Delivery and Paying Agent shall provide Electronic Notice to the Depository and the related LC Bank of the related Redemption Notice, not later than 12:00 P.M. on the same Business Day that the Call Option Exercise Notice is timely received by the Delivery and Paying Agent by or on behalf of the City. If the Delivery and Paying Agent receives the Preliminary Call Option Exercise Notice after 12:00 P.M. on the third Business Day immediately preceding such designated Redemption Date, upon the Delivery and Paying Agent's timely receipt of the related Call Option Exercise Notice, the Delivery and Paying Agent shall use its best efforts to provide Electronic Notice to the Depository and the related LC Bank of the related Redemption Notice not later than 12:00 P.M. on the same Business Day the Delivery and Paying Agent receives the related Call Option Exercise Notice, but shall, in any event, provide such Electronic Notice to the Depository and the related LC Bank of the related Redemption Notice not later than 4:00 P.M. on such Business Day. The Delivery and Paying Agent shall provide evidence to the City and the applicable Dealer that the Depository has received such Redemption Notice.

(ii) The Delivery and Paying Agent shall use its best efforts to file, or cause to be filed, such Redemption Notice with EMMA by 4:30 P.M. on the Business Day that the Delivery and Paying Agent receives the Call Option Exercise Notice, or, if the Delivery and Paying Agent is unable to file, or cause to be filed, such Redemption Notice with EMMA by such time, the Delivery and Paying Agent shall file, or cause to be filed, such Redemption Notice with EMMA as soon as practicable thereafter.

(iii) Each Redemption Notice shall state (1) the designated Redemption Date and the Redemption Price and accrued interest with respect to the applicable Callable Commercial Paper Certificates payable upon such redemption prior to maturity and the maturity date and CUSIP Number of the Callable Commercial Paper Certificates to be redeemed, (2) that such Callable Commercial Paper Certificates must be presented for delivery to the Delivery and Paying Agent not later than 12:30 P.M. on the Redemption Date for such Callable Commercial Paper Certificates and that any such Callable Commercial Paper Certificates not so presented for delivery as required shall be deemed to have been so presented and, upon provision for payment of the Redemption Price thereof from the funds specified in the following paragraph and accrued interest thereon, shall be deemed to have been redeemed on the Redemption Date, after which the Owner thereof shall have no further rights with respect thereto or hereunder except the right to receive the Redemption Price thereof and accrued interest with respect to the applicable Callable Commercial Paper Certificates upon such redemption prior to



maturity upon presentation and surrender of said Callable Commercial Paper Certificates to the Delivery and Paying Agent and that all Callable Commercial Paper Certificates subject to such redemption shall be redeemed on the Redemption Date at the Redemption Price thereof; (3) from and after the Redemption Date, if the Redemption Notice shall have been duly given and funds available for the Redemption Price thereof and accrued interest thereon shall have been duly provided, no interest shall accrue on such Callable Commercial Paper Certificates from and after the Redemption Date; (4) the Redemption Price thereof shall be payable to the Owner thereof in accordance with the procedures set forth herein, solely from the following sources in the following order of priority: (x) to the extent amounts sufficient to pay such Redemption Price have been deposited in the applicable Refunding Proceeds Redemption Price Subaccount of the Commercial Paper Certificates Payment Account from the proceeds of any long-term bonds or certificates of participation fixed to maturity executed and delivered to pay such Redemption Price to such Owner on the Redemption Date, from such proceeds on deposit in the applicable Refunding Proceeds Redemption Price Subaccount of the Commercial Paper Certificates Payment Account; and (y) the proceeds of the sale of any Commercial Paper Certificates; and (5) upon a Failed Remarketing or a Failed Settlement, the proposed redemption shall be rescinded for that Redemption Date, the Owners shall retain ownership of such Callable Commercial Paper Certificates, and all such Callable Commercial Paper Certificates shall remain subject to redemption prior to maturity on any subsequently designated Redemption Date (which is a Business Day remaining in the related Call Exercise Period) pursuant to a subsequently delivered Redemption Notice. Neither the failure to receive any notice so mailed, nor any defect in such notice, shall affect the validity of the proceedings for the redemption of the applicable Callable Commercial Paper Certificates or the cessation of the accrual of interest thereon from and after the Redemption Date.

(c) Redemption Procedure.

(i) Subject to rescission as provided in Section 2.16(d) hereof, upon delivery of a Call Option Exercise Notice by or on behalf of the City to the Delivery and Paying Agent, the Callable Commercial Paper Certificates will be subject to redemption prior to maturity, in whole, but not in part, on the designated Redemption Date described in such Call Option Exercise Notice at the Redemption Price thereof. Unless otherwise instructed by the City, the applicable Dealer shall use its best efforts to sell new Callable Commercial Paper Certificates (or if directed by the City, new Commercial Paper Certificates that are not subject to a Call Option), the proceeds of which will be used to pay the Redemption Price of the existing Callable Commercial Paper Certificates proposed to be redeemed and shall provide the City and the City with any other information as required for delivery of such Callable Commercial Paper Certificates (or Commercial Paper Certificates that are not subject to a Call Option, as applicable) pursuant to the applicable Dealer Agreement; provided however that, so long as a Credit Facility or Credit Facilities remains in effect with respect to the Callable Commercial Paper Certificates, the applicable Dealer shall not offer for sale or sell any new Callable Commercial Paper Certificates (or if directed by the City, new Commercial Paper Certificates that are not subject to a Call Option), the proceeds of which will be used to pay the Redemption Price of the existing Callable Commercial Paper Certificates proposed to be redeemed, to the City. Any such purchase of new Callable Commercial Paper Certificates (or if directed by the City, new Commercial Paper Certificates that are not subject to a Call Option), the proceeds of which will be used to pay the Redemption

Price of the existing Callable Commercial Paper Certificates proposed to be redeemed, or secondary transactions related thereto, shall be on a when issued basis.

(ii) The Redemption Price of such Callable Commercial Paper Certificates shall be payable to the Owners thereof in accordance with the following procedures, but solely from the sources in the order of priority set forth in Section 2.12 hereof. The Delivery and Paying Agent shall make payment of the Redemption Price of such Callable Commercial Paper Certificates and accrued interest with respect to the applicable Callable Commercial Paper Certificates upon such redemption prior to maturity to the Owner thereof upon surrender for redemption thereof by such Owner to the Delivery and Paying Agent (for the account of the City).

(iii) Following the delivery of a Redemption Notice with respect to any Callable Commercial Paper Certificates, the Owner thereof shall present such Callable Commercial Paper Certificates for delivery to the Delivery and Paying Agent (for the account of the City) through the Depository not later than 12:30 P.M. on the Redemption Date for such Callable Commercial Paper Certificates. If such Callable Commercial Paper Certificates are timely presented for delivery by the Owner thereof as described above, the City will cause the Delivery and Paying Agent to pay the Redemption Price of and accrued interest with respect to the applicable Callable Commercial Paper Certificates upon such redemption prior to maturity to such Owner on the Redemption Date in lawful money of the United States of America in immediately available funds or in such manner as such Owner and the Delivery and Paying Agent shall agree. Any Callable Commercial Paper Certificates not so timely presented for delivery shall be deemed to have been redeemed on the Redemption Date from the funds specified above, after which the Owner thereof shall have no further rights with respect thereto or hereunder except the right to receive the Redemption Price of and accrued interest with respect to the applicable Callable Commercial Paper Certificates upon such redemption prior to maturity upon presentation and surrender of said Callable Commercial Paper Certificates to the Delivery and Paying Agent. From and after the Redemption Date, if the Redemption Notice shall have been duly given and funds available for the Redemption Price of such Callable Commercial Paper Certificates shall have been duly provided, no interest shall accrue on such Callable Commercial Paper Certificates from and after the Redemption Date. All Callable Commercial Paper Certificates redeemed pursuant to the provisions of this Section 2.16 shall be cancelled and shall not be redelivered.

(d) Rescission.

(i) Anything herein to the contrary notwithstanding, upon the occurrence of a Failed Remarketing or a Failed Settlement, with regards to any Callable Commercial Paper Certificates for which a Redemption Notice has been given, the proposed redemption of such Callable Commercial Paper Certificates shall be rescinded.

(ii) Upon the occurrence of a Failed Remarketing, the applicable Dealer shall notify the Delivery and Paying Agent of such Failed Remarketing by 1:00 P.M. on the Business Day immediately preceding the designated Redemption Date for such Callable Commercial Paper Certificates. Upon the Delivery and Paying Agent's receipt of such notice of a Failed Remarketing, the Delivery and Paying Agent shall cause the rescission of the proposed redemption of such Callable Commercial Paper Certificates by providing Electronic Notice of the rescission of the proposed redemption to the Depository not later

than 2:00 P.M. on the same date of the Delivery and Paying Agent's timely receipt of such notice of a Failed Remarketing and the Delivery and Paying Agent shall use its best efforts to confirm receipt of such rescission notice by the Depository.

(iii) If the Delivery and Paying Agent fails to receive a notice of a Failed Remarketing by 1:00 P.M. on the Business Day immediately preceding the designated Redemption Date for such Callable Commercial Paper Certificates, and the Delivery and Paying Agent also fails to receive notice from the applicable Dealer pursuant to Section 2(d) of the applicable Dealer Agreement of the relevant terms of the new Callable Commercial Paper Certificates (or if directed by the City, new Commercial Paper Certificates that are not subject to a Call Option), the proceeds of which will be used to pay the Redemption Price of the existing Callable Commercial Paper Certificates proposed to be redeemed, by 1:00 P.M. on the Business Day immediately preceding the designated Redemption Date for such Callable Commercial Paper Certificates, the Delivery and Paying Agent shall cause the rescission of the proposed redemption of such Callable Commercial Paper Certificates by providing Electronic Notice of the rescission of the proposed redemption to the Depository not later than 2:00 P.M. on the Business Day immediately preceding the designated Redemption Date for such Callable Commercial Paper Certificates and the Delivery and Paying Agent shall use its best efforts to confirm receipt of such rescission notice by the Depository. The Delivery and Paying Agent shall also use its best efforts to file any such rescission notice with EMMA by 4:30 P.M. on the same date of the Delivery and Paying Agent's timely receipt of such rescission notice.

(iv) Upon the occurrence of a Failed Settlement, the Delivery and Paying Agent shall cause the rescission of the proposed redemption of such Callable Commercial Paper Certificates by providing Electronic Notice of the rescission of such proposed redemption to the Depository not later than 1:00 P.M. on the designated Redemption Date for such Callable Commercial Paper Certificates and the Delivery and Paying Agent shall confirm the Depository's receipt of such rescission notice by 3:00 P.M. on such designated Redemption Date. The Delivery and Paying Agent shall also use its best efforts to file such rescission notice with EMMA by 4:30 P.M. on such designated Redemption Date.

(v) Upon any rescission of a proposed redemption of Callable Commercial Paper Certificates, any Callable Commercial Paper Certificates theretofore delivered to the Delivery and Paying Agent shall be returned to the respective Owners thereof. For the avoidance of doubt, any Callable Commercial Paper Certificates for which a proposed redemption has been rescinded shall continue to be subject to redemption prior to maturity at the Redemption Price thereof on a subsequently designated Redemption Date (which is a Business Day remaining in the related Call Exercise Period) pursuant to a subsequently delivered Redemption Notice. Upon any Failed Remarketing or Failed Settlement, as applicable, of any Callable Commercial Paper Certificates subject to redemption for any subsequently designated Redemption Date, if any, during the remaining related Call Exercise Period, the subsequently designated redemption shall be rescinded in the same manner as described above.

**Section 2.17. Fiscal and Other Agents for Certificates.** In furtherance of the purposes of this Trust Agreement with the prior written consent of the City, may from time to time appoint and provide for the payment of such additional fiscal, paying or other agents or trustees as it may deem necessary or appropriate in connection with the Certificates.



## ARTICLE III

### GENERAL TERMS OF THE DIRECT PLACEMENT REVOLVING CERTIFICATES

**Section 3.01 Authorization of Direct Placement Revolving Certificates and Advances.** From time to time, on or after the date of this Trust Agreement, the City may on any date execute and request the Trustee to also execute and, at the request of the City, deliver a Direct Placement Revolving Certificates for the purpose of evidencing Advances under the related Direct Placement Revolving Credit Agreement, which may consist of one or more of the following: a Tax Exempt Direct Placement Revolving Certificate evidencing Advances for the purpose of financing Project Costs of the Tax Exempt Projects, and a Taxable Direct Purchase Revolving Certificate evidencing Advances for the purpose of financing Project Costs of the Taxable Projects. Advances under a Direct Placement Revolving Credit Agreement shall be made for the purpose of financing Project Costs and shall be evidenced by the Direct Placement Revolving Certificates as set forth in the preceding sentence. The authorizations hereof are all in accordance with and subject to the terms, conditions and limitations contained herein and in the related Direct Placement Revolving Credit Agreement. Initially, the Trustee shall execute and deliver the Series A Tax Exempt Direct Placement Revolving Certificate and the Series A Taxable Direct Placement Revolving Certificate pursuant to the Series A Direct Placement Revolving Credit Agreement.

#### **Section 3.02. Terms of Direct Placement Revolving Certificates.**

(a) Direct Placement Revolving Certificates (including without limitation the Series A Direct Placement Revolving Certificate and Direct Placement Revolving Certificates executed and delivered from time to time as an Additional Series) to be designated "City and County of San Francisco Lease Revenue Direct Placement Revolving Certificates of Participation" may be executed and delivered from time to time in an aggregate principal amount which, together with the aggregate principal amount of all Outstanding Lease Revenue Certificates of such Category, will not exceed the Pro Rata Share of the Maximum Principal Amount attributable to such Category calculated as of such date at anyone time Outstanding and maturing not later than the last day of the Sublease Term.

Subject to applicable terms, limitations and procedures contained herein, the Direct Placement Revolving Certificates herein authorized shall be dated as of their date of execution and delivery and shall bear interest at such rate or rates per annum computed on the basis set forth in the related Direct Placement Revolving Credit Agreement; provided however, that in no event shall the interest rate or effective yield to maturity exceed the Maximum Lawful Rate. Direct Placement Revolving Certificates shall be interest bearing as set forth in the related Direct Placement Revolving Credit Agreement.

The City shall repay or prepay outstanding Advances evidenced by Direct Placement Revolving Certificates in an amount not less than the Pro Rata Share of the Required Principal Reduction Amount attributable to such Category no later than July 1 of each Base Rental Period, commencing [July 1, 2017].

Principal of the Direct Placement Revolving Certificates shall be payable, at the times and in the amounts and in the manner set forth in the related Direct Placement Revolving Credit Agreement, in lawful money of the United States of America in immediately available funds, at the corporate trust office of the Trustee to the Owner thereof. Interest on the Direct Placement Revolving Certificates shall be payable, at the times and in the amounts and in the manner set

forth in the related Direct Placement Revolving Credit Agreement, in lawful money of the United States of America in immediately available funds, at the corporate trust office of the Trustee to the Owner thereof. Notwithstanding anything herein to the contrary, no presentment of any Direct Placement Revolving Certificate is required for any payments of principal of or interest thereon or with respect thereto. The City and the Trustee may treat the Owner as the absolute owner of any Direct Placement Revolving Certificate for the purpose of receiving payment thereof and for all purposes, and the City and the Trustee shall not be affected by any notice or knowledge to the contrary.

(b) A Tax Exempt Direct Placement Revolving Certificate bearing the designation "City and County of San Francisco Lease Revenue Direct Placement Revolving Certificates of Participation, Series A" shall be executed and delivered hereunder as the Series A Tax Exempt Direct Placement Revolving Certificate to evidence Advances under the Series A Direct Placement Revolving Credit Agreement for the purpose of financing Project Costs of the Tax Exempt Projects. A Taxable Direct Placement Revolving Certificate bearing the designation "City and County of San Francisco Lease Revenue Direct Placement Revolving Certificates of Participation, Series A (Taxable)" shall be executed and delivered hereunder as the Series A Taxable Direct Placement Revolving Certificate to evidence Advances under the Series A Direct Placement Revolving Credit Agreement for the purpose of financing Project Costs of the Taxable Projects. Collectively, the Series A Tax Exempt Direct Placement Revolving Certificate and the Series A Taxable Direct Placement Revolving Certificate comprise the Series A Direct Placement Revolving Certificates and shall collectively evidence the Advances under the Series A Direct Placement Revolving Credit Agreement. The Series A Direct Placement Revolving Certificates shall be executed and delivered in a not to exceed aggregate principal amount equal to the Funding Commitment of the Series A Direct Placement Bank under the Series A Direct Placement Revolving Credit Agreement, although individually any one Series A Direct Placement Revolving Certificate may evidence Advances in an aggregate principal amount up to such Funding Commitment so long as the aggregate principal amount of outstanding Advances evidenced by the Series A Direct Placement Revolving Certificates does not exceed such Funding Commitment.

**Section 3.03. Form of Direct Placement Revolving Certificates.** The Direct Placement Revolving Certificates shall be executed and delivered in the Form of a separate single fully registered Direct Placement Revolving Certificate substantially in the Form set forth in Exhibit C-1 hereto, and the Taxable Direct Placement Certificates shall be executed and delivered in the Form of a separate single fully registered Direct Placement Revolving Certificate substantially in the Form set forth in Exhibit C-2 hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are permitted or required by this Trust Agreement and may have such letters, numbers or other marks of identification and such legends, endorsements and opinions thereon as may, consistent herewith, be approved by an Authorized Representative. Any portion of the text of any Direct Placement Revolving Certificate may be set forth on the reverse thereof, with an appropriate reference thereto on the face of such Direct Placement Revolving Certificate. The Direct Placement Revolving Certificates shall be printed, lithographed or engraved or produced in any other similar manner, or typewritten, all as determined and approved by an Authorized Representative.

**Section 3.04. Execution and Authentication of Direct Placement Revolving Certificates.** Each Direct Placement Revolving Certificate shall be executed on behalf of the City with the signature of an Authorized Representative. Such signature may be executed manually or by facsimile.

In case any such officer whose signature or countersignature appears on the Direct Placement Revolving Certificates shall cease to be such officer before the Direct Placement Revolving Certificates so signed shall have been delivered, such signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until the delivery of the Direct Placement Revolving Certificates, and such Direct Placement Revolving Certificates shall be executed and delivered and outstanding hereunder and shall be as binding upon the City as though the Person who signed such Direct Placement Revolving Certificates had been such official on the date borne by the Direct Placement Revolving Certificates and on the date of delivery. Also, any Direct Placement Revolving Certificates may be signed and sealed on behalf of the City by such Person as at the actual date of execution of such Direct Placement Revolving Certificates shall be an Authorized Representative, although on the date borne by such Direct Placement Revolving Certificates such Person shall not have been such official.

No Direct Placement Revolving Certificate shall be entitled to any right or benefit under this Trust Agreement, or be valid or obligatory for any purpose unless there appears on such Direct Placement Revolving Certificate a certificate of authentication, executed by the Trustee by manual signature, and such certificate upon any Direct Placement Revolving Certificate shall be conclusive evidence that such Direct Placement Revolving Certificate has been duly certified or registered, if applicable, and delivered.

**Section 3.05. Transfers of Direct Placement Revolving Certificates.** Subject to the limitations set forth below, any Direct Placement Revolving Certificate may, in accordance with its terms, be transferred, upon the registration books pursuant to the provisions of Section 3.07 hereof, by the person in whose name it is registered, in person or by his attorney duly authorized in writing, upon surrender of such Direct Placement Revolving Certificate to the Trustee. Whenever any Direct Placement Revolving Certificate shall be surrendered for transfer, the City shall execute and the Trustee shall authenticate and deliver a new Direct Placement Revolving Certificate of like tenor, maturity, Series and tax-exempt status and for a like aggregate principal amount. The Trustee shall require the Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer. Direct Placement Revolving Certificates may only be transferred in compliance with the terms, conditions and limitations set forth in the related Direct Placement Revolving Credit Agreement. Failure to satisfy the requirements of the preceding sentence shall cause the purported transfer to be null and void.

**Section 3.06. Exchange of Direct Placement Revolving Certificates.** Any Direct Placement Revolving Certificate may be exchanged for a new Direct Placement Revolving Certificate of like tenor, maturity, Series and tax-exempt status and for a like aggregate principal amount upon surrender thereof to the Trustee. The Trustee shall require the Owner requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange.

**Section 3.07. Registration of Direct Placement Revolving Certificates.** The Trustee shall keep or cause to be kept sufficient books for the registration, transfer and exchange of the Direct Placement Revolving Certificates, which shall be available for inspection by the City, any Direct Placement Bank and any Owner of Direct Placement Revolving Certificates, or his agent or representative duly authorized in writing, at reasonable hours, and under reasonable circumstances; and, upon presentation of any Direct Placement Revolving Certificates for such purpose, the Trustee shall, under such reasonable procedures as it may prescribe, register, transfer or exchange, or cause to be registered, transferred or exchanged, such Direct

Placement Revolving Certificates on such books as hereinabove provided. The City and the Trustee may treat the person in whose name a Direct Placement Revolving Certificate is registered in the registration books kept by the Trustee as the absolute owner of such Direct Placement Revolving Certificate for the purpose of receiving payment thereof and for all purposes, and the City and the Trustee shall not be affected by any notice or knowledge to the contrary.

**Section 3.08. Direct Placement Revolving Certificates Mutilated, Lost Destroyed or Stolen.** If any Direct Placement Revolving Certificate shall become mutilated, the City, at the expense of the Owner of said Direct Placement Revolving Certificate, shall execute and deliver a new Direct Placement Revolving Certificate of like tenor, maturity, Series and tax-exempt status and for a like aggregate principal amount in exchange and in substitution for the Direct Placement Revolving Certificate so mutilated, but only upon surrender to the Trustee of the Direct Placement Revolving Certificate so mutilated. If any Direct Placement Revolving Certificate shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and the Trustee and if such evidence is satisfactory to the City and indemnity satisfactory to the Trustee, the City and the City has been given, the City shall, at the expense of the Owner, execute and deliver a new Direct Placement Revolving Certificate of like tenor, maturity, Series and tax-exempt status and for a like aggregate principal amount in lieu of and in substitution for the Direct Placement Revolving Certificate so lost, destroyed or stolen. Any Direct Placement Revolving Certificate executed and delivered under the provisions of this Section 3.08 in lieu of any Direct Placement Revolving Certificate claimed to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Trust Agreement with all other Lease Revenue Certificates. Neither the City nor the Trustee shall be required to treat both the original Direct Placement Revolving Certificate and any duplicate Direct Placement Revolving Certificate as being Outstanding for the purposes of determining the principal amount of Direct Placement Revolving Certificates which may be executed and delivered hereunder or for any other purpose, but both the original and the duplicate Direct Placement Revolving Certificate shall be treated as one and the same.

Only a new Tax Exempt Direct Placement Revolving Certificate may be exchanged for a Tax Exempt Direct Placement Revolving Certificate mutilated, lost, destroyed or stolen, and only a new Taxable Direct Placement Revolving Certificate may be exchanged for a Taxable Direct Placement Revolving Certificate mutilated, lost, destroyed or stolen.

**Section 3.09. Cancellation of Direct Placement Revolving Certificates.** Any Direct Placement Revolving Certificate which at maturity is surrendered to the Trustee for the collection of the principal and interest thereof, as applicable, shall, upon payment, be cancelled and destroyed by the Trustee, and the Trustee shall forthwith transmit to the City a certificate identifying such Direct Placement Revolving Certificate and stating that such Direct Placement Revolving Certificate has been duly cancelled and destroyed.

**Section 3.10. Fiscal and Other Agents for Direct Placement Revolving Certificates.** In furtherance of the purposes of this Trust Agreement, the Trustee, with the prior written consent of the City, may from time to time appoint and provide for the payment of such additional fiscal, paying or other agents or trustees as it may deem necessary or appropriate in connection with the Direct Placement Revolving Certificates.

**Section 3.11. Authorization of Additional Series of Direct Placement Revolving Certificates.** At any time after the execution of this Trust Agreement, the City may authorize the execution and delivery of an Additional Series of Direct Placement Revolving Certificates upon



the execution by the City and the Trustee of a Supplemental Trust Agreement providing for the authorization of such Additional Series, provided, that the City shall deliver to the Trustee each of the following:

- (a) An executed copy of the Supplemental Trust Agreement that provides:
  - (i) the terms of such Additional Series of Direct Placement Revolving Certificates; and
  - (ii) that Direct Placement Revolving Certificates of such Additional Series shall (A) evidence Advances under the related Direct Placement Revolving Credit Agreement, (B) be interest bearing, (C) mature not later than the last day of the Sublease Term, (D) be executed and delivered in an aggregate principal amount which, together with the aggregate principal amount of all Outstanding Lease Revenue Certificates of such Category, will not exceed the Pro Rata Share of the Maximum Principal Amount attributable to such Category calculated as of such date at anyone time Outstanding, and (E) not bear interest at an interest rate or have an effective yield to maturity in excess of the Maximum Lawful Rate;

(b) A written legal opinion from Special Counsel to the effect that the Direct Placement Revolving Certificates of such Additional Series are valid and binding obligations of the City and, with respect to Tax Exempt Direct Placement Revolving Certificates of such Additional Series, are obligations the interest with respect to which is excludable from gross income of the Owners thereof for federal income tax purposes;

(c) A certificate of an Authorized Representative of the City certifying to the following:

- (i) no Event of Default under Section 9.01 of this Trust Agreement shall have occurred and is continuing as of such date;
- (ii) the City has full power and authority to perform its duties and obligations with respect to the Direct Placement Revolving Certificates of such Additional Series and the Direct Placement Revolving Credit Agreement for the Additional Series; and
- (iii) the City is in compliance with its covenants set forth in Article VII hereof as of such date; and

(d) The prior written consent of 100% of the Credit Providers.

**Section 3.12. Advances under Direct Placement Revolving Credit Agreements.** At any time after the execution of a Direct Placement Revolving Credit Agreement, the City may determine to request Advances under such Direct Placement Revolving Credit Agreement for the purpose of financing Project Costs, upon satisfaction of the following conditions:

- (a) the amount of Advances to be Outstanding as of the date of such Advance does not exceed the amount then available to be drawn under such Direct Placement Revolving Credit Agreement;
- (b) the sum of the aggregate principal amount of Advances Outstanding under such Direct Placement Revolving Credit Agreement and evidenced by the related Direct Placement

Revolving Certificates shall not exceed the maximum aggregate principal amount authorized under Section 3.02(b) hereof;

(c) the sum of the aggregate principal amount of Advances Outstanding under all Direct Placement Revolving Certificates immediately after such Advance shall not exceed the Pro Rata Share of the Maximum Principal Amount attributable to such Category calculated as of the date of such Advance;

(d) the City shall have issued to the City a Debt Service Certificate - Additional Lease Revenue Certificates in the form of Exhibit C-2 to the Sublease reflecting such Advances and the City shall have complied with Section 3.1(c) of the Sublease, if applicable;

(e) if such Advance is for the purpose of financing Project Costs of the Tax Exempt Projects, the City and the Trustee shall have received an opinion of Special Counsel that the interest with respect to the Direct Placement Revolving Certificates relating to such Direct Placement Revolving Credit Agreement immediately after such Advance shall be exempt from California personal income tax and excludable from gross income for federal income tax purposes and the City and the City shall have executed and delivered a Tax Certificate with respect to such Advance in form and substance satisfactory to Special Counsel;

(f) no Event of Default under Section 9.01 of this Trust Agreement has occurred and is continuing as of the date of such in substance;

(g) the City has full power and authority to perform its duties and obligations with respect to such Direct Placement Revolving Credit Agreement and the related Direct Placement Revolving Certificates; and

(h) the City is in compliance with its covenants set forth in Article VII hereof as of the date of such instructions.

The proceeds of Advances under Direct Placement Revolving Credit Agreements shall be deposited as set forth in Section 4.03 hereof.

## ARTICLE IV

### FUNDS AND ACCOUNTS

#### **Section 4.01. Application of Proceeds of Sale of Commercial Paper Certificates.**

(a) The proceeds of the sale of any Series of Commercial Paper Certificates that are executed and delivered for the purpose of refinancing, renewing or refunding Certificates (and interest thereon) shall be deposited in the applicable Commercial Paper Certificate Proceeds Subaccount of the Commercial Paper Certificates Payment Account (based on such Series of Commercial Paper Certificates and whether such Commercial Paper Certificates are Tax Exempt Commercial Paper Certificates or Taxable Commercial Paper Certificates) to the extent necessary for the immediate payment of interest payments past due, and then for the immediate payment of principal payments past due according to the tenor of the related Commercial Paper Certificates. Any remaining proceeds shall be transferred to the applicable Bank Reimbursement Subaccounts of the Bank Reimbursement Account with respect to such Series of Commercial Paper Certificates, to be applied in accordance with the provisions of Section 4.06. Notwithstanding the foregoing, proceeds of the sale of one Series of Commercial Paper Certificates may be deposited in the Commercial Paper Certificate Proceeds Subaccount established with respect to another Series of Commercial Paper Certificates in accordance with telephonic, facsimile, email or written instructions of an Authorized Representative delivered to the Delivery and Paying Agent in the manner specified in Section 2.15 hereof, and if such proceeds are from the execution and delivery of any Tax Exempt Commercial Paper Certificates and are to be deposited in any Commercial Paper Certificate Proceeds Subaccount with respect to any Taxable Commercial Paper Certificates, with an opinion of Special Counsel that such execution and delivery and deposit will not have an adverse effect on the tax-exempt status of the Tax Exempt Lease Revenue Certificates outstanding immediately prior to and immediately following such execution and delivery and deposit.

(b) The proceeds of the sale of any Commercial Paper Certificates that are executed and delivered for the purpose of financing Project Costs (net of all Costs of Issuance which shall be deposited in the Costs of Issuance Fund and applied in accordance with the provisions of Section 4.08 hereof) shall be deposited in the Project Fund and applied to the payment of Project Costs, in accordance with the provisions of Section 4.04 hereof.

(c) The proceeds of the sale of any Commercial Paper Certificates of a Series that are executed and delivered for the purpose of paying the Redemption Price of the applicable Series of Callable Commercial Paper Certificates shall be deposited in the Commercial Paper Certificate Proceeds Subaccount of the applicable Commercial Paper Certificates Payment Account with respect to such Series of Commercial Paper Certificates, to be applied in accordance with the provisions of Section 4.06 hereof.

(d) The proceeds of the sale of any Commercial Paper Certificates of a Series that are executed and delivered for the purpose of paying accrued interest with respect to the applicable Series of Callable Commercial Paper Certificates upon redemption prior to maturity shall be deposited in the applicable Commercial Paper Certificate Proceeds Subaccount of the Commercial Paper Certificates Payment Account (based on such Series of Commercial Paper Certificates and whether such Commercial Paper Certificates are Tax Exempt Commercial Paper Certificates or Taxable Commercial Paper Certificates) to the extent necessary for the immediate payment of interest past due and any remaining proceeds shall be transferred to the applicable Bank Reimbursement Subaccount to be applied in accordance with the provisions of

Section 4.06 hereof. 48 (e) The proceeds of any long-term bonds or certificates of participation fixed to maturity executed and delivered to pay the Redemption Price of the applicable Series of Callable Commercial Paper Certificates to any Owner thereof on the Redemption Date shall be deposited in the Refunding Proceeds Redemption Price Subaccount of the Commercial Paper Certificates Payment Account with respect to such Series of Commercial Paper Certificates.

**Section 4.02. Application of Proceeds of Advances under Credit Facilities.** The proceeds of all drawings under a Credit Facility for a Series of Commercial Paper Certificates shall be deposited in the Credit Facility Proceeds Subaccount of the Commercial Paper Certificates Payment Account with respect to such Series of Commercial Paper Certificates and expended solely for the payment of principal of and interest with respect to maturing Outstanding Commercial Paper Certificates of such Series or accrued interest with respect to such Series of Callable Commercial Paper Certificates upon redemption prior to maturity, in each case in accordance with Section 4.06 hereof.

**Section 4.03. Application of Proceeds of Advances under Direct Placement Revolving Credit Agreements.** The proceeds of an Advance under a Direct Placement Revolving Credit Agreement for a Series of Lease Revenue Certificates (net of all Costs of Issuance which shall be deposited in the Costs of Issuance Fund and applied in accordance with the provisions of Section 4.08 hereof) shall be deposited in the applicable account or subaccount of the Project Fund and applied to the payment of Project Costs, in accordance with the provisions of Section 4.04 hereof.

**Section 4.04. Establishment and Application of Project Fund.** There is hereby established in trust a special fund designated the "Project Fund", which shall be held by the Trustee and which shall be kept separate and apart from all other funds and moneys held by the Trustee. The Trustee shall administer the Project Fund. The Trustee shall also establish such accounts within the Project Fund as shall be directed by the City in connection with any particular capital project or improvements and separate subaccounts within such accounts shall be maintained for the proceeds of Tax Exempt Commercial Paper Certificates and Taxable Commercial Paper Certificates, and Advances evidenced by Tax Exempt Direct Placement Revolving Certificates and Taxable Direct Placement Revolving Certificates or as directed by the Tax Certificates. Each such subaccount shall bear such additional designation as may be necessary or appropriate to distinguish it from every other subaccount associated with each issuance of Tax Exempt Commercial Paper Certificates and Advance evidenced by Tax Exempt Direct Placement Revolving Certificates executed and delivered in connection with any Tax Exempt Project (each a "Tax Exempt Project Subaccount") and each issuance of Taxable Commercial Paper Certificates and Advances evidenced by Taxable Direct Placement Revolving Certificates executed and delivered in connection with any Taxable Project (each, a "Taxable Project Subaccount"). Moneys may be transferred from any subaccount to any other subaccount established under this Section in accordance with the written instructions of an Authorized Representative if such written instruction is accompanied by the approving opinion of Special Counsel addressed to the City and to the Trustee that such use will not adversely affect the exclusion from gross income for federal income tax purposes of the interest with respect to the Tax Exempt Lease Revenue Certificates.

In connection with the issuance of the Commercial Paper Certificates, there shall be deposited in the Project Fund for the purpose of paying Project Costs that portion of the proceeds of the Commercial Paper Certificates required to be deposited therein pursuant to Section 4.01 hereof and such other amounts as specified by the City. In connection with Advances under Direct Placement Revolving Credit Agreements, there shall be deposited in the

Project Fund for the purpose of paying Project Costs that portion of the proceeds of such Advances required to be deposited therein pursuant to Section 4.03 hereof and such other amounts as specified by the City. The Trustee shall, from time to time, disburse money from the Project Fund or any applicable subaccount therein, to pay Project Costs in each case promptly after receipt of and in accordance with a written request of an Authorized Representative in the form attached hereto as Exhibit E. Moneys deposited in the Project Fund or any applicable subaccount therein shall remain therein until from time to time expended to pay for Project Costs, as specified in writing by the City, and shall not be used for any other purposes whatsoever, except as otherwise provided below. Pending such expenditure, moneys in said fund may be invested at the direction of an Authorized Representative in Qualified Investments subject to any investment and other limitations contained in the Tax Certificates. Any income received from such investments or the proceeds of Tax Exempt Commercial Paper Certificates and Advances evidenced by Tax Exempt Direct Placement Revolving Certificates shall be deposited, as received, into the Investment Earnings Account of the Earnings Fund and applied as provided therein.

If the City shall certify to the Trustee that moneys are no longer required for the payment of any Project Costs and there shall remain any balance of money in the Project Fund, or any subaccount therein, such balance shall be transferred, at the election of the City, (a) to the Base Rental Account to the extent necessary to make the amount on deposit therein equal to the amount of Base Rental to become due within the next 12 months, or (b) to the City for any capital expenditure of the City whether or not related to Project Costs, provided that the Trustee shall have received an opinion of Special Counsel to the effect that such use will not adversely affect the exclusion from gross income for federal income tax purposes of the interest with respect to the Tax Exempt Lease Revenue Certificates, or (c) to any other use desired by the City that Special Counsel has determined will not adversely affect the exclusion from gross income for federal income tax purposes of the interest with respect to the Tax Exempt Lease Revenue Certificates, provided that the Trustee shall have received an opinion of Special Counsel to such effect.

There shall also be established with the Project Fund a Capitalized Interest Account, which shall consist of a Tax Exempt Capitalized Interest Subaccount and a Taxable Capitalized Interest Subaccount. The Trustee shall deposit such amounts in such Account and Subaccounts as directed by the City, and shall direct the Trustee to transfer such amounts to the Commercial Paper Certificates Base Rental Subaccount and the Direct Placement Revolving Certificates Base Rental Subaccount to be applied as provided in Section 4.05(d) hereof. Amounts representing capitalized interest that are proceeds of the Tax Exempt Commercial Paper Certificates or the Tax Exempt Direct Placement Revolving Certificates may be used only to pay interest with respect to Tax Exempt Commercial Paper Certificates and the Revolving Certificates related thereto and Tax Exempt Direct Placement Revolving Certificates.

There shall also be established with the Project Fund a Capitalized Fees Account, which shall consist of a Tax Exempt Capitalized Fees Subaccount and a Taxable Capitalized Fees Subaccount. The Trustee shall deposit such amounts in such Account and Subaccounts as directed by the City, and shall direct the Trustee to transfer such amounts to the Administrative Expense Account to be applied as provided in Section 4.05(c) hereof. Amounts representing capitalized fees that are proceeds of the Tax Exempt Commercial Paper Certificates or the Tax Exempt Direct Placement Revolving Certificates may be used only to pay fees with respect to Tax Exempt Commercial Paper Certificates and the Revolving Certificates related thereto and Tax Exempt Direct Placement Revolving Certificates.

**Section 4.05. Establishment and Application of Lease Revenue Certificate Payment Fund.**

(a) Simultaneously with the execution of this Trust Agreement, the Trustee shall establish hereunder in trust a special fund designated as the "Lease Revenue Certificate Payment Fund," which shall be held by the Trustee and which shall be kept separate and apart from all other funds and moneys held by the Trustee. The Lease Revenue Certificate Payment Fund shall be maintained by the Trustee until all required Base Rental is paid in full pursuant to the terms of the Sublease and all obligations payable to the Credit Providers under the Credit Provider Agreements have been satisfied. Within the Lease Revenue Certificate Payment Fund, the Trustee shall establish the following accounts and subaccounts (and may establish such additional subaccounts within such accounts as directed to by an Authorized Representative of the City):

- (i) Base Rental Account, including each of the following subaccounts;
  - (A) Commercial Paper Certificates Base Rental Subaccount; and
  - (B) Direct Placement Revolving Certificates Base Rental Subaccount;
- (ii) Administrative Expense Account;
- (iii) Direct Placement Revolving Certificates Payment Account, including the following subaccount (and separate subaccounts within each such Payment Subaccount with respect to Tax Exempt Commercial Paper Certificates and Taxable Commercial Paper Certificates if and when executed and delivered):
  - (A) Series A Direct Placement Revolving Certificates Payment Subaccount.

(b) Base Rental and proceeds of rental interruption insurance with respect to any Property (if any), received by the Trustee shall be deposited in the Base Rental Account and transferred to the Commercial Paper Certificates Base Rental Subaccount and the Direct Placement Revolving Certificates Base Rental Subaccount to the extent necessary for the immediate payment of interest payments past due and then for immediate payment of principal payments past due according to the tenor of the related Lease Revenue Certificates plus amounts sufficient to pay the principal of and accrued interest with respect to the related Lease Revenue Certificates due and payable for the applicable Base Rental Period. To the extent the amount of Base Rental and proceeds of rental interruption insurance with respect to any Property (if any) received by the Trustee is insufficient to make the transfers described in the preceding sentence, such amounts shall be transferred to such subaccounts on a Pro Rata Basis. Any delinquent Base Rental payments and any proceeds of rental interruption insurance with respect to the Property shall be deposited in the Base Rental Account and transferred to the Commercial Paper Certificates Base Rental Subaccount and the Direct Placement Revolving Certificates Base Rental Subaccount on a Pro Rata Basis. The Trustee shall transfer amounts on deposit in the Commercial Paper Certificates Base Rental Subaccount to the Delivery and Paying Agent for deposit in the Bank Reimbursement Account, to be applied as set forth in Section 4.06 hereof. The Trustee shall transfer amounts on deposit in the Direct Placement Revolving Certificates Base Rental Subaccount to the Direct Placement Revolving Certificates Payment Account to be applied as set forth in Section 4.05(e) below. Any remaining money representing delinquent Base Rental payments and any proceeds of rental interruption

insurance shall remain on deposit in the Base Rental Account to be applied in the manner provided herein.

(c) Additional Rental with respect to each Property received by the Trustee shall be deposited in the Administrative Expense Account. The Trustee shall disburse money from the Administrative Expense Account on such dates and in such amounts as are necessary to pay all expenses of the City or the City (not otherwise paid or provided for out of the proceeds of the sale of the Commercial Paper Certificates or the proceeds of an Advance under a Direct Placement Revolving Credit Agreement), incidental to the execution and delivery of the Lease Revenue Certificates, including but without limiting the generality of the foregoing; fees, costs and expenses of the Trustee and the Delivery and Paying Agent, commitment fees and other amounts payable to the Credit Providers as required under each Credit Provider Agreement, and other necessary administrative charges of the City or the City or for any other lawful purpose of the City or the City in accordance with the Tax Certificates, in each case, in accordance with a written payment request of an Authorized Representative in the form attached hereto as Exhibit D. Any amounts on deposit in the Administrative Expense Account not needed to pay expenses of the City or the Trustee incidental to the execution and delivery of the Lease Revenue Certificates may be transferred to the Base Rental Account from time to time pursuant to a written request of an Authorized Representative.

(d) On July 1, 20\_\_ and on each July 1 thereafter so long as any Series of Lease Revenue Certificates are Outstanding, the Trustee shall transfer from the Base Rental Account to the Commercial Paper Certificates Base Rental Subaccount and the Direct Placement Revolving Certificates Base Rental Subaccount, on a Pro Rata Basis, such amount as shall be necessary to (i) with respect to Certificates, repay or prepay Advances under the Reimbursement Agreement relating to such Series or, if applicable, to retire maturing Commercial Paper Certificates of such Series (and in each case to pay the interest thereon) and (ii) with respect to Direct Placement Revolving Certificates, repay or prepay Advances under the Direct Placement Revolving Credit Agreement, in each case in an aggregate amount not less than the Pro Rata Share of the Required Principal Reduction Amount attributable to such Category calculated for the then current Base Rental Period. The Trustee shall transfer amounts on deposit in the Commercial Paper Certificates Base Rental Subaccount to the Delivery and Paying Agent for deposit in the applicable Bank Reimbursement Account to be applied as set forth in Section 4.06 hereof. The Trustee shall transfer amounts on deposit in the Direct Placement Revolving Certificates Base Rental Subaccount to the Direct Placement Revolving Certificates Payment Account, to be applied as set forth in Section 4.05(e) below. Any amounts remaining in the Base Rental Account following such transfer and the other transfers required by this Section 4.05 (other than any remaining money representing delinquent Base Rental payments and any proceeds of rental interruption insurance which shall remain on deposit in the Base Rental Account) shall be applied (A) first, to pay any outstanding Advances (and interest thereon) evidenced by Revolving Certificates and any outstanding Advances (and interest thereon) evidenced by Direct Placement Revolving Certificates, on a Pro Rata Basis, (B) second, at the election of the City, either to pay any Advances evidenced by Revolving Certificates made to retire additional Commercial Paper Certificates (and interest thereon) or prepay any outstanding Advances (and interest thereon) evidenced by Direct Placement Revolving Certificates, on a Pro Rata Basis, (C) third, transferred to the Administrative Expense Account to pay any other amounts payable to the Credit Providers as required under each Credit Provider Agreement, or (D) fourth, transferred to the City to be used for any lawful purpose.

(e) There shall be deposited in the Direct Placement Revolving Certificates Payment Account all amounts directed to be deposited therein pursuant to Section 4.05(b) hereof, to be transferred to the Series A Direct Placement Revolving Certificates Payment Subaccount in amounts sufficient to pay the interest and principal then due and payable with respect to the related Direct Placement Revolving Certificates. To the extent the amount directed to be deposited in the Direct Placement Revolving Certificates Payment Account is insufficient to make the transfer described in the preceding sentence, such amounts shall be transferred to such subaccount first, to the payment of accrued and unpaid interest then due and payable and, second, to the payment of principal then due and payable, in each case, under the related Direct Placement Revolving Certificates. On the date any payment is due under any Direct Placement Revolving Certificate, the Trustee shall apply moneys on deposit in the applicable Direct Placement Revolving Certificates Payment Subaccount to the payment of interest and principal then due and payable with respect to the related Direct Placement Revolving Certificate in accordance with its terms and the related Direct Placement Revolving Credit Agreement.

(f) The Trustee shall pay to any Credit Provider from amounts on deposit in the Administrative Expense Account amounts required to be paid to such Credit Provider pursuant to the applicable Credit Provider Agreement.

#### **Section 4.06. Establishment and Application of Delivery and Paying Agent Fund.**

(a) Simultaneously with the execution of this Trust Agreement, and pursuant to the terms of the Delivery and Paying Agent Agreement, the Delivery and Paying Agent shall establish in trust a special fund designated as the "Delivery and Paying Agent Fund," which shall be held by the Delivery and Paying Agent and which shall be kept separate and apart from any other funds and moneys held by the Delivery and Paying Agent. The Delivery and Paying Agent Fund shall be maintained by the Delivery and Paying Agent until all required Base Rental is paid in full pursuant to the terms of the Sublease and all obligations payable to the LC Banks under the Reimbursement Agreements have been satisfied and all Credit Facilities have expired or terminated. Within the Delivery and Paying Agent Fund, the Delivery and Paying Agent shall establish the following accounts and subaccounts (and may establish such additional subaccounts within such accounts as directed to by an Authorized Representative of the City):

(i) Commercial Paper Certificates Payment Account including each of the following subaccounts (and separate subaccounts within each applicable Commercial Paper Certificate Proceeds Subaccount and each applicable Base Rental Payment Subaccount with respect to Tax Exempt Commercial Paper Certificates and Taxable Commercial Paper Certificates if and when executed and delivered):

- (A) Credit Facility Proceeds Subaccount;
- (B) Commercial Paper Certificate Proceeds Subaccount;
- (C) Base Rental Payment Subaccount; and
- (D) Refunding Proceeds Redemption Price Subaccount.

(ii) Bank Reimbursement Account including the Reimbursement Subaccount.



Any monies in the Refunding Proceeds Redemption Price Subaccount until applied for the purposes herein provided shall be held uninvested.

If and when any Commercial Paper Certificates are executed and delivered as Callable Commercial Paper Certificates, the Delivery and Paying Agent shall establish a Refunding Proceeds Redemption Price Subaccount with respect to such Series of Commercial Paper Certificates within the Commercial Paper Certificates Payment Account.

(b) There shall be deposited into the applicable Commercial Paper Certificate Proceeds Subaccount of the Commercial Paper Certificates Payment Account (based on such Series of Commercial Paper Certificates and whether such Commercial Paper Certificates are Tax Exempt Commercial Paper Certificates or Taxable Commercial Paper Certificates) an amounts directed to be deposited therein with respect to a Series of Commercial Paper Certificates pursuant to Section 4.01(a) hereof.

(c) There shall be deposited in the Bank Reimbursement Account all amounts directed to be deposited therein pursuant to Section 4.05(b) hereof, to be transferred to the Bank Reimbursement Subaccounts with respect to each Series of Commercial Paper Certificates to the extent necessary for the immediate payment of interest payments past due and then for immediate payment of principal payments past due according to the tenor of the related Revolving Certificates plus amounts sufficient to pay the principal of and accrued interest with respect to the related Revolving Certificates due and payable for the applicable Base Rental Period. To the extent the amount directed to be deposited in the Bank Reimbursement Account pursuant to Section 4.05(b) hereof is insufficient to make the transfers described in the preceding sentence, such amounts shall be transferred to such subaccounts on a Pro Rata Basis.

(d) The proceeds of any long-term bonds or certificates of participation fixed to maturity executed and delivered to pay such Redemption Price to such Owner on the Redemption Date shall be deposited in the applicable Refunding Proceeds Redemption Price Subaccount within the Commercial Paper Certificates Payment Account and expended for the payment of the Redemption Price of the applicable Series of Callable Commercial Paper Certificates upon redemption prior to maturity in accordance with the terms of this Trust Agreement.

(e) Amounts on deposit in the accounts of the Delivery and Paying Agent Fund shall be expended as follows:

(i) On the maturity date of any Commercial Paper Certificate or Redemption Date of any Callable Commercial Paper Certificate, as applicable:

(A) the Delivery and Paying Agent shall apply moneys on deposit in the Commercial Paper Certificates Payment Account to the payment of principal and interest, if any, on such maturing Commercial Paper Certificates or accrued interest with respect to the applicable Series of Callable Commercial Paper Certificates upon redemption prior to maturity in accordance with the terms of this Trust Agreement, and from the subaccounts with respect to such Series of Commercial Paper Certificates within such Commercial Paper Certificates Payment Account in the following order: first, from the applicable Credit Facility Proceeds Subaccount, second, from the applicable Commercial Paper Certificate Proceeds Subaccount (based on such Series of Commercial Paper Certificates

and whether such Commercial Paper Certificates are Tax Exempt Commercial Paper Certificates or Taxable Commercial Paper Certificates) and third, from the applicable Base Rental Payment Subaccount; and

(B) the Delivery and Paying Agent shall apply moneys on deposit in the subaccount within the Bank Reimbursement Account with respect to such Series of Commercial Paper Certificates that have been deposited pursuant to Section 4.01(a) or 4.06(c) hereof to reimburse the related LC Bank for Advances made to pay the principal of and interest with respect to such Series of Commercial Paper Certificates or accrued interest with respect to such Series of Callable Commercial Paper Certificates upon redemption prior to maturity.

(ii) On the date any payment is due under any Revolving Certificate:

(A) the Delivery and Paying Agent shall apply moneys on deposit in the subaccount of the Bank. Reimbursement Account with respect to such Series of Revolving Certificate to the payment of the interest and principal then due and payable with respect to such Revolving Certificate in accordance with its terms and the related Reimbursement Agreement;

(B) subject to clause (C) below, if after application of all moneys on deposit in such subaccount of the Bank. Reimbursement Account, any interest or principal then due with respect to such Revolving Certificate remains due and payable, the Delivery and Paying Agent shall transfer from the Commercial Paper Certificates Base Rental Subaccount an amount which equals the interest and principal then due and payable with respect to such Revolving Certificate, for payment of interest and principal in accordance with the terms of such Revolving Certificate and the related Reimbursement Agreement; and

(C) if the interest or principal under one or more Revolving Certificates are due and payable on such date and amounts in the subaccounts of the Bank Reimbursement Account are insufficient to pay all interest and principal then due and payable under all Revolving Certificates, then the amounts in the Commercial Paper Certificates Base Rental Subaccount shall be paid on a Pro Rata Basis, first, to the payment of accrued and unpaid interest then due and payable and, second, to the payment of principal then due and payable, in each case, under all Revolving Certificates.

(iii) On the Redemption Date of any Callable Commercial Paper Certificate, the Delivery and Paying Agent shall apply moneys on deposit in the following subaccounts in the following order: first, from the applicable Refunding Proceeds Redemption Price Subaccount within the Commercial Paper Certificates Payment Account with respect to such Series of Commercial Paper Certificates and second, from the applicable Commercial Paper Certificate Proceeds Subaccount within the Commercial Paper Certificates Payment Account (based on such Series of Commercial Paper Certificates and whether such Commercial Paper Certificates are Tax Exempt Commercial Paper Certificates or Taxable Commercial Paper Certificates), to the payment of the Redemption Price of such Callable Commercial Paper Certificate in accordance with the terms of this Trust Agreement.

(f) Any proceeds of the sale of any Series of Commercial Paper Certificates deposited in any subaccount of the Bank Reimbursement Account pursuant to Section 4.01 (a) hereof may be transferred to the applicable Commercial Paper Certificate Proceeds Subaccount to the extent necessary for the immediate payment of interest payments past due and then for immediate payment of principal payments past due according to the tenor of the related Commercial Paper Certificates.

**Section 4.07. Establishment and Application of Earnings Fund.**

(a) The Trustee shall establish, maintain and hold in trust a special fund separate from any other fund or account established and maintained hereunder designated as the "Earnings Fund." The Earnings Fund shall be maintained by the Trustee until the Trustee receives written notification from an Authorized Representative that it be closed. The Trustee shall establish and maintain in the Earnings Fund two separate accounts each designated as follows: the "Investment Earnings Account" and the "Excess Earnings Account." Within each of the Investment Earnings Account and Excess Earnings Account, the Trustee shall establish an investment earnings subaccount and an excess earnings subaccount for each corresponding Tax Exempt Project Subaccount created pursuant to Section 4.04 hereof (each an "Investment Earnings Subaccount" and an "Excess Earnings Subaccount", respectively). All moneys in each of the Investment Earnings Account and the Excess Earnings Account shall be held by the Trustee in trust and shall be kept separate and apart from all other funds and moneys held by the Trustee.

(b) All Investment Earnings on amounts on deposit in any Excess Earnings Subaccount in the Excess Earnings Account of the Earnings Fund shall be retained therein.

(c) There shall be deposited into each Investment Earnings Subaccount in the Investment Earnings Account and each Excess Earnings Subaccount in the Excess Earnings Account amounts required to be deposited therein pursuant to the provisions of this Trust Agreement and as directed by notice in writing given by an Authorized Representative in accordance with the Tax Certificates.

(d) Amounts on deposit in each Investment Earnings Subaccount in the Investment Earnings Account shall be transferred to the corresponding Excess Earnings Subaccount in the Excess Earnings Account pursuant to the written instructions from an Authorized Representative in accordance with the provisions of the Tax Certificates. Upon such transfer, and prior to the payment of all Project Costs relating to the corresponding issuance of Tax Exempt Lease Revenue Certificates, any amount remaining in any Investment Earnings Subaccount in the Investment Earnings Account or any amount on deposit in any Excess Earnings Subaccount in the Excess Earnings Account corresponding to the Tax Exempt Project Subaccount which exceeds the amount required to be maintained therein shall be transferred by the Trustee to the Project Fund. Following payment of all Project Costs from the corresponding Tax Exempt Project Subaccount as certified by the City in accordance with Section 4.04 hereof, any such remaining amounts in the corresponding Investment Earnings Subaccount or the corresponding Excess Earnings Subaccount shall be transferred to the Bank Reimbursement Account of the Delivery and Paying Agent Fund and applied as provided therein. Except as set forth in the preceding sentence, amounts on deposit in the Excess Earnings Account shall only be applied to payments made to the United States in accordance with written instructions of an Authorized Representative.

**Section 4.08. Costs of Issuance Fund.** There is hereby established in trust a special fund designated the "Costs of Issuance Fund;" which shall be held by the Trustee and which shall be kept separate and apart from all other funds and moneys held by the Trustee. In connection with the execution and delivery of the Lease Revenue Certificates, there shall be deposited in the Costs of Issuance Fund that portion of the proceeds of the Lease Revenue Certificates required to be deposited therein pursuant to Sections 4.01(b) and 4.03 hereof and such other amounts as specified by the City. The Trustee shall disburse money from the Costs of Issuance Fund on such dates and in such amounts as are necessary to pay Costs of Issuance, in each case, promptly after receipt of, and in accordance with, a written payment request of an Authorized Representative in the form attached hereto as Exhibit D, together with invoices therefor. Pending such expenditure, moneys in said fund may be invested at the direction of an Authorized Representative in Qualified Investments subject to any investment and other limitations contained in the Tax Certificates. Any income received from such investments shall be deposited, as received, into the Investment Earnings Account of the Earnings Fund and applied as provided therein. Any moneys remaining in the Costs of Issuance Fund six (6) months following the initial date of deposit of such moneys therein, shall be transferred to the Project Fund and applied as provided therein.

**Section 4.09. Surplus.** Subject to the limitations contained in the Tax Certificates, after (a) payment or provision for payment of an amounts due with respect to the Lease Revenue Certificates and the payment of all other amounts payable under each Credit Provider Agreement, and payment of all fees and expenses of the Delivery and Paying Agent and the Trustee, and (b) the transfer of any additional amounts required to be deposited into the Excess Earnings Account of the Earnings Fund pursuant to the written instructions from an Authorized Representative in accordance with Section 4.07 hereof and the Tax Certificates, any amounts remaining in any of the funds or accounts established hereunder (other than in the Excess Earnings Account of the Earnings Fund) and not required for such purposes shall after payment of any amounts due to the Trustee be remitted to the City and used for any lawful purpose.

**Section 4.10. Additional Rental.** In the event the Trustee receives Additional Rental pursuant to the Sublease, such Additional Rental shall be applied by the Trustee solely to the payment of any amounts in respect of which such Additional Rental was received and shall not be commingled in any way with any other funds received by the Trustee pursuant to the Sublease or this Trust Agreement.

**Section 4.11. Repair or Replacement; Application of Insurance Proceeds and Condemnation Awards.** If any portion of the Property shall be damaged or destroyed, or shall be taken by eminent domain proceedings, the City shall, as expeditiously as possible, continuously and diligently prosecute or cause to be prosecuted the repair or replacement thereof, unless the City elects not to repair or replace the Property in accordance with the provisions of this Section 4.11.

The proceeds of any insurance (other than any rental interruption or workers' compensation insurance), including the proceeds of any self-insurance or of any condemnation award, received on account of any damage, destruction or taking of the Property or portion thereof shall as soon as possible be deposited with the Trustee and be held by the Trustee in a special account which it shall establish upon such deposit and made available for and, to the extent necessary, shall be applied to the cost of repair or replacement of the Property or affected portion thereof upon receipt of a written request of an Authorized Representative. Pending such application, such proceeds shall be invested by the Trustee solely at the written

direction of an Authorized Representative, in Qualified Investments that mature not later than such times moneys are expected to be needed to pay such costs of repair or replacement.

Notwithstanding the foregoing, an Authorized Representative shall, within 90 days of the occurrence of the event of damage, destruction or taking, notify the Trustee in writing of whether the City intends to replace or repair the Property or the portions of the Property which were damaged or destroyed. If the City elects to replace or repair the Property or portions thereof, the City shall deposit with the Trustee the full amount of any insurance deductible to be credited to the special account.

In the event of damage, destruction or taking which results in an abatement of Rental Payments pursuant to Section 3.5 of the Sublease, the City shall be required either to (i) apply sufficient funds from the insurance proceeds, condemnation award and other legally available funds, if any, to the replacement or repair of any Component which has been damaged, destroyed or taken, or (ii) apply sufficient funds from the insurance proceeds, condemnation award and other legally available funds, if any, to the payment and retirement of Outstanding Lease Revenue Certificates and payment to the Credit Providers of all obligations payable under the Credit Provider Agreements, such that (a) the Lease Revenue Certificates Outstanding following the application of such amounts does not exceed the Maximum Principal Amount (as modified assuming the termination of the Sublease with respect to such damaged, destroyed or taken Component pursuant to Section 5.1 or 6.1 of the Sublease, as applicable, and assuming the corresponding adjustment to Maximum Base Rental for each Base Rental Period during the remainder of the term of the Sublease) and (b) the resulting Base Rental payments on the unaffected portions of the Property payable pursuant to the Sublease in any Base Rental Period following the application of such amounts are sufficient to pay in such Base Rental Period the principal of and interest with respect to an aggregate principal amount of Lease Revenue Certificates assuming such Lease Revenue Certificates are Outstanding in an aggregate principal amount equal to the Maximum Principal Amount (as modified assuming the termination of the Sublease with respect to such damaged, destroyed or taken Component pursuant to Section 5.1 or 6.1 of the Sublease, as applicable, and assuming the corresponding adjustment to Maximum Base Rental for each Base Rental Period during the remainder of the term of the Sublease), to the extent due and payable in any such subsequent Base Rental Period following the application of such amounts. Any amounts received by the Trustee under this Section 4.11 in excess of the amount needed to either repair or replace a damaged, destroyed or taken portion of the Property or pay Outstanding Lease Revenue Certificates and obligations payable under the Credit Provider Agreements as hereinabove provided shall be transferred to the City.

**Section 4.12. Title Insurance.** Proceeds of any policy of title insurance received by the Trustee in respect of the Property shall be applied and disbursed by the Trustee as follows:

(a) If the City and the City (i) determine that the title defect giving rise to such proceeds has not materially affected the use and possession of the Property and will not result in any abatement of Rental Payments payable by the City under the Sublease, and (ii) have provided the Trustee with written evidence of such determination, such proceeds shall be remitted to the City.

(b) If the City and the City determine that such title defect will result in an abatement of Rental Payments payable by the City under the Sublease, then the Trustee shall immediately deposit such amounts in a special account and apply such amounts to the to the payment and retirement of Outstanding Lease Revenue Certificates and payment to the Credit Providers of all

obligations payable under the Credit Provider Agreements, such that (i) the Lease Revenue Certificates Outstanding following the application of such amounts does not exceed the Maximum Principal Amount (as modified to disregard the Property subject to such title defect and assuming the corresponding adjustment to Maximum Base Rental for each Base Rental Period during the remainder of the term of the Sublease) and (ii) the resulting Base Rental payments on the unaffected portions of the Property payable pursuant to the Sublease in any Base Rental Period following such payment or prepayment are sufficient to pay in such Base Rental Period the principal of and interest with respect to an aggregate principal amount of Lease Revenue Certificates assuming such Lease Revenue Certificates are Outstanding in an aggregate principal amount equal to the Maximum Principal Amount (as modified to disregard the Property subject to such title defect and assuming the corresponding adjustment to Maximum Base Rental for each Base Rental Period during the remainder of the term of the Sublease), to the extent due and payable in any such subsequent Base Rental Period following the application of such amounts.

**Section 4.13. Application of Amounts After Default by City.** All damages or other payments received by the Trustee from the enforcement of any rights and powers of the Trustee under Section 12 of the Sublease, after a default by the City thereunder or hereunder, shall, after payment of all reasonable fees and expenses of the Trustee related to the enforcement of remedies, including without limitation, the reasonable fees and expenses of its attorneys, be deposited into the Base Rental Account of the Delivery and Paying Agent Fund and applied in the manner specified herein.

**Section 4.14. Held in Trust.** The moneys and investments held by the Trustee hereunder are irrevocably held in trust for the purposes herein specified, and such moneys and investments, and any income or interest earned thereon, shall be expended only as provided herein, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of (i) the City, (ii) the Trustee, (iii) any Owner, or (v) any beneficial owner of Lease Revenue Certificates.

**Section 4.15. Investments Authorized.** Except as otherwise provided herein, moneys held by the Trustee in any fund or account hereunder shall be invested by the Trustee in Qualified Investments pending application as provided herein, solely at the written direction of an Authorized Representative, shall be registered in the name of the Trustee where applicable, as Trustee, and shall be held by the Trustee. The City shall direct the Trustee prior to 12:00 p.m. Pacific time on the last Business Day before the date on which a Qualified Investment matures or is redeemed as to the reinvestment of the proceeds thereof. In the absence of such direction, the Trustee shall invest in Qualified Investments described in clause (4) of the definition thereof. Moneys held in any fund or account hereunder may be commingled for purposes of investment only. All Investment Earnings on amounts on deposit in the each fund, account and subaccount established and to be established from time to time hereunder shall remain in such funds, accounts and subaccounts, except that all Investment Earnings on amounts on deposit in each subaccount relating to Tax Exempt Projects shall be transferred to a corresponding Investment Earnings Subaccount created pursuant to Section 4.07(a) hereof.

The Trustee may purchase or send to itself or any affiliate, as principal or agent, investments authorized by this Section 4.15, provided that the Trustee has given prior notice to the City of its intent to do so. The Trustee may act as agent in the making or disposing of any investment.

The Trustee or any of its affiliates may act as agent, sponsor or advisor in connection with any investment made by the Trustee hereunder.

For the purpose of determining the amount in any fund or account hereunder all Qualified Investments shall be valued on June 30 of each year at the cost thereof (or more frequently as directed in writing by the City or as required in the definition of Qualified Investments with respect to certain Qualified Investments). The Trustee may sell at the best price obtainable, or present for redemption, any Qualified Investment purchased by the Trustee whenever it shall be necessary in order to provide money to meet any required payment, transfer, withdrawal or disbursement from any fund or account hereunder, and the Trustee shall not be liable or responsible for any loss resulting from such investment or sale, except any loss resulting from its own negligence or willful misconduct.

**Section 4.16. Reports.** The Trustee shall furnish monthly to the City a report, which may be its customary account statements, of all investments made by the Trustee and of all amounts on deposit in each fund and account maintained hereunder.

**Section 4.17. Limited Obligation of Lease Revenue Certificates.** The Lease Revenue Certificates are special limited obligations and the principal thereof and interest with respect thereto are payable solely from the Pledged Property as provided herein, and the City is not obligated to pay such principal or interest except from the Pledged Property.

## ARTICLE V

### THE TRUSTEE

**Section 5.01. Compensation and Indemnification of Trustee.** The City will from time to time, on demand, pay to the Trustee reasonable compensation for its services and will reimburse the Trustee for all its advances and expenditures, including but not limited to advances to and fees and expenses of independent appraisers, accountants, consultants, counsel, agents and attorneys-at-law or other experts employed by it in the exercise and performance of its powers and duties hereunder. To the extent permitted by law, compensation and reimbursement to the Trustee will not be limited by any statutory provisions which limit compensation to trustees of express trusts.

To the extent permitted by law, the City further covenants and agrees to indemnify the Trustee and its authorized officers, directors, agents and employees, against any loss, expense and liabilities which it may incur arising out of or in the exercise and performance of its powers and duties hereunder, or related to or arising from the Site Lease and the Sublease, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, expenses and liabilities which are due to the negligence or willful misconduct of the Trustee, its officers, directors, agents or employees.

Notwithstanding any other provision of this Trust Agreement, the provisions of this Section 5.01 shall survive the satisfaction and discharge of this Trust Agreement or the appointment of a successor trustee.

**Section 5.02. Removal of Trustee.** The City at any time, provided no Event of Default has occurred and is continuing, or the Owners of a majority in aggregate principal amount of all Lease Revenue Certificates then Outstanding at any time may by written request for any reason, remove the Trustee and any successor thereto, and shall thereupon appoint a successor or successors thereto, but any such successor shall be a trust company, or a bank having the powers of a trust company, having (or be a member of a bank holding company system with a bank holding company which has) a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000 and shall be subject to supervision or examination by federal or state banking authorities. If such trust company or bank publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 5.02 the combined capital and surplus of such trust company or bank shall be deemed to be its combined capital and surplus set forth in its most recent report of condition so published. Any removal of the Trustee shall become effective upon acceptance of appointment by the successor Trustee.

**Section 5.03. Resignation of Trustee.** The Trustee or any successor may at any time resign by giving written notice to the City and the City and by giving mailed notice to the Owner of its intention to resign and of the proposed date of resignation, subject to acceptance of appointment by a successor Trustee.

Upon receiving such notice of resignation, the City shall promptly appoint a successor Trustee by an instrument in writing; provided however, that in the event the City fails to appoint a successor Trustee within 30 days following receipt of such written notice of resignation, the resigning Trustee may petition the appropriate court having jurisdiction to appoint a successor.



Anything herein to the contrary notwithstanding, any resignation of the Trustee shall become effective only upon acceptance of appointment by the successor Trustee.

Any successor Trustee approved by the City or any court shall satisfy the qualifications set forth in Section 5.02 hereof.

**Section 5.04. Merger or Consolidation.** Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business (provided such company is eligible under Section 5.02 hereof), shall be the successor to the Trustee without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

**Section 5.05. Protection and Rights of the Trustee.** The Trustee shall, prior to an Event of Default, and after the curing or waiving of all events of default which may have occurred, perform such duties and only such duties as are specifically set forth in this Trust Agreement. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Trust Agreement and the Trustee shall 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 such person's own affairs. The Trustee shall be protected and shall incur no liability in acting upon or processing in good faith any resolution, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board or Person or to have been prepared and furnished pursuant to any of the provisions of this Trust Agreement, and the Trustee shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee may consult with counsel, who may not be counsel to the City or the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it in good faith reliance.

The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the Owners of not less than a majority in aggregate principal amount of the Lease Revenue Certificates at the time Outstanding or the Required Credit Providers relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or relating to the exercise of any trust or power conferred upon the Trustee under this Trust Agreement.

Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Lease Revenue Certificates, or as to the existence of a default or Event of Default thereunder.

Whenever in the administration of its duties under this Trust Agreement the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) shall be deemed to be conclusively proved and established by a certificate of an Authorized Representative and such certificate shall be full warranty to the

Trustee for any action taken or suffered under the provisions of this Trust Agreement in good faith reliance thereon, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

The Trustee may become an Owner or a pledgee of any Lease Revenue Certificates with the same rights it would have if it were not the Trustee; may acquire and dispose of bonds or other evidences of indebtedness of the City and enforce its rights as owner thereof to the same extent as if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners, whether or not such committee shall represent the Owners of a majority in aggregate principal amount of the Lease Revenue Certificates then Outstanding.

The recitals, statements and representations by the City contained in this Trust Agreement or in the Lease Revenue Certificates shall be taken and construed as made by and on the part of the City and not by the Trustee, and the Trustee does not assume, and shall not have any responsibility or obligation for the correctness of any such recital, statement or representation.

The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents or receivers, and shall be entitled to advice of counsel concerning all matters of trust and concerning its duties hereunder.

No provision of this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties hereunder or in the exercise of any of its rights or powers if the repayment of such funds, or adequate indemnity against such risk or liability, is not reasonably assured to it. Notwithstanding anything to the contrary in this Section 5.05, to the extent the Trustee is required under this Trust Agreement to take actions to pay Outstanding Lease Revenue Certificates, the Trustee shall do so without requiring indemnity.

Every provision of this Trust Agreement, the Sublease and any other document related to the Lease Revenue Certificates relating to the conduct or liability of the Trustee shall be subject to the provisions of this Trust Agreement, including without limitation, this Article.

In acting as Trustee hereunder, the Trustee acts solely in its capacity as Trustee hereunder and not in its individual or personal capacity, and all Persons, including without limitation the Owners, the City and the City, having any claim against the Trustee shall look only to the funds and accounts held by the Trustee hereunder for payment, except as otherwise provided herein. Under no circumstances shall the Trustee be liable in its individual or personal capacity for the obligations evidenced by the Lease Revenue Certificates.

The Trustee makes no representation or warranty, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City or the City of the Property or any portion thereof, or any other representation or warranty with respect to the Property or any portion thereof. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with this Trust Agreement, the Sublease or the Site Lease or the existence, furnishing or functioning of the Property or the City's use of the Property.

Before taking any action under Article IX hereof or upon the direction of the Owners, the Trustee may require indemnity satisfactory to the Trustee be furnished to it to protect it against all reasonable fees and expenses, including those of its attorneys and advisors, and protect it against all liability it may incur.

The Trustee shall not be responsible for any information in, or the content of any offering memorandum or other document prepared in connection with the Lease Revenue Certificates.

**Section 5.06. Trustee to Act as Set Forth Herein.** The Trustee has the power to receive, to hold in accordance with the terms hereof and to disburse the money to be paid pursuant to the Sublease and this Trust Agreement. The Trustee has no power to vary, alter or substitute the Sublease or the corpus of any trust created hereby or pursuant to the Sublease or this Trust Agreement at any time, except as specific any authorized herein.

## ARTICLE VI

### THE DELIVERY AND PAYING AGENT

#### Section 6.01 Duties, Immunities and Liabilities of Delivery and Paying Agent.

(a) The City hereby appoints U.S. Bank National Association, as the Delivery and Paying Agent. The Delivery and Paying Agent shall perform such duties and only such duties as are specifically set forth herein and in the Delivery and Paying Agent Agreement and exercise such of the rights and powers vested in it herein and therein.

(b) The City may remove the Delivery and Paying Agent at any time unless an Event of Default shall have occurred and then be continuing, and shall remove the Delivery and Paying Agent if at any time the Delivery and Paying Agent shall cease to be eligible in accordance with subsection (e) of this Section 6.01, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Delivery and Paying Agent or its property shall be appointed, or any public officer shall take control or charge of the Delivery and Paying Agent or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Delivery and Paying Agent, and thereupon shall appoint a successor Delivery and Paying Agent by an instrument in writing.

(c) The Delivery and Paying Agent may at any time resign by giving written notice of such resignation to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor Delivery and Paying Agent by an instrument in writing. In the event the City fails to appoint a successor Delivery and Paying Agent within 90 days following receipt of such written notice of resignation, the resigning Delivery and Paying Agent may petition the appropriate court having jurisdiction to appoint a successor.

(d) Notwithstanding the provisions of Section 6.01(c) hereof, the Delivery and Paying Agent shall not be relieved of its duties hereunder and under the Delivery and Paying Agent Agreement until its successor Delivery and Paying Agent has accepted its appointment and assumed the duties of Delivery and Paying Agent hereunder. Any removal or resignation of the Delivery and Paying Agent and appointment of a successor Delivery and Paying Agent shall become effective upon acceptance of appointment by the successor Delivery and Paying Agent; provided however, that such acceptance shall only become effective upon the transfer to, and the acceptance by, the successor Delivery and Paying Agent of each Credit Facility in accordance with its terms. Any successor Delivery and Paying Agent appointed under this Trust Agreement shall signify its acceptance of such appointment by executing and delivering to the City and to its predecessor Delivery and Paying Agent a written acceptance thereof, and thereupon such successor Delivery and Paying Agent, without any further act, deed or conveyance, shall become vested with all duties and obligations of such predecessor Delivery and Paying Agent, with like effect as if originally named Delivery and Paying Agent herein; but, nevertheless at the request of the successor Delivery and Paying Agent, such predecessor Delivery and Paying Agent shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Delivery and Paying Agent all the powers of such predecessor Delivery and Paying Agent and shall pay over, transfer, assign and deliver to the successor Delivery and Paying Agent any money or other property subject to the conditions herein set forth. Upon request of the successor Delivery and Paying Agent, the City shall execute and deliver any and all instruments as may be reasonably required for more fully

and certainly vesting in and confirming to such successor Delivery and Paying Agent all such moneys, properties, rights, powers, duties and obligations.

(e) The Delivery and Paying Agent and any successor Delivery and Paying Agent shall be a trust company or bank having the powers of a trust company, having its principal corporate trust office in Los Angeles or San Francisco, California, having a combined capital and surplus of at least fifty million dollars (\$50,000,000), and subject to supervision or examination by federal or state banking authorities. If such trust company or bank publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such trust company or bank shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Delivery and Paying Agent shall cease to be eligible in accordance with the provisions of this subsection 6.01(e), the Delivery and Paying Agent shall resign immediately in the manner and with the effect specified in this Section 6.01.

(f) Any rights of, or amounts due to, the Delivery and Paying Agent shall be subordinate to the interests of the Owners.

(g) The Delivery and Paying Agent shall perform such duties and only such duties as are specifically set forth in this Trust Agreement. The Delivery and Paying Agent shall 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 such person's own affairs. The Delivery and Paying Agent shall be protected and shall incur no liability in acting upon or processing in good faith any resolution, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board or Person or to have been prepared and furnished pursuant to any of the provisions of this Trust Agreement, and the Delivery and Paying Agent shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Delivery and Paying Agent may consult with counsel, who may or may not be counsel to the City or the County, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it in good faith reliance thereon.

(h) Except as otherwise expressly provided herein, the Delivery and Paying Agent shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Commercial Paper Certificates, or as to the existence of a default or Event of Default thereunder.

(i) The Delivery and Paying Agent may become an Owner or a pledgee of any Commercial Paper Certificates with the same rights it would have if it were not the Delivery and Paying Agent; may acquire and dispose of bonds or other evidences of indebtedness of the City and enforce its rights as owner thereof to the same extent as if it were not the Delivery and Paying Agent; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Lease Revenue Certificates, whether or not such committee shall represent the Owners of a majority in aggregate principal amount of the Lease Revenue Certificates then Outstanding.

(j) The recitals, statements and representations by the City contained in this Trust Agreement or in the Lease Revenue Certificates shall be taken and construed as made by and on the part of the City and not by the Delivery and Paying Agent, and the Delivery and Paying Agent does not assume, and shall not have, any responsibility or obligation for the correctness of any such recital, statement or representation.

(h) The Delivery and Paying Agent may execute any powers hereof and perform the duties required of it hereunder by or through attorneys, agents or receivers, and shall be entitled to advice of counsel concerning its duties hereunder.

(l) No provision of this Trust Agreement shall require the Delivery and Paying Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties hereunder or in the exercise of any of its rights or powers if the repayment of such funds, or adequate indemnity against such risk or liability, is not reasonably assured to it. Notwithstanding anything to the contrary in this Section 6.01(g), to the extent the Delivery and Paying Agent is required to draw on the Credit Facility or take other actions under this Trust Agreement to pay Outstanding Certificates, the Delivery and Paying Agent shall do so without requiring indemnity.

(m) Every provision of this Trust Agreement, the Sublease and any other document related to the Commercial Paper Certificates relating to the conduct or liability of the Delivery and Paying Agent shall be subject to the provisions of this Trust Agreement, including without limitation, this Article.

(n) In acting as Delivery and Paying Agent hereunder, the Delivery and Paying Agent acts solely in its capacity as Delivery and Paying Agent hereunder and not in its individual or personal capacity, and all Persons, including without limitation the Owners, the City and the City, having any claim against the Delivery and Paying Agent shall look only to the funds and accounts held by the Delivery and Paying Agent hereunder for payment, except as otherwise provided herein. Under no circumstances shall the Delivery and Paying Agent be liable in its individual or personal capacity for the obligations evidenced by the Commercial Paper Certificates.

(o) The Delivery and Paying Agent makes no representation or warranty, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City or the City of the Property or any portion thereof, or any other representation or warranty with respect to the Property or any portion thereof. In no event shall the Delivery and Paying Agent be liable for incidental, indirect, special or consequential damages in connection with this Trust Agreement, the Sublease or the Site Lease or the existence, furnishing or functioning of the Property or the City's use of the Property.

(p) The Delivery and Paying Agent shall not be responsible for any information in, or the content of any offering memorandum or other document prepared in connection with the Commercial Paper Certificates.

**Section 6.02. Merger or Consolidation.** Any company into which the Delivery and Paying Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Delivery and Paying Agent may sell or transfer all or substantially all

of its corporate trust business (provided such company shall be eligible under subsection (e) of Section 6.01) shall be the successor to such Delivery and Paying Agent without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

**Section 6.03. Right of Delivery and Paying Agent to Rely Upon Documents.** The Delivery and Paying Agent shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

The Delivery and Paying Agent may consult with counsel; who may be counsel of or to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith. The Delivery and Paying Agent shall not be bound to recognize any Person as the Owner of a Commercial Paper Certificate unless and until such Commercial Paper Certificate is submitted for inspection, if required, and his or her title thereto is satisfactorily established, if disputed.

Whenever in the administration of the duties imposed upon it by this Trust Agreement the Delivery and Paying Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate of the City, and such Certificate shall be full warrant to the Delivery and Paying Agent for any action taken or suffered in good faith under the provisions of this Trust Agreement in reliance upon such Certificate, but in its discretion the Delivery and Paying Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

**Section 6.04. Preservation and Inspection of Documents.** The Delivery and Paying Agent shall at all times keep, or cause to be kept, proper books of record and account prepared in accordance with trust accounting standards, in which complete and accurate entries shall be made of all transactions relating to the receipt, investment, disbursement, allocation and application of the proceeds of the Commercial Paper Certificates. Such books of record and account shall be available for inspection by the City, any LC Bank and any Owner of Commercial Paper Certificates, or his agent or representative duly authorized in writing, at reasonable hours, and under reasonable circumstances.

## ARTICLE VII

### COVENANTS

**Section 7.01. Limitation on Issuance of Commercial Paper Certificates.** The City covenants and agrees that it shall not issue any Commercial Paper Certificates of a Series with a maturity later than five days prior to the expiration or termination of the related Credit Facility unless the City shall have arranged for an Alternate Credit Facility with respect to such Series pursuant to Section 7.02 hereof.

**Section 7.02. Maintenance of Credit Facilities for Commercial Paper Certificates.** The City covenants and agrees that at all times while Commercial Paper Certificates of a Series remain Outstanding, it will maintain a Credit Facility supporting payment of the Commercial Paper Certificates of such Series with an available amount thereunder such that, assuming that all then Outstanding Commercial Paper Certificates of such Series were to become due and payable immediately thereof, the amount available to be drawn under the applicable Credit Facility would be sufficient to pay the aggregate principal amount of all Commercial Paper Certificates of such Series due and payable at the stated maturity thereof plus the aggregate amount of all interest that would become due and payable at the stated maturity thereof; provided however, that the City may in accordance with the terms of each Reimbursement Agreement replace the related Credit Facility upon five days prior written notice to the Dealer or Dealers of such Series, the Trustee and the Delivery and Paying Agent (such notice to the Trustee including a written direction from the City to the Trustee to immediately disseminate notice of the replacement of a Credit Facility to the respective Owners thereof) so long as the replacement of a Credit Facility shall not result in (a) a withdrawal by any Rating Agency of the then-current short-term ratings on the Commercial Paper Certificates of such Series or (b) a downgrade by any Rating Agency of the then-current short-term ratings on the Commercial Paper Certificates of such Series; provided, further, that the City may replace the related Credit Facility without compliance with the rating requirement of the preceding proviso if such replacement is made on any date that all Outstanding Commercial Paper Certificates of such Series mature or are defeased pursuant to the provisions of Section 11.03 hereof or are redeemed prior to maturity pursuant to Section 2.16 hereof. Prior to the effective date of an Alternate Credit Facility for Commercial Paper Certificates of a Series, the Credit Facility being replaced by such Alternate Credit Facility shall remain in effect until all such Commercial Paper Certificates of such Series are paid in full or defeased pursuant to the provisions of Section 11.03 hereof or are redeemed prior to maturity pursuant to Section 2.16 hereof and the Delivery and Paying Agent shall draw on such Credit Facility being replaced (and not upon any Alternate Credit Facility replacing such Credit Facility then in effect) as needed to pay the principal of and interest with respect to such Commercial Paper Certificates of such Series upon the maturity thereof or accrued interest with respect to all then Outstanding Callable Commercial Paper Certificates of such Series upon redemption prior to maturity, but no such draw shall be required for any of such Commercial Paper Certificates of such Series defeased pursuant to the provisions of Section 11.03 hereof.

No Commercial Paper Certificate of any Series shall be executed and delivered if, immediately after the issuance thereof and the application of any proceeds thereof to reimburse the applicable LC Bank for any Advances made to retire other Commercial Paper Certificates of such Series, the aggregate principal amount of all Commercial Paper Certificates of such Series due and payable at the stated maturity thereof plus the aggregate amount of all interest that would become due and payable at the stated maturity thereof, would exceed the amount



available to be drawn under the Credit Facility supporting payment of Commercial Paper Certificates of such Series. In furtherance of the foregoing covenant, the City agrees that it will not issue any Commercial Paper Certificates of any Series which will result in a violation of such covenant, will not amend any Credit Facility in a manner which will cause a violation of such covenant and, if and to the extent necessary to maintain compliance with such covenant, will arrange for an Alternate Credit Facility prior to, or contemporaneously with, the expiration or termination of such Credit Facility.

**Section 7.03. Punctual Payment.** The City will punctually payor cause to be paid the principal of and interest with respect to the Lease Revenue Certificates (but only from the sources pledged herein), in conformity with the Lease Revenue Certificates, this Trust Agreement and each Reimbursement Agreement.

**Section 7.04. Tax Exempt Lease Revenue Certificates to Remain Tax Exempt.**

(a) In order to maintain the exclusion from gross income of the interest with respect to the Tax Exempt Lease Revenue Certificates for federal income tax purposes, an Authorized Representative shall make all calculations relating to any rebate of excess investment earnings on the proceeds of the Tax Exempt Lease Revenue Certificates due to the United States Treasury in a reasonable and prudent fashion and shall segregate and set aside lawfully available amounts as may be required to be paid to the United States Treasury, and otherwise shall at all times do and perform an acts and things within its power and authority known to it to be necessary to comply with each applicable requirement of Section 103 and Sections 141 through 150 of the Code. In furtherance of this covenant, the City agrees to comply with the Tax Certificates, as it may be amended from time to time, as a source of guidance for compliance with such provisions. The Trustee hereby agrees to comply with any instructions received from the City which the City indicates must be followed in order to comply with the Tax Certificates. This covenant shall survive the payment in full of an Outstanding Tax Exempt Lease Revenue Certificates.

(b) The City will not use or permit the use of any proceeds of the Tax Exempt Lease Revenue Certificates or any funds of the City, directly or indirectly, in any manner, and will not take or omit to take any action that would cause any of the Commercial Paper Certificates to be treated as an obligation not described in Section 103(a) of the Code. In furtherance of this covenant, the City will at all times comply with the provisions of the Nonarbitrage Certificate.

(c) The City will not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Tax Exempt Lease Revenue Certificates to be "federally guaranteed" within the meaning of section 149(b) of the Code.

(d) The City will assure that the proceeds of the Tax Exempt Lease Revenue Certificates are not so used as to cause the Tax Exempt Lease Revenue Certificates to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

(e) The City will take all actions within its control necessary to assure the exclusion of interest with respect to the Tax Exempt Lease Revenue Certificates from the gross income of the Holders of the Tax Exempt Lease Revenue Certificates to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of delivery of the Tax Exempt Lease Revenue Certificates.

(f) In the event that at any time the City is of the opinion that for purposes of this Section 6.04 it is necessary to restrict or to limit the yield on the investment of any moneys held by the Trustee under this Trust Agreement, the City will so instruct the Trustee under this Trust Agreement by written notice containing instructions as to the yield or yields to which such investments must be restricted. The Trustee will take such action as may be necessary in accordance with such instructions. The City will not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Sublease which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of execution of the Sublease would have caused the Sublease to be an "arbitrage bond" within the meaning of section 148 of the Code.

(g) Notwithstanding any provision of this Section 6.04, if the City and the Trustee receive an Opinion of Special Counsel to the effect that any action required under this Section 6.04 is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest with respect to the Tax Exempt Lease Revenue Certificates under Section 103 of the Code, the City and the Trustee may rely conclusively on such opinion in complying with the provisions hereof; and the covenants hereunder will be deemed to be modified to that extent.

(h) Notwithstanding any other provision of this Trust Agreement to the contrary, upon the City's failure to observe, or refusal to comply with, the foregoing covenant, no Person other than the Trustee or the Holders will be entitled to exercise any right or remedy provided to the Holders under this Trust Agreement on the basis of the City's failure to observe, or refusal to comply with the covenant.

**Section 7.05. Notices to Rating Agencies.** The City hereby agrees to give immediate written notice to each Rating Agency of the occurrence of any of the following events:

(a) the extension, renewal, expiration, termination or replacement of a Credit Facility pursuant to Section 7.02 hereof;

(b) any material modification or amendment to this Trust Agreement, the Delivery and Paying Agent Agreement, a Credit Facility, a Reimbursement Agreement or a Dealer Agreement;

(c) the payment in full, or the defeasance under Section 11.03 hereof, of all Outstanding Lease Revenue Certificates of any Series; or

(d) the replacement or substitution of, or the appointment of any successor to, the Trustee, the Delivery and Paying Agent or any Dealer.

**Section 7.06. City to Perform Pursuant to Sublease.** The City covenants and agrees with the Owners to perform all obligations and duties imposed under the Sublease and the Site Lease.

**Section 7.07. Access to Books and Records.** The Trustee shall at all times have access to those books and records of the City which may be reasonably required by the Trustee to fulfill its duties and obligations hereunder.

**Section 7.08. General.** The City shall do and perform or cause to be done and performed an respective acts and things required to be done or performed by or on behalf of the City under the provisions of this Trust Agreement.

The City warrants that upon the date of execution and delivery of any of the Lease Revenue Certificates, all conditions, acts and things required by law and this Trust Agreement to exist, to have happened and to have been performed precedent to and in the execution and delivery of such Lease Revenue Certificates do exist, have happened and have been performed in respect of the Lease Revenue Certificates and the execution and delivery of such Lease Revenue Certificates shall comply in all respects with the applicable laws of the State.

**Section 7.09. Performance.** The City shall faithfully observe all covenants and other provisions contained in this Trust Agreement, in each Lease Revenue Certificate executed and delivered hereunder, and in the Site Lease and the Sublease.

**Section 7.10. Prosecution and Defense of Suits.** The City shall promptly take such action as may be necessary to cure any defect in the title to the Property or any part thereof, whether now existing or hereafter occurring, and shall prosecute and defend all such suits, actions and all other proceedings as may be appropriate for such purpose.

**Section 7.11. Further Assurances.** The City will make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Trust Agreement, and for the better assuring and confirming to the Owners the rights and benefits provided herein.

**Section 7.12. Receipt and Deposit of Revenues in Lease Revenue Certificate Payment Fund.** In order to carry out and effectuate the pledge, charge and lien contained herein, the City agrees and covenants that all Base Rental and any proceeds of any rental interruption insurance when and as received shall be received by the City in trust hereunder for the benefit of the Owners and the Credit Providers and shall be deposited when and as received by the City in the Base Rental Account of the Lease Revenue Certificate Payment Fund. All Pledged Property shall be accounted for and applied in accordance with this Trust Agreement and the City shall have no beneficial right or interest in any of the Pledged Property except as herein provided. All Pledged Property, whether received by the City in trust or deposited with the Trustee as herein provided, shall nevertheless be allocated, applied and disbursed solely to the purposes and uses set forth herein, and shall be accounted for separately and apart from all other accounts, funds, moneys or other resources of the City.

**Section 7.13. Retirement of Lease Revenue Certificates.** So long as any Certificates are Outstanding, the City shall cause the Dealers to retire and not remarket, renew or refinance Commercial Paper Certificates and the City shall repay or prepay Advances evidenced by Revolving Certificates in an aggregate principal amount equal to or in excess of the Pro Rata Share of the Required Principal Reduction Amount attributable to such Category no later than July 1 of each Base Rental Period, commencing July 1, 2017, with any such Advances repaid or prepaid prior to retirement of any such Commercial Paper Certificates. So long as any Direct Placement Revolving Certificates are Outstanding, the City shall repay or prepay outstanding Advances evidenced by Direct Placement Revolving Certificates in an amount not less than the Pro Rata Share of the Required Principal Reduction Amount attributable to such Category no later than July 1 of each Base Rental Period, commencing July 1, 2017.

**Section 7.14. File Debt Service Certificate Additional Interest/Principal.** If at any time during a Base Rental Period, the amount on deposit in the Base Rental Account, the Commercial Paper Certificates Payment Account, the Direct Placement Revolving Certificates Payment Account and/or the Bank Reimbursement Account shall not be sufficient to pay the principal of and accrued interest with respect to the Lease Revenue Certificates due and payable during such Base Rental Period and the Required Principal Reduction Amount for such Base Rental Period, the City shall file with the City a Debt Service Certificate - Additional Interest/Principal with respect to such deficiency.

## ARTICLE VIII

### AMENDMENTS

**Section 8.01. Amendments to Trust Agreement.** This Trust Agreement and the rights and obligations of the City and of the Owners of the Lease Revenue Certificates may be modified or amended at any time by a Supplemental Trust Agreement, which shall become binding upon execution by the parties hereto, without consent of any Lease Revenue Certificate Owner and to the extent permitted by law, but only for anyone or more of the following purposes:

(a) to add to the covenants and agreements of the City in this Trust Agreement contained, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or powers herein reserved to or conferred upon the City so long as such limitation or surrender of such rights or powers shall not materially adversely affect the Owners of the Lease Revenue Certificates; or

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Trust Agreement, or in any other respect whatsoever as the City may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not materially adversely affect the interests of the Owners of the Lease Revenue Certificates; or

(c) to amend any provision hereof relating to the Code, but only if and to the extent such amendment win not adversely affect the exclusion from gross income of interest with respect to any of the Tax Exempt Lease Revenue Certificates under the Code, in the opinion of nationally recognized Special Counsel; or

(d) to amend any provision hereof relating to the authorization of the issuance of one or more Additional Series of Commercial Paper Certificates pursuant to Section 2.14 hereof or Additional Series of Direct Placement Revolving Certificates pursuant to Section 3.11 hereof (other than Section 2.14(g) or Section 3.11(d) hereof); or

(e) to amend any provision agreed to by the City and the Trustee, so long as such amendment does not materially adversely affect the interests of the Owners of Lease Revenue Certificates.

Except as set forth in the preceding paragraph of this Section 8.01, this Trust Agreement and the rights and obligations of the City and of the Owners of the Lease Revenue Certificates may only be modified, amended or supplemented by a Supplemental Trust Agreement which shall become binding when the written consent of the Owners of a majority in aggregate principal amount of the Lease Revenue Certificates then Outstanding are filed with the Trustee; provided that if such modification, amendment or supplement wilt, by its terms, not take effect so long as any Lease Revenue Certificates of any particular maturity remain Outstanding, the consent of the Owner of such shall not be required and such Lease Revenue Certificates shall not be deemed to be Outstanding for the purpose of any calculation of Lease Revenue Certificates Outstanding under this Section.

Anything herein to the contrary notwithstanding, no such modification, amendment or supplement shall (i) extend the maturity of or reduce the interest rate on any Lease Revenue

Certificate or otherwise alter or impair the obligation of the City to pay the principal or interest at the time and place and at the rate and in the currency provided therein of any Lease Revenue Certificate without the express written consent of the Owner thereof, (ii) reduce the percentage of Lease Revenue Certificates required for the written consent to any such amendment or modification, (iii) modify any of the rights or obligations of the Trustee without its prior written consent thereto, or (iv) adversely affect the rights, interests, security or remedies of any Credit Provider without its prior written consent thereto.

So long as it has not failed to honor a properly presented and conforming drawing under the related Credit Facility, each LC Bank shall be deemed to be the Owner of Commercial Paper Certificates of the Series for which it has issued a Credit Facility to support payment of such Series for the purpose of the provision of consents or any other action under this Article VIII; provided, however, that no LC Bank shall be deemed to be the Owner of Commercial Paper Certificates for the purposes of consenting to a modification or amendment that extends the maturity of or reduces the interest rate on any Commercial Paper Certificate or otherwise alters or impairs the obligation of the City to pay the principal or interest at the time and place and at the rate and in the currency provided therein of any Commercial Paper Certificate without the express written consent of the Owner of such Commercial Paper Certificate.

From and after the time any Supplemental Trust Agreement becomes effective pursuant to this Section 8.01, this Trust Agreement shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners of Outstanding Lease Revenue Certificates, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any Supplemental Trust Agreement shall be deemed to be part of the terms and conditions of this Trust Agreement for any and all purposes.

The provisions of this Section 8.01 shall not prevent any Owner from accepting any amendment as to the particular Lease Revenue Certificate held by him, provided that due notation thereof is made on such Lease Revenue Certificate.

#### **Section 8.02. Amendments to Site Lease and Sublease.**

(a) The Site Lease and the Sublease may be amended in writing by agreement between the parties thereto as long as such amendment shall not (i) have a material adverse effect upon the Owners of Lease Revenue Certificates then Outstanding or (ii) adversely affect the rights, interests, security or remedies of any Credit Provider without the prior written consent of such Credit Provider; provided that if such amendment will, by its terms, not take effect so long as any Lease Revenue Certificates of any particular maturity remain Outstanding, clause (i) above need not be complied with and such Lease Revenue Certificates shall not be deemed to be Outstanding for the purpose of any calculation of Lease Revenue Certificates Outstanding under this Section 8.02(a). The Site Lease and the Sublease may also be amended in writing by agreement between the parties thereto with the prior written consent of the Trustee and each Credit Provider to substitute other real property and/or improvements (the "Substituted Property") for existing Property or to remove real property or improvements from the definition of Property upon compliance with all of the conditions set forth in subsection (b) below. After a substitution or removal, the part of the Property for which the substitution or removal has been effected shall be released from the leasehold under the Site Lease and the Sublease. The City may amend the Sublease and the Site Lease to add real property and/or improvements (the

"Additional Property") upon compliance with all of the conditions set forth in subsection (c) below.

(b) In addition to the requirements and conditions provided in subsection (a) above, no substitution or removal of Property shall occur until the City delivers to the City, the Trustee and each Credit Provider the following:

(i) A written description of all or part of the Property to be released and, in the event of a substitution, a legal description of the Substituted Property to be substituted in its place;

(ii) A Certificate of the City (A) stating that the annual fair market rental value of the Property after such substitution or removal, in each Base Rental Period during the remaining term of the Sublease, is at least equal to the Maximum Base Rental set forth in an amended Exhibit B to the Sublease giving effect to such substitution or removal, as determined by the City on the basis of an appraisal of the Property after said substitution or removal conducted by a qualified employee of the City; (B) showing that the aggregate principal amount of Lease Revenue Certificates Outstanding is less than or equal to the Maximum Principal Amount (as modified after giving effect to such substitution or removal and the corresponding adjustment to Maximum Base Rental for each Base Rental Period during the remainder of the term of the Sublease); (C) demonstrating that the useful life of the Property after substitution or removal equals or exceeds the remaining term of the Sublease after giving effect to the modifications to Exhibit B to the Sublease resulting from such substitution or removal; and (D) stating that the Property remaining after such substitution or removal is as essential to the operations of the City as was the Property immediately prior to such substitution or removal;

(iii) An opinion of Special Counsel to the effect that the amendments to the Sublease and to the Site Lease contemplating substitution or removal have been duly authorized, executed and delivered and constitute the valid and binding obligations of the City and the City enforceable in accordance with their terms;

(iv) (A) In the event of a substitution, a title insurance policy in an amount such that the total title insurance on the Property in favor of the Trustee is not less than the sum of the amount of Outstanding Lease Revenue Certificates and amounts payable to the Credit Providers under the Credit Provider Agreements insuring the City's leasehold interest in the substituted Property (except any portion thereof which is not real property) subject only to Permitted Encumbrances and such other encumbrances as would be permitted by Section 4.3(d) of the Sublease, together with an endorsement thereto making said policy payable to the Trustee for the benefit of the Owners of the Lease Revenue Certificates and (B) in the event of a partial removal, evidence that the title insurance in effect immediately prior thereto is not affected;

(v) An opinion of Special Counsel that the substitution or removal does not cause the interest with respect to the Tax Exempt Lease Revenue Certificates to be includable in gross income of the Owners thereof for federal income tax purposes;

(vi) Evidence that the City has complied with the insurance covenants contained in the Sublease with respect to the Substituted Property; and

(vii) An opinion of counsel to the Trustee to the effect that the amendments or supplements to the Sublease and to the Site Lease contemplating said removal of Property have been duly authorized, executed and delivered by the Trustee; and

(viii) Evidence that the substitution or removal, in and of itself, has not or will not cause a downgrade or withdrawal of the then existing credit ratings on the Commercial Paper Certificates.

(c) In addition to the requirements and conditions provided in subsection (a) above, no addition of Property shall occur until the City delivers to the City, the Trustee and each Credit Provider the following:

(i) Executed amendments or supplements to the Site Lease and the Sublease setting forth, among other things, a written, legal description of the Additional Property, the term of the Site Lease and Sublease for the Additional Property, and, in the case of the Sublease, a schedule setting forth the Base Rental for the Additional Property;

(ii) An opinion of Special Counsel to the effect that the amendments or supplements to the Sublease and to the Site Lease contemplating the addition of Additional Property have been duly authorized, executed and delivered and constitute the valid and binding obligations of the City and the City enforceable in accordance with their terms;

(iii) An opinion of Special Counsel that the addition of Additional Property does not cause the interest with respect to the Tax Exempt Lease Revenue Certificates to be includable in gross income of the Owners thereof for federal income tax purposes; and

(iv) Evidence that the City has complied with the insurance covenants contained in the Sublease with respect to the Additional Property.



## ARTICLE IX

### EVENTS OF DEFAULT

**Section 9.01. Events of Default Defined.** The following shall be "Events of Default" under this Trust Agreement and the terms "Events of Default" and "default" shall mean, whenever they are used in this Trust Agreement, anyone or more of the following events:

(a) If default shall be made in the due and punctual payment of principal and interest with respect to any Lease Revenue Certificate when and as the same shall become due and payable.

(b) An event of default shall have occurred under Section 12.1 of the Sublease.

(c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Trust Agreement, the Sublease, and the Site Lease, other than such failure as may constitute an Event of Default under clause (a) of this Section 9.01, for a period of 120 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Trustee or to the City and the Trustee by the Owners of not less than a majority in aggregate principal amount of Lease Revenue Certificates then Outstanding or the Required Credit Providers or if the failure stated in the notice cannot be corrected within such 120-day period, then the City shall fail to institute corrective action within such 120-day period and diligently pursue the same to completion.

(d) The City or the City shall (i) voluntarily commence any proceeding or file any petition seeking relief under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law, (ii) consent to the institution of, or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for such party or for a substantial part of its property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) admit in writing its inability generally to pay its debts as they become due or (vii) take action for the purpose of effecting any of the foregoing;

(e) An involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the City or the City, or of a substantial part of their respective property, under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law or (ii) the appointment of a receiver, trustee, custodian, sequestrator or similar official for the City or the City or for a substantial part of their respective property, and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall continue unstayed and in effect for 30 days; or (f) The Trustee receives written notice from any Credit Provider of the occurrence of an "event of default, under the related Credit Provider Agreement.

**Section 9.02. Notice of Events of Default.** In the event the City or the City is in default, the Trustee shall give notice of such default to the Owners of Lease Revenue Certificates, the Credit Providers, and to each Rating Agency. Such notice shall state that the City or the City is in default and shall provide a brief description of such default. The Trustee in its discretion may withhold notice if it deems it in the best interests of the Owners. The notice provided for in this

Section 9.02 shall be given by first-class mail, postage prepaid, to the Owners within 30 days of such occurrence of default.

**Section 9.03. Remedies on Default.**

(a) Upon the occurrence and continuance of any event of default specified in Sections 12.1 of the Sublease, the Trustee shall, at the written direction of the Required Credit Providers or upon the occurrence and continuance of any Event of Default specified in Section 12.1 of the Sublease, the Trustee may, with the written consent of the Required Credit Providers, proceed (and upon written request of the Required Credit Providers shall proceed) to exercise the remedies set forth in Section 12.2 of the Sublease or available to the Trustee hereunder.

(b) In addition to the remedies set forth in Section 9.03(a) and upon the occurrence and continuance of any Event of Default specified in Section 9.01(b) hereof, the Trustee may, and shall, upon written request of the Required Credit Providers, proceed to protect and enforce the rights vested in Owners by this Trust Agreement by appropriate judicial proceedings or proceedings the Trustee deems most effectual. The provisions of this Trust Agreement and all resolutions or orders in the proceedings for the issuance of the Lease Revenue Certificates shall constitute a contract with the Owners of the Lease Revenue Certificates and the Credit Providers, and such contract may be enforced by any Owner of Lease Revenue Certificates or any Credit Providers by mandamus, injunction or other applicable legal action, suit, proceeding or other remedy.

(c) Upon an Event of Default and prior to the curing thereof, the Trustee shall exercise the rights and remedies vested in it by this Trust Agreement with the same degree of care and skill as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

(d) Anything herein to the contrary notwithstanding, the Credit Providers may enter into a written agreement among the Credit Providers appointing one of such Credit Providers to act on their behalf (a "Credit Provider Agent") in connection with any direction or consent provided for in this Article IX, and in such event any such direction or consent of such Credit Provider Agent shall constitute the direction or consent of the Credit Providers under this Article IX.

**Section 9.04. Application of Revenues and Other Funds After Default.** All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of this Trust Agreement and any other funds held by the Trustee shall be applied by the Trustee in the following order:

First, to the payment of the fees, costs and expenses of the Trustee incurred in the performance of its duties and the exercise of any remedies, including any amounts owed to it pursuant to Section 5.01, including reasonable compensation to its agents, attorneys and counsel; and

Second, to the payment of the whole amount of interest with respect to and principal of the Lease Revenue Certificates then due and unpaid, with interest with respect to overdue installments of principal and interest to the extent permitted by law at the lesser of the rate of interest payable on the Lease Revenue Certificates or the maximum rate permitted by law, provided however, that in the event such amounts shall be insufficient to pay in full the fun

amount of such interest and principal, then such amounts shall be applied in the following order of priority:

(a) *first*, to the payment of all installments of interest with respect to the Lease Revenue Certificates then due and unpaid, on a Pro Rata Basis in the event that the available amounts are insufficient to pay all such interest in full,

(b) *second*, to the payment of all installments of principal of the Lease Revenue Certificates then due and unpaid, on a Pro Rata Basis in the event that the available amounts are insufficient to pay all such principal in full,

(c) *third*, to the payment of interest with respect to overdue installments of principal and interest, on a Pro Rata Basis in the event that the available amounts are insufficient to pay all such interest in full. Section 9.05. Lease Revenue Certificates Not Subject to Acceleration. The Lease Revenue Certificates are not subject to acceleration and upon the occurrence of an Event of Default, none of the Trustee, the Delivery and Paying Agent, the Credit Providers, any Owner or any other Person may accelerate the maturity of any of the Lease Revenue Certificates.

**Section 9.06. Collection of Base Rental Payments.** The Trustee shall take any appropriate action to cause the City to pay any Base Rental payment not paid when due, upon written request and authorization by the Credit Providers or, if applicable the Owners of a majority in aggregate principal amount of the Lease Revenue Certificates then Outstanding and unpaid, and upon being satisfactorily indemnified against any expense and liability with respect thereto and receiving payment for its fees and expenses.

**Section 9.07. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Trust Agreement and the Sublease, or now or hereafter existing at law or in equity, except as expressly waived herein or therein. No delay or omission to exercise any right or power accruing upon any default shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee, the Credit Providers or the Owners to exercise any remedy reserved to it or them, it shall not be necessary to give any notice other than such notice as may be required in this Article IX or by law.

**Section 9.08. No Additional Waiver Implied by One Waiver.** In the event any provision contained in this Trust Agreement should be breached by a party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 9.09. Action by Owners.** In the event the Trustee fails to take any action to eliminate an event of default under Section 12 of the Sublease or Event of Default hereunder, the Owners of a majority in aggregate principal amount of Lease Revenue Certificates then Outstanding may institute any suit, action, mandamus or other proceeding in equity or at law for the protection or enforcement of any right under the Sublease and this Trust Agreement, but only if the Credit Providers or, if applicable, such Owners shall have first made written request of the Trustee after the right to exercise such powers or right of action shall have arisen, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers granted therein or otherwise granted by law or to institute such action, suit or proceeding in its name, and unless, also, the Trustee shall have been offered reasonable security and indemnity

against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused or neglected to comply with such request within a reasonable time.

**Section 9.10. Opinion of Counsel.** Before being required to take any action pursuant to this Article IX, the Trustee may require an opinion of counsel acceptable to the Trustee, which opinion shall be made available to the City and the City upon request, which counsel mayor may not be counsel to the City or Special Counsel with regard to legal questions.

## ARTICLE X

### LIMITATION OF LIABILITY

**Section 10.01. No Liability of City for Trustee Performance.** The City shall not have any obligation or liability to any of the other parties or to the Owners with respect to the performance by the Trustee of any duty imposed upon it under this Trust Agreement, including the distribution of principal and interest to the Owners.

**Section 10.02. No Liability of Trustee or Delivery and Paying Agent for Base Rental Payments by City.** Except as provided herein, neither the Trustee nor the Delivery and Paying Agent shall have any obligation or liability to the Owners with respect to the payment of the Base Rental by the City when due, or with respect to the performance by the City of any other covenant made by it in the Sublease.

**Section 10.03. No Liability of County Except as Stated.** Except for (i) the payment of Base Rental and Additional Rental when due in accordance with the terms of the Sublease, and (ii) the performance by the City of its obligations and duties as set forth in the Site Lease, the Sublease and this Trust Agreement, the City shall have no obligation or liability to the Trustee, the Delivery and Paying Agent or the Owners.

**Section 10.04. Limited Liability of Trustee and Delivery and Paying Agent.** The Trustee and the Delivery and Paying Agent shall not have any obligation or responsibility for providing information to the Owners concerning the investment quality of the Lease Revenue Certificates, for the sufficiency or collection of any Base Rental or for the actions or representations of any other party to this Trust Agreement. The Trustee and the Delivery and Paying Agent shall not have any obligation or liability to any of the other parties hereto or to the Owners with respect to the failure or refusal of any other party hereto to perform any covenant or agreement made by it under this Trust Agreement, the Site Lease, or the Sublease, but each shall be responsible solely for the performance of the duties expressly imposed upon it hereunder. The recitals of facts, covenants and agreements contained herein and in the Lease Revenue Certificates shall be taken as statements, covenants and agreements of the City and each of the Trustee and Delivery and Paying Agent assumes no responsibility for the correctness of the same and makes no representation as to the validity or sufficiency of this Trust Agreement, the Site Lease, the Sublease or the Lease Revenue Certificates, or as to the value of or title to the Property, and shall not incur any responsibility in respect thereof, other than in connection with the duties or obligations herein assigned to or imposed upon it.

**Section 10.05. Limitation of Rights: Third Party Beneficiaries.** Nothing in this Trust Agreement or in the Lease Revenue Certificates expressed or implied is intended or shall be construed to give any Person other than the City, the Trustee, the Delivery and Paying Agent, the City and the Owners any legal or equitable right, remedy or claim under or in respect of this Trust Agreement or any covenant, condition or provision hereof; and all such covenants, conditions and provisions are and shall be for the sole and exclusive benefit of the City, the Trustee, the Delivery and Paying Agent, the City and such Owners. Notwithstanding the foregoing, each Credit Provider shall be an express third party beneficiary of this Trust Agreement, with the power to enforce the same until the later of (i) the date the respective Credit Facility or Direct Placement Revolving Credit Agreement has terminated and been surrendered to such Credit Provider for cancellation and (ii) the date all amounts payable under

the respective Credit Provider Agreement and Revolving Certificate or Direct Placement Revolving Certificate, as applicable, have been satisfied in full.

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01. Records.** Until three years following the full payment of principal and interest due with respect to the Lease Revenue Certificates, each of the Trustee and the Delivery and Paying Agent shall keep complete and accurate records of all money received and disbursed under this Trust Agreement, which records shall be available for inspection by the City and by any Owner, or the agent of any of them, at reasonable times during regular business hours and upon reasonable prior written notice.

**Section 11.02. Notices.** All notices, requests, demands and other communications under this Trust Agreement by any Person shall be in writing (unless otherwise specified herein) and shall be sufficiently given on the date of service if served personally upon the Person to whom notice is to be given or on receipt if sent by telex or other telecommunication facility or courier or if mailed by registered or certified mail, postage prepaid, and properly addressed as follows:

- (a) if to the City: City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place,  
Room 316  
San Francisco, California 94102  
Attention: City Controller
- (b) if to the Trustee: U.S. Bank National Association  
One California Street, Suite 1000  
San Francisco, California 94111  
Attention: Corporate Trust Services  
Facsimile: (415) 677-3769
- (c) if to the Delivery and Paying Agent: U.S. Bank National Association  
100 Wall Street, Suite 1600  
New York, New York 10005  
Attention: Global Corporate Trust Services  
Facsimile: (212) 514-6841
- (d) If to the Credit Providers, at their respective addresses set forth in their respective Credit Provider Agreements;

(e) if to the Rating Agencies: Fitch Ratings, Inc.,  
One State Street Plaza,  
New York, New York 10004;  
Attention: Municipal Structured Finance,

and

Standard & Poor's Ratings Group,  
55 Water Street, 38th Floor,  
New York, New York 10041-0003,  
Attention: Municipal Structured Group

and

Moody's Investors Service, Inc.,  
7 World Trade Center, 250 Greenwich Street,  
New York, New York 10007,  
Attention: MSPG Surveillance Team; and

(f) if to any Owner of Commercial Paper Certificates, to its address as indicated in the records of the Depository, the Nominee or the Delivery and Paying Agent

or if to any Owner of Direct Placement Revolving Certificates, to its address as indicated in the records of the Trustee; or to such other address or addresses as any such Person shall have designated to the others by notice given in accordance with the provisions of this Section 11.02.

The Trustee shall provide to each Credit Provider a copy of each notice it receives under this Trust Agreement, the Site Lease and the Sublease. In no event shall the City or the City be required to provide such notices if the Trustee fails to do so.

**Section 11.03. Defeasance.** If, when all or any portion of the Lease Revenue Certificates shall have become due and payable in accordance with their terms or otherwise as provided in this Trust Agreement, the entire principal and interest so due and payable upon said Lease Revenue Certificates shall be paid, or if at or prior to the date said Lease Revenue Certificates have become due and payable, sufficient moneys or noncallable, nonprepayable, direct obligations of, or obligations guaranteed by, the United States of America, the principal of and interest with respect to which will provide sufficient moneys for such payment, as verified by a report of an independent firm of nationally recognized certified public accountants verifying the sufficiency of the escrow established to pay said Lease Revenue Certificates in full on the dates that principal of and interest with respect to said Lease Revenue Certificates is due, shall be held in trust by the Trustee and provision shall also be made for paying all other sums payable hereunder by the Trustee or the City with respect to said Lease Revenue Certificates, the pledge herein created with respect to said Lease Revenue Certificates shall thereupon cease, terminate and become discharged and said Lease Revenue Certificates shall no longer be deemed Outstanding for purposes of this Trust Agreement and all the provisions of this Trust Agreement, including all covenants, agreements, liens and pledges made herein, shall be deemed duly discharged, satisfied and released with respect to said Lease Revenue Certificates; provided, however, that with respect to any defeasance of Direct Placement Revolving Certificates, any such defeasance shall be subject to either (a) the City obtaining the prior written consent of the related Direct Placement Bank or (b) receipt by the related Direct Placement Bank of (i) a report of an independent firm of nationally recognized certified public



accountants or such other accountant as shall be acceptable to the related Direct Placement Bank verifying the sufficiency of the escrow established to pay such Direct Placement Revolving Certificates in full on the dates that principal of and interest with respect to such Direct Placement Revolving Certificates is due in Form and substance acceptable to the related Direct Placement Bank, (ii) an escrow deposit agreement establishing an escrow with respect to such Direct Placement Revolving Certificates in Form and substance acceptable to the related Direct Placement Bank, and (iii) an opinion of Special Counsel in Form and substance acceptable to the related Direct Placement Bank to the effect that escrow and the defeasance will not adversely affect the excludability of the interest with respect to such Direct Placement Revolving Certificates from gross income of the Owners thereof for federal income tax purposes. Notwithstanding anything in this Trust Agreement to the contrary, if the amount held in escrow shall at any time be insufficient (for whatever reason) to pay principal of and interest with respect to such Direct Placement Revolving Certificates when due in full, the City shall be obligated to pay to the holders of such Direct Placement Revolving Certificates on the applicable due date or due dates the amount of any such shortfall from funds legally available for such purpose. A prepayment of Advances evidenced by Direct Placement Revolving Certificates in and of itself shall not constitute a defeasance of the Direct Placement Revolving Certificates.

**Section 11.04. Governing Law.** This Trust Agreement will be construed and governed in accordance with the laws of the State. Venue for all litigation relative to the formation, interpretation and performance of this Trust Agreement will be in San Francisco, California.

**Section 11.05. Partial Invalidity.** Any provision of this Trust 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 Trust Agreement.

**Section 11.06. Binding Effect: Successors.** This Trust Agreement shall be binding upon and shall inure to the benefit of the parties hereto and the Owners and their respective successors and assigns. Whenever in this Trust Agreement any party is named or referred to, such reference shall be deemed to include such party's successors or assigns, and all covenants and agreements contained in this Trust Agreement by or on behalf of any party hereto shall bind and inure to the benefit of such party's successors and assigns whether so expressed or not

**Section 11.07. Execution in Counterparts.** This Trust Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

**Section 11.08. Headings.** The headings or titles of the several Articles and Sections hereof, and the table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Trust Agreement. Unless the context requires otherwise, all references herein to "Articles," "Sections," and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Trust Agreement, and the words "hereby," "herein," "hereof," "hereto," "herewith," "hereunder" and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section, subsection or clause hereof.

**Section 11.09. LC Bank Consent.** So long as it has not failed to honor a properly presented and conforming drawing under the related Credit Facility, each LC Bank shall be

deemed to be the Owner of Commercial Paper Certificates of the Series for which it has issued a Credit Facility to support payment of such Series for the purpose of the provision of consents and any other action of an Owner of such Commercial Paper Certificates under this Trust Agreement, subject to the limitations set forth in Section 8.01 hereof.

**Section 11.10. City Requirements.** . . . Additional requirements of the City with respect to this Trust Agreement are attached as Exhibit F and are incorporated by reference herein, and, by executing this Trust Agreement, the Trustee is agreeing to comply with those provisions.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Trust Agreement effective the date first above written.

CITY AND COUNTY OF SAN FRANCISCO

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

\_\_\_\_\_  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

EXHIBIT A-1

FORM OF TAX EXEMPT COMMERCIAL PAPER CERTIFICATE

UNITED STATES OF AMERICA  
STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO  
LEASE REVENUE COMMERCIAL PAPER CERTIFICATE OF PARTICIPATION, SERIES \_\_\_\_  
(TAX EXEMPT)

No.:	_____	Certificate Date:	_____
Principal Amount:	\$ _____	Maturity Date:	_____
Interest to Maturity:	_____	Number of Days:	_____
Due at Maturity:	_____	Interest Rate:	_____ %

THIS IS TO CERTIFY THAT the registered owner identified above or registered assigns, as the registered owner of this Lease Revenue Commercial Paper Certificate of Participation, Series \_ (Tax Exempt) (the "Certificate" or "Tax Exempt Commercial Paper Certificate"), is the owner of a proportionate interest in a Sublease, including the right to receive Base Rental payments payable thereunder (the "Sublease"), dated as of [June 1,] 2016, between the City and County of San Francisco (the "City"), a charter city and county of the State of California (the "State"), as lessee, and U.S. Bank National Association, a national banking association, as trustee (the "Trustee").

The registered owner of this Certificate is entitled to receive, subject to the terms of the Sublease, on the maturity date identified above, the principal sum specified above representing a portion of the Base Rental payments designated as principal coming due on or prior to such date, and to receive interest, if any, on said principal amount at said maturity date, from the above specified Certificate date to said maturity date at the per annum interest rate shown above (computed on the basis of actual days elapsed and a 365-day or 366-day year); both principal and interest with respect to this Certificate being payable in lawful money of the United States of America at the principal corporate office of U.S. Bank National Association, as paying agent (the "Delivery and Paying Agent") executing the "Certificate of Authentication" endorsed hereon and appearing below, or its successor at the principal corporate office of such successor.

This Certificate is one of a duly authorized issue of Tax Exempt Commercial Paper Certificates, all of which have been executed and delivered pursuant to that certain Trust Agreement, dated as of [June 1, 2016] (as amended, supplemented and modified from time to time, the "Trust Agreement"), by and between the City (the "City") and the Trustee, for the purpose of financing Project Costs of the Tax Exempt Projects (each as defined in the Trust Agreement), to refinance, renew or refund the Certificates (as defined in the Trust Agreement) delivered pursuant to the provisions of the Trust Agreement, to pay the Redemption Price of the applicable Series of Callable Commercial Paper Certificates and to pay accrued interest with respect to the applicable Series of Callable Commercial Paper Certificates upon redemption prior to maturity.

If this Tax Exempt Commercial Paper Certificate has been designated as a Callable Commercial Paper Certificate under the Trust Agreement, this Tax Exempt Commercial Paper Certificate is subject to optional redemption prior to maturity as provided in the Trust Agreement. Such Redemption Price shall be payable to the registered Owner of this Tax Exempt Commercial Paper Certificate in accordance with the procedures set forth in the Trust Agreement, but solely from the following sources in the following order of priority: (i) to the extent amounts sufficient to pay such Redemption Price have been deposited in the A-1-I applicable Refunding Proceeds Redemption Price Subaccount of the Commercial Paper Certificates Payment Account with respect to such Series of Tax Exempt Commercial Paper Certificates from the proceeds of any long-term bonds or certificates of participation fixed to maturity executed and delivered to pay such Redemption Price to such Owner on the Redemption Date, from such proceeds on deposit in the applicable Refunding Proceeds Redemption Price Subaccount of the Commercial Paper Certificates Payment Account; and (ii) the proceeds of the sale of any Commercial Paper Certificates of the applicable Series.

Reference is hereby made to the Trust Agreement (a copy of which is on file at said principal corporate trust office of the Trustee) and all amendments and supplements thereto for a description of the rights thereunder of the bearers of the Tax Exempt Commercial Paper Certificates, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and the Delivery and Paying Agent and of the rights and obligations of the City thereunder, to all the provisions of which Trust Agreement the registered Owner of this Tax Exempt Commercial Paper Certificate, by acceptance hereof, assents and agrees. AU capitalized terms herein not otherwise defined shall have the meaning ascribed to them in the Trust Agreement.

This Tax Exempt Commercial Paper Certificate of a Series, together with the other Lease Revenue Certificates, is payable from and equally secured by a lien on and pledge of an of the City's right, title, and interest in and to: (i) the Site Lease; (ii) the Sublease (except for its right to payment of expenses of the City under Section 3.1(g) of the Sublease, its right to indemnification under Section 11 of the Sublease and its right to receive notices under Section 15 of the Sublease) including the right to enforce remedies under the Sublease and all revenues, issues, income, rents, royalties, profits and receipts derived or to be derived by the City from or attributable to the sublease of the Property to the City including all revenues attributable to the sublease of the Property or to the payment of the costs thereof received or to be received by the City under the Sublease or any part thereof or any contractual arrangement with respect to the use of the Property, including the payment of Base Rental thereunder, (iii) the proceeds of any insurance, including the proceeds of any self insurance covering loss relating to the Property; (iv) all amounts on hand from time to time in the funds and accounts established hereunder (other than the Excess Earnings Account of the Earnings Fund), provided that the proceeds of the sale of a Series of Commercial Paper Certificates on deposit in any such fund or account shall not secure any other Series of Lease Revenue Certificates and the proceeds of any drawing or payment under a Credit Facility for a Series or any Advance under a Direct Placement Revolving Credit Agreement of a Series shall not secure any other Series of Lease Revenue Certificates; (v) all proceeds of rental interruption insurance policies carried with respect to the Property pursuant to the Sublease or in accordance with the Trust Agreement; and (vi) any additional moneys or amounts that may from time to time, by delivery or by writing of any kind, be subjected to the lien hereof by the City or by anyone on its behalf, subject only to the provisions of the Trust Agreement, the Site Lease and the Sublease.

This Tax Exempt Commercial Paper Certificate shall not be entitled to any benefit under the Trust Agreement, or become valid or obligatory for any other purpose, until the Delivery and Paying Agent shall have authenticated the same by manual signature.

This Tax Exempt Commercial Paper Certificate, together with the other Lease Revenue Certificates, is payable solely from the sources hereinabove identified securing the payment thereof and the Lease Revenue Certificates do not constitute a legal or equitable pledge, charge, lien or encumbrance upon any other property of the City. The registered owner shall never have the right to demand payment of this obligation from any sources or properties of the City except as identified above.

It is hereby certified and recited that all acts, conditions and things required by law and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the issuance of this Tax Exempt Commercial Paper Certificate, do exist, have happened and have been performed in regular and in due time, form and manner as required by the Constitution and laws of the State of California; and that issuance of this Tax Exempt Commercial Paper Certificate, together with all other indebtedness of the City, is within every debt and other limit prescribed by the Constitution and laws of the State of California, and is not in excess of the amount of Lease Revenue Certificates permitted to be executed and delivered under the Trust Agreement. I

IN WITNESS WHEREOF, the City and County of San Francisco has caused this Commercial Paper Certificate to be executed in its name by its duly authorized representative and has caused this Commercial Paper Certificate to be dated the Certificate Date set forth above.

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

**DELIVERY AND PAYING AGENT'S  
CERTIFICATE OF AUTHENTICATION**

This Tax Exempt Commercial Paper Certificate is one of the Tax Exempt Commercial Paper Certificates delivered pursuant to the within mentioned Trust Agreement.

\_\_\_\_\_, as  
Delivery and Paying Agent

By: \_\_\_\_\_  
Authorized Signatory

EXHIBIT A-2

FORM OF TAXABLE COMMERCIAL PAPER CERTIFICATE

UNITED STATES OF AMERICA  
STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO  
LEASE REVENUE COMMERCIAL PAPER CERTIFICATE OF PARTICIPATION, SERIES \_\_  
(TAXABLE)

No.:	_____	Certificate Date:	_____
Principal Amount:	\$ _____	Maturity Date:	_____
Interest to Maturity:	_____	Number of Days:	_____
Due at Maturity:	_____	Interest Rate:	_____%

THIS IS TO CERTIFY THAT the registered owner identified above or registered assigns, as the registered owner of this Lease Revenue Commercial Paper Certificate of Participation, Series \_\_ (Taxable) (the "Certificate" or "Taxable Commercial Paper Certificate"), is the owner of a proportionate interest in a Sublease, including the right to receive Base Rental payments payable thereunder (the "Sublease"), dated as of [June 1,] 2016, between the City and County of San Francisco (the "City"), a charter city and county of the State of California (the "State"), as lessee, and U.S. Bank National Association, a national banking association, as trustee (the "Trustee").

The registered owner of this Certificate is entitled to receive, subject to the terms of the Sublease, on the maturity date identified above, the principal sum specified above representing a portion of the Base Rental payments designated as principal coming due on or prior to such date, and to receive interest, if any, on said principal amount at said maturity date, from the above specified Certificate date to said maturity date at the per annum interest rate shown above (computed on the basis of actual days elapsed and a 365-day or 366-day year); both principal and interest with respect to this Certificate being payable in lawful money of the United States of America at the principal corporate office of U.S. Bank National Association, as paying agent (the "Delivery and Paying Agent") executing the "Certificate of Authentication" endorsed hereon and appearing below, or its successor at the principal corporate office of such successor.

This Certificate is one of a duly authorized issue of Taxable Commercial Paper Certificates, all of which have been executed and delivered pursuant to that certain Trust Agreement, dated as of [June 1, 2016] (as amended, supplemented and modified from time to time, the "Trust Agreement"), by and between the City (the "City") and the Trustee, for the purpose of financing Project Costs (as defined in the Trust Agreement), to refinance, renew or refund the Certificates (as defined in the Trust Agreement) delivered pursuant to the provisions of the Trust Agreement, to pay the Redemption Price of the applicable Series of Callable Commercial Paper Certificates and to pay accrued interest with respect to the applicable Series of Callable Commercial Paper Certificates upon redemption prior to maturity.

If this Taxable Commercial Paper Certificate has been designated as a Callable Commercial Paper Certificate under the Trust Agreement, this Taxable Commercial Paper



Certificate is subject to optional redemption prior to maturity as provided in the Trust Agreement. Such Redemption Price shall be payable to the registered Owner of this Taxable Commercial Paper Certificate in accordance with the procedures set forth in the Trust Agreement, but solely from the following sources in the following order of priority: (i) to the extent amounts sufficient to pay such Redemption Price have been deposited in the applicable Refunding Proceeds Redemption Price Subaccount of the Commercial Paper Certificates Payment Account with respect to the Series of this Taxable Commercial Paper Certificate from the proceeds of any long-term bonds or certificates of participation fixed to maturity executed and delivered to pay such Redemption Price to such Owner on the Redemption Date, from such proceeds on deposit in the applicable Refunding Proceeds Redemption Price Subaccount of the Commercial Paper Certificates Payment Account; and (ii) the proceeds of the sale of any Commercial Paper Certificates of the applicable Series.

Reference is hereby made to the Trust Agreement (a copy of which is on file at said principal corporate trust office of the Trustee) and all amendments and supplements thereto for a description of the rights thereunder of the bearers of the Taxable Commercial Paper Certificates, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and the Delivery and Paying Agent and of the rights and obligations of the City thereunder, to all the provisions of which Trust Agreement the registered Owner of this Taxable Commercial Paper Certificate, by acceptance hereof, assents and agrees. All capitalized terms herein not otherwise defined shall have the meaning ascribed to them in the Trust Agreement.

This Taxable Commercial Paper Certificate, together with the other Lease Revenue Certificates, is payable from and equally secured by a lien on and pledge of all of the City's right, title, and interest in and to: (i) the Site Lease; (ii) the Sublease (except for its right to payment of expenses of the City under Section 3.1(g) of the Sublease, its right to indemnification under Section 11 of the Sublease and its right to receive notices under Section 15 of the Sublease) including the right to enforce remedies under the Sublease and all revenues, issues, income, rents, royalties, profits and receipts derived or to be derived by the City from or attributable to the sublease of the Property to the City including all revenues attributable to the sublease of the Property or to the payment of the costs thereof received or to be received by the City under the Sublease or any part thereof or any contractual arrangement with respect to the use of the Property, including the payment of Base Rental thereunder; (iii) the proceeds of any insurance, including the proceeds of any self-insurance covering loss relating to the Property; (iv) all amounts on hand from time to time in the funds and accounts established hereunder (other than the Excess Earnings Account of the Earnings Fund), provided that the proceeds of the sale of a Series of Commercial Paper Certificates on deposit in any such fund or account shall not secure any other Series of Lease Revenue Certificates and the proceeds of any drawing or payment under a Credit Facility for a Series or any Advance under a Direct Placement Revolving Credit Agreement of a Series shall not secure any other Series of Lease Revenue Certificates; (v) all proceeds of rental interruption insurance policies carried with respect to the Property pursuant to the Sublease or in accordance with the Trust Agreement; and (vi) any additional moneys or amounts that may from time to time, by delivery or by writing of any kind, be subjected to the lien hereof by the City or by anyone on its behalf, subject only to the provisions of the Trust Agreement, the Site Lease and the Sublease.

This Taxable Commercial Paper Certificate shall not be entitled to any benefit under the Trust Agreement, or become valid or obligatory for any other purpose, until the Delivery and Paying Agent shall have authenticated the same by manual signature.

This Taxable Commercial Paper Certificate, together with the other Lease Revenue Certificates, is payable solely from the sources hereinabove identified securing the payment thereof and the Lease Revenue Certificates do not constitute a legal or equitable pledge, charge, lien or encumbrance upon any other property of the City. The registered owner shall never have the right to demand payment of this obligation from any sources or properties of the City except as identified above.

It is hereby certified and recited that all acts, conditions and things required by law and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the issuance of this Taxable Commercial Paper Certificate, do exist, have happened and have been performed in regular and in due time, form and manner as required by the Constitution and laws of the State of California; and that issuance of this Taxable Commercial Paper Certificate, together with all other indebtedness of the City, is within every debt and other limit prescribed by the Constitution and laws of the State of California, and is not in excess of the amount of Certificates permitted to be executed and delivered under the Trust Agreement.

IN WITNESS WHEREOF, the City and County of San Francisco has caused this Commercial Paper Certificate to be executed in its name by its duly authorized representative and has caused this Commercial Paper Certificate to be dated the Certificate Date set forth above.

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

**DELIVERY AND PAYING AGENT'S CERTIFICATE OF AUTHENTICATION**

This Taxable Commercial Paper Certificate is one of the Taxable Commercial Paper Certificates delivered pursuant to the within mentioned Trust Agreement.

\_\_\_\_\_, as Delivery  
and Paying Agent

By: \_\_\_\_\_  
Authorized Signatory

**EXHIBIT B-1**

**FORM OF TAX EXEMPT GOVERNMENTAL MASTER CERTIFICATE**

**ANNEX I TO**

**MUNICIPAL COMMERCIAL PAPER - TECP CERTIFICATE**

THIS IS TO CERTIFY THAT the registered owner identified above or registered assigns, as the registered owner of this Lease Revenue Commercial Paper Certificate of Participation, Series \_ (Tax Exempt) (the "Master Commercial Paper Certificate" or "Tax Exempt Commercial Paper Certificate"), is the owner of a proportionate interest in a Sublease, including the right to receive Base Rental payments payable thereunder (the "Sublease"), dated as of [June 1,] 2016, between the City and County of San Francisco (the "City"), a charter city and county of the State of California (the "State"), as lessee, and U.S. Bank National Association, a national banking association, as trustee (the "Trustee").

The registered owner of this Master Commercial Paper Certificate is entitled to receive, subject to the terms of the Sublease, on the maturity date identified above, the principal sum specified above representing a portion of the Base Rental payments designated as principal coming due on or prior to such date, and to receive interest, if any, on said principal amount at said maturity date, from the above specified Master Commercial Paper Certificate date to said maturity date at the per annum interest rate shown above (computed on the basis of actual days elapsed and a 365-day or 366-day year); both principal and interest with respect to this Master Commercial Paper Certificate being payable in lawful money of the United States of America at the principal corporate office of U.S. Bank National Association, as paying agent (the "Delivery and Paying Agent") executing the "Certificate of Authentication" endorsed hereon and appearing below, or its successor at the principal corporate office of such successor.

This Master Commercial Paper Certificate is one of a duly authorized issue of Lease Revenue Certificate Commercial Paper Certificates, Series \_ (Tax Exempt) of the City (the "Tax Exempt Commercial Paper Certificates"), all of which have been executed and delivered in pursuance of the laws and Constitution of the State of California and that certain Trust Agreement dated as of [June 1, 2016] by and between the Trustee and the City (as amended, modified or otherwise supplemented, from time to time, the "Trust Agreement"), for the purpose of financing Project Costs (as defined in the Trust Agreement) of the Tax Exempt Projects, to refinance, renew or refund Certificates (as defined in the Trust Agreement) executed and delivered pursuant to the provisions of the Trust Agreement, to pay the Redemption Price of the applicable Series of Callable Commercial Paper Certificates and to pay accrued interest with respect to the applicable Series of Callable Commercial Paper Certificates upon redemption prior to maturity.

If any duly authorized issue of Tax Exempt Commercial Paper Certificates has been designated as Callable Commercial Paper Certificates under the Trust Agreement, such issue of Tax Exempt Commercial Paper Certificates is subject to optional redemption prior to maturity as provided in the Trust Agreement. Such Redemption Price shall be payable to the registered Owner of such issue of Tax Exempt Commercial Paper Certificates in accordance with the procedures set forth in the Trust Agreement, but solely from the following sources in the following order of priority: (i) to the extent amounts sufficient to pay such Redemption Price have been deposited in the applicable Refunding Proceeds Redemption Price Subaccount of the

Commercial Paper Certificates Payment Account with respect to such Series of Commercial Paper Certificates from the proceeds of any long-term bonds or certificates of participation fixed to maturity executed and delivered to pay such Redemption Price to such Owner on the Redemption Date, from such proceeds on deposit in the applicable Refunding Proceeds Redemption Price Subaccount of the Commercial Paper Certificates Payment Account; and (ii) the proceeds of the sale of any Commercial Paper Certificates of the applicable Series.

Reference is hereby made to the Trust Agreement (a copy of which is on file at said principal corporate trust office of the Trustee) and all supplements thereto for a description of the rights thereunder of the registered owners of the Tax Exempt Commercial Paper Certificates, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and the Delivery and Paying Agent and of the rights and obligations of the City thereunder, to all the provisions of which Trust Agreement the registered owner of this Master Commercial Paper Certificate, by acceptance hereof, assents and agrees. All capitalized terms herein not otherwise defined shall have the meaning ascribed to them in the Trust Agreement.

This Master Commercial Paper Certificate, together with the other Lease Revenue Certificates of the City, is payable from and equally secured by a lien on and pledge of all of the City's right, title, and interest in and to: (i) the Site Lease; (ii) the Sublease (except for its right to payment of expenses of the City under Section 3.1(g) of the Sublease, its right to indemnification under Section 11 of the Sublease and its right to receive notices under Section 15 of the Sublease) including the right to enforce remedies under the Sublease and all revenues, issues, income, rents, royalties, profits and receipts derived or to be derived by the City from or attributable to the sublease of the Property to the City including all revenues attributable to the sublease of the Property or to the payment of the costs thereof received or to be received by the City under the Sublease or any part thereof or any contractual arrangement with respect to the use of the Property, including the payment of Base Rental thereunder; (iii) the proceeds of any insurance, including the proceeds of any self-insurance covering loss relating to the Property; (iv) all amounts on hand from time to time in the funds and accounts established hereunder (other than the Excess Earnings Account of the Earnings Fund), provided that the proceeds of the sale of a Series of Commercial Paper Certificates on deposit in any such fund or account shall not secure any other Series of Lease Revenue Certificates and the proceeds of any drawing or payment under a Credit Facility for a Series or any Advance under a Direct Placement Revolving Credit Agreement of a Series shall not secure any other Series of Lease Revenue Certificates; (v) all proceeds of rental interruption insurance policies carried with respect to the Property pursuant to the Sublease or in accordance with the Trust Agreement; and (vi) any additional moneys or amounts that may from time to time, by delivery or by writing of any kind, be subjected to the lien hereof by the City or by anyone on its behalf, subject only to the provisions of the Trust Agreement, the Site Lease and the Sublease.

This Master Commercial Paper Certificate shall not be entitled to any benefit under the Trust Agreement, or become valid or obligatory for any other purpose, until the Delivery and Paying Agent shall have authenticated the same by manual signature.

This Master Commercial Paper Certificate, together with the other Commercial Paper Certificates, is payable solely from the sources hereinabove identified securing the payment thereof and the Commercial Paper Certificates do not constitute a legal or equitable pledge, charge, lien or encumbrance upon any other property of the City. The registered owner shall never have the right to demand payment of this obligation from any sources or properties of the City except as identified above.

It is hereby certified and recited that all acts, conditions and things required by law and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the issuance of this Master Commercial Paper Certificate, do exist, have happened and have been performed in regular and in due time, Form and manner as required by the Constitution and laws of the State of California; and that issuance of this Master Commercial Paper Certificate, together with all other indebtedness of the City, is within every debt and other limit prescribed by the Constitution and laws of the State of California, and is not in excess of the amount of Certificates permitted to be executed and delivered under the Trust Agreement.

## EXHIBIT B-2

### FORM OF MASTER COMMERCIAL PAPER CERTIFICATE (TAXABLE)

#### ANNEX I

#### TO MUNICIPAL COMMERCIAL PAPER - TCP MASTER CERTIFICATE

THIS IS TO CERTIFY THAT the registered owner identified above or registered assigns, as the registered owner of this Lease Revenue Commercial Paper Certificate of Participation, Series \_ (Taxable) (the "Master Commercial Paper Certificate" or "Taxable Commercial Paper Certificate"), is the owner of a proportionate interest in a Sublease, including the right to receive Base Rental payments payable thereunder (the "Sublease"), dated as of [June 1,] 2016, between the City and County of San Francisco (the "City"), a charter city and county of the State of California (the "State"), as lessee, and U.S. Bank National Association, a national banking association, as trustee (the "Trustee").

The registered owner of this Master Commercial Paper Certificate is entitled to receive, subject to the terms of the Sublease, on the maturity date identified above, the principal sum specified above representing a portion of the Base Rental payments designated as principal coming due on or prior to such date, and to receive interest, if any, on said principal amount at said maturity date, from the above specified Master Commercial Paper Certificate date to said maturity date at the per annum interest rate shown above (computed on the basis of actual days elapsed and a 365-day or 366-day year); both principal and interest with respect to this Master Commercial Paper Certificate being payable in lawful money of the United States of America at the principal corporate office of U.S. Bank National Association, as paying agent (the "Delivery and Paying Agent") executing the "Certificate of Authentication" endorsed hereon and appearing below, or its successor at the principal corporate office of such successor.

This Master Commercial Paper Certificate, Series (Taxable) is one of a duly authorized issue of Lease Revenue Certificate Commercial Paper Certificates, Series \_ (Taxable) of the City (the "Taxable Commercial Paper Certificates"), all of which have been executed and delivered in pursuance of the laws and Constitution of the State of California and that certain Second Amended and Restated Trust Agreement dated as of [June 1, 2016] by and between the Trustee and the City (as amended, modified or otherwise supplemented, from time to time, the "Trust Agreement"), for the purpose of financing Project Costs (as defined in the Trust Agreement), to refinance, renew or refund Certificates (as defined in the Trust Agreement) executed and delivered pursuant to the provisions of the Trust Agreement, to pay the Redemption Price of the applicable Series of Callable Commercial Paper Certificates and to pay accrued interest with respect to the applicable Series of Callable Commercial Paper Certificates upon redemption prior to maturity.

If any duly authorized issue of Taxable Commercial Paper Certificates has been designated as Callable Commercial Paper Certificates under the Trust Agreement, such issue of Taxable Commercial Paper Certificates is subject to optional redemption prior to maturity as provided in the Trust Agreement. Such Redemption Price shall be payable to the registered Owner of such issue of Taxable Commercial Paper Certificates in accordance with the procedures set forth in the Trust Agreement, but solely from the following sources in the following order of priority: (i) to the extent amounts sufficient to pay such Redemption Price have

been deposited in the applicable Refunding Proceeds Redemption Price Subaccount of the Commercial Paper Certificates Payment Account with respect to such Series of Commercial Paper Certificates from the proceeds of any long-term bonds or certificates of participation fixed to maturity executed and delivered to pay such Redemption Price to such Owner on the Redemption Date, from such proceeds on deposit in the applicable Refunding Proceeds Redemption Price Subaccount of the Commercial Paper Certificates Payment Account; and (ii) the proceeds of the sale of any Commercial Paper Certificates of the applicable Series.

Reference is hereby made to the Trust Agreement (a copy of which is on file at said principal corporate trust office of the Trustee) and all supplements thereto for a description of the rights thereunder of the registered owners of the Taxable Commercial Paper Certificates, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and the Delivery and Paying Agent and of the rights and obligations of the City thereunder, to all the provisions of which Trust Agreement the registered owner of this Master Commercial Paper Certificate, by acceptance hereof, assents and agrees. All capitalized terms herein not otherwise defined shall have the meaning ascribed to them in the Trust Agreement.

This Master Commercial Paper Certificate, together with the other Lease Revenue Certificates, is payable from and equally secured by a lien on and pledge of all of the City's right, title, and interest in and to: (i) the Site Lease; (ii) the Sublease (except for its right to payment of expenses of the City under Section 3.1(g) of the Sublease, its right to indemnification under Section II of the Sublease and its right to receive notices under Section 15 of the Sublease) including the right to enforce remedies under the Sublease and all revenues, issues, income, rents, royalties, profits and receipts derived or to be derived by the City from or attributable to the sublease of the Property to the City including all revenues attributable to the sublease of the Property or to the payment of the costs thereof received or to be received by the City under the Sublease or any part thereof or any contractual arrangement with respect to the use of the Property, including the payment of Base Rental thereunder; (iii) the proceeds of any insurance, including the proceeds of any self-insurance covering loss relating to the Property; (iv) all amounts on hand from time to time in the funds and accounts established hereunder (other than the Excess Earnings Account of the Earnings Fund), provided that the proceeds of the sale of a Series of Commercial Paper Certificates on deposit in any such fund or account shall not secure any other Series of Lease Revenue Certificates and the proceeds of any drawing or payment under a Credit Facility for a Series or any Advance under a Direct Placement Revolving Credit Agreement of a Series shall not secure any other Series of Lease Revenue Certificates; (v) all proceeds of rental interruption insurance policies carried with respect to the Property pursuant to the Sublease or in accordance with the Trust Agreement; and (vi) any additional moneys or amounts that may from time to time, by delivery or by writing of any kind, be subjected to the lien hereof by the City or by anyone on its behalf, subject only to the provisions of the Trust Agreement, the Site Lease and the Sublease.

This Master Commercial Paper Certificate shall not be entitled to any benefit under the Trust Agreement, or become valid or obligatory for any other purpose, until the Delivery and Paying Agent shall have authenticated the same by manual signature.

This Master Commercial Paper Certificate, together with the other Commercial Paper Certificates, is payable solely from the sources hereinabove identified securing the payment thereof and the Commercial Paper Certificates do not constitute a legal or equitable pledge, charge, lien or encumbrance upon any other property of the City. The registered owner shall never have the right to demand payment of this obligation from any sources or properties of the City except as identified above.



It is hereby certified and recited that all acts, conditions and things required by law and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the issuance of this Master Commercial Paper Certificate, do exist, have happened and have been performed in regular and in due time, form and manner as required by the Constitution and laws of the State of California; and that issuance of this Master Commercial Paper Certificate, together with all other indebtedness of the City, is within every debt and other limit prescribed by the Constitution and laws of the State of California, and is not in excess of the amount of Certificates permitted to be executed and delivered under the Trust Agreement.

**EXHIBIT C-1**

**FORM OF DIRECT PLACEMENT REVOLVING CERTIFICATE (TAX EXEMPT)**

**[registration information to come]**

THIS IS TO CERTIFY THAT the registered owner identified above or registered assigns, as the registered owner of this Direct Placement Revolving Certificate (Tax Exempt) (the "Certificate"), is the owner of a proportionate interest in a Sublease, including the right to receive Base Rental payments payable thereunder (the "Sublease"), dated as of [June 1,] 2016, between the City and County of San Francisco (the "City"), a charter city and county of the State of California (the "State"), as lessee, and U.S. Bank National Association, a national banking association, as trustee (the "Trustee").

The registered owner of this Certificate is entitled to receive, subject to the terms of the Sublease, on the maturity date identified above, the principal sum specified above representing a portion of the Base Rental payments designated as principal coming due on or prior to such date, and to receive interest, if any, on said principal amount at said maturity date, from the above specified Certificate date to said maturity date at the per annum interest rate shown above (computed on the basis of actual days elapsed and a 365-day or 366-day year); both principal and interest with respect to this Certificate being payable in lawful money of the United States of America at the principal corporate office of U.S. Bank National Association, as paying agent (the "Delivery and Paying Agent") executing the "Certificate of Authentication" endorsed hereon and appearing below, or its successor at the principal corporate office of such successor.

This Certificate is one of a duly authorized issue of Lease Revenue Direct Placement Revolving Certificates (Tax Exempt) of the City (the "Tax Exempt Direct Placement Certificates"), all of which have been executed and delivered in pursuance of the laws and Constitution of the State of California and that certain Trust Agreement dated as of [June 1, 2016] by and between the Trustee and the City (as amended, modified or otherwise supplemented, from time to time, the "Trust Agreement"), for the purpose of financing Project Costs (as defined in the Trust Agreement) of the Tax Exempt Projects.

Reference is hereby made to the Trust Agreement (a copy of which is on file at said principal corporate trust office of the Trustee) and all supplements thereto for a description of the rights thereunder of the registered owners of the Tax Exempt Direct Placement Certificates, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and the Delivery and Paying Agent and of the rights and obligations of the City thereunder, to all the provisions of which Trust Agreement the registered owner of this Certificate, by acceptance hereof, assents and agrees. All capitalized terms herein not otherwise defined shall have the meaning ascribed to them in the Trust Agreement.

This Certificate, together with the other Lease Revenue Certificates of the City, is payable from and equally secured by a lien on and pledge of all of the City's right, title, and interest in and to: (i) the Site Lease; (ii) the Sublease (except for its right to payment of expenses of the City under Section 3.1(g) of the Sublease, its right to indemnification under Section 11 of the Sublease and its right to receive notices under Section 15 of the Sublease) including the right to enforce remedies under the Sublease and all revenues, issues, income,

rents, royalties, profits and receipts derived or to be derived by the City from or attributable to the sublease of the Property to the City including all revenues attributable to the sublease of the Property or to the payment of the costs thereof received or to be received by the City under the Sublease or any part thereof or any contractual arrangement with respect to the use of the Property, including the payment of Base Rental thereunder; (iii) the proceeds of any insurance, including the proceeds of any self-insurance covering loss relating to the Property; (iv) all amounts on hand from time to time in the funds and accounts established hereunder (other than the Excess Earnings Account of the Earnings Fund), provided that the proceeds of the sale of Commercial Paper Certificates on deposit in any such fund or account shall not secure any other Lease Revenue Certificates and the proceeds of any drawing or payment under the Credit Facility or any Advance under a Direct Placement Revolving Credit Agreement shall not secure any other Lease Revenue Certificates; (v) all proceeds of rental interruption insurance policies carried with respect to the Property pursuant to the Sublease or in accordance with the Trust Agreement; and (vi) any additional moneys or amounts that may from time to time, by delivery or by writing of any kind, be subjected to the lien hereof by the City or by anyone on its behalf, subject only to the provisions of the Trust Agreement, the Site Lease and the Sublease.

This Certificate shall not be entitled to any benefit under the Trust Agreement, or become valid or obligatory for any other purpose, until the Delivery and Paying Agent shall have authenticated the same by manual signature.

This Certificate, together with the other Direct Placement Certificates, is payable solely from the sources hereinabove identified securing the payment thereof and the Direct Placement Certificates do not constitute a legal or equitable pledge, charge, lien or encumbrance upon any other property of the City. The registered owner shall never have the right to demand payment of this obligation from any sources or properties of the City except as identified above.

It is hereby certified and recited that all acts, conditions and things required by law and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the issuance of this Certificate, do exist, have happened and have been performed in regular and in due time, Form and manner as required by the Constitution and laws of the State of California; and that issuance of this Certificate, together with all other indebtedness of the City, is within every debt and other limit prescribed by the Constitution and laws of the State of California, and is not in excess of the amount of Certificates permitted to be executed and delivered under the Trust Agreement.

**EXHIBIT C-2**

**FORM OF DIRECT PLACEMENT REVOLVING CERTIFICATE (TAXABLE)**

**[registration information to come]**

THIS IS TO CERTIFY THAT the registered owner identified above or registered assigns, as the registered owner of this Lease Revenue Direct Placement Revolving Certificate of Participation (Taxable) (the "Certificate"), is the owner of a proportionate interest in a Sublease, including the right to receive Base Rental payments payable thereunder (the "Sublease"), dated as of [June 1,] 2016, between the City and County of San Francisco (the "City"), a charter city and county of the State of California (the "State"), as lessee, and U.S. Bank National Association, a national banking association, as trustee (the "Trustee").

The registered owner of this Certificate is entitled to receive, subject to the terms of the Sublease, on the maturity date identified above, the principal sum specified above representing a portion of the Base Rental payments designated as principal coming due on or prior to such date, and to receive interest, if any, on said principal amount at said maturity date, from the above specified Certificate date to said maturity date at the per annum interest rate shown above (computed on the basis of actual days elapsed and a 365-day or 366-day year); both principal and interest with respect to this Certificate being payable in lawful money of the United States of America at the principal corporate office of U.S. Bank National Association, as paying agent (the "Delivery and Paying Agent") executing the "Certificate of Authentication" endorsed hereon and appearing below, or its successor at the principal corporate office of such successor.

This Certificate is one of a duly authorized issue of Lease Revenue Direct Placement Revolving Certificates (Taxable) of the City (the "Taxable Direct Placement Certificates"), all of which have been executed and delivered in pursuance of the laws and Constitution of the State of California and that certain Second Amended and Restated Trust Agreement dated as of [June 1, 2016] by and between the Trustee and the City (as amended, modified or otherwise supplemented, from time to time, the "Trust Agreement"), for the purpose of financing Project Costs (as defined in the Trust Agreement).

Reference is hereby made to the Trust Agreement (a copy of which is on file at said principal corporate trust office of the Trustee) and all supplements thereto for a description of the rights thereunder of the registered owners of the Taxable Direct Placement Certificates, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and the Delivery and Paying Agent and of the rights and obligations of the City thereunder, to all the provisions of which Trust Agreement the registered owner of this Certificate, by acceptance hereof, assents and agrees. All capitalized terms herein not otherwise defined shall have the meaning ascribed to them in the Trust Agreement.

This Certificate, together with the other Lease Revenue Certificates, is payable from and equally secured by a lien on and pledge of all of the City's right, title, and interest in and to: (i) the Site Lease; (ii) the Sublease (except for its right to payment of expenses of the City under Section 3.1(g) of the Sublease, its right to indemnification under Section II of the Sublease and its right to receive notices under Section 15 of the Sublease) including the right to enforce

remedies under the Sublease and all revenues, issues, income, rents, royalties, profits and receipts derived or to be derived by the City from or attributable to the sublease of the Property to the City including all revenues attributable to the sublease of the Property or to the payment of the costs thereof received or to be received by the City under the Sublease or any part thereof or any contractual arrangement with respect to the use of the Property, including the payment of Base Rental thereunder; (iii) the proceeds of any insurance, including the proceeds of any self-insurance covering loss relating to the Property; (iv) all amounts on hand from time to time in the funds and accounts established hereunder (other than the Excess Earnings Account of the Earnings Fund), provided that the proceeds of the sale of Commercial Paper Certificates on deposit in any such fund or account shall not secure any other Lease Revenue Certificates and the proceeds of any drawing or payment under the Credit Facility or any Advance under a Direct Placement Revolving Credit Agreement shall not secure any other Lease Revenue Certificates; (v) all proceeds of rental interruption insurance policies carried with respect to the Property pursuant to the Sublease or in accordance with the Trust Agreement; and (vi) any additional moneys or amounts that may from time to time, by delivery or by writing of any kind, be subjected to the lien hereof by the City or by anyone on its behalf, subject only to the provisions of the Trust Agreement, the Site Lease and the Sublease.

This Certificate shall not be entitled to any benefit under the Trust Agreement, or become valid or obligatory for any other purpose, until the Delivery and Paying Agent shall have authenticated the same by manual signature.

This Certificate, together with the other Direct Placement Certificates, is payable solely from the sources hereinabove identified securing the payment thereof and the Direct Placement Certificates do not constitute a legal or equitable pledge, charge, lien or encumbrance upon any other property of the City. The registered owner shall never have the right to demand payment of this obligation from any sources or properties of the City except as identified above.

It is hereby certified and recited that all acts, conditions and things required by law and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the issuance of this Certificate, do exist, have happened and have been performed in regular and in due time, form and manner as required by the Constitution and laws of the State of California; and that issuance of this Certificate, together with all other indebtedness of the City, is within every debt and other limit prescribed by the Constitution and laws of the State of California, and is not in excess of the amount of Certificates permitted to be executed and delivered under the Trust Agreement.

**EXHIBIT D**

**FORM OF PAYMENT REQUEST  
(Administrative Costs/Costs of Issuance)**

[Letterhead of City]

**PAYMENT REQUEST NO. \_\_\_**

[TRUSTEE]

[TRUSTEE ADDRESS]

Attention: \_\_\_\_\_

Re: City and County of San Francisco Lease Revenue Certificates

Ladies and Gentlemen:

Pursuant to Section [4.05]/[4.08] of the Trust Agreement, dated as of [June 1, 2016] (the "Trust Agreement"), between the City and County of San Francisco and \_\_\_\_\_, as trustee (the "Trustee"), you are hereby instructed to disburse the sum of \$ from the [Administrative Expense Account of the Lease Revenue Payment Fund established under the (Trust Agreement)]/[Costs of Issuance Fund established under the Trust Agreement]. You are instructed to pay such disbursement to the order of the following payee, and for the following cost(s) and/or expense(s).

Payee: \_\_\_\_\_

Cost(s) and/or expense(s) for which disbursement is requested:

By: \_\_\_\_\_  
Authorized Representative

**EXHIBIT E**

**FORM OF DISBURSEMENT REQUEST  
(Project Costs)**

[Letterhead of City]

**PAYMENT REQUEST NO. \_\_\_**

[TRUSTEE]  
[TRUSTEE ADDRESS]  
Attention: \_\_\_\_\_

Re: City and County of San Francisco Lease Revenue Certificates

Ladies and Gentlemen:

In accordance with the terms of a Trust Agreement, by and between you and the City and County of San Francisco (the "City"), dated as of [June 1, 2016] (the "Trust Agreement"), you are hereby authorized and requested to make immediate disbursement of funds held by you for Project Costs (capitalized terms used herein and not otherwise defined will have the meanings given such terms in the Trust Agreement) from the [\_\_\_\_\_ Account of the] Project Fund.

You are hereby requested to pay from the \_\_\_\_\_ Account of the Project Fund, to the Person designated on Schedule A attached as payee(s), the sum set forth on said Schedule, in payment of all or a portion of the Project Costs described on said Schedule.

The undersigned hereby certifies that (i) no part of the amount requested herein has been included in any other request previously filed with you; (ii) to the knowledge of the undersigned, there has not been filed with or served upon the City any notice of any lien or attachment upon or claim (except for any preliminary notice of lien as may be filed in accordance with law) affecting the right of the person, corporation or other entity stated below to receive payment of the amount stated below, which lien has not been released or will not be released simultaneously with the payment requested hereunder; (iii) the labor, services or materials covered hereby have been performed upon or furnished and the payment requested herein is due and payable under a purchase order, contract or other authorization; (iv) not more than 5% of the amount disbursed to date from the Project Fund, including the amount disbursed hereby, will be used to provide for property that will be used in any trade or business of any non-governmental person (i.e., any entity or person other than a state or a political subdivision thereof), other than as a member of the general public; and (v) not more than 5% of the amount disbursed to date from the Project Fund, including the amount disbursed hereby, will be used to pay working capital expenses relating to the start-up of the Project.

Dated: \_\_\_\_\_

CITY AND COUNTY OF SAN FRANCISCO

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

**Schedule A**

Payee  
(include address)

Description  
of Costs

Amount



**EXHIBIT F**

**ADDITIONAL CITY REQUIREMENTS**

[most recent City contract requirements to come]



RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:

JONES HALL, A PROFESSIONAL LAW CORPORATION  
475 Sansome Street, Suite 1700  
San Francisco, California 94111  
ATTENTION: Stephen G. Melikian, Esq.

---

(Space Above This Line For Recorders Use Only)

**SUBLEASE**

Dated as of [June 1, 2016]

by and between

**U.S. BANK NATIONAL ASSOCIATION,  
in its capacity as Trustee  
as Sublessor**

and

**CITY AND COUNTY OF SAN FRANCISCO,  
as Sublessee**

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NO DOCUMENTARY TRANSFER TAX DUE. This Sublease is recorded for the benefit of the City and County of San Francisco and the recording is exempt under Section 27383 of the California Government Code and Section 11928 of the California Revenue and Taxation Code.

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## SUBLEASE

THIS SUBLEASE, dated as of [June 1, 2016] (as amended, supplemented or modified from time to time, the "**Sublease**"), is entered into between the **U.S. BANK NATIONAL ASSOCIATION** (the "**Trustee**"), a national banking association, solely in its capacity as Trustee under the Trust Agreement, dated as of [June 1, 2016] (the "Trust Agreement") between the City and the Trustee, as sublessor, and the **CITY AND COUNTY OF SAN FRANCISCO** (the "**City**"), a charter city and county duly organized and existing under the laws and Constitution of the State of California, as sublessee.

## RECITALS

**WHEREAS**, the Trustee is the lessee of the Property (as hereinafter defined), pursuant to the terms and conditions set forth in the Site Lease, dated of even date herewith, between the City and the Trustee, and desires to sublease to the City the Property, and the City desires to sublease from the Trustee the Property on the terms stated herein; and

**WHEREAS**, the City is authorized to enter into this Sublease pursuant to applicable law of the State; and

**WHEREAS**, the City and the Trustee desire to provide for the pledge of all Base Rental payments hereunder to the payment of principal of and interest on the City's Lease Revenue Certificates (as such term is defined in the hereinafter mentioned Trust Agreement).

## AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**Section 1. Definitions.** Unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Sublease, have the meanings as set forth below. All other capitalized terms used herein without definition shall have the meanings as set forth in the Trust Agreement (as hereinafter defined).

**"Additional Rental"** means the amounts specified as such in Section 3.1(g) hereof.

**"Advance"** shall have the meaning assigned to such term in the Trust Agreement

**"Assumed Interest Cost"** means, as of any date of calculation or for any period of time (a) with respect to all Lease Revenue Certificates, the amount that would accrue as interest during such period with respect to Lease Revenue Certificates Outstanding as of the date of such calculation assuming such Lease Revenue Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs, and (b)(i) with respect to Commercial Paper Certificates, the amount that would accrue as interest during such period with respect to Commercial Paper Certificates Outstanding as of the date of such calculation assuming such Commercial Paper Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs, (ii) with respect to Revolving Certificates, the amount that would accrue as interest during such period with respect to such Revolving Certificates Outstanding as of the date of such calculation assuming such Revolving Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs, and (iii) with respect to Direct Placement Revolving Certificates, the amount that would accrue as interest during such period with respect to such Direct Placement Revolving Certificates Outstanding as of the date of such calculation assuming such Direct Placement Revolving Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs.

**"Base Rental"** shall have the meaning assigned to such term in the Trust Agreement.

**"Authorized Representative"** means the Controller of the City, the Director of Public Finance of the City, the Public Finance Manager of the City, or another official designated by any such officer and authorized to act on behalf of the City under or with respect to this Trust Agreement and all other agreements related hereto.

**"Base Rental Payment Date"** means each July 1 commencing July 1, 2017, during the Sublease Term.

**"Base Rental Period"** means the period between one Base Rental Payment Date and the next Base Rental Payment Date, provided that the first Base Rental Period shall commence on the Closing Date and end on July 1, 2017.

**"Closing Date"** means the date on which this Sublease is filed for recording in the official records of the City and County of San Francisco.

**"Commercial Paper Certificate"** shall have the meaning assigned to such term in the Trust Agreement.

"**Component**" means, as the context requires, any of the following or any property added thereto or substituted therefor pursuant to Section 7 hereof, but does not include any property released pursuant to Section 7:

(i) [to come]

"**Debt Service Certificate - Additional Interest Principal**" means a certificate substantially in the form of Exhibit C-3 hereof.

"**Debt Service Certificate - Additional Lease Revenue Certificates**" means a certificate substantially in the form of Exhibit C-2 hereof.

"**Debt Service Certificate - Annual**" means a certificate substantially in the form of Exhibit C-1 hereto.

"**Direct Placement Revolving Credit Agreement**" shall have the meaning assigned to such term in the Trust Agreement.

"**Fiscal Year**" means the fiscal year of the City, which at the date of this Sublease is the period from July 1 to and including the following June 30.

"**Lease Revenue Certificate**" shall have the meaning assigned to such term in the Trust Agreement.

"**Maximum Base Rental**" means the amounts specified as such in Section 3.1 (a) hereof, as such amounts may be adjusted from time to time in accordance with the terms hereof, but does not include Additional Rental.

"**Minimum Required Rental Payment**" has the meaning set forth in the Debt Service Certificate - Annual.

"**Minimum Supplemental Rental Payment**" means an amount determined pursuant to a Debt Service Certificate - Additional Lease Revenue Certificates or a Debt Service Certificate - Additional Interest Principal.

"**Property**" means, collectively, all of the Components. "Property" also includes any property, or portion thereof, that by amendment hereto becomes subject to this Sublease and any property, or portion thereof, substituted for any of the Components pursuant to Section 7, but "Property" excludes any Component for which new property has been substituted, and any Component or property released, pursuant to Section 7 hereof.

"**Related Documents**" means the Trust Agreement, the Delivery and Paying Agent Agreement, the Site Lease, the Dealer Agreements, the Lease Revenue Certificates, the Credit Facilities and the Credit Provider Agreements.

"**Rental Payments**" means all Minimum Required Rental Payments, Minimum Supplemental Rental Payments and Additional Rental payable hereunder.

"**Risk Manager**" means the Director of Public Finance of the City or, if the Director of Public Finance of the City is no longer performing the function of risk manager for the City such other person or firm of favorable reputation, qualified and experienced in the field of insurance



and risk management consultation as may from time to time be designated by the City, and who may be employed by the City.

**"Sublease"** means this Sublease, including any amendments or supplements hereto made or entered into in accordance with the terms hereof and Section 8.02 of the Trust Agreement.

**"Sublease Term"** means the term of this Sublease, as provided in Section 2.2 hereof.

**"Trust Agreement"** means that certain Trust Agreement, dated as of the date hereof, by and the City and the Trustee, including any amendments or supplements thereto made or entered into in accordance with its terms.

**"Trustee"** means the trustee acting in its capacity as such under the Trust Agreement or any successor appointed as therein provided.

**"Trustee Event of Default"** means an event described as such in Section 12.3 hereof.

## **Section 2. Sublease; Term.**

**Section 2.1. Sublease.** The Trustee hereby subleases the Property to the City and the City hereby subleases the Property from the Trustee on the terms and conditions hereinafter set forth, subject to all Permitted Encumbrances. The City shall take possession of the Property on the Closing Date. The City hereby agrees and covenants that during the term hereof, except as hereinafter provided, it will use the Property for public purposes so as to afford the public the benefits contemplated hereby and so as to permit the Trustee to carry out its agreements and covenants contained herein and in the Trust Agreement, and the City hereby further agrees and covenants that during the term hereof that it will not abandon or vacate the Property.

**Section 2.2. Term.** Subject to the next succeeding paragraph of this Section 2.2, with respect to each Component, the term of this Sublease with respect to such Component shall begin on the Closing Date and end on the earliest of: (a) the date set forth with respect to such Component in Exhibit B hereto (and in the case of any Property which is added to or substituted for a Component pursuant to Section 7.2 hereof and Section 8.02 of the Trust Agreement, the date set forth in Exhibit B with respect to such additional or substituted Component), (b) the date all Base Rental related to such Component is paid in full, (c) the date of termination of this Sublease with respect to such Component due to casualty or condemnation in accordance with the terms of Section 5 or 6 hereof; or (d) the date of release of such Component in accordance with the teams of Section 7.2 hereof and Section 8.02 of the Trust Agreement.

Notwithstanding anything to the contrary contained herein, including without limitation the provisions of Section 3.1 hereof, if there shall remain outstanding any obligations payable to a Credit Provider under a Credit Provider Agreement or any Credit Provider Agreement remains in effect or any Credit Facility or Direct Placement Revolving Credit Agreement remains in effect, the term of this Sublease with respect to each Component subject to this Sublease at such time shall be extended until such date as no Credit Facility or Direct Placement Revolving Credit Agreement or Credit Provider Agreement remains in effect and all such obligations payable to such Credit Provider have been satisfied; provided, however, in no event shall the term of this Sublease with respect to any Component exceed the maximum useful life of such Component. During such extension of the term of this Sublease, the City shall

pay Base Rental in amount sufficient to satisfy such obligations to such Credit Provider in full; provided, however, that the Base Rental with respect to any Component during any Base Rental Period shall not exceed the fair rental value with respect to such Component during such Base Rental Period.

Upon the termination or expiration of this Sublease (other than as provided in Section 12.2 hereof), all right, title and interest in and to the Property shall vest in the City. Upon any such termination or expiration, the Trustee shall execute such conveyances, deeds and other documents as may be necessary to effect such vesting of record.

### **Section 3. Rent.**

**Section 3.1. Rental Payments.** The City hereby agrees to pay to the Trustee Base Rental (in an amount up to the Maximum Base Rental) and the Additional Rental with respect to each Component, as provided herein, for the use, occupancy and possession of the Property for which such Maximum Base Rental is payable, all on the terms and conditions set forth herein. The City shall be obligated to pay the Minimum Required Rental Payment in advance, and any Minimum Supplemental Rental Payment and Additional Rental, on the terms, in the amounts, at the times and in the manner hereinafter set forth.

a. Maximum Base Rental. Subject to Section 2.2 above, the Maximum Base Rental for each Component for each Base Rental Period shall be the amount set forth in Exhibit B with respect to such Component and shall become due and payable annually in advance on each Base Rental Payment Date during the Sublease Term. The City hereby agrees to pay, from legally available funds, the aggregate Maximum Base Rental for all Components for each Base Rental Period on the respective Base Rental Payment Date subject to reduction pursuant to Section 3.1(b) hereof.

b. Minimum Required Rental Payment. Prior to the commencement of each Base Rental Period, the City will issue to the Trustee a Debt Service Certificate - Annual. If the Minimum Required Rental Payment set forth on the Debt Service Certificate for a Base Rental Period is less than the aggregate Maximum Base Rental for all Components for such Base Rental Period, the City may deposit with the Trustee such Minimum Required Rental Payment. The amount by which the aggregate Maximum Base Rental for said Base Rental Period exceeds the amount so deposited shall continue to be an obligation of the City for such Base Rental Period and shall be payable by the City if and to the extent that payment is required pursuant to Section 3.1(c) or 3.1(d) hereof.

c. Additional Deposit if Lease Revenue Certificates Increase. If the Debt Service Certificate - Additional Lease Revenue Certificates issued by the City to the Trustee pursuant to Section 2.15(e)(v) or 3.12(d) of the Trust Agreement indicates that a Minimum Supplemental Rental Payment is required, the City shall promptly pay such Minimum Supplemental Rental Payment, except as provided in Section 3.1(e) hereof.

d. Additional Deposit for Interest. If the Debt Service Certificate - Additional Interest/Principal filed by the City with the Trustee pursuant to Section 7.14 of the Trust Agreement indicates that a Minimum Supplemental Rental Payment is required, the City shall promptly pay such Minimum Supplemental Rental Payment, except as provided in Section 3.1(e) hereof.

e. Alternative to Payment of Minimum Supplemental Rental Payment. The City shall not be required to pay that portion of a Minimum Supplemental Rental Payment solely

arising from or relating to existing or additional Commercial Paper Certificates for which Commercial Paper Certificates have been executed and delivered to provide funds in an amount not less than such portion of such Minimum Supplemental Rental Payment and the proceeds of such Commercial Paper Certificates shall have been deposited into the related Commercial Paper Certificate Proceeds Subaccount of the Commercial Paper Certificates Payment Account within the Delivery and Paying Agent Fund.

f. No Payments in Excess of Aggregate Maximum Base Rental. Under no circumstances shall the City be required to pay during any Base Rental Period amounts exclusive of Additional Rental in excess of aggregate Maximum Base Rental for such Base Rental Period.

g. Additional Rental. In addition to the Minimum Required Rental Payments and any Minimum Supplemental Rental Payments set forth herein, the City agrees to pay as Additional Rental all of the following:

(i) All taxes and assessments of any nature whatsoever, including but not limited to excise taxes, ad valorem taxes, ad valorem and specific lien special assessments and gross receipts taxes, if any, levied upon any Component or upon any interest of the City, the Trustee or the Owners therein or in this Sublease, including taxes and charges contemplated by Section 4.2 hereof;

(ii) All costs of maintenance, operation, repair and replacement of the Property as required under Section 4.1 hereof;

(iii) Insurance premiums, if any, on all insurance required under the provisions of Section 4.3 hereof;

(iv) All fees, costs and expenses (not otherwise paid or provided for out of the proceeds of the sale of the Commercial Paper Certificates or Advances under the Direct Placement Revolving Credit Agreement) of the Trustee and the Delivery and Paying Agent in connection with the Trust Agreement;

(v) All commitment fees and other amounts payable to each Credit Provider under its respective Credit Provider Agreement;

(vi) Amounts owed to the United States as rebatable arbitrage pursuant to Section 4.07 of the Trust Agreement to the extent amounts available in the appropriate subaccounts of the Excess Earnings Account and the Investment Earnings Account are insufficient therefor; and

(vii) Any other fees, costs or expenses incurred by the Trustee and the Delivery and Paying Agent in connection with the execution, performance or enforcement of this Sublease or any assignment hereof or of the Trust Agreement or any of the transactions contemplated hereby or thereby or related to the Property. Amounts constituting Additional Rental payable hereunder shall be paid by the City directly to the person or persons to whom such amounts shall be payable. The City shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within 30 days after notice in writing from the Trustee, the City or any Credit Provider to the City stating the amount of Additional Rental then due and payable and the purpose thereof.

[h. Delivery of Debt Service Certificate - Annual. Notwithstanding anything herein to the contrary, the City will not be required to deliver a Debt Service Certificate - Annual for the Base Rental Periods ending June 30, 2017 through Jun 30, 20\_\_ unless the City determines not to fund all of the capitalized interest with respect to the Lease Revenue Certificates from the proceeds of Lease Revenue Certificates for those Base Rental Periods or unless amounts are due and owing on the Revolving Certificates or the Direct Placement Revolving Certificates. If the City determines not to fully all of the fund capitalized interest with respect to the Lease Revenue Certificates through June 30, 2017, or if amounts are due and owing on the Revolving Certificates or the Direct Placement Revolving Certificates, the City will be obligated to deliver the Debt Service Certificate - Annual, as required by paragraph (b) above, for each Base Rental Period for which capitalized interest is not being fully funded or for which as of the date of delivery of the Debt Service Certificate - Annual there is an amount owing on the Revolving Certificates or the Direct Placement Revolving Certificates, and the City will be obligated to budget and appropriate the necessary Base Rental for those Base Rental Periods.]

Additionally, the City will take into consideration any amounts on deposit in the Capitalized Interest Account and any capitalized interest it intends to fund from the proceeds of Commercial Paper Certificates or Direct Placement Revolving Certificates for any Base Rental Period in completing the applicable Debt Service Certificate - Annual.

**Section 3.2. Consideration.** The Minimum Required Rental Payments and any Minimum Supplemental Rental Payments and Additional Rental for each Base Rental Period or portion thereof during the Sublease Term shall constitute the total rental for such Base Rental Period or portion thereof and shall be payable by the City for and in consideration for the use and possession, and the continued quiet use and enjoyment, of the Property by the City for and during such Base Rental Period or portion thereof. The parties hereto have agreed and determined that the Rental Payments payable in respect of any Component during each such Base Rental Period are not in excess of the total fair rental value of such Component for such Base Rental Period. In making such determination, consideration has been given to the uses and purposes served by each such Component and the benefits therefrom that will accrue to the parties by reason of this Sublease and to the general public by reason of the City's use of each such Component.

**Section 3.3. Budget.** The City hereby covenants to include all Minimum Required Rental Payments, Additional Rental and Minimum Supplemental Rental Payments due hereunder in each Fiscal Year in its annual budget and to make the necessary annual appropriations for all such Minimum Required Rental Payments, Additional Rental and Minimum Supplemental Rental Payments, subject to Section 3.1(h) and Section 3.5 hereof. The covenants on the part of the City herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the ministerial duty of each and every public official of the City who bears direct or indirect responsibility for administering this Sublease to take such action and do such things as are required by law in the performance of such official duty of such officials to enable the City to carry out and perform the covenants and agreements on the part of the City contained in this Sublease. The obligation of the City to make Rental Payments does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. Notwithstanding anything to the contrary contained herein, neither the Lease Revenue Certificates nor the obligation of the City to make Rental Payments or Additional Rental payments constitutes an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction.

**Section 3.4. Payment.** Amounts necessary to pay Rental Payments shall be paid by the City on the dates set forth in Section 3.1 hereof in lawful money of the United States of America, at the Principal Office of the Trustee, or at such other place or places as may be established in accordance with the Trust Agreement. Except as provided in Section 3.1(h) or Section 3.5 hereof, any amount necessary to pay any Rental Payments that is not so deposited shall remain due and payable until received by the Trustee. Notwithstanding any dispute between the City and the Trustee hereunder, the City shall make all Rental Payments when due and shall not withhold any Rental Payments pending the final resolution of such dispute or for any other reason whatsoever. The City's obligation to make Rental Payments in the amount and on the terms and conditions specified hereunder shall be absolute and unconditional without any right of set-off or counterclaim, and without abatement, subject only to the provisions of Section 3.5 hereof.

**Section 3.5. Rental Abatement.** Except to the extent of (a) available amounts held by the Trustee in the Base Rental Account and the Direct Placement Revolving Certificates Payment Account of the Lease Revenue Certificate Payment Fund, and available amounts held by the Delivery and Paying Agent in the Commercial Paper Certificates Payment Account or the Bank Reimbursement Account of the Delivery and Paying Agent Fund, (b) amounts, if any, received in respect of rental interruption insurance with respect to any Component, and (c) amounts, if any, otherwise legally available to the City for payments in respect of this Sublease or to the Trustee for payments in respect of the Lease Revenue Certificates, Rental Payments due hereunder shall be subject to abatement in accordance with this Section 3.5 during any period in which, by reason of material damage, destruction or condemnation of any Component, or defects in title to any Component, there is substantial interference with the use, occupancy or possession of any Component by the City. The amount of annual rental abatement shall be such that the resulting Rental Payments in respect of the Property in any Base Rental Period during which such interference continues, excluding any amounts described in clauses (a), (b) or (c) above, do not exceed the fair rental value of the Property for such Base Rental Period with respect to which there has not been substantial interference, as evidenced by a certificate of an Authorized Representative. Such abatement shall continue for the period commencing with the date of such damage, destruction, condemnation or discovery of such title defect and ending with the restoration of the affected Component to tenantable condition or correction of the title defect. In the event of any such damage, destruction, condemnation or title defect, this Sublease shall continue in full force and effect, except as set forth in Sections 5 and 6 hereof.

**Section 3.6. Triple Net Sublease.** This Sublease is intended to be a triple net lease. The City agrees that the rentals provided for herein shall be an absolute net return to the Trustee free and clear of any expenses, charges or set-offs whatsoever.

**Section 3.7. Power and Authority.** The City represents and warrants to the Trustee that the City has the full power and authority to enter into, to execute and deliver this Sublease and the Site Lease, and to perform all of its duties and obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Sublease and the Site Lease, and the Property is zoned for use for governmental related facilities. The Trustee represents and warrants to the City that the Trustee has the full power and authority to enter into, to execute and deliver this Sublease, the Site Lease, the Trust Agreement and the Delivery and Paying Agent Agreement, and to perform all of its duties and obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Sublease, the Site Lease, the Trust Agreement and the Delivery and Paying Agent Agreement.

**Section 4. Affirmative Covenants of the Trustee and the City.** The Trustee and the City are entering into this Sublease in consideration of, among other things, the following covenants:

**Section 4.1 Replacement, Maintenance and Repairs.** The City shall, at its own expense, during the Sublease Term, maintain each Component, or cause the same to be maintained, in good order, condition and repair and shall repair or replace any Component which is destroyed, damaged or taken to such an extent that there is substantial interference with the use and possession of such Component by the City which would result in an abatement of Rental Payments or any portion thereof pursuant to Section 3.5 hereof, unless the City elects not to repair or replace such Component in accordance with clause (ii) of the following sentence. In the event of damage, destruction or taking which results in an abatement of Rental Payments or any portion thereof pursuant to Section 3.5 hereof, the City shall be required either to (i) apply sufficient funds from the insurance proceeds (including self-insurance), condemnation award and other legally available funds, if any, to the replacement or repair of such Component which has been damaged, destroyed or taken, or (ii) apply sufficient funds from the insurance proceeds (including self-insurance), condemnation award and other legally available funds, if any, to the payment and retirement of Outstanding Lease Revenue Certificates and payment to the Credit Providers of all obligations payable under the Credit Provider Agreements, such that (a) the Lease Revenue Certificates Outstanding following the application of such amounts does not exceed the Maximum Principal Amount (as modified assuming the termination of this Sublease with respect to such damaged, destroyed or taken Component pursuant to Section 5.1 or 6.1 hereof, as applicable, and assuming the corresponding adjustment to Maximum Base Rental for each Base Rental Period during the remainder of the term of this Sublease) and (b) the resulting Base Rental payments on the unaffected portions of the Property payable pursuant to Section 3.1 hereof in any Base Rental Period following the application of such amounts are sufficient to pay in such Base Rental Period the principal of and interest on an aggregate principal amount of Lease Revenue Certificates assuming such Lease Revenue Certificates are Outstanding in an aggregate principal amount equal to the Maximum Principal Amount (as modified assuming the termination of this Sublease with respect to such damaged, destroyed or taken Component pursuant to Section 5.1 or 6.1 hereof, as applicable, and assuming the corresponding adjustment to Maximum Base Rental for each Base Rental Period during the remainder of the term of this Sublease), to the extent due and payable in any such subsequent Base Rental Period following the application of such amounts.

The City shall provide or cause to be provided all security service, custodial service, janitorial service and other services necessary for the proper upkeep and maintenance of each Component. It is understood and agreed that in consideration of the payment by the City of the Rental Payments herein provided for, the City is entitled to possession of each Component and the Trustee shall have no obligation to incur any expense of any kind or character in connection with the management, operation or maintenance of such Component during the Sublease Term with respect to such Component. The Trustee shall not be required at any time to make any improvements, alterations, changes, additions, repairs or replacements of any nature whatsoever in or to any Component. The City hereby expressly waives the right to make repairs or to perform maintenance of any Component at the expense of the Trustee and (to the extent permitted by law) waives the benefit of Sections 1932, 1941 and 1942 of the California Civil Code relating thereto. The City shall keep each Component free and clear of all liens, charges and encumbrances other than Permitted Encumbrances, subject only to the provisions of Section 4.2 hereof.

**Section 4.2. Taxes, Other Governmental Charges and Utility Charges.** The Trustee and the City contemplate that each Component will be used for a governmental or proprietary purpose of the City and, therefore, that each Component will be exempt from all taxes presently assessed and levied with respect to such Component. Nevertheless, the City hereby agrees to pay during the Sublease Term with respect to each Component as the same respectively become due, all taxes (except for income or franchise taxes of the Trustee), utility charges and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to each such Component; provided, however, that, with respect to any governmental charges 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 Sublease is in effect with respect to such Component; provided, further, that the City may contest in good faith the validity or application of any tax, utility charge or governmental charge in any reasonable manner which does not adversely affect the right, title and interest of the City or the Trustee in and to any Component or its rights or interests under this Sublease or subject any portion of any Component to loss or forfeiture. Any such taxes or charges shall constitute Additional Rental under Section 3.1(g) hereof and shall be payable directly to the entity assessing such taxes or charges.

**Section 4.3. Insurance.** The City shall secure and maintain or cause to be secured and maintained at all times with insurers of recognized responsibility or through a program of self-insurance to the extent specifically permitted in this Section 4.3, all coverage on the Property required by this Section 4.3. Such insurance shall consist of:

a. A policy or policies of insurance against loss or damage to any Component known as "all risk" including earthquake. Such insurance shall be maintained with respect to the Property at any time in an amount equal to the lesser of (i) the full replacement value of the Property, and (ii) the Maximum Principal Amount. The term "full replacement value" as used herein shall mean the cost of repair or replacement of the affected Component, without deduction for depreciation. Such insurance may at any time include a deductible clause providing for a deductible not to exceed \$1,000,000 for all losses in any year; provided, however, that the City's obligations under this clause (a) may be satisfied by self-insurance satisfactory to the LC Banks and the Direct Placement Banks; provided further, however, that if the City in its own discretion determines that earthquake coverage is not available on commercially reasonable terms, then earthquake insurance on the Property or any component thereof shall not be required by this clause (a);

b. Comprehensive general liability insurance against damages occasioned by reason of the construction of improvements to, or operation of, the Property. The policy or policies will provide coverage in the following minimum amount: \$5,000,000 combined single limit for bodily and personal injury, death and property damage per occurrence. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the City. Such policies will name the City as an insured party, and will name the Trustee, the LC Banks and the Direct Placement Banks and their officers, agents and employees as additional insured parties;

c. Rental interruption insurance to cover loss, total or partial, of the use of any Component as a result of any of the hazards covered by the "all risk" insurance required to be secured and maintained pursuant to clause (a) of this Section 4.3, in an amount sufficient at all times to pay the total rent payable under this Sublease with respect to such Component for a period adequate to cover the period of repair or

replacement. Such policy shall provide that the amount payable thereunder shall not be less than an amount equal to two year's Maximum Base Rental for all of the particular Components to which such insurance applies; and

d. A CLTA policy or policies of title insurance for all Components in an amount not less than the Maximum Principal Amount. Such policy or policies of title insurance shall show title to the particular Component covered by such policy in the name of the Trustee or the City, subject to the Sublease and such other encumbrances as will not, in the reasonable opinion of the City, materially affect the use, occupancy and possession of the Component and will not result in the abatement of Rental Payments payable by the City hereunder with respect to such Component.

All policies or certificates issued by the respective insurers for insurance shall provide that such policies or certificates shall not be cancelled or materially changed without at least 30 days' prior written notice to the Trustee. A certificate of an Authorized Representative stating whether all policies or self-insurance required by this Section 4.3 have been obtained and are in full force and effect shall be deposited with the Trustee by the City on the Closing Date and on or before each anniversary of the Closing Date.

All policies or certificates of insurance provided for herein (other than title insurance policies) shall name the City as a named insured, and the Trustee as loss payee. All proceeds of insurance maintained under clauses (a), (c) and (d) of this Section 4.3 shall be deposited with the Trustee for application pursuant to the provisions of the Trust Agreement. All proceeds of insurance maintained under clause (b) of this Section 4.3 shall be deposited with the City.

Notwithstanding the generality of the foregoing, except as to the coverage required under clause (c) of this Section 4.3, the City shall not be required to maintain or cause to be maintained more insurance than is specifically referred to above or any policies of insurance other than standard policies of insurance with standard deductibles offered by reputable insurers at a reasonable cost on the open market.

Notwithstanding anything herein to the contrary, the City has the right to adopt alternative risk management programs to insure against any of the risks required to be insured against under this Sublease, including a program of self-insurance (other than for rental interruption insurance pursuant to clause (c) and title insurance pursuant to subsection (d)), in whole or in part; provided that (i) any such alternative risk management program has been approved as reasonable and appropriate risk management by the Risk Manager, and (ii) any reserves set aside for such program will be certified at least annually on each June 15, commencing June 15, 2017, as to their adequacy by the Risk Manager in a certificate delivered to the Trustee, the LC Banks and the Direct Placement Banks. In addition, any of the Mayor, Controller, Director of Property or Director of Public Finance of the City may, if in the best interests of the City, approve such other types of insurance, including any increases in the insurance coverage required by this Sublease, upon the recommendation of the Risk Manager, or in connection with obtaining or maintaining any rating on the Lease Revenue Certificates. The Trustee will not be responsible for the adequacy, sufficiency or coverage of the insurance or self-insurance required or allowed by this Section 4.3.

**Section 4.4. Liens.** The City will promptly pay or cause to be paid all sums of money that may become due for any labor, services, materials, supplies or equipment alleged to have



been furnished or to be furnished to or for, in, upon or about any Component and which may be secured by any mechanic's, materialman's or other lien against such Component, or the interest of the Trustee therein, and will cause each such lien to be fully discharged and released; except, that the City or the Trustee (a) may contest any such claim or lien without payment thereof so long as such non-payment and contest stays execution or enforcement of the lien, but if such lien is reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not stayed, or if stayed and the stay thereafter expires, then and in any such event the City will forthwith pay and discharge such judgment or lien, or (b) delay payment without contest so long as and to the extent that such delay will not result in the imposition of any penalty or forfeiture. Additionally, the Trustee and the City will not create or suffer to be created any lien, charge or encumbrance upon the Property, or upon any real or personal property essential to the operation of the Property, except Permitted Encumbrances. The Trustee and the City will not sell or otherwise dispose of the Property or any other property essential to the proper operation of the Property.

**Section 4.5. Laws and Ordinances.** The City agrees to observe and comply with all rules, regulations and laws applicable to the City with respect to the Property and the operation thereof. The cost, if any, of such observance and compliance shall be borne by the City, and the Trustee shall not be liable therefor. The City agrees further to place, keep, use, maintain and operate all Property in such a manner and condition as will provide for the safety of its agents, employees, invitees, subtenants, licensees and the public.

**Section 4.6. Performance of Trustee's Duties and Responsibilities .** The City and the Trustee agree that any and all administrative or ministerial actions or determinations that the Trustee is required to do or make pursuant to this Sublease, the Trust Agreement, the Site Lease, the Dealer Agreements, the Delivery and Paying Agent Agreement, each Credit Provider Agreement, each Credit Facility, the Lease Revenue Certificates or the Direct Placement Revolving Certificates or any other related agreement may be performed by the City on behalf of the Trustee.

## **Section 5. Application of Insurance Proceeds .**

**Section 5.1. General.** Proceeds of insurance received in respect of destruction or damage to any portion of any Component by fire, earthquake or other casualty or event shall be paid to the Trustee for application in accordance with the provisions of Section 4.11 of the Trust Agreement. If there is an abatement of Rental Payments pursuant to Section 3.5 hereof as a result of such casualty or event, and the City elects pursuant to Section 4.11 of the Trust Agreement to apply such insurance (including self-insurance) to the payment and retirement of Lease Revenue Certificates rather than to the replacement or repair of the destroyed or damaged Component, then this Sublease shall terminate with respect to the destroyed or damaged Component as of the later of the date of such election by the City or the date the amount required by Section 4.11 of the Trust Agreement is received by the Trustee. If the City elects, pursuant to Section 4.11 of the Trust Agreement to apply such proceeds to the repair or replacement of the portion of any Component which has been damaged or destroyed, in the event there has been an abatement of Rental Payments pursuant to Section 3.5 hereof, then Rental Payments without any abatement shall again begin to accrue with respect thereto upon repair or replacement of such portion of such Component. The City hereby covenants that it will perform and observe its obligations under the provisions of Section 4.11 of the Trust Agreement, the provisions of which are incorporated herein by reference as if fully set forth herein.

**Section 5.2. Title Insurance.** Proceeds of title insurance received with respect to any Component shall be paid to the Trustee for application in accordance with the provisions of Section 4.12 of the Trust Agreement.

**Section 6. Eminent Domain.**

**Section 6.1 Total Condemnation.** If any Component, or so much thereof as to render the remainder of such Component unusable for the City's purposes under this Sublease, shall be taken under the power of eminent domain, then this Sublease shall terminate with respect to such Component as of the day possession shall be so taken or as of the date of entry of the interlocutory judgment, and Base Rental with respect to such Component will be abated. Notwithstanding the foregoing, the City may substitute other real property or improvements for such Component in accordance with Section 8.02 of the Trust Agreement, and Base Rental will again begin to accrue with respect thereto upon substitution of the Component

**Section 6.2. Partial Condemnation.** If less than a substantial portion of any Component shall be taken under the power of eminent domain, and the remainder is useable for the City's purposes, then this Sublease shall continue in full force and effect as to the remaining portions of such Component, subject only to such rental abatement as is required by Section 3.5 hereof. The City and the Trustee hereby waive the benefit of any law to the contrary.

**Section 6.3. Condemnation Awards.** Any award made in eminent domain proceedings for the taking shall be paid to the Trustee for application in accordance with the provisions of Section 4.11 of the Trust Agreement. If the City elects, pursuant to Section 4.11 of the Trust Agreement, to apply such proceeds to the replacement of the condemned portion of any Component, in the event there has been an abatement of Rental Payments pursuant to Section 3.5 hereof, then Rental Payments without any abatement shall again begin to accrue with respect thereto upon replacement of Component.

**Section 7. Assignment and Sublease: Addition, Substitution or Release of Property.**

**Section 7.1. Assignment and Sublease.** Except as permitted by Section 7.2, the City shall not mortgage, pledge, assign or transfer any interest of the City in this Sublease by voluntary act or by operation of law, or otherwise; provided, however, that the City may sublease all Property or any Component thereof, may grant concessions to others involving the use of the Property or any Component, whether such concessions purport to convey a leasehold interest or a license to use such Property or Component; provided, further, however, that such sublease or grant shall be subject to the terms hereof and of the Trust Agreement. Subject to the limitations set forth herein and in the Trust Agreement, the City shall at all times remain liable for the performance of the covenants and conditions on its part to be performed under this Sublease, notwithstanding any subletting or granting of concessions which may be made. Nothing herein contained shall be construed to relieve the City of its obligation to pay Base Rental and Additional Rental with respect to each Component as provided in this Sublease or to relieve the City of any other obligations contained herein. In no event shall the City sublease to or permit the use of all or any part of any Component by any person so as to cause interest on the Tax Exempt Lease Revenue Certificates to be includable in gross income for federal income tax purposes or to be subject to State personal income tax.

**Section 7.2. Addition, Substitution or Release of Property.** Notwithstanding Section 7.1 above, if no default or event of default has occurred and is continuing hereunder or under any Credit Provider Agreement, the City may acquire from the Trustee, free and clear of

the Trustee's rights under this Sublease and the Site Lease, the release or substitution of any Component, subject to the requirements set forth in Section 8.02 of the Trust Agreement, or the City may add a component or other property to this Sublease and the Site Lease, subject to the requirements set forth in Section 8.02 of the Trust Agreement.

**Section 8. Additions and Improvements; Removal.** The City shall have the right during the Sublease Term to make any additions or improvements to any Component, to attach fixtures, structures or signs, and to affix any personal property to any Component, so long as the fair rental value of the Component is not thereby reduced. Title to all fixtures, equipment or personal property placed by the City on any Component shall remain in the City. Title to any personal property, improvements or fixtures placed on any Component by any sublessee or licensee of the City shall be controlled by the sublease or license agreement between such sublessee or licensee and the City, which sublease or license agreement shall not be inconsistent with this Sublease.

**Section 9. Right of Entry.** Representatives of the Trustee shall, subject to reasonable security precautions, have the right to enter upon any Component during reasonable business hours (and in emergencies at all times) (a) to inspect the same, (b) for any purpose connected with the rights or obligations of the Trustee under this Sublease or of the Trustee under the Trust Agreement, or (c) for all other lawful purposes.

**Section 10. Quiet Enjoyment.** The Trustee covenants and agrees that the City, upon keeping and performing the covenants and agreements herein contained, shall, at all times during the Sublease Term, peaceably and quietly have, hold, and enjoy the Property.

**Section 11. Indemnification and Hold Harmless Agreement.** To the extent permitted by law, the City hereby agrees to indemnify and hold the Trustee and its officers and directors harmless against any and all liabilities which might arise out of or are related to the Property and the Lease Revenue Certificates, including without limitation obligations to the Credit Providers under the Credit Provider Agreements, and the City further agrees to defend the Trustee and its directors in any action arising out of or related to the Property or the Lease Revenue Certificates or the issuance of any Credit Facility or the execution and delivery of any Direct Placement Revolving Credit Agreement; provided that any such indemnification and obligation to defend shall not apply in the case of the negligence or willful misconduct of the Trustee. The Trustee 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 any Component.

**Section 12. Events of Default and Remedies.**

**Section 12.1. Default by City.** If the City shall fail to pay to the Trustee any Base Rental with respect to any Component as and when the same shall become due and payable, or shall breach any other terms, covenants or conditions contained herein or in the Trust Agreement and shall fail to remedy any such breach with all reasonable dispatch within a period of 60 days after written notice thereof from the Trustee, or its assignee, to the City, or, if such breach cannot be remedied within such 60-day period, shall fail to institute corrective action within such 60-day period and diligently pursue the same to completion, then and in any such event the City shall be deemed to be in default hereunder.

**Section 12.2. Remedies on Default by Trustee.** Upon a failure or breach as described in 12.1, the Trustee or its assignee shall have the right, at its option, without any further demand or notice to enforce all of its rights and remedies under this Sublease, including

the right to recover Base Rental payments as they become due under this Sublease pursuant to Section 1951.4 of the California Civil Code and to otherwise enforce performance by the City, and to pursue any remedy available in law or in equity, except as expressly provided herein.

Notwithstanding any other provision of this Sublease or the Trust Agreement, in no event shall the Trustee or its assignee have the right to accelerate the payment of any Base Rental with respect to the Property hereunder.

Each and every remedy of the Trustee or any assignee of the rights of the Trustee hereunder is cumulative and the exercise of one remedy shall not impair the right of the Trustee or its assignee to any or all other remedies. If any statute or rule of law validly shall limit the remedies given to the Trustee or any assignee of the rights of the Trustee or its assignee hereunder, the Trustee or its assignee nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law. All damages and other payments received by the Trustee pursuant to this Section 12 shall be applied in the manner set forth in the Trust Agreement.

**Section 12.3. Default by Trustee.** The failure of the Trustee to observe and perform any covenants, agreements or conditions on its part in this Sublease contained, including under Section 10 hereof, if such failure shall have continued for a period of 60 days after written notice thereof, specifying such failure and requiring the same to be remedied, shall have been given to the Trustee, by the City, shall constitute a Trustee Event of Default under this Sublease; provided, however, that if in the reasonable opinion of the Trustee the failure stated in the notice can be corrected, but not within such 60 day period, such failure shall not constitute a Trustee Event of Default if corrective action is instituted by the Trustee within such 60 day period and the Trustee shall diligently and in good faith cure such failure in a reasonable period of time. In each and every case upon the occurrence and during the continuance of a Trustee Event of Default by the Trustee hereunder, the City shall have all the rights and remedies permitted by law.

**Section 13. Waiver.** The waiver by the Trustee or its assignee of any breach by the City, and the waiver by the City of any breach by the Trustee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

**Section 14. DISCLAIMER OF WARRANTIES.** NEITHER THE TRUSTEE NOR ANY PERSON ACTING ON ITS BEHALF HAS MADE OR MAKES ANY WARRANTY OR REPRESENTATION AS TO THE PAST, PRESENT OR FUTURE CONDITION OF THE PROPERTY NOT HEREIN EXPRESSED, AND THE CITY HAS ENTERED INTO THIS SUBLEASE WITHOUT REPRESENTATIONS OR WARRANTIES WITH RESPECT THERETO ON THE PART OF THE TRUSTEE, ITS AGENTS, REPRESENTATIVES OR EMPLOYEES.

**Section 15. Notices.** All notices, requests, demands and other communications under this Sublease shall be in writing (unless otherwise specified herein) and shall be sufficiently given on the date of service if served personally upon the person to whom notice is to be given or on receipt if sent by telex or other telecommunication facility or courier or if mailed by registered or certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

if to the City:

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place,  
Room 316  
San Francisco, California 94102  
Attention: City Controller;

if to the Trustee:

U.S. Bank National Association  
One California Street, Suite 1000  
San Francisco, California 94111  
Attention: Corporate Trust Services  
Facsimile: (415) 677-3769

if to the Delivery and Paying Agent:

U.S. Bank National Association  
100 Wall Street, Suite 1600  
New York, New York 10005  
Attention: Global Corporate Trust Services  
Facsimile: (212) 514-6841

if to the Credit Providers, at their respective addresses set forth in their respective Credit Provider Agreement; or to such other address or addresses as any such person shall have designated to the others by notice given in accordance with the provisions of this Section 15.

**Section 16. Validity.** If anyone or more of the terms, provisions, promises, covenants or conditions of this Sublease shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction; then each and all of the remaining terms, provisions, promises, covenants and conditions of this Sublease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

If for any reason this Sublease will be held by a court of competent jurisdiction to be void, voidable or unenforceable by the Trustee or by the City, or if for any reason it is held by such a court that any of the covenants and agreements of the City hereunder, including the covenant to pay Base Rental and Additional Rental hereunder, is unenforceable for the full term hereof, then and in such event for and in consideration of the right of the City to possess, occupy and use the Property, which right in such event is hereby granted, this Sublease will thereupon become and will be deemed to be a sublease from year to year under which the annual Base Rental payments and Additional Rental payments herein specified will be paid by the City.

**Section 17. Execution in Counterparts.** This Sublease may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same agreement.

**Section 18. Law Governing.** This Sublease is made in the State under the Constitution and laws of the State and is to be so construed.

**Section 19. Amendment.** This Sublease may be amended only in accordance with and as permitted by the terms of Section 8.02 of the Trust Agreement.

**Section 20. Excess Payments.** Notwithstanding anything contained herein or in the Trust Agreement to the contrary, if for any reason, including but not limited to damage, destruction, condemnation, transfer, sale or disposition, the City or the Trustee receive payments, proceeds or awards with respect to any Component in excess of the amount necessary to pay or provide in accordance with the Trust Agreement for the payment of all of the Outstanding Lease Revenue Certificates and the payment of all amounts payable under each Credit Provider Agreement, such excess shall represent the City's equity interest in such Component and shall be paid to the City.

**Section 21. No Merger.** If both the Trustee's and the City's estates under this Sublease or the Site Lease or any other lease relating to any Component shall at any time by any time by any reason become vested in one owner, this Sublease and the estate created hereby shall not be destroyed or terminated by the doctrine of merger unless the City so elects as evidenced by recording a written declaration so stating, and, unless and until the City, so elects, the Trustee and the City shall continue to have and enjoy all of their respective rights and privileges as to the separate estates.

**Section 22. Further Assurances and Corrective Instruments.** The City and the Trustee 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 reasonably be required for correcting any inadequate or incorrect description of the Property or any Component leased hereby or intended to be so leased or for carrying out the express intention of the Sublease.

**Section 23. No Sovereign Immunity.** The City is subject to civil and commercial law in respect of its obligations under this Sublease, the Lease Revenue Certificates and other Related Documents to which it is a party, and the execution, delivery and performance of such instruments and agreements constitute commercial acts rather than public or governmental acts; however, (i) the substantive provisions and procedural requirements of California civil law and commercial law which apply to the City are, in many respects, different from the substantive provisions and procedural requirements which would apply to other Persons under similar circumstances; (ii) California law limits the exercise of prejudgment and postjudgment remedies against public entities, including the City; and (iii) a court may not strictly enforce certain covenants if it concludes that enforcement would be unreasonable under the circumstances. To the extent that the City is entitled to any immunity from suit, it hereby waives such immunity to the fullest extent permitted by law.

**Section 24. Third Party Beneficiaries.** Each Credit Provider shall be a third party beneficiary of this Sublease with the power to enforce the same until the later of (i) the date the respective Credit Facility or Direct Placement Revolving Credit Agreement has terminated and been surrendered to such Credit Provider for cancellation and (ii) the date all amounts payable under the respective Credit Provider Agreement and Revolving Certificate or Direct Placement Revolving Certificate, as applicable, have been satisfied in full.

**Section 25. Limited Liability of Trustee.** The Trustee is executing this Sublease solely in its capacity as Trustee under the Trust Agreement, subject to the protections, indemnities and limitations from liability afforded to the Trustee under the Trust Agreement, (ii) nothing contained herein will be construed as creating any liability on U.S. Bank National Association individually or personally, to perform any covenant, duty or obligation of any kind

contained in this Sublease, and (iii) under no circumstances will U.S. Bank National Association be liable for the payment of any fees, costs, indebtedness or expenses related to or arising from the Sublease or any documents related hereto.

**Section 26. City Requirements.** Additional requirements of the City with respect to this Site Lease are attached as Exhibit D and are incorporated by reference herein, and, by executing this Site Lease, the Trustee is agreeing to comply with those provisions.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Sublease as of the date first above written.

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee and Lessor

By: \_\_\_\_\_  
Authorized Officer

CITY AND COUNTY OF SAN FRANCISCO,  
as Lessor

By: \_\_\_\_\_  
Director of Public Finance

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

All that real property situated in the City and County of San Francisco, State of California, described as follows, and any improvements thereto:

[See attached pages]

**EXHIBIT B**

**BASE RENTAL PAYMENT SCHEDULE**

[See attached base rental schedules]

EXHIBIT C-1

FORM OF DEBT SERVICE CERTIFICATE – ANNUAL

Pursuant to Section 3.1(b) of the Sublease (the "Sublease"), dated as of [June 1, 2016], by and between \_\_\_\_\_, as trustee (the "Trustee") as sublessor, and the City and County of San Francisco (the "City"), as sublessee, the undersigned hereby certifies that as of July 1, 20\_\_ (the "Date of Calculation") for the Base Rental Period commencing on the Date of Calculation:

(a) the aggregate principal amount of Lease Revenue Certificates Outstanding as of the Date of Calculation is expected to be \$\_\_\_\_\_, consisting of \$\_\_\_\_\_ principal amount of Commercial Paper Certificates, \$\_\_\_\_\_ principal amount of Revolving Certificates and \$\_\_\_\_\_ principal amount of Direct Placement Revolving Certificates;

(b) [*determine Assumed Interest Rate only for those Lease Revenue Certificates where Commercial Paper Certificates and/or Advances evidenced by Revolving Certificates/Direct Placement Revolving Certificates are Outstanding, otherwise mark N/A*]: the Assumed Interest Rate for the Base Rental Period commencing on the Date of Calculation is, with respect to the Commercial Paper Certificates \_\_\_% per annum, with respect to Revolving Certificates \_\_\_% per annum, and with respect to Direct Placement Revolving Certificates \_\_\_% per annum, all as calculated pursuant to the Trust Agreement;

(c) [*calculate Assumed Interest Cost only for those Lease Revenue Certificates where Commercial Paper Certificates and/or Advances evidenced by Revolving Certificates/Direct Placement Revolving Certificates are Outstanding, otherwise mark \$\_\_\_\_\_*]: based upon the aggregate principal amount of Lease Revenue Certificates Outstanding as of the Date of Calculation and the Assumed Interest Rate as of the Date of Calculation, the aggregate Assumed Interest Cost required during the Base Rental Period commencing on the Date of Calculation will be \$\_\_\_\_\_, consisting of \$\_\_\_\_\_ of Assumed Interest Cost for Commercial Paper Certificates, \$\_\_\_\_\_ of Assumed Interest Cost for Revolving Certificates and \$\_\_\_\_\_ of Assumed Interest Cost for Direct Placement Revolving Certificates, and \$\_\_\_\_\_ of such amount is expected to be paid by capitalized interest pursuant to Section 3.2(h) of the Sublease;

(d) the Maximum Principal Amount as of the last day of the Base Rental Period commencing Date of Calculation will be \$\_\_\_\_\_, of which \$\_\_\_\_\_ is the Pro Rata Share thereof for Certificates and \$\_\_\_\_\_ is the Pro Rata Share thereof for Direct Placement Revolving Certificates;

(e) [*determine only for a Base Rental Period with a Required Principal Reduction Amount, otherwise mark \$0*]: the Required Principal Reduction Amount for the Base Rental Period commencing on the Date of Calculation is \$ , of which \$ is the Pro Rata Share thereof for Certificates and \$ is the Pro Rata Share thereof for Direct Placement Revolving Certificates;

(f) [*determine only for those Lease Revenue Certificates where Advances evidenced by Revolving Certificates/Direct Placement Revolving Certificates are Outstanding*]

and are required to be repaid through an amortization of Advances in the Base Rental Period commencing on the Date a/Calculation, otherwise mark \$0]: the amount of principal scheduled to be payable on Revolving Certificates during the Base Rental Period commencing Date of Calculation is \$ and the amount of principal coming due on Direct Placement Revolving Certificates during the Base Rental Period commencing Date of Calculation is \$\_\_\_\_\_;

(g) the Minimum Required Rental Payment is \$\_\_\_\_\_, which represents the sum of the amounts set forth in paragraphs (c), (e) and (1); and

(h) the City agrees that it is obligated to pay the Minimum Required Rental Payment as provided in Section 3.1 of the Sublease.

Dated: \_\_\_\_\_

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Authorized Representative

EXHIBIT C-2

**FORM OF DEBT SERVICE CERTIFICATE –  
ADDITIONAL LEASE REVENUE CERTIFICATES**

Pursuant to Section 3.1(c) of the Sublease (the "Sublease"), dated as of [June 1, 2016], by and between \_\_\_\_\_, as trustee (the "Trustee") as sublessor, and the City and County of San Francisco (the "City"), as sublessee, the undersigned hereby certifies that as of the date of execution and delivery (the "Date of Calculation") of Lease Revenue Certificates referred to in Section 2.15(e)(v) or 3.12(d) of the Trust Agreement, dated as of [June 1, 2016], between the City and the Trustee (the "Trust Agreement");

(a) the aggregate principal amount of Lease Revenue Certificates Outstanding immediately after such issuance is expected to be \$ \_\_\_\_\_, consisting of \$ \_\_\_\_\_ principal amount of Commercial Paper Certificates, \$ \_\_\_\_\_ principal amount of Revolving Certificates and \$ \_\_\_\_\_ principal amount of Direct Placement Revolving Certificates;

(b) *[determine Assumed Interest Rate only for those Lease Revenue Certificates where Commercial Paper Certificates and/or Advances evidenced by Revolving Certificates/Direct Placement Revolving Certificates are Outstanding, otherwise mark N/A]:* the Assumed Interest Rate for the Base Rental Period during which the Date of Calculation occurs, as calculated pursuant to the Trust Agreement is, with respect to the Commercial Paper Certificates \_\_\_% per annum, with respect to Revolving Certificates \_\_\_% per annum and with respect to Direct Placement Revolving Certificates \_\_\_% per annum, as calculated pursuant to the Trust Agreement;

(c) *[calculate Assumed Interest Cost only for those Lease Revenue Certificates where Commercial Paper Certificates and/or Advances evidenced by Revolving Certificates/Direct Placement Revolving Certificates are Outstanding, otherwise mark \$0]:* based upon the aggregate principal amount of Lease Revenue Certificates Outstanding immediately after such issuance and the Assumed Interest Rate for the Base Rental Period during which the Date of Calculation occurs, the aggregate Assumed Interest Cost during the portion of the Base Rental Period from and after the Date of Calculation, will be \$ \_\_\_\_\_, consisting of \$ \_\_\_\_\_ of Assumed Interest Cost for Commercial Paper Certificates, \$ \_\_\_\_\_ of Assumed Interest Cost for Revolving Certificates and \$ \_\_\_\_\_ of Assumed Interest Cost for Direct Placement Revolving Certificates, and \$ \_\_\_\_\_ of such amount is expected to be paid by capitalized interest pursuant to Section 3.2(h) of the Sublease;

(d) *[determine only for those Lease Revenue Certificates where Commercial Paper Certificates and/or Advances evidenced by Revolving Certificates/Direct Placement Revolving Certificates are Outstanding, otherwise mark \$0]:* the aggregate interest accrued on Lease Revenue Certificates during the Base Rental Period prior to the Date of Calculation is \$ \_\_\_\_\_ consisting of \$ \_\_\_\_\_ of interest accrued on Commercial Paper Certificates, \$ \_\_\_\_\_ of interest accrued on Revolving Certificates and \$ \_\_\_\_\_ of interest accrued on Direct Placement Revolving Certificates, and \$ \_\_\_\_\_ of such amount will be paid by capitalized interest pursuant to Section 3.2(h) of the Sublease;

(e) *[determine only for a Base Rental Period with a Required Principal Reduction Amount, otherwise mark \$0]:* the new Required Principal Reduction Amount for the Base Rental

Period during which the Date of Calculation occurs is \$ \_\_\_\_\_ , of which \$ \_\_\_\_\_ is the Pro Rata Share thereof for Certificates and \$ \_\_\_\_\_ is the Pro Rata Share thereof for Direct Placement Revolving Certificates;

(f) [determine only for a Base Rental Period with a Required Principal Reduction Amount, otherwise mark \$0]: the Required Principal Reduction Amount paid during the portion of the Base Rental Period prior to the Date of Calculation is \$ \_\_\_\_\_ of which \$ \_\_\_\_\_ is the Pro Rata Share thereof for Certificates and \$ \_\_\_\_\_ is the Pro Rata Share thereof for Direct Placement Revolving Certificates;

(g) [determine only for those Lease Revenue Certificates where Advances evidenced by Revolving Certificates/Direct Placement Revolving Certificates are Outstanding and are required to be repaid through an amortization of Advances in the Base Rental Period, otherwise mark \$0]: the amount of principal scheduled to be payable on Revolving Certificates during the portion of the Base Rental Period from and after the Date of Calculation will be \$ \_\_\_\_\_ and the amount of principal coming due on Direct Placement Revolving Certificates during the portion of the Base Rental Period from and after the Date of Calculation will be \$ \_\_\_\_\_

(h) the aggregate principal paid on Revolving Certificates during the Base Rental Period prior to the Date of Calculation is \$ \_\_\_\_\_ and the aggregate principal paid on Direct Placement Revolving Certificates during the Base Rental Period prior to the Date of Calculation is \$ \_\_\_\_\_ ,

(i) the amount of Minimum Required Rental Payment and Minimum Supplemental Rental Payment previously paid by the City for the Base Rental Period during which the Date of Calculation occurs is \$ \_\_\_\_\_ ;

(j) the Minimum Supplemental Rental Payment is the sum of the amounts set forth in paragraphs (c), (d), (e), (f), (g) and (h), less the amount set forth in paragraph (i), which amount equals \$ \_\_\_\_\_ ; and

(k) if the amount set forth in paragraph (j) is greater than zero, the acknowledges that it will forthwith pay the Minimum Supplemental Rental Payment.

Dated: \_\_\_\_\_

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Authorized Representative

EXHIBIT C-3

FORM OF DEBT SERVICE CERTIFICATE –  
ADDITIONAL INTEREST/PRINCIPAL

Pursuant to Section 3.1(d) of the Sublease (the "Sublease"), dated as of [June 1, 2016], by and between \_\_\_\_\_, as trustee (the "Trustee") as sublessor, and the City and County of San Francisco (the "City"), as sublessee, the undersigned hereby certifies that as of the date hereof (the "Date of Calculation"):

(a) [determine only for those Lease Revenue Certificates where Commercial Paper Certificates and/or Advances evidenced by Revolving Certificates/Direct Placement Revolving Certificates are Outstanding, otherwise mark \$0]: the amount of interest required to be paid on Lease Revenue Certificates during the portion of the Base Rental Period from and after the Date of Calculation is \$ \_\_\_\_\_ consisting of \$ \_\_\_\_\_ of interest with respect to Commercial Paper Certificates, \$ \_\_\_\_\_ of interest with respect to Revolving Certificates and \$ \_\_\_\_\_ with respect to interest accrued on Direct Placement Revolving Certificates;

(b) [determine only for those Lease Revenue Certificates where Commercial Paper Certificates and/or Advances evidenced by Revolving Certificates/Direct Placement Revolving Certificates are Outstanding, otherwise mark \$0]: the interest accrued on Lease Revenue Certificates during the portion of the Base Rental Period prior to the Date of Calculation is \$ \_\_\_\_\_, consisting of \$ \_\_\_\_\_ of interest accrued with respect to Commercial Paper Certificates, \$ \_\_\_\_\_ of interest accrued with respect to Revolving Certificates and \$ \_\_\_\_\_ of interest accrued with respect to Direct Placement Revolving Certificates;

(c) [determine only for a Base Rental Period with a Required Principal Reduction Amount, otherwise mark \$0]: the Required Principal Reduction Amount for the Base Rental Period during which the Date of Calculation occurs is \$ \_\_\_\_\_, of which \$ \_\_\_\_\_ is the Pro Rata Share thereof for Certificates and \$ \_\_\_\_\_ is the Pro Rata Share thereof for Direct Placement Revolving Certificates;

(d) [determine only for a Base Rental Period with a Required Principal Reduction Amount, otherwise mark \$0]: the Required Principal Reduction Amount paid during the portion of the Base Rental Period prior to the Date of Calculation is \$ \_\_\_\_\_, of which \$ \_\_\_\_\_ is the Pro Rata Share thereof for Certificates and \$ \_\_\_\_\_ is the Pro Rata Share thereof for Direct Placement Revolving Certificates;

(e) [determine only for those Lease Revenue Certificates where Advances evidenced by Revolving Certificates/Direct Placement Revolving Certificates are Outstanding and are required to be repaid through an amortization of Advances in the current Base Rental Period, otherwise mark \$0]: the amount of principal required to be paid on Revolving Certificates and Direct Placement Revolving Certificates during the portion of the Base Rental Period from and after the Date of Calculation is \$ \_\_\_\_\_ consisting of \$ \_\_\_\_\_ of principal of Revolving Certificates and \$ \_\_\_\_\_ of principal of Direct Placement Revolving Certificates;

(f) [determine only for those Lease Revenue Certificates where Advances evidenced by Revolving Certificates/Direct Placement Revolving Certificates are Outstanding

and are required to be repaid through an amortization of Advances, otherwise mark \$0]: the amount of principal required to be paid on Revolving Certificates and Direct Placement Revolving Certificates during the portion of the Base Rental Period prior to the Date of Calculation is \$ \_\_\_\_\_, consisting of \$ of principal of Revolving Certificates and \$ \_\_\_\_\_ of principal of Direct Placement Revolving Certificates;

(g) the amount of Minimum Required Rental Payment and Minimum Supplemental Rental Payment previously paid by the City for the Base Rental Period during which the Date of Calculation occurs is \$ \_\_\_\_\_

(h) the Minimum Supplemental Rental Payment is the sum of the amounts set forth in paragraphs (a), (b), (c), (d), (e) and (f), less the amount set forth in paragraph (g), which amount equals \$ \_\_\_\_\_; and

(i) if the amount set forth in paragraph (h) is greater than zero, the acknowledges that it will forthwith pay the Minimum Supplemental Rental Payment.

Dated: \_\_\_\_\_

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Authorized Representative



29137-43

JH:SM;mwk

03/30/16

RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:

JONES HALL, A PROFESSIONAL LAW CORPORATION  
475 Sansome Street, Suite 1700  
San Francisco, California 94111  
ATTENTION: Stephen G. Melikian, Esq.

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(Space Above This Line For Recordors Use Only)

**SITE LEASE**

**Dated as of [June 1, 2016]**

**by and between**

**CITY AND COUNTY OF SAN FRANCISCO,  
as Lessor**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
in its capacity as Trustee,  
as Lessee**

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NO DOCUMENTARY TRANSFER TAX DUE. This Site Lease is recorded for the benefit of the City and County of San Francisco and the recording is exempt under Section 27383 of the California Government Code and Section 11928 of the California Revenue and Taxation Code.

## SITE LEASE

THIS SITE LEASE, dated as of [June] 1, 2016 (as amended, supplemented or modified from time to time, this "Site Lease"), is made between the CITY AND COUNTY OF SAN FRANCISCO, a charter city and county duly organized and existing under the laws and the Constitution of the State of California (the "City"), as lessor, and the U.S. BANK NATIONAL ASSOCIATION, a national banking association, solely in its capacity as Trustee (the "Trustee") under the Trust Agreement dated as of [June] 1, 2016 (as amended, supplemented or modified from time to time, the "Trust Agreement") between the City and the Trustee, as lessee.

### WITNESSETH:

That in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

**Section 1. Definitions.** All capitalized terms used herein without definition shall have the meanings given to such terms in the Sublease, dated as of the date hereof, by and between the Trustee and the City (the "Sublease").

**Section 2. Property.** The City hereby leases to the Trustee those parcels of real property, together with the buildings and improvements thereon owned by the City, located in the City and County of San Francisco, California, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"), subject to the terms hereof and subject to any and all covenants, conditions, reservations, exceptions and other matters which are of record.

**Section 3. Ownership.** The City represents and covenants that [it is the sole owner of and holds fee title to the] Property free and clear of any encumbrances other than Permitted Encumbrances, and has full power and authority to enter into this Site Lease and the Sublease.

**Section 4. Term.** With respect to each Component, the term of this Site Lease shall begin on the date of recordation hereof and end on the earlier to occur of: (a) the date set forth with respect to such Component in Exhibit B to the Sublease; or (b) the date of termination of the Sublease with respect to such Component as provided in Section 2.2 thereof. Notwithstanding anything to the contrary contained herein, the term of this Site Lease with respect to each Component subject to this Site Lease at such time shall be extended such that the term of this Site Lease is coterminous with the term of the Sublease as extended pursuant to Section 2.2 of the Sublease.

**Section 5. Rent.** The City shall pay to the County an advance rent of \$1.00 as full consideration for this Site Lease over its term, the receipt of which is hereby acknowledged by the County.

**Section 6. Purpose.** The City shall use the Property for the purposes described in the Sublease and for such other purposes as may be incidental thereto.

**Section 7. Assignment and Lease.** The Trustee shall not assign, mortgage, hypothecate or otherwise encumber this Site Lease or any rights hereunder or the leasehold created hereby by trust agreement, indenture or deed of trust or otherwise or sublet the Property or any Component without the written consent of the City (unless a default or event of default under the Sublease or the Trust Agreement shall have occurred and be continuing, in

which case the consent of the City shall not be required), except that the City expressly approves and consents to the Sublease and the Trust Agreement, and the pledge of the Trustee's right, title and interest in and to this Site Lease and the Sublease, including the Base Rentals and other payments under the Sublease.

**Section 8. Right of Entry.** The City reserves the right for any of its duly authorized representatives to enter upon the Property at any reasonable time.

**Section 9. Expiration.** The Trustee agrees, upon the expiration of this Site Lease, to quit and surrender the Property.

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

**Section 11. Taxes.** The City covenants and agrees to pay any and all taxes and assessments levied or assessed upon the Property and improvements thereon.

**Section 12. Eminent Domain.** If the Property or any Component shall be taken under the power of eminent domain, the interest of the Trustee shall be recognized and is hereby determined to be the aggregate amount of unpaid Base Rental and Additional Rental with respect to the Property or Component under the Sublease through the remainder of its term (excluding any contingent or potential liabilities), and such proceeds shall be paid to the Trustee, in accordance with the terms of the Sublease and the Trust Agreement.

**Section 13. Default.** In the event that the Trustee or its assignee shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Sublease shall be deemed to occur as a result thereof; provided, however, that the City shall have no power to terminate this Site Lease by reason of any default on the part of the Trustee or its assignee if such termination would prejudice the exercise of the remedies provided the Trustee in Section 12 of the Sublease. So long as any such assignee of the Trustee or any successor in interest to the Trustee shall duly perform the terms and conditions of this Site Lease, such assignee shall be deemed to be and shall become the tenant of the City hereunder and shall be entitled to all of the rights and privileges granted under any such assignment.

In furtherance of the foregoing, the City and the Trustee agree that: (i) the City will simultaneously mail to each Credit Provider a copy of any notice given by the City to the Trustee; (ii) prior to taking any action upon a default by the Trustee or its assignee in the performance of any obligation under the terms of this Site Lease, the City shall provide written notice thereof to each Credit Provider, and thereupon such Credit Provider shall have the right, but not the obligation, to cure any such default. In that connection, the City will not take action to effect a termination of this Site Lease or to re-enter or take possession of the Property or any Component as a consequence of such default except upon the prior written direction of 100% of the Credit Providers. Furthermore, if this Site Lease shall be rejected or disaffirmed pursuant to any bankruptcy law or other law affecting creditors' rights or if this Site Lease is terminated for any other reason whatsoever, the City will use its best efforts to enter into a new lease of the Property at the request of the Required Credit Providers, for the remainder of the term of this Site Lease, effective as of the date of such rejection or disaffirmance or termination. So long as (x) any Credit Facility facilitating a Series of Commercial Paper Certificates is in effect or there shall remain outstanding any obligations to an LC Bank in respect of payments made under any

Credit Facility or (y) any Direct Placement Revolving Credit Agreement is in effect or there shall remain outstanding any obligations to a Direct Placement Bank in respect of payments made under any Direct Placement Revolving Credit Agreement, (i) the City will not accept a voluntary surrender of this Site Lease and (ii) this Site Lease shall not be modified in any material respect without, in each case, the prior written consent of 100% of the Credit Providers.

**Section 14. Notices.** All notices, requests, demands or other communications under this Site Lease by any person shall be in writing and shall be sufficiently given on the date of service if served personally upon the person to whom notice is to be given or on receipt if sent by facsimile transmission or electronic facility or courier or if mailed by registered or certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

City: City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place,  
Room 316  
San Francisco, California 94102  
Attention: City Controller

Trustee: U.S. Bank National Association  
One California Street, Suite 1000  
San Francisco, California 94111  
Attention: Corporate Trust Services  
Facsimile: (415) 677-3769

or to such other address or addresses as any such person shall have designated to the other by notice given in accordance with the provisions of this Section 14.

Copies of any such notices, requests, demands or other communications under this Site Lease given by either the City or the Trustee shall be provided to each Credit Provider as set forth in the applicable Credit Provider Agreement, or to such other address or addresses as each Credit Provider shall have designated to the City and the Trustee by notice given in accordance with the provisions of this Section 14.

**Section 15. Partial Invalidity.** If any one or more of the terms, provisions, promises, covenants or conditions of this Site Lease shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Site Lease shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

**Section 16. Governing Law; Venue.** This Site Lease is made in the State under the Constitution and laws of the State and is to be so construed. If any party to this Site Lease initiates any legal or equitable action to enforce the terms of this Site Lease, to declare the rights of the parties under this Site Lease or which relates to this Site Lease in any manner, each such party agrees that the place of making and for performance of this Site Lease is the City and County of San Francisco, State of California, and the proper venue for any such action is any court of competent jurisdiction.

**Section 17. Amendments.** This Site Lease may be amended only in accordance with and as permitted by the terms of Section 8.02 of the Trust Agreement.

**Section 18. Execution in Counterparts.** This Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

**Section 19. No Merger.** If both the City's and the Trustee's estates under this Site Lease or the Sublease or any other lease relating to any Property or any portion thereof shall at any time by any reason become vested in one owner, this Site Lease and the estate created hereby shall not be destroyed or terminated by the doctrine of merger unless the City so elects as evidenced by recording a written declaration so stating, and, unless and until the City so elects, the City shall continue to have and enjoy all of their respective rights and privileges as to the separate estates.

**Section 20. Third Party Beneficiaries.** Each Credit Provider shall be a third party beneficiary of this Site Lease with the power to enforce the same until the later of (i) the date the respective Credit Facility or Direct Placement Revolving Credit Agreement has terminated and been surrendered to such Credit Provider for cancellation and (ii) the date all amounts payable under the respective Credit Provider Agreement and Revolving Certificates or Direct Placement Revolving Certificate, as applicable, have been satisfied in full.

**Section 21. City Requirements.** Additional requirements of the City with respect to this Site Lease are attached as Exhibit B and are incorporated by reference herein, and, by executing this Site Lease, the Trustee is agreeing to comply with those provisions.

IN WITNESS WHEREOF, the parties have executed this Site Lease as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO,  
as Lessor

By: \_\_\_\_\_  
Director of Public Finance

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee and Lessee

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

All that real property situated in the City and County of San Francisco, State of California, described as follows, and any improvements thereto:

[See attached pages]





RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:

TRANSBAY JOINT POWERS AUTHORITY  
201 Mission Street Suite 2100  
San Francisco, CA 94105  
Attn: Executive Director

---

(Space Above This Line For Recorders Use Only)

**LEASEBACK LEASE**

**Dated as of [June 1, 2016]**

**by and between**

**CITY AND COUNTY OF SAN FRANCISCO,**

**as Sublessor**

**and**

**TRANSBAY JOINT POWERS AUTHORITY,**

**as Sublessee**

---

NO DOCUMENTARY TRANSFER TAX DUE. This Leaseback Lease is recorded for the benefit of the City and County of San Francisco and the recording is exempt under Section 27383 of the California Government Code and Section 11928 of the California Revenue and Taxation Code.

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## LEASEBACK LEASE

THIS LEASEBACK LEASE, dated as of [June 1, 2016] (as amended, supplemented or modified from time to time, and as hereinafter further defined the “Leaseback Lease”), is entered into between the **CITY AND COUNTY OF SAN FRANCISCO** (the “City”), a charter city and county duly organized and existing under the laws and Constitution of the State of California, as sublessor, and the **TRANSBAY JOINT POWERS AUTHORITY** (the “TJPA”), a joint powers authority created under California Government Code Sections 6500 et seq., as sublessee.

### RECITALS

**WHEREAS**, \_\_\_\_\_, a national banking association, solely in its capacity as Trustee (the “Trustee”) under the Trust Agreement – TJPA Property, dated as of [June 1, 2016] (the “TJPA Trust Agreement”) between the City and the Trustee, is the lessee of the Property (as hereinafter defined), pursuant to the terms and conditions set forth in the Site Lease – TJPA Property, dated of even date herewith, between the TJPA and the Trustee (the “TJPA Site Lease”);

**WHEREAS**, the City is the sublessee of the Property pursuant to the terms and conditions set forth in the Sublease – TJPA Property, dated of even date herewith, between the Trustee and the City (the “TJPA Sublease”);

**WHEREAS**, the City is also the sublessee of other property pursuant to the terms and conditions set forth in the Sublease – City Property, dated of even date herewith, between the Trustee and the City (the “City Sublease”);

**WHEREAS**, the City desires to sublease to the TJPA the Property, and the TJPA desires to sublease from the City the Property on the terms stated herein; and

**WHEREAS**, the City and TJPA are each authorized to enter into this Leaseback Lease pursuant to applicable law of the State.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**Section 1. Definitions.** Unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Leaseback Lease, have the meanings as set forth below.

“**AC Transit**” means the Alameda-Contra Costa Transit District, a special district created under Part 1, Division 10 of the California Public Utilities Code.

“**Additional Rental**” means, with respect to Additional Rental payments due from the TJPA, the amounts specified as such in Section 3.1(d) hereof and, with respect to Additional

Rental payments due from the City, the amounts specified as such under Section 3.1(g) of the TJPA Sublease and the City Sublease.

**“Annual Capital Contributions”** means the annual capital contributions required to be made by AC Transit pursuant to Section 5.1 of the Lease and Use Agreement using “Passenger Facility Charges” which shall include all passenger facility charges imposed by AC Transit on all passengers riding AC Transit originating and terminating from the Transbay Transit Center upon AC Transit’s commencement of service at the Transbay Transit Center or other sources of funding; provided, however, that the use of federal grant funds for this purpose shall be prohibited.

**“Assumed Interest Cost”** means, as of any date of calculation or for any period of time (a) with respect to all Lease Revenue Certificates, the amount that would accrue as interest during such period with respect to Lease Revenue Certificates Outstanding as of the date of such calculation assuming such Lease Revenue Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs, and (b)(i) with respect to Commercial Paper Certificates, the amount that would accrue as interest during such period with respect to Commercial Paper Certificates Outstanding as of the date of such calculation assuming such Commercial Paper Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs, (ii) with respect to Revolving Certificates, the amount that would accrue as interest during such period with respect to such Revolving Certificates Outstanding as of the date of such calculation assuming such Revolving Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs, and (iii) with respect to Direct Placement Revolving Certificates, the amount that would accrue as interest during such period with respect to such Direct Placement Revolving Certificates Outstanding as of the date of such calculation assuming such Direct Placement Revolving Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs.

**“Authorized Representative”** means the Executive Director of the TJPA, the Chief Financial Officer of the TJPA, or another official designated by any such officer and authorized to act on behalf of the TJPA under or with respect to this Leaseback Lease and all other agreements related hereto.

**“Base Rental”** means, with respect to Base Rental payments due from the TJPA, the amount payable as Base Rental under Section 3.1 hereof and, with respect to Base Rental payments due from the City, the amount payable as Base Rental under Section 3.1 of the TJPA Sublease and Section 3.1 of the City Sublease.

**“Base Rental Payment Date”** means each July 1 commencing July 1, 2017, during the Leaseback Lease Term (as hereinafter defined).

**“Base Rental Period”** means the period between one Base Rental Payment Date and the next Base Rental Payment Date, provided that the first Base Rental Period shall commence on the Closing Date (as hereinafter defined) and end on July 1, 2017.

**“City Event of Default”** means an event described as such in Section 12.3 hereof.

**“Closing Date”** means the date on which this Leaseback Lease is filed for recording in the official records of the City and County of San Francisco.

**“Community Redevelopment Law”** means the Community Redevelopment Law of the State of California (Health and Safety Code Sections 33000 *et seq.*).

**“Component”** means, as the context requires, any of the following or any property added thereto or substituted therefor pursuant to Section 7 hereof, but does not include any property released pursuant to Section 7:

- (i) [to come – make reference to Exhibit A]

**“Cooperative Agreement”** means the Cooperative Agreement, dated as of July 11, 2003, by and among the State, the City and TJPA, as the same may be amended, supplemented or otherwise modified from time to time.

**“Fiscal Year”** means the fiscal year of the City, which at the date of this Leaseback Lease is the period from July 1 to and including the following June 30.

**“Lease and Use Agreement”** means the Transbay Transit Center Program Lease and Use Agreement for the Temporary Terminal and Terminal, dated as of September 10, 2008, between TJPA and AC Transit, as the same may be amended, supplemented or otherwise modified from time to time.

**“Leaseback Lease”** means this Leaseback Lease, including any amendments or supplements hereto made or entered into in accordance with the terms hereof.

**“Leaseback Lease Term”** means the term of this Leaseback Lease, as provided in Section 2.2 hereof.

**“Maximum Base Rental”** means the amounts specified as such in Section 3.1 (a) hereof, as such amounts may be adjusted from time to time in accordance with the terms hereof, but does not include Additional Rental.

**“Net Tax Increment Revenues”** means all property tax increment revenues attributable to the State-owned Parcels, allocated to and received by the Successor Agency and pledged under the TIF Pledge Agreement as indebtedness to TJPA, but specifically excluding therefrom the following: (i) charges for San Francisco County administrative charges, fees, or costs; (ii) the portion of the tax increment revenues committed to the Successor Agency for fulfilling the Transbay Affordable Housing Obligation; (iii) a portion of the tax increment revenues equal to the percentage of such revenue that the Successor Agency is required to pay to all governmental entities as required by the Community Redevelopment Law; and (iv) the portion of the tax increment revenues equal to the percentage of such revenues that the State may mandate the Successor Agency to pay from time to time in the future, including, for example, any payments which the Successor Agency may be required to pay to the Education Revenue Augmentation Fund pursuant to Section 33681 *et seq.* of the Community Redevelopment Law.

**“Pledged Revenues”** means (i) Net Tax Increment Revenues, (ii) Annual Capital Contributions and (iii) all income from (i) and (ii) derived from the investments thereof.

**“Property”** means, collectively, all of the Components. “Property” also includes any property, or portion thereof, that by amendment hereto becomes subject to this Leaseback Lease and any property, or portion thereof, substituted for any of the Components pursuant to Section 7, but “Property” excludes any Component for which new property has been substituted, and any Component or property released, pursuant to Section 7 hereof.

**“Rental Payments”** means, with respect to Rental Payments due from the TJPA, all Base Rental and Additional Rental payable hereunder and, with respect to Rental Payments due from the City, all amounts specified as such in the TJPA Sublease and the City Sublease.

**“Risk Manager”** means the TJPA’s Chief Financial Officer or such other person or firm of favorable reputation, qualified and experienced in the field of insurance and risk management consultation as may from time to time be designated by the TJPA, and who may be employed by the TJPA.

**“State”** means the State of California.

**“State-owned Parcels”** means those parcels identified as “State-owned Parcels” under the Cooperative Agreement.

**“Subleases”** means, collectively, the TJPA Sublease and the City Sublease.

**“Successor Agency”** means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, also known as the Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State.

**“TIFIA Borrowing Conditions”** means the conditions precedent to borrowing the TIFIA Loan under the TIFIA Loan Agreement.

**“TIFIA Collateral Agency Agreement”** means the Collateral Agency and Account Agreement, dated as of January 1, 2010, by and among TIFIA Collateral Agent, TJPA, and the TIFIA Lender, as amended by the First Amendment thereto, dated as of May 8, 2014, as further amended by the Second Amendment thereto, dated as of December 1, 2014, and as further amended, supplemented or otherwise modified from time to time.

**“TIFIA Collateral Agent”** means U.S. Bank National Association in its capacity as collateral agent under the TIFIA Collateral Agency Agreement (and any successor collateral agent appointed thereunder).

**“TIFIA Lender”** means the United States Department of Transportation, an agency of the United States of America, acting by and through the Federal Highway Administrator and acting as lender under the TIFIA Loan Agreement.

**“TIFIA Loan”** means the secured loan to be made by the TIFIA Lender to TJPA pursuant to the TIFIA Loan Agreement, subject to the satisfaction of the TIFIA Borrowing Conditions.

**“TIFIA Loan Agreement”** means the TIFIA Loan Agreement, dated as of January 1, 2010, as amended by the First Amendment thereto, dated as of May 8, 2014, by and between TJPA and the TIFIA Lender, as further amended by the Second Amendment thereto, dated as of December 1, 2014, [and the Third Amendment thereto, dated as of June 1, 2016,] and as further amended, supplemented or otherwise modified from time to time.

**“TIF Pledge Agreement”** means the Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement, dated as of January 31, 2008, by and among the City, the Successor Agency and TJPA, as the same may be amended, supplemented or otherwise modified from time to time.

**“TJPA Event of Default”** means an event described as such in Section 12.1 hereof.

**“Transbay Affordable Housing Obligation”** means certain affordable housing requirements, as described in Section 5027.1 of the California Public Resources Code, the Redevelopment Plan and the Implementation Agreement, and finally and conclusively determined by the California Department of Finance to be an enforceable obligation under Redevelopment Dissolution Law; this obligation requires that 25 percent of all dwelling units developed within the Project Area (as defined in the Redevelopment Plan) shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 60 percent of the area median income, and that at least an additional 10 percent of all dwelling units developed within the Project Area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 120 percent of the area median income.

## **Section 2. Leaseback Lease; Term.**

**Section 2.1 Leaseback Lease.** The City hereby subleases the Property to the TJPA and the TJPA hereby subleases the Property from the City on the terms and conditions hereinafter set forth. The TJPA shall take possession of the Property on the Closing Date. The TJPA hereby agrees and covenants that during the term hereof, except as hereinafter provided, it will use the Property for public purposes so as to afford the public the benefits contemplated hereby and so as to permit the City to carry out its agreements and covenants contained in the TJPA Sublease, and the TJPA hereby further agrees and covenants that during the term hereof that it will not abandon or vacate the Property.

**Section 2.2 Term.** Subject to the next succeeding paragraph of this Section 2.2, with respect to each Component, the term of this Leaseback Lease with respect to such Component shall begin on the Closing Date and end on the earliest of: (a) the date set forth with respect to such Component in Exhibit B hereto (and in the case of any Property which is added to or substituted for a Component pursuant to Section 7.2 hereof, the date set forth in Exhibit B with respect to such additional or substituted Component), (b) the date all Base Rental related to such Component is paid in full, (c) the date of termination of this Leaseback Lease with respect



to such Component due to casualty or condemnation in accordance with the terms of Section 5 or 6 hereof, (d) the date of release of such Component in accordance with the terms of Section 7.2 hereof, or (e) the date both the TJPA Site Lease and the TJPA Sublease terminate.

Notwithstanding anything to the contrary contained herein, including without limitation the provisions of Section 3.1 hereof, so long as the TJPA Site Lease and the TJPA Sublease remain in effect, the term of this Leaseback Lease with respect to each Component subject to the TJPA Site Lease and the TJPA Sublease at such time shall be extended until such date as neither the TJPA Site Lease nor the TJPA Sublease remains in effect and all obligations thereunder have been satisfied.

Upon the termination or expiration of this Leaseback Lease, all right, title and interest in and to the Property shall vest in the TJPA. Upon any such termination or expiration, the City shall execute such conveyances, deeds and other documents as may be necessary to affect such vesting of record.

### **Section 3. Rent.**

**Section 3.1 Rental Payments.** The TJPA hereby agrees to pay to the City Base Rental (in an amount up to the Maximum Base Rental) and the Additional Rental with respect to each Component, as provided herein, for the use, occupancy and possession of the Property for which such Maximum Base Rental is payable, all on the terms and conditions set forth herein. The TJPA shall be obligated to pay the Minimum Required Rental Payment in advance, and any Minimum Supplemental Rental Payment and Additional Rental, on the terms, in the amounts, at the times and in the manner hereinafter set forth.

a. Maximum Base Rental. Subject to Section 2.2 above, the Maximum Base Rental for each Component for each Base Rental Period shall be the amount set forth in Exhibit B with respect to such Component and shall become due and payable annually in advance on each Base Rental Payment Date during the Leaseback Lease Term. The TJPA hereby agrees to pay, from legally available funds, to the City the aggregate Maximum Base Rental for all Components for each Base Rental Period on the respective Base Rental Payment Date subject to reduction pursuant to Section 3.1(b) hereof.

b. Other Base Rental Payments. If at any time the City determines, based on its Base Rental payments due under the TJPA Sublease and the City Sublease, that Base Rental due from the TJPA is different in time or amount from the Maximum Base Rental payable by the TJPA under Section 3.1(a) above, the City shall deliver to the TJPA five business days before payment is due an invoice for the amount of Base Rental due. Such invoice shall attach a calculation or certificate demonstrating the amount of the corresponding Base Rental due from the City under the TJPA Sublease and the City Sublease. The TJPA shall make such Base Rental payment to or upon the order of the City in immediately available funds not later than 12:00 noon California time on the due date shown in the invoice.

c. No Payments in Excess of Aggregate Maximum Base Rental. Under no circumstances shall the TJPA be required to pay to or upon the order of the City during any Base

Rental Period amounts exclusive of Additional Rental in excess of aggregate Maximum Base Rental for such Base Rental Period.

d. Additional Rental. In addition to the Base Rental payments set forth herein, the TJPA agrees to pay to the City as Additional Rental any and all amounts payable by the City as Additional Rental under the TJPA Sublease and the City Sublease.

**Section 3.2 Consideration.** The Base Rental and Additional Rental for each Base Rental Period or portion thereof during the Leaseback Lease Term shall constitute the total rental for such Base Rental Period or portion thereof and shall be payable by the TJPA to or upon the order of the City for and in consideration for the use and possession, and the continued quiet use and enjoyment, of the Property by the TJPA for and during such Base Rental Period or portion thereof. The parties hereto have agreed and determined that the Rental Payments payable in respect of any Component during each such Base Rental Period are not in excess of the total fair rental value of such Component for such Base Rental Period. In making such determination, consideration has been given to the costs of acquisition and construction of each such Component, the uses and purposes served by each such Component, and the benefits therefrom that will accrue to the parties by reason of this Leaseback Lease and to the general public by reason of the TJPA's use of each such Component.

**Section 3.3 Budget.** The TJPA hereby covenants to include all Rental Payment due hereunder in each Fiscal Year in its annual budget and to make the necessary annual appropriations for all such Rental Payments, subject to Section 3.5 hereof. The covenants on the part of the TJPA herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the ministerial duty of each and every public official of the TJPA who bears direct or indirect responsibility for administering this Leaseback Lease to take such action and do such things as are required by law in the performance of such official duty of such officials to enable the TJPA to carry out and perform the covenants and agreements on the part of the TJPA contained in this Leaseback Lease. The obligation of the TJPA to make Rental Payments does not constitute an obligation of the TJPA for which the TJPA is obligated to levy or pledge any form of taxation or for which the TJPA has levied or pledged any form of taxation. Notwithstanding anything to the contrary contained herein, the obligation of the TJPA to make Rental Payments does not constitute an indebtedness of the TJPA within the meaning of any constitutional or statutory debt limitation or restriction.

**Section 3.4 Payment.** Amounts necessary to pay Rental Payments shall be paid by the TJPA on the dates set forth in Section 3.1 hereof in lawful money of the United States of America, at such place or places as may be instructed by the City. Except as provided in Section 3.5 hereof, any amount necessary to pay any Rental Payments that is not so deposited shall remain due and payable until received by the City. Notwithstanding any dispute between the TJPA and the City hereunder, the TJPA shall make all Rental Payments when due and shall not withhold any Rental Payments pending the final resolution of such dispute or for any other reason whatsoever. The TJPA's obligation to make Rental Payments in the amount and on the terms and conditions specified hereunder shall be absolute and unconditional without any right of set-off or counterclaim, and without abatement, subject only to the provisions of Section 3.5 hereof.

**Section 3.5 Rental Abatement.** Rental Payments due hereunder shall be subject to abatement to the extent, in the amount, and for the period that the City's obligation to make Rental Payments under the TJPA Sublease are subject to abatement. In the event of any such abatement, this Leaseback Lease shall continue in full force and effect, except as set forth in Sections 5 and 6 hereof.

**Section 3.6 Triple Net Lease.** This Leaseback Lease is intended to be a triple net lease. The TJPA agrees that the rentals provided for herein shall be an absolute net return to the City free and clear of any expenses, charges or set-offs whatsoever.

**Section 3.7 Power and Authority.** The TJPA represents and warrants to the City that the TJPA has the full power and authority to enter into, to execute and deliver this Leaseback Lease, and to perform all of its duties and obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Leaseback Lease, and the Property is zoned for use for governmental related facilities. The City represents and warrants to the TJPA that the City has the full power and authority to enter into, to execute and deliver this Leaseback Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution and delivery of this Leaseback Lease.

**Section 3.8 Grant of Security Interest.** The TJPA hereby grants to the City, as collateral security for the prompt and complete payment or performance in full when due of all Rental Payments, a security interest and continuing lien on all of TJPA's right, title and interest in, to and under all of the following property described in clauses (a) through (d) of this Section 3.8, in each case whether now or hereafter existing or in TJPA now has or hereafter acquires an interest and wherever the same may be located:

- a. all Pledged Revenues;
- b. all accounts, general intangibles and contract or other rights to receive Pledged Revenues;
- c. the TIFIA Collateral Agency Agreement, including all of TJPA's rights and interests to and in the funds, money and securities held thereunder (excluding amounts used to pay fees of the TIFIA Lender and TIFIA Collateral Agent); and
- d. to the extent not otherwise included above, all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

**Section 4. Affirmative Covenants of the City and the TJPA.** The City and the TJPA are entering into this Leaseback Lease in consideration of, among other things, the following covenants:

**Section 4.1 Replacement, Maintenance and Repairs.** The TJPA shall, at its own expense, during the Leaseback Lease Term, maintain each Component, or cause the same to be maintained, in good order, condition and repair and shall repair or replace any Component which is destroyed, damaged or taken to such an extent that there is substantial interference with the use and possession of such Component by the TJPA which would result in an abatement of Rental Payments or any portion thereof pursuant to Section 3.5 hereof, unless the TJPA elects

not to repair or replace such Component in accordance with clause (ii) of the following sentence. In the event of damage, destruction or taking which results in an abatement of Rental Payments or any portion thereof pursuant to Section 3.5 hereof, the TJPA shall be required either to (i) apply sufficient funds from the insurance proceeds (including self-insurance), condemnation award and other legally available funds, if any, to the replacement or repair of such Component which has been damaged, destroyed or taken, or (ii) apply sufficient funds from the insurance proceeds (including self-insurance), condemnation award and other legally available funds, if any, in the manner that will enable to City to comply with its obligations under Section 4.1 of the TJPA Sublease.

The TJPA shall provide or cause to be provided all security service, custodial service, janitorial service and other services necessary for the proper upkeep and maintenance of each Component. It is understood and agreed that in consideration of the payment by the TJPA of the Rental Payments herein provided for, the TJPA is entitled to possession of each Component and the City shall have no obligation to incur any expense of any kind or character in connection with the management, operation or maintenance of such Component during the Leaseback Lease Term with respect to such Component. The City shall not be required at any time to make any improvements, alterations, changes, additions, repairs or replacements of any nature whatsoever in or to any Component. The TJPA hereby expressly waives the right to make repairs or to perform maintenance of any Component at the expense of the City and (to the extent permitted by law) waives the benefit of Sections 1932, 1941 and 1942 of the California Civil Code relating thereto. The TJPA shall keep each Component free and clear of all liens, charges and encumbrances other than encumbrances of this Leaseback Lease, the TJPA Sublease, the TJPA Site Lease and such other encumbrances as are permitted under the TJPA Sublease, subject only to the provisions of Section 4.2 hereof.

**Section 4.2 Taxes, Other Governmental Charges and Utility Charges.** The City and the TJPA contemplate that each Component will be used for a governmental or proprietary purpose of the TJPA and, therefore, that each Component will be exempt from all taxes presently assessed and levied with respect to such Component. Nevertheless, the TJPA hereby agrees to pay during the Leaseback Lease Term with respect to each Component as the same respectively become due, all taxes, utility charges and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to each such Component; provided, however, that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, the TJPA shall be obligated to pay only such installments as are accrued during such time as this Leaseback Lease is in effect with respect to such Component; provided, further, that the TJPA may contest in good faith the validity or application of any tax, utility charge or governmental charge in any reasonable manner which does not adversely affect the right, title and interest of the TJPA or the City in and to any Component or its rights or interests under this Leaseback Lease or subject any portion of any Component to loss or forfeiture. Any such taxes or charges shall constitute Additional Rental under Section 3.1(d) hereof and shall be payable directly to the entity assessing such taxes or charges.

**Section 4.3 Insurance.** The TJPA shall secure and maintain or cause to be secured and maintained at all times with insurers of recognized responsibility or through a

program of self-insurance to the extent specifically permitted in this Section 4.3, all coverage on the Property required by this Section 4.3. Such insurance shall consist of:

a. A policy or policies of insurance against loss or damage to any Component known as "all risk" including earthquake. Such insurance shall be maintained with respect to the Property at any time in an amount equal to the lesser of (i) the full replacement value of the Property, and (ii) the Maximum Principal Amount. The term "full replacement value" as used herein shall mean the cost of repair or replacement of the affected Component, without deduction for depreciation. Such insurance may at any time include a deductible clause providing for a deductible not to exceed \$1,000,000 for all losses in any year; provided, however, that the TJPA's obligations under this clause (a) may be satisfied by self-insurance satisfactory to the City; provided further, however, that if the TJPA and the City determine that earthquake coverage is not available on commercially reasonable terms, then earthquake insurance on the Property or any component thereof shall not be required by this clause (a);

b. Comprehensive general liability insurance against damages occasioned by reason of the construction of improvements to, or operation of, the Property. The policy or policies will provide coverage in the following minimum amount: \$5,000,000 combined single limit for bodily and personal injury, death and property damage per occurrence. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the TJPA. Such policies will name the TJPA as an insured party, and will name the City and such other persons as shall be instructed by the City as additional insured parties;

c. Rental interruption insurance to cover loss, total or partial, of the use of any Component as a result of any of the hazards covered by the "all risk" insurance required to be secured and maintained pursuant to clause (a) of this Section 4.3, in an amount sufficient at all times to pay the total rent payable under this Leaseback Lease with respect to such Component for a period adequate to cover the period of repair or replacement. Such policy shall provide that the amount payable thereunder shall not be less than an amount equal to two year's Maximum Base Rental for all of the particular Components to which such insurance applies; and

d. A CLTA policy or policies of title insurance for all Components in an amount not less than the such amount as is required of the CLTA policy or policies required under Section 4.3 of the TJPA Sublease. Such policy or policies of title insurance shall show title to the particular Component covered by such policy in the name of the TJPA, subject to the TJPA Site Lease, the TJPA Sublease, the Leaseback Lease and such other encumbrances as will not, in the reasonable opinion of the TJPA, materially affect the use, occupancy and possession of the Component and will not result in the abatement of Rental Payments payable by the TJPA hereunder with respect to such Component.

All policies or certificates issued by the respective insurers for insurance shall provide that such policies or certificates shall not be cancelled or materially changed without at least 30 days' prior written notice to the City and such other persons as shall

be instructed by the City. A certificate of an Authorized Representative stating whether all policies or self-insurance required by this Section 4.3 have been obtained and are in full force and effect shall be deposited with the City and such other persons as shall be instructed by the City by the TJPA on the Closing Date and on or before each anniversary of the Closing Date.

All policies or certificates of insurance provided for herein (other than title insurance policies) shall name the TJPA as a named insured, and the City or such other persons as shall be instructed by the City as loss payee. All proceeds of insurance maintained under clauses (a), (c) and (d) of this Section 4.3 shall be deposited with the City or such other persons as shall be instructed by the City for application pursuant to the provisions of the Trust Agreement. All proceeds of insurance maintained under clause (b) of this Section 4.3 shall be deposited with the TJPA.

Notwithstanding the generality of the foregoing, except as to the coverage required under clause (c) of this Section 4.3, the TJPA shall not be required to maintain or cause to be maintained more insurance than is specifically referred to above or any policies of insurance other than standard policies of insurance with standard deductibles offered by reputable insurers at a reasonable cost on the open market.

Notwithstanding anything herein to the contrary, the TJPA has the right to adopt alternative risk management programs to insure against any of the risks required to be insured against under this Leaseback Lease, including a program of self-insurance (other than for rental interruption insurance pursuant to clause (c) and title insurance pursuant to subsection (d)), in whole or in part; provided that (i) any such alternative risk management program has been approved as reasonable and appropriate risk management by the Risk Manager and the City, and (ii) any reserves set aside for such program will be certified at least annually on each June 15, commencing June 15, 2017, as to their adequacy by the Risk Manager in a certificate delivered to the City and such other persons as shall be instructed by the City. The City will not be responsible for the adequacy, sufficiency or coverage of the insurance or self-insurance required or allowed by this Section 4.3.

**Section 4.4 Liens.** The TJPA will promptly pay or cause to be paid all sums of money that may become due for any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for, in, upon or about any Component and which may be secured by any mechanic's, materialman's or other lien against such Component, or the interest of the Trustee or the City therein, and will cause each such lien to be fully discharged and released; except, that the TJPA, or the City (a) may contest any such claim or lien without payment thereof so long as such non-payment and contest stays execution or enforcement of the lien, but if such lien is reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not stayed, or if stayed and the stay thereafter expires, then and in any such event the TJPA will forthwith pay and discharge such judgment or lien, or (b) delay payment without contest so long as and to the extent that such delay will not result in the imposition of any penalty or forfeiture. Additionally, the City and the TJPA will not create or suffer to be created any lien, charge or encumbrance upon the Property or upon any real or personal property essential to the operation of the Property, except encumbrances of this

Leaseback Lease, the TJPA Sublease, the TJPA Site Lease and such other encumbrances as are permitted under the TJPA Sublease. The City and the TJPA will not sell or otherwise dispose of the Property or any other property essential to the proper operation of the Property.

**Section 4.5 Laws and Ordinances.** The TJPA agrees to observe and comply with all rules, regulations and laws applicable to the TJPA with respect to the Property and the operation thereof. The cost, if any, of such observance and compliance shall be borne by the TJPA, and the City shall not be liable therefor. The TJPA agrees further to place, keep, use, maintain and operate all Property in such a manner and condition as will provide for the safety of its agents, employees, invitees, subtenants, licensees and the public.

**Section 4.6 Performance of City's Duties and Responsibilities.** The TJPA and the City agree that any and all administrative or ministerial actions or determinations that the City is required to do or make pursuant to this Leaseback Lease may be performed by the TJPA on behalf of the City.

**Section 5. Application of Insurance Proceeds.**

**Section 5.1 General.** Proceeds of insurance received in respect of destruction of or damage to any portion of any Component by fire, earthquake or other casualty or event shall be paid to or upon the order of the City for application in accordance with the provisions of the TJPA Sublease, unless the TJPA elects to apply such proceeds to the repair or replacement of the portion of any Component which has been damaged or destroyed, whereupon if there has been an abatement of Rental Payments pursuant to Section 3.5 hereof, then Rental Payments without any abatement shall again begin to accrue with respect thereto upon repair or replacement of such portion of such Component.

**Section 5.2 Title Insurance.** Proceeds of title insurance received with respect to any Component shall be paid to or upon the order of the City for application in accordance with the provisions of the TJPA Sublease.

**Section 6. Eminent Domain.**

**Section 6.1 Total Condemnation.** If any Component, or so much thereof as to render the remainder of such Component unusable for the TJPA's purposes under this Leaseback Lease, shall be taken under the power of eminent domain, then if, and only if, the TJPA Site Lease and the TJPA Sublease are terminated with respect to such Component, this Leaseback Lease shall terminate with respect to such Component as of the day possession shall be so taken or as of the date of entry of the interlocutory judgment, and Base Rental with respect to such Component will be abated. Notwithstanding the foregoing, the City may substitute other real property or improvements for such Component and Base Rental will again begin to accrue with respect thereto upon substitution of the Component.

**Section 6.2 Partial Condemnation.** If less than a substantial portion of any Component shall be taken under the power of eminent domain, and the remainder is useable for the TJPA's purposes, then this Leaseback Lease shall continue in full force and effect as to the remaining portions of such Component, subject only to such rental abatement as is required by Section 3.5 hereof. The TJPA and the City hereby waive the benefit of any law to the contrary.

**Section 6.3 Condemnation Awards.** Any award made in eminent domain proceedings for the taking shall be paid to or upon the order of the City for application in accordance with the provisions of the TJPA Sublease unless the TJPA elects to apply such proceeds to the replacement of the condemned portion of any Component, whereupon if there has been an abatement of Rental Payments pursuant to Section 3.5 hereof, then Rental Payments without any abatement shall again begin to accrue with respect thereto upon replacement of Component.

**Section 7. Assignment and Sublease: Addition, Substitution or Release of Property.**

**Section 7.1 Assignment and Sublease.** Except as permitted by Section 7.2, the TJPA shall not mortgage, pledge, assign or transfer any interest of the TJPA in this Leaseback Lease by voluntary act or by operation of law, or otherwise; provided, however, that the TJPA may sublease all Property or any Component thereof, may grant concessions to others involving the use of the Property or any Component, whether such concessions purport to convey a leasehold interest or a license to use such Property or Component; [provided, further, however, that such sublease or grant shall be subject to the terms hereof]. Subject to the limitations set forth herein and in the Trust Agreement, the TJPA shall at all times remain liable for the performance of the covenants and conditions on its part to be performed under this Leaseback Lease, notwithstanding any subletting or granting of concessions which may be made. Nothing herein contained shall be construed to relieve the TJPA of its obligation to pay Base Rental and Additional Rental with respect to each Component as provided in this Leaseback Lease or to relieve the TJPA of any other obligations contained herein.

**Section 7.2 Addition, Substitution or Release of Property.** Notwithstanding Section 7.1 above, the City and the TJPA may release or substitute Property subject to this Leaseback Lease to the same extent such Property is released or substituted in the TJPA Site Lease and TJPA Sublease.

**Section 8. Additions and Improvements; Removal.** The TJPA and any sublessee or licensee shall have the right during the Leaseback Lease Term to make any additions or improvements to any Component, to attach fixtures, structures or signs, and to affix any personal property to any Component, so long as the fair rental value of the Component is not thereby reduced. Title to all fixtures, equipment or personal property placed by the TJPA on any Component shall remain in the TJPA. Title to any personal property, improvements or fixtures placed on any Component by any sublessee or licensee of the TJPA shall be controlled by the sublease or license agreement between such sublessee or licensee and the TJPA, which sublease or license agreement shall not be inconsistent with this Leaseback Lease.

**Section 9. Right of Entry.** Representatives of the City shall, subject to reasonable security precautions, have the right to enter upon any Component during reasonable business hours (and in emergencies at all times) (a) to inspect the same, (b) for any purpose connected with the rights or obligations of the City under this Leaseback Lease, or (c) for all other lawful purposes.



**Section 10. Quiet Enjoyment.** The City covenants and agrees that the TJPA, upon keeping and performing the covenants and agreements herein contained, shall, at all times during the Leaseback Lease Term, peaceably and quietly have, hold, and enjoy the Property.

**Section 11. Indemnification and Hold Harmless Agreement.** To the extent permitted by law, the TJPA hereby agrees to indemnify and hold the City and its officers and employees harmless against any and all liabilities which might arise out of or are related to the Property, and the TJPA further agrees to defend the City and its directors in any action arising out of or related to the Property; provided that any such indemnification and obligation to defend shall not apply in the case of the negligence or willful misconduct of the City. The City and its officers, agents and employees, shall not be liable to the TJPA 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 any Component.

**Section 12. Events of Default and Remedies.**

**Section 12.1 Default by TJPA.** If the TJPA shall fail to pay to the City any Base Rental with respect to any Component as and when the same shall become due and payable, or shall breach any other terms, covenants or conditions contained herein and shall fail to remedy any such breach with all reasonable dispatch within a period of 60 days after written notice thereof from the City, or its assignee, to the TJPA, or, if such breach cannot be remedied within such 60-day period, shall fail to institute corrective action within such 60-day period and diligently pursue the same to completion, then and in any such event the TJPA shall be deemed to be in default hereunder.

**Section 12.2 Remedies on Default by TJPA.** Upon a failure or breach as described in Section 12.1, the City will have the right, without any further demand or notice, to enforce all of its rights and remedies under this Leaseback Lease, including the right to recover Base Rental payments as they become due under this Leaseback Lease pursuant to Section 1951.4 of the California Civil Code by pursuing any remedy available in law or in equity, other than by terminating the Leaseback Lease or reentering and reletting the Property or any Component thereof, or except as expressly provided herein. Notwithstanding any other provision of this Leaseback Lease, in no event will the City have the right to accelerate the payment of any Base Rental hereunder.

Each and every remedy of the City hereunder is cumulative and the exercise of one remedy shall not impair the right of the City to any or all other remedies. If any statute or rule of law validly shall limit the remedies given to the City, the City nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

**Section 12.3 Default by City.** The failure of the City to observe and perform any covenants, agreements or conditions on its part in this Leaseback Lease contained, including under Section 10 hereof, if such failure shall have continued for a period of 60 days after written notice thereof, specifying such failure and requiring the same to be remedied, shall have been given to the City, by the TJPA, shall constitute a City Event of Default under this Leaseback Lease; provided, however, that if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 60 day period, such failure shall not constitute a City

Event of Default if corrective action is instituted by the City within such 60 day period and the City shall diligently and in good faith cure such failure in a reasonable period of time. In each and every case upon the occurrence and during the continuance of a City Event of Default by the City hereunder, the TJPA shall have all the rights and remedies permitted by law.

**Section 13. Waiver.** The waiver by the City or its assignee of any breach by the TJPA, and the waiver by the TJPA of any breach by the City of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

**Section 14. DISCLAIMER OF WARRANTIES.** NEITHER THE CITY NOR ANY PERSON ACTING ON ITS BEHALF HAS MADE OR MAKES ANY WARRANTY OR REPRESENTATION AS TO THE PAST, PRESENT OR FUTURE CONDITION OF THE PROPERTY NOT HEREIN EXPRESSED, AND THE TJPA HAS ENTERED INTO THIS LEASEBACK LEASE WITHOUT REPRESENTATIONS OR WARRANTIES WITH RESPECT THERETO ON THE PART OF THE CITY, ITS AGENTS, REPRESENTATIVES OR EMPLOYEES.

**Section 15. Notices.** All notices, requests, demands and other communications under this Leaseback Lease shall be in writing (unless otherwise specified herein) and shall be sufficiently given on the date of service if served personally upon the person to whom notice is to be given or on receipt if sent by telex or other telecommunication facility or courier or if mailed by registered or certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

if to the City: City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place,  
Room 316  
San Francisco, California 94102  
Attention: City Controller;

if to the TJPA: Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, CA 94105  
Attention: Executive Director

or to such other address or addresses as any such person shall have designated to the others by notice given in accordance with the provisions of this Section 15.

**Section 16. Validity.** If anyone or more of the terms, provisions, promises, covenants or conditions of this Leaseback Lease shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction; then each and all of the remaining terms, provisions, promises, covenants and conditions of this Leaseback Lease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

If for any reason this Leaseback Lease will be held by a court of competent jurisdiction to be void, voidable or unenforceable by the City or by the TJPA, or if for any reason it is held by such a court that any of the covenants and agreements of the TJPA hereunder, including the covenant to pay Base Rental and Additional Rental hereunder, is unenforceable for the full term hereof, then and in such event for and in consideration of the right of the TJPA to possess, occupy and use the Property, which right in such event is hereby granted, this Leaseback Lease will thereupon become and will be deemed to be a sublease from year to year under which the annual Base Rental payments and Additional Rental payments herein specified will be paid by the TJPA.

**Section 17. Execution in Counterparts.** This Leaseback Lease may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same agreement.

**Section 18. Law Governing.** This Leaseback Lease is made in the State under the Constitution and laws of the State and is to be so construed.

**Section 19. Amendment.** This Leaseback Lease may be amended only by written agreement of the City and the TJPA.

**Section 20. Excess Payments.** Notwithstanding anything contained herein to the contrary, if for any reason, including but not limited to damage, destruction, condemnation, transfer, sale or disposition, the TJPA or the City receive payments, proceeds or awards with respect to any Component in excess of the amount necessary for the City to pay or provide in accordance with the TJPA Sublease, such excess shall represent the TJPA's equity interest in such Component and shall be paid to the TJPA.

**Section 21. No Merger.** If the TJPA's estates under this Leaseback Lease or the TJPA Site Lease or any other lease relating to any Component shall at any time by any reason become vested in one owner, this Leaseback Lease and the estate created hereby shall not be destroyed or terminated by the doctrine of merger unless the TJPA so elects as evidenced by recording a written declaration so stating, and, unless and until the TJPA, so elects, the City and the TJPA shall continue to have and enjoy all of their respective rights and privileges as to the separate estates.

**Section 22. Further Assurances and Corrective Instruments.** The TJPA and the City 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 reasonably be required for correcting any inadequate or incorrect description of the Property or any Component leased hereby or intended to be so leased or for carrying out the express intention of the Leaseback Lease.

**Section 23. No Sovereign Immunity.** The TJPA is subject to civil and commercial law in respect of its obligations under this Leaseback Lease, and the execution, delivery and performance of this Leaseback Lease constitutes a commercial act rather than a public or governmental act; however, (i) the substantive provisions and procedural requirements of California civil law and commercial law which apply to the TJPA are, in many respects, different

from the substantive provisions and procedural requirements which would apply to other persons under similar circumstances; (ii) California law limits the exercise of prejudgment and postjudgment remedies against public entities, including the TJPA; and (iii) a court may not strictly enforce certain covenants if it concludes that enforcement would be unreasonable under the circumstances. To the extent that the TJPA is entitled to any immunity from suit, it hereby waives such immunity to the fullest extent permitted by law.

**Section 24. Omitted.**

**Section 25. Limited Liability.** Nothing contained herein will be construed as creating any liability on any officer, director, or employee of the TJPA or the City, individually or personally, to perform any covenant, duty or obligation of any kind contained in this Leaseback Lease, and under no circumstances will any officer, director, or employee of the TJPA or the City be liable, individually or personally, for the payment of any fees, costs, indebtedness or expenses related to or arising from the Leaseback Lease or any documents related hereto.

**Section 26. City Requirements.** Additional requirements of the City with respect to this Leaseback Lease are attached as Exhibit C and are incorporated by reference herein, and, by executing this Leaseback Lease, the TJPA is agreeing to comply with those provisions.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Leaseback Lease as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO, as Sublessor

By: \_\_\_\_\_  
Director of Public Finance

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

TRANSBAY JOINT POWERS AUTHORITY, as Sublessee

By: \_\_\_\_\_  
Executive Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Legal Counsel

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

All that real property situated in the City and County of San Francisco, State of California, described as follows, and any improvements thereto:

[See attached pages]

**EXHIBIT B**

**BASE RENTAL PAYMENT SCHEDULE**

[See attached base rental schedules]

**EXHIBIT C**  
**CITY REQUIREMENTS**



RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:

TRANSBAY JOINT POWERS AUTHORITY  
201 Mission Street Suite 2100  
San Francisco, CA 94105  
Attn: Executive Director

---

(Space Above This Line For Recorders Use Only)

**SUBLEASE**

**Dated as of [June 1, 2016]**

**by and between**

**CITY AND COUNTY OF SAN FRANCISCO,**

**as Sublessor**

**and**

**TRANSBAY JOINT POWERS AUTHORITY,  
as Sublessee**

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NO DOCUMENTARY TRANSFER TAX DUE. This Sublease is recorded for the benefit of the Transbay Joint Powers Authority and the recording is exempt under Section 27383 of the California Government Code and Section 11928 of the California Revenue and Taxation Code.

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Exhibit C City Requirements

## SUBLEASE

THIS SUBLEASE, dated as of [June 1, 2016] (as amended, supplemented or modified from time to time, and as hereinafter further defined the "**Sublease**"), is entered into between the **CITY AND COUNTY OF SAN FRANCISCO** (the "**City**"), a charter city and county duly organized and existing under the laws and Constitution of the State of California, as sublessor, and the **TRANSBAY JOINT POWERS AUTHORITY** (the "**TJPA**"), a joint powers authority created under California Government Code Sections 6500 et seq., as sublessee.

## RECITALS

**WHEREAS**, \_\_\_\_\_, a national banking association, solely in its capacity as Trustee (the "Trustee") under the Trust Agreement, dated as of [June 1, 2016] (the "Trust Agreement") between the City and the Trustee, is the lessee of the Property (as hereinafter defined), pursuant to the terms and conditions set forth in the Site Lease, dated of even date herewith, between the TJPA and the Trustee ("the Site Lease");

**WHEREAS**, the City is the sublessee of the Property pursuant to the terms and conditions set forth in the Project Lease, dated of even date herewith, between the Trustee and the City (the "Project Lease");

**WHEREAS**, the City desires to sublease to the TJPA the Property, and the TJPA desires to sublease from the City the Property on the terms stated herein; and

**WHEREAS**, the City is authorized to enter into this Sublease pursuant to applicable law of the State.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**Section 1. Definitions.** Unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Sublease, have the meanings as set forth below.

**"AC Transit"** means the Alameda-Contra Costa Transit District, a special district created under Part 1, Division 10 of the California Public Utilities Code.

**"Additional Rental"** means, with respect to Additional Rental payments due from the TJPA, the amounts specified as such in Section 3.1(d) hereof and, with respect to Additional Rental payments due from the City, the amounts specified as such under Section 3.1(g) of the Project Lease.

**"Annual Capital Contributions"** means the annual capital contributions required to be made by AC Transit pursuant to Section 5.1 of the Lease and Use Agreement using "Passenger Facility Charges" which shall include all passenger facility charges imposed by AC Transit on all passengers riding AC Transit originating and terminating from the Transbay Transit Center upon AC Transit's commencement of service at the Transbay Transit Center or other sources of funding; provided, however, that the use of federal grant funds for this purpose shall be prohibited.

**"Assumed Interest Cost"** means, as of any date of calculation or for any period of time (a) with respect to all Lease Revenue Certificates, the amount that would accrue as interest during such period with respect to Lease Revenue Certificates Outstanding as of the date of such calculation assuming such Lease Revenue Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs, and (b)(i) with respect to Commercial Paper Certificates, the amount that would accrue as interest during such period with respect to Commercial Paper Certificates Outstanding as of the date of such calculation assuming such Commercial Paper Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs, (ii) with respect to Revolving Certificates, the amount that would accrue as interest during such period with respect to such Revolving Certificates Outstanding as of the date of such calculation assuming such Revolving Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs, and (iii) with respect to Direct Placement Revolving Certificates, the amount that would accrue as interest during such period with respect to such Direct Placement Revolving Certificates Outstanding as of the date of such calculation assuming such Direct Placement Revolving Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs.

**"Authorized Representative"** means the Executive Director of the TJPA, the Chief Financial Officer of the TJPA, or another official designated by any such officer and authorized to act on behalf of the TJPA under or with respect to this Sublease and all other agreements related hereto.

**"Base Rental"** means, with respect to Base Rental payments due from the TJPA, the amount payable as Base Rental under Section 3.1 hereof and, with respect to Base Rental payments due from the City, the amount payable as Base Rental under Section 3.1 of the Project Lease.

**"Base Rental Payment Date"** means each July 1 commencing July 1, 2017, during the Sublease Term (as hereinafter defined).

**"Base Rental Period"** means the period between one Base Rental Payment Date and the next Base Rental Payment Date, provided that the first Base Rental Period shall commence on the Closing Date (as hereinafter defined) and end on July 1, 2017.

**"City Event of Default"** means an event described as such in Section 12.3 hereof.

**"Closing Date"** means the date on which this Sublease is filed for recording in the official records of the City and County of San Francisco.

**"Community Redevelopment Law"** means the Community Redevelopment Law of the State of California (Health and Safety Code Sections 33000 *et seq.*).

**"Component"** means, as the context requires, any of the following or any property added thereto or substituted therefor pursuant to Section 7 hereof, but does not include any property released pursuant to Section 7:

- (i) [to come – make reference to Exhibit A]

**"Cooperative Agreement"** means the Cooperative Agreement, dated as of July 11, 2003, by and among the State, the City and TJPA, as the same may be amended, supplemented or otherwise modified from time to time.

**"Fiscal Year"** means the fiscal year of the City, which at the date of this Sublease is the period from July 1 to and including the following June 30.

**"Lease and Use Agreement"** means the Transbay Transit Center Program Lease and Use Agreement for the Temporary Terminal and Terminal, dated as of September 10, 2008, between TJPA and AC Transit, as the same may be amended, supplemented or otherwise modified from time to time.

**"Maximum Base Rental"** means the amounts specified as such in Section 3.1 (a) hereof, as such amounts may be adjusted from time to time in accordance with the terms hereof, but does not include Additional Rental.

**"Net Tax Increment Revenues"** means all property tax increment revenues attributable to the State-owned Parcels, allocated to and received by the Successor Agency and pledged under the TIF Pledge Agreement as indebtedness to TJPA, but specifically excluding therefrom the following: (i) charges for San Francisco County administrative charges, fees, or costs; (ii) the portion of the tax increment revenues committed to the Successor Agency for fulfilling the Transbay Affordable Housing Obligation; (iii) a portion of the tax increment revenues equal to the percentage of such revenue that the Successor Agency is required to pay to all governmental entities as required by the Community Redevelopment Law; and (iv) the portion of the tax increment revenues equal to the percentage of such revenues that the State may mandate the Successor Agency to pay from time to time in the future, including, for example, any payments which the Successor Agency may be required to pay to the Education Revenue Augmentation Fund pursuant to Section 33681 *et seq.* of the Community Redevelopment Law.

**"Pledged Revenues"** means (i) Net Tax Increment Revenues, (ii) Annual Capital Contributions and (iii) all income from (i) and (ii) derived from the investments thereof.

**"Property"** means, collectively, all of the Components. "Property" also includes any property, or portion thereof, that by amendment hereto becomes subject to this Sublease and any property, or portion thereof, substituted for any of the Components pursuant to Section 7, but "Property" excludes any Component for which new property has been substituted, and any Component or property released, pursuant to Section 7 hereof.

**"Rental Payments"** means, with respect to Rental Payments due from the TJPA, all Base Rental and Additional Rental payable hereunder and, with respect to Rental Payments due from the City, all amounts specified as such in the Project Lease.

**"Risk Manager"** means the TJPA's Chief Financial Officer or such other person or firm of favorable reputation, qualified and experienced in the field of insurance and risk management consultation as may from time to time be designated by the TJPA, and who may be employed by the TJPA.

**"State"** means the State of California.

**"State-owned Parcels"** means those parcels identified as "State-owned Parcels" under the Cooperative Agreement.

**"Sublease"** means this Sublease, including any amendments or supplements hereto made or entered into in accordance with the terms hereof.

**"Sublease Term"** means the term of this Sublease, as provided in Section 2.2 hereof.

**"Successor Agency"** means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, also known as the Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State.

**"TIFIA Borrowing Conditions"** means the conditions precedent to borrowing the TIFIA Loan under the TIFIA Loan Agreement.

**"TIFIA Collateral Agency Agreement"** means the Collateral Agency and Account Agreement, dated as of January 1, 2010, by and among TIFIA Collateral Agent, TJPA, and the TIFIA Lender, as amended by the First Amendment thereto, dated as of May 8, 2014, as further amended by the Second Amendment thereto, dated as of December 1, 2014, and as further amended, supplemented or otherwise modified from time to time.

**"TIFIA Collateral Agent"** means U.S. Bank National Association in its capacity as collateral agent under the TIFIA Collateral Agency Agreement (and any successor collateral agent appointed thereunder).

**"TIFIA Lender"** means the United States Department of Transportation, an agency of the United States of America, acting by and through the Federal Highway Administrator and acting as lender under the TIFIA Loan Agreement.

**“TIFIA Loan”** means the secured loan to be made by the TIFIA Lender to TJPA pursuant to the TIFIA Loan Agreement, subject to the satisfaction of the TIFIA Borrowing Conditions.

**“TIFIA Loan Agreement”** means the TIFIA Loan Agreement, dated as of January 1, 2010, as amended by the First Amendment thereto, dated as of May 8, 2014, by and between TJPA and the TIFIA Lender, as further amended by the Second Amendment thereto, dated as of December 1, 2014, [and the Third Amendment thereto, dated as of June 1, 2016,] and as further amended, supplemented or otherwise modified from time to time.

**“TIF Pledge Agreement”** means the Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement, dated as of January 31, 2008, by and among the City, the Successor Agency and TJPA, as the same may be amended, supplemented or otherwise modified from time to time.

**“TJPA Event of Default”** means an event described as such in Section 12.1 hereof.

**“Transbay Affordable Housing Obligation”** means certain affordable housing requirements, as described in Section 5027.1 of the California Public Resources Code, the Redevelopment Plan and the Implementation Agreement, and finally and conclusively determined by the California Department of Finance to be an enforceable obligation under Redevelopment Dissolution Law; this obligation requires that 25 percent of all dwelling units developed within the Project Area (as defined in the Redevelopment Plan) shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 60 percent of the area median income, and that at least an additional 10 percent of all dwelling units developed within the Project Area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 120 percent of the area median income.

## **Section 2. Sublease; Term.**

**Section 2.1. Sublease.** The City hereby subleases the Property to the TJPA and the TJPA hereby subleases the Property from the City on the terms and conditions hereinafter set forth. The TJPA shall take possession of the Property on the Closing Date. The TJPA hereby agrees and covenants that during the term hereof, except as hereinafter provided, it will use the Property for public purposes so as to afford the public the benefits contemplated hereby and so as to permit the City to carry out its agreements and covenants contained in the Project Lease, and the TJPA hereby further agrees and covenants that during the term hereof that it will not abandon or vacate the Property.

**Section 2.2. Term.** Subject to the next succeeding paragraph of this Section 2.2, with respect to each Component, the term of this Sublease with respect to such Component shall begin on the Closing Date and end on the earliest of: (a) the date set forth with respect to such Component in Exhibit B hereto (and in the case of any Property which is added to or substituted for a Component pursuant to Section 7.2 hereof, the date set forth in Exhibit B with respect to such additional or substituted Component), (b) the date all Base Rental related to such Component is paid in full, (c) the date of termination of this Sublease with respect to such Component due to casualty or condemnation in accordance with the terms of Section 5 or 6 hereof, or (d) the date of release of such Component in accordance with the terms of Section 7.2 hereof, or (e) the date both the Site Lease and the Project Lease terminate.



Notwithstanding anything to the contrary contained herein, including without limitation the provisions of Section 3.1 hereof, so long as the Site Lease and the Project Lease remain in effect, the term of this Sublease with respect to each Component subject to the Site Lease and the Project Lease at such time shall be extended until such date as neither the Site Lease nor the Project Lease remains in effect and all obligations thereunder have been satisfied.

Upon the termination or expiration of this Sublease, all right, title and interest in and to the Property shall vest in the TJPA. Upon any such termination or expiration, the City shall execute such conveyances, deeds and other documents as may be necessary to effect such vesting of record.

### **Section 3. Rent.**

**Section 3.1. Rental Payments.** The TJPA hereby agrees to pay to the City Base Rental (in an amount up to the Maximum Base Rental) and the Additional Rental with respect to each Component, as provided herein, for the use, occupancy and possession of the Property for which such Maximum Base Rental is payable, all on the terms and conditions set forth herein. The TJPA shall be obligated to pay the Minimum Required Rental Payment in advance, and any Minimum Supplemental Rental Payment and Additional Rental, on the terms, in the amounts, at the times and in the manner hereinafter set forth.

a. Maximum Base Rental. Subject to Section 2.2 above, the Maximum Base Rental for each Component for each Base Rental Period shall be the amount set forth in Exhibit B with respect to such Component and shall become due and payable annually in advance on each Base Rental Payment Date during the Sublease Term. The TJPA hereby agrees to pay, from legally available funds, to the City the aggregate Maximum Base Rental for all Components for each Base Rental Period on the respective Base Rental Payment Date subject to reduction pursuant to Section 3.1(b) hereof.

b. Other Base Rental Payments. If at any time the City determines, based on its Base Rental payments due under the Project Lease, that Base Rental due from the TJPA is different in time or amount from the Maximum Base Rental payable by the TJPA under Section 3.1(a) above, the City shall deliver to the TJPA five business days before payment is due an invoice for the amount of Base Rental due. Such invoice shall attach a calculation or certificate demonstrating the amount of the corresponding Base Rental due from the City under the Project Lease. The TJPA shall make such Base Rental payment to or upon the order of the City in immediately available funds not later than 12:00 noon California time on the due date shown in the invoice.

c. No Payments in Excess of Aggregate Maximum Base Rental. Under no circumstances shall the TJPA be required to pay to or upon the order of the City during any Base Rental Period amounts exclusive of Additional Rental in excess of aggregate Maximum Base Rental for such Base Rental Period.

d. Additional Rental. In addition to the Base Rental payments set forth herein, the TJPA agrees to pay to the City as Additional Rental any and all amounts payable by the City as Additional Rental under the Project Lease.

**Section 3.2. Consideration.** The Base Rental and Additional Rental for each Base Rental Period or portion thereof during the Sublease Term shall constitute the total rental for such Base Rental Period or portion thereof and shall be payable by the TJPA to or upon the order of the City for and in consideration for the use and possession, and the continued quiet use and enjoyment, of the Property by the TJPA for and during such Base Rental Period or portion thereof. The parties hereto have agreed and determined that the Rental Payments payable in respect of any Component during each such Base Rental Period are not in excess of the total fair rental value of such Component for such Base Rental Period. In making such determination, consideration has been given to the uses and purposes served by each such Component and the benefits therefrom that will accrue to the parties by reason of this Sublease and to the general public by reason of the TJPA's use of each such Component.

**Section 3.3. Budget.** The TJPA hereby covenants to include all Rental Payment due hereunder in each Fiscal Year in its annual budget and to make the necessary annual appropriations for all such Rental Payments, subject to Section 3.5 hereof. The covenants on the part of the TJPA herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the ministerial duty of each and every public official of the TJPA who bears direct or indirect responsibility for administering this Sublease to take such action and do such things as are required by law in the performance of such official duty of such officials to enable the TJPA to carry out and perform the covenants and agreements on the part of the TJPA contained in this Sublease. The obligation of the TJPA to make Rental Payments does not constitute an obligation of the TJPA for which the TJPA is obligated to levy or pledge any form of taxation or for which the TJPA has levied or pledged any form of taxation. Notwithstanding anything to the contrary contained herein, the obligation of the TJPA to make Rental Payments does not constitute an indebtedness of the TJPA within the meaning of any constitutional or statutory debt limitation or restriction.

**Section 3.4. Payment.** Amounts necessary to pay Rental Payments shall be paid by the TJPA on the dates set forth in Section 3.1 hereof in lawful money of the United States of America, at such place or places as may be instructed by the City. Except as provided in Section 3.5 hereof, any amount necessary to pay any Rental Payments that is not so deposited shall remain due and payable until received by the City. Notwithstanding any dispute between the TJPA and the City hereunder, the TJPA shall make all Rental Payments when due and shall not withhold any Rental Payments pending the final resolution of such dispute or for any other reason whatsoever. The TJPA's obligation to make Rental Payments in the amount and on the terms and conditions specified hereunder shall be absolute and unconditional without any right of set-off or counterclaim, and without abatement, subject only to the provisions of Section 3.5 hereof.

**Section 3.5. Rental Abatement.** Rental Payments due hereunder shall be subject to abatement to the extent, in the amount, and for the period that the City's obligation to make Rental Payments under the Project Lease are subject to abatement. In the event of any such abatement, this Sublease shall continue in full force and effect, except as set forth in Sections 5 and 6 hereof.

**Section 3.6. Triple Net Sublease.** This Sublease is intended to be a triple net lease. The TJPA agrees that the rentals provided for herein shall be an absolute net return to the City free and clear of any expenses, charges or set-offs whatsoever.

**Section 3.7. Power and Authority.** The TJPA represents and warrants to the City that the TJPA has the full power and authority to enter into, to execute and deliver this

Sublease, and to perform all of its duties and obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Sublease, and the Property is zoned for use for governmental related facilities. The City represents and warrants to the TJPA that the City has the full power and authority to enter into, to execute and deliver this Sublease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution and delivery of this Sublease.

**Section 3.8. Grant of Security Interest.** The TJPA hereby grants to the City, as collateral security for the prompt and complete payment or performance in full when due of all Rental Payments, a security interest and continuing lien on all of TJPA's right, title and interest in, to and under all of the following property described in clauses (a) through (d) of this Section 2, in each case whether now or hereafter existing or in TJPA now has or hereafter acquires an interest and wherever the same may be located:

- a. all Pledged Revenues;
- b. all accounts, general intangibles and contract or other rights to receive Pledged Revenues;
- c. the TIFIA Collateral Agency Agreement, including all of TJPA's rights and interests to and in the funds, money and securities held thereunder (excluding amounts used to pay fees of the TIFIA Lender and TIFIA Collateral Agent); and
- d. to the extent not otherwise included above, all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

**Section 4. Affirmative Covenants of the City and the TJPA.** The City and the TJPA are entering into this Sublease in consideration of, among other things, the following covenants:

**Section 4.1 Replacement, Maintenance and Repairs.** The TJPA shall, at its own expense, during the Sublease Term, maintain each Component, or cause the same to be maintained, in good order, condition and repair and shall repair or replace any Component which is destroyed, damaged or taken to such an extent that there is substantial interference with the use and possession of such Component by the TJPA which would result in an abatement of Rental Payments or any portion thereof pursuant to Section 3.5 hereof, unless the TJPA elects not to repair or replace such Component in accordance with clause (ii) of the following sentence. In the event of damage, destruction or taking which results in an abatement of Rental Payments or any portion thereof pursuant to Section 3.5 hereof, the TJPA shall be required either to (i) apply sufficient funds from the insurance proceeds (including self-insurance), condemnation award and other legally available funds, if any, to the replacement or repair of such Component which has been damaged, destroyed or taken, or (ii) apply sufficient funds from the insurance proceeds (including self-insurance), condemnation award and other legally available funds, if any, in the manner that will enable to City to comply with its obligations under Section 4.1 of the Project Lease.

The TJPA shall provide or cause to be provided all security service, custodial service, janitorial service and other services necessary for the proper upkeep and maintenance of each Component. It is understood and agreed that in consideration of the payment by the TJPA of the Rental Payments herein provided for, the TJPA is entitled to possession of each Component and the City shall have no obligation to incur any expense of any kind or character

in connection with the management, operation or maintenance of such Component during the Sublease Term with respect to such Component. The City shall not be required at any time to make any improvements, alterations, changes, additions, repairs or replacements of any nature whatsoever in or to any Component. The TJPA hereby expressly waives the right to make repairs or to perform maintenance of any Component at the expense of the City and (to the extent permitted by law) waives the benefit of Sections 1932, 1941 and 1942 of the California Civil Code relating thereto. The TJPA shall keep each Component free and clear of all liens, charges and encumbrances other than encumbrances of this Sublease, the Project Lease, the Site Lease and such other encumbrances as are permitted under the Project Lease, subject only to the provisions of Section 4.2 hereof.

**Section 4.2. Taxes, Other Governmental Charges and Utility Charges.** The City and the TJPA contemplate that each Component will be used for a governmental or proprietary purpose of the TJPA and, therefore, that each Component will be exempt from all taxes presently assessed and levied with respect to such Component. Nevertheless, the TJPA hereby agrees to pay during the Sublease Term with respect to each Component as the same respectively become due, all taxes, utility charges and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to each such Component; provided, however, that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, the TJPA shall be obligated to pay only such installments as are accrued during such time as this Sublease is in effect with respect to such Component; provided, further, that the TJPA may contest in good faith the validity or application of any tax, utility charge or governmental charge in any reasonable manner which does not adversely affect the right, title and interest of the TJPA or the City in and to any Component or its rights or interests under this Sublease or subject any portion of any Component to loss or forfeiture. Any such taxes or charges shall constitute Additional Rental under Section 3.1(d) hereof and shall be payable directly to the entity assessing such taxes or charges.

**Section 4.3. Insurance.** The TJPA shall secure and maintain or cause to be secured and maintained at all times with insurers of recognized responsibility or through a program of self-insurance to the extent specifically permitted in this Section 4.3, all coverage on the Property required by this Section 4.3. Such insurance shall consist of:

a. A policy or policies of insurance against loss or damage to any Component known as "all risk" including earthquake. Such insurance shall be maintained with respect to the Property at any time in an amount equal to the lesser of (i) the full replacement value of the Property, and (ii) the Maximum Principal Amount. The term "full replacement value" as used herein shall mean the cost of repair or replacement of the affected Component, without deduction for depreciation. Such insurance may at any time include a deductible clause providing for a deductible not to exceed \$1,000,000 for all losses in any year; provided, however, that the TJPA's obligations under this clause (a) may be satisfied by self-insurance satisfactory to the City; provided further, however, that if the TJPA and the City determine that earthquake coverage is not available on commercially reasonable terms, then earthquake insurance on the Property or any component thereof shall not be required by this clause (a);

b. Comprehensive general liability insurance against damages occasioned by reason of the construction of improvements to, or operation of, the Property. The policy or policies will provide coverage in the following minimum amount: \$5,000,000 combined single limit for bodily and personal injury, death and property

damage per occurrence. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the TJPA. Such policies will name the TJPA as an insured party, and will name the City and such other persons as shall be instructed by the City as additional insured parties;

c. Rental interruption insurance to cover loss, total or partial, of the use of any Component as a result of any of the hazards covered by the "all risk" insurance required to be secured and maintained pursuant to clause (a) of this Section 4.3, in an amount sufficient at all times to pay the total rent payable under this Sublease with respect to such Component for a period adequate to cover the period of repair or replacement. Such policy shall provide that the amount payable thereunder shall not be less than an amount equal to two year's Maximum Base Rental for all of the particular Components to which such insurance applies; and

d. A CLTA policy or policies of title insurance for all Components in an amount not less than the such amount as is required of the CLTA policy or policies required under Section 4.3 of the Project Lease. Such policy or policies of title insurance shall show title to the particular Component covered by such policy in the name of the TJPA, subject to the Site Lease, the Project Lease, the Sublease and such other encumbrances as will not, in the reasonable opinion of the TJPA, materially affect the use, occupancy and possession of the Component and will not result in the abatement of Rental Payments payable by the TJPA hereunder with respect to such Component.

All policies or certificates issued by the respective insurers for insurance shall provide that such policies or certificates shall not be cancelled or materially changed without at least 30 days' prior written notice to the City and such other persons as shall be instructed by the City. A certificate of an Authorized Representative stating whether all policies or self-insurance required by this Section 4.3 have been obtained and are in full force and effect shall be deposited with the City and such other persons as shall be instructed by the City by the TJPA on the Closing Date and on or before each anniversary of the Closing Date.

All policies or certificates of insurance provided for herein (other than title insurance policies) shall name the TJPA as a named insured, and the City or such other persons as shall be instructed by the City as loss payee. All proceeds of insurance maintained under clauses (a), (c) and (d) of this Section 4.3 shall be deposited with the City or such other persons as shall be instructed by the City for application pursuant to the provisions of the Trust Agreement. All proceeds of insurance maintained under clause (b) of this Section 4.3 shall be deposited with the TJPA.

Notwithstanding the generality of the foregoing, except as to the coverage required under clause (c) of this Section 4.3, the TJPA shall not be required to maintain or cause to be maintained more insurance than is specifically referred to above or any policies of insurance other than standard policies of insurance with standard deductibles offered by reputable insurers at a reasonable cost on the open market.

Notwithstanding anything herein to the contrary, the TJPA has the right to adopt alternative risk management programs to insure against any of the risks required to be insured against under this Sublease, including a program of self-insurance (other than for rental interruption insurance pursuant to clause (c) and title insurance pursuant to subsection (d)), in whole or in part; provided that (i) any such alternative risk

management program has been approved as reasonable and appropriate risk management by the Risk Manager and the City, and (ii) any reserves set aside for such program will be certified at least annually on each June 15, commencing June 15, 2017, as to their adequacy by the Risk Manager in a certificate delivered to the City and such other persons as shall be instructed by the City. The City will not be responsible for the adequacy, sufficiency or coverage of the insurance or self-insurance required or allowed by this Section 4.3.

**Section 4.4. Liens.** The TJPA will promptly pay or cause to be paid all sums of money that may become due for any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for, in, upon or about any Component and which may be secured by any mechanic's, materialman's or other lien against such Component, or the interest of the Trustee or the City therein, and will cause each such lien to be fully discharged and released; except, that the TJPA, or the City (a) may contest any such claim or lien without payment thereof so long as such non-payment and contest stays execution or enforcement of the lien, but if such lien is reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not stayed, or if stayed and the stay thereafter expires, then and in any such event the TJPA will forthwith pay and discharge such judgment or lien, or (b) delay payment without contest so long as and to the extent that such delay will not result in the imposition of any penalty or forfeiture. Additionally, the City and the TJPA will not create or suffer to be created any lien, charge or encumbrance upon the Property, or upon any real or personal property essential to the operation of the Property, except encumbrances of this Sublease, the Project Lease, the Site Lease and such other encumbrances as are permitted under the Project Lease. The City and the TJPA will not sell or otherwise dispose of the Property or any other property essential to the proper operation of the Property.

**Section 4.5. Laws and Ordinances.** The TJPA agrees to observe and comply with all rules, regulations and laws applicable to the TJPA with respect to the Property and the operation thereof. The cost, if any, of such observance and compliance shall be borne by the TJPA, and the City shall not be liable therefor. The TJPA agrees further to place, keep, use, maintain and operate all Property in such a manner and condition as will provide for the safety of its agents, employees, invitees, subtenants, licensees and the public.

**Section 4.6. Performance of City's Duties and Responsibilities.** The TJPA and the City agree that any and all administrative or ministerial actions or determinations that the City is required to do or make pursuant to this Sublease may be performed by the TJPA on behalf of the City.

## **Section 5. Application of Insurance Proceeds .**

**Section 5.1. General.** Proceeds of insurance received in respect of destruction of or damage to any portion of any Component by fire, earthquake or other casualty or event shall be paid to or upon the order of the City for application in accordance with the provisions of the Project Lease, unless the TJPA elects to apply such proceeds to the repair or replacement of the portion of any Component which has been damaged or destroyed, whereupon if there has been an abatement of Rental Payments pursuant to Section 3.5 hereof, then Rental Payments without any abatement shall again begin to accrue with respect thereto upon repair or replacement of such portion of such Component.

**Section 5.2. Title Insurance.** Proceeds of title insurance received with respect to any Component shall be paid to or upon the order of the City for application in accordance with the provisions of the Project Lease.

**Section 6. Eminent Domain.**

**Section 6.1 Total Condemnation.** If any Component, or so much thereof as to render the remainder of such Component unusable for the TJPA's purposes under this Sublease, shall be taken under the power of eminent domain, then if, and only if, the Site Lease and the Project Lease are terminated with respect to such Component, this Sublease shall terminate with respect to such Component as of the day possession shall be so taken or as of the date of entry of the interlocutory judgment, and Base Rental with respect to such Component will be abated. Notwithstanding the foregoing, the City may substitute other real property or improvements for such Component and Base Rental will again begin to accrue with respect thereto upon substitution of the Component

**Section 6.2. Partial Condemnation.** If less than a substantial portion of any Component shall be taken under the power of eminent domain, and the remainder is useable for the TJPA's purposes, then this Sublease shall continue in full force and effect as to the remaining portions of such Component, subject only to such rental abatement as is required by Section 3.5 hereof. The TJPA and the City hereby waive the benefit of any law to the contrary.

**Section 6.3. Condemnation Awards.** Any award made in eminent domain proceedings for the taking shall be paid to or upon the order of the City for application in accordance with the provisions of the Project Lease unless the TJPA elects to apply such proceeds to the replacement of the condemned portion of any Component, whereupon if there has been an abatement of Rental Payments pursuant to Section 3.5 hereof, then Rental Payments without any abatement shall again begin to accrue with respect thereto upon replacement of Component.

**Section 7. Assignment and Sublease: Addition, Substitution or Release of Property.**

**Section 7.1. Assignment and Sublease.** Except as permitted by Section 7.2, the TJPA shall not mortgage, pledge, assign or transfer any interest of the TJPA in this Sublease by voluntary act or by operation of law, or otherwise; provided, however, that the TJPA may sublease all Property or any Component thereof, may grant concessions to others involving the use of the Property or any Component, whether such concessions purport to convey a leasehold interest or a license to use such Property or Component; provided, further, however, that such sublease or grant shall be subject to the terms hereof. Subject to the limitations set forth herein and in the Trust Agreement, the TJPA shall at all times remain liable for the performance of the covenants and conditions on its part to be performed under this Sublease, notwithstanding any subletting or granting of concessions which may be made. Nothing herein contained shall be construed to relieve the TJPA of its obligation to pay Base Rental and Additional Rental with respect to each Component as provided in this Sublease or to relieve the TJPA of any other obligations contained herein.

**Section 7.2. Addition, Substitution or Release of Property.** Notwithstanding Section 7.1 above, the City and the TJPA may release or substitute Property subject to this Sublease to the same extent such Property is released or substituted in the Site Lease and Project Lease.

**Section 8. Additions and Improvements; Removal.** The TJPA and any sublessee or licensee shall have the right during the Sublease Term to make any additions or improvements to any Component, to attach fixtures, structures or signs, and to affix any personal property to any Component, so long as the fair rental value of the Component is not thereby reduced. Title to all fixtures, equipment or personal property placed by the TJPA on any Component shall remain in the TJPA. Title to any personal property, improvements or fixtures placed on any Component by any sublessee or licensee of the TJPA shall be controlled by the sublease or license agreement between such sublessee or licensee and the TJPA, which sublease or license agreement shall not be inconsistent with this Sublease.

**Section 9. Right of Entry.** Representatives of the City shall, subject to reasonable security precautions, have the right to enter upon any Component during reasonable business hours (and in emergencies at all times) (a) to inspect the same, (b) for any purpose connected with the rights or obligations of the City under this Sublease, or (c) for all other lawful purposes.

**Section 10. Quiet Enjoyment.** The City covenants and agrees that the TJPA, upon keeping and performing the covenants and agreements herein contained, shall, at all times during the Sublease Term, peaceably and quietly have, hold, and enjoy the Property.

**Section 11. Indemnification and Hold Harmless Agreement.** To the extent permitted by law, the TJPA hereby agrees to indemnify and hold the City and its officers and employees harmless against any and all liabilities which might arise out of or are related to the Property, and the TJPA further agrees to defend the City and its directors in any action arising out of or related to the Property; provided that any such indemnification and obligation to defend shall not apply in the case of the negligence or willful misconduct of the City. The City and its officers, agents and employees, shall not be liable to the TJPA 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 any Component.

**Section 12. Events of Default and Remedies.**

**Section 12.1. Default by TJPA.** If the TJPA shall fail to pay to the City any Base Rental with respect to any Component as and when the same shall become due and payable, or shall breach any other terms, covenants or conditions contained herein and shall fail to remedy any such breach with all reasonable dispatch within a period of 60 days after written notice thereof from the City, or its assignee, to the TJPA, or, if such breach cannot be remedied within such 60-day period, shall fail to institute corrective action within such 60-day period and diligently pursue the same to completion, then and in any such event the TJPA shall be deemed to be in default hereunder.

**Section 12.2. Remedies on Default by TJPA.** Upon a failure or breach as described in Section 12.1, the City will have the right, without any further demand or notice, to enforce all of its rights and remedies under this Sublease, including the right to recover Base Rental payments as they become due under this Sublease pursuant to Section 1951.4 of the California Civil Code by pursuing any remedy available in law or in equity, other than by terminating the Sublease or reentering and reletting the Property or any Component thereof, or except as expressly provided herein. Notwithstanding any other provision of this Sublease, in no event will the City have the right to accelerate the payment of any Base Rental hereunder.



Each and every remedy of the City hereunder is cumulative and the exercise of one remedy shall not impair the right of the City to any or all other remedies. If any statute or rule of law validly shall limit the remedies given to the City , the City nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

**Section 12.3. Default by City .** The failure of the City to observe and perform any covenants, agreements or conditions on its part in this Sublease contained, including under Section 10 hereof, if such failure shall have continued for a period of 60 days after written notice thereof, specifying such failure and requiring the same to be remedied, shall have been given to the City , by the TJPA, shall constitute a City Event of Default under this Sublease; provided, however, that if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 60 day period, such failure shall not constitute a City Event of Default if corrective action is instituted by the City within such 60 day period and the City shall diligently and in good faith cure such failure in a reasonable period of time. In each and every case upon the occurrence and during the continuance of a City Event of Default by the City hereunder, the TJPA shall have all the rights and remedies permitted by law.

**Section 13. Waiver.** The waiver by the City or its assignee of any breach by the TJPA, and the waiver by the TJPA of any breach by the City of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

**Section 14. DISCLAIMER OF WARRANTIES.** NEITHER THE CITY NOR ANY PERSON ACTING ON ITS BEHALF HAS MADE OR MAKES ANY WARRANTY OR REPRESENTATION AS TO THE PAST, PRESENT OR FUTURE CONDITION OF THE PROPERTY NOT HEREIN EXPRESSED, AND THE TJPA HAS ENTERED INTO THIS SUBLEASE WITHOUT REPRESENTATIONS OR WARRANTIES WITH RESPECT THERETO ON THE PART OF THE CITY, ITS AGENTS, REPRESENTATIVES OR EMPLOYEES.

**Section 15. Notices.** All notices, requests, demands and other communications under this Sublease shall be in writing (unless otherwise specified herein) and shall be sufficiently given on the date of service if served personally upon the person to whom notice is to be given or on receipt if sent by telex or other telecommunication facility or courier or if mailed by registered or certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

if to the City:

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place,  
Room 316  
San Francisco, California 94102  
Attention: City Controller;

if to the TJPA:

Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, CA 94105  
Attention: Executive Director

or to such other address or addresses as any such person shall have designated to the others by notice given in accordance with the provisions of this Section 15.

**Section 16. Validity.** If anyone or more of the terms, provisions, promises, covenants or conditions of this Sublease shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction; then each and all of the remaining terms, provisions, promises, covenants and conditions of this Sublease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

If for any reason this Sublease will be held by a court of competent jurisdiction to be void, voidable or unenforceable by the City or by the TJPA, or if for any reason it is held by such a court that any of the covenants and agreements of the TJPA hereunder, including the covenant to pay Base Rental and Additional Rental hereunder, is unenforceable for the full term hereof, then and in such event for and in consideration of the right of the TJPA to possess, occupy and use the Property, which right in such event is hereby granted, this Sublease will thereupon become and will be deemed to be a sublease from year to year under which the annual Base Rental payments and Additional Rental payments herein specified will be paid by the TJPA.

**Section 17. Execution in Counterparts.** This Sublease may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same agreement.

**Section 18. Law Governing.** This Sublease is made in the State under the Constitution and laws of the State and is to be so construed.

**Section 19. Amendment.** This Sublease may be amended only by written agreement of the City and the TJPA.

**Section 20. Excess Payments.** Notwithstanding anything contained herein to the contrary, if for any reason, including but not limited to damage, destruction, condemnation, transfer, sale or disposition, the TJPA or the City receive payments, proceeds or awards with respect to any Component in excess of the amount necessary for the City to pay or provide in accordance with the Project Lease, such excess shall represent the TJPA's equity interest in such Component and shall be paid to the TJPA.

**Section 21. No Merger.** If the TJPA's estates under this Sublease or the Site Lease or any other lease relating to any Component shall at any time by any reason become vested in one owner, this Sublease and the estate created hereby shall not be destroyed or terminated by the doctrine of merger unless the TJPA so elects as evidenced by recording a written declaration so stating, and, unless and until the TJPA, so elects, the City and the TJPA shall continue to have and enjoy all of their respective rights and privileges as to the separate estates.

**Section 22. Further Assurances and Corrective Instruments.** The TJPA and the City 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 reasonably be required for correcting any inadequate or incorrect description of the Property or any Component leased hereby or intended to be so leased or for carrying out the express intention of the Sublease.

**Section 23. No Sovereign Immunity.** The TJPA is subject to civil and commercial law in respect of its obligations under this Sublease, , and the execution, delivery and performance of this Sublease constitutes a commercial act rather than a public or governmental

act; however, (i) the substantive provisions and procedural requirements of California civil law and commercial law which apply to the TJPA are, in many respects, different from the substantive provisions and procedural requirements which would apply to other persons under similar circumstances; (ii) California law limits the exercise of prejudgment and postjudgment remedies against public entities, including the TJPA; and (iii) a court may not strictly enforce certain covenants if it concludes that enforcement would be unreasonable under the circumstances. To the extent that the TJPA is entitled to any immunity from suit, it hereby waives such immunity to the fullest extent permitted by law.

**Section 24. Omitted.**

**Section 25. Limited Liability.** Nothing contained herein will be construed as creating any liability on any officer, director, or employee of the TJPA or the City, individually or personally, to perform any covenant, duty or obligation of any kind contained in this Sublease, and under no circumstances will any officer, director, or employee of the TJPA or the City be liable, individually or personally, for the payment of any fees, costs, indebtedness or expenses related to or arising from the Sublease or any documents related hereto.

**Section 26. City Requirements.** Additional requirements of the City with respect to this Sublease are attached as Exhibit C and are incorporated by reference herein, and, by executing this Sublease, the TJPA is agreeing to comply with those provisions.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Sublease as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO,  
as Lessor

By: \_\_\_\_\_  
Director of Public Finance

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

TRANSBAY JOINT POWERS AUTHORITY,  
as Lessee

By: \_\_\_\_\_  
Executive Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Legal Counsel

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

All that real property situated in the City and County of San Francisco, State of California, described as follows, and any improvements thereto:

[See attached pages]

**EXHIBIT B**

**BASE RENTAL PAYMENT SCHEDULE**

[See attached base rental schedules]

**EXHIBIT C**  
**CITY REQUIREMENTS**





RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:

TRANSBAY JOINT POWERS AUTHORITY  
201 Mission Street, Suite 2100  
San Francisco, California 94105  
ATTENTION: Executive Director

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(Space Above This Line For Recordors Use Only)

**SITE LEASE – TJPA PROPERTY**

**Dated as of [June 1, 2016]**

**by and between**

**TRANSBAY JOINT POWERS AUTHORITY,  
as Lessor**

**and**

---

**in its capacity as Trustee,  
as Lessee**

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NO DOCUMENTARY TRANSFER TAX DUE. This Site Lease – TJPA Property is recorded for the benefit of the Transbay Joint Powers Authority and the recording is exempt under Section 27383 of the California Government Code and Section 11928 of the California Revenue and Taxation Code.

## SITE LEASE – TJPA PROPERTY

THIS SITE LEASE – TJPA PROPERTY, dated as of [June] 1, 2016 (as amended, supplemented or modified from time to time, this “TJPA Site Lease”), is made between the TRANSBAY JOINT POWERS AUTHORITY, a joint exercise of powers agency duly created and existing under the Joint Exercise of Powers Act of the State of California, California Government Code Sections 6500 et seq. (the “TJPA”), as lessor, and the \_\_\_\_\_, a national banking association, solely in its capacity as Trustee (the “Trustee”) under the Trust Agreement – TJPA Property dated as of [June] 1, 2016 (as amended, supplemented or modified from time to time, the “TJPA Trust Agreement”) between the City and County of San Francisco (the “City”) and the Trustee, as lessee.

### WITNESSETH:

That in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

**Section 1. Definitions.** All capitalized terms used herein without definition shall have the meanings given to such terms in the Leaseback Lease – TJPA Property, dated as of the date hereof, by and between the City and the TJPA (the “TJPA Leaseback”).

“Additional Series” means the Series of Lease Revenue Certificates executed and delivered pursuant to a Supplemental Trust Agreement.

“Advance” means (i) with respect to a Credit Facility, each advance or loan (whether a revolving loan or term loan) of funds made under and subject to the provisions contained in such Credit Facility or the related Reimbursement Agreement, as applicable, (ii) with respect to a Direct Placement Revolving Credit Agreement, each advance or loan (whether a revolving loan or term loan) of funds made under and subject to the provisions contained in such Direct Placement Revolving Credit Agreement, and (iv) with respect to a Certificate Purchase Agreement, each purchase of Direct Placement Revolving Certificates thereunder.

“Certificate Purchase Agreement” means (i) the Certificate Purchase Agreement dated [June] 1, 2016 by and between the City and Wells Fargo Bank, National Association relating to City and County of San Francisco Lease Revenue Direct Placement Revolving Certificates of Participation, (ii) the Certificate Purchase Agreement dated [June] 1, 2016 by and between the City and the Metropolitan Transportation Commission relating to City and County of San Francisco Lease Revenue Direct Placement Revolving Certificates of Participation, and (iii) any other Certificate Purchase Agreement by and between the City and any other Direct Placement Purchaser.

“City Trust Agreement” means the Trust Agreement – City Property dated as of [June] 1, 2016 (as amended, supplemented or modified from time to time, the “City Trust Agreement”) between the City and County of San Francisco (the “City”) and the Trustee

“Commercial Paper Certificates” means, collectively, (a) any Tax Exempt Commercial Paper Certificates, (b) any Taxable Commercial Paper Certificates, and (c) the City and County of San Francisco Lease Revenue Commercial Paper Certificates.

“Component” means, as the context requires, any of the following or any property added thereto or substituted therefor pursuant to this TJPA Site Lease or the TJPA Leaseback, but does not include any property released pursuant to the TJPA Leaseback:

- (i) [to come – make reference to Exhibit A]

“Credit Facility” means (a)(i) with respect to any Series of Commercial Paper Certificates, any irrevocable letter of credit, a line or lines of credit, a non-cancellable insurance policy or other credit facility provided by an LC Bank to facilitate the payment of Commercial Paper Certificates of such Series and (b) any Alternate Credit Facility.

“Credit Provider” means any LC Bank or any Direct Placement Bank.

“Credit Provider Agreement” means any Reimbursement Agreement, any Direct Placement Revolving Credit Agreement or Certificate Purchase Agreement.

“Direct Placement Bank” means, as applicable, any provider obligated to make Advances to the City under a Direct Placement Revolving Credit Agreement evidenced by one or more Direct Placement Revolving Certificate(s) executed and delivered as a Series pursuant to the provisions of the Trust Agreements.

“Direct Placement Purchaser” means a purchaser of Direct Placement Revolving Certificates under a Certificate Purchase Agreement.

“Direct Placement Revolving Certificates” means, as applicable, (a) the [Series \_\_\_] Direct Placement Revolving Certificates of Participation, and (b) one or more other certificates of participation executed and delivered as an additional series pursuant to the provisions of the Trust Agreements evidencing Advances made (i) by a Direct Placement Bank to the City pursuant to a Direct Placement Revolving Credit Agreement, or (ii) by a Direct Placement Purchaser pursuant to a Certificate Purchase Agreement.

“Direct Placement Revolving Credit Agreement” means, as applicable, (a) the [Series \_\_\_] Direct Placement Revolving Credit Agreement, and (b) any other revolving credit agreement and related fee letter agreement entered into among the City and a Direct Placement Bank providing for Advances made by such Direct Placement Bank to the City evidenced by one or more Direct Placement Revolving Certificate(s) executed and delivered as an Additional Series pursuant to the provisions of the TJPA Trust Agreement.

“LC Bank” means any issuer of a Credit Facility for any Series of Commercial Paper Certificates.

“Lease Revenue Certificate” means any Commercial Paper Certificate, any Revolving Certificate, or any Direct Placement Revolving Certificate, and “Lease Revenue Certificates” means the Commercial Paper Certificates, the Revolving Certificates and the Direct Placement

Revolving Certificates. A Series of Lease Revenue Certificates consisting of Commercial Paper Certificates shall also include the related Revolving Certificates.

“Permitted Encumbrances” means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may, pursuant to Section 4.4 of the TJPA Sublease, permit to remain unpaid; (ii) the TJPA Sublease, as it may be amended from time to time; (iii) this TJPA Site Lease, as it may be amended from time to time; (iv) the TJPA Leaseback, dated as of [June] 1, 2016, by and between the City and TJPA pursuant to which the City subleases the Property to the TJPA for the duration of the TJPA Sublease; (v) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law or which the City may, pursuant to Section 4.4 of the TJPA Sublease, permit to remain unpaid; (vi) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions, all of a non-monetary nature, which exist of record as of the Closing Date, or with respect to any property that is added to or substituted for any Component, as of the date any such property is added to or substituted for any such Component, and, in each case, included in the exceptions and exclusions set forth in the title policies delivered pursuant to Section 4.3 of the TJPA Sublease; and (vii) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions, all of a non-monetary nature, established following the Closing Date, or with respect to any property that is added to or substituted for any Component, as of the date any such property is added to or substituted for any such Component, and to which the City and the Credit Providers consent in writing.

“Reimbursement Agreement” means, collectively, (a) the Reimbursement Agreement, (b) the [Series B] Reimbursement Agreement, (c) the [Series A] or [Series C] Reimbursement Agreement, and (d) any reimbursement agreement and related fee letter agreement entered into between the City and any LC Bank in connection with the delivery of any Credit Facility supporting the payment of an Additional Series of Commercial Paper Certificates.

“Revolving Certificate” means, collectively, (a) any [Series A] Revolving Certificate, (b) any [Series B] Revolving Certificate, (c) any [Series C] Revolving Certificate, and (d) any promissory note or promissory notes executed and delivered pursuant to the provisions of the Trust Agreements and/or a Reimbursement Agreement in evidence of Advances made by an LC Bank under a Reimbursement Agreement to support the payment of Commercial Paper Certificates of an Additional Series, having the terms and characteristics contained therein and executed and delivered in accordance therewith.

“Supplemental Trust Agreement” means any agreement amending or supplementing either of the Trust Agreements or another Supplemental Trust Agreement.

“Tax Exempt Commercial Paper Certificates” means any Series of Commercial Paper Certificates bearing interest that is excludable from the gross income of the Owners thereof for federal income tax purposes.

“Tax Exempt Direct Placement Revolving Certificates” means (a) [the Series D Tax Exempt Direct Placement Revolving Certificate], and (b) any Direct Placement Revolving Certificates executed and delivered as an Additional Series evidencing Advances for the purpose

of financing Project Costs of the Tax Exempt Projects and bearing interest which is excludable from the gross income of the Owners thereof for federal income tax purposes.

“Tax Exempt Lease Revenue Certificates” means the Tax Exempt Commercial Paper Certificates, and the Tax Exempt Direct Placement Revolving Certificates.

“Taxable Commercial Paper Certificates” means any Series of Commercial Paper Certificates bearing interest that is not intended to be excluded from the gross income of the Owners thereof for federal income tax purposes.

“Taxable Direct Placement Revolving Certificates” means (a) [the Series D Taxable Direct Placement Revolving Certificate and (b) any Direct Placement Revolving Certificates (other than Tax Exempt Direct Placement Revolving Certificates) executed and delivered as an Additional Series for the purpose of financing Project Costs of the Taxable Projects and bearing interest that is not intended to be excluded from the gross income of the Owners thereof for federal income tax purposes.

“Taxable Lease Revenue Certificates” means the Taxable Commercial Paper Certificates and the Taxable Direct Placement Revolving Certificates.

“TJPA Leaseback” means the Leaseback Lease – TJPA Property, dated as of the date hereof, between the City, as lessor, and the TJPA, as lessee, pursuant to which the City subleases the Property to the TJPA for the duration of the TJPA Sublease.

“TJPA Sublease” means the Sublease – TJPA Property, dated as of the date hereof, between the Trustee, as lessor, and the City, as lessee, pursuant to which the Trustee subleases the Property to the City.

“Trust Agreements” means the TJPA Trust Agreement and the City Trust Agreement.

**Section 2. Property.** The TJPA hereby leases to the Trustee the real property located in the City more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Property”), subject to the terms hereof and subject to any and all covenants, conditions, reservations, exceptions and other matters which are of record.

**Section 3. Ownership.** The TJPA represents and covenants that it is the sole owner of and holds fee title to the Property free and clear of any encumbrances other than Permitted Encumbrances, and has full power and authority to enter into this TJPA Site Lease and the TJPA Leaseback.

**Section 4. Term.** With respect to each Component, the term of this TJPA Site Lease shall begin on the date of recordation hereof and end on the earlier to occur of: (a) the date set forth with respect to such Component in Exhibit B to the TJPA Sublease; or (b) the date of termination of the TJPA Sublease with respect to such Component as provided in Section 2.2 thereof. Notwithstanding anything to the contrary contained herein, the term of this TJPA Site Lease with respect to each Component subject to this TJPA Site Lease at such time shall be extended such that the term of this TJPA Site Lease is coterminous with the term of the TJPA Sublease as extended pursuant to Section 2.2 of the TJPA Sublease.

**Section 5. Rent.** The Trustee shall pay to the TJPA an advance rent of \$1.00 as full consideration for this TJPA Site Lease over its term, the receipt of which is hereby acknowledged by the Trustee.

**Section 6. Purpose.** The Trustee shall use the Property solely for the purpose of subletting it to the City pursuant to the TJPA Sublease and for no other purpose whatsoever.

**Section 7. Assignment and Lease.** The Trustee shall not assign, mortgage, hypothecate or otherwise encumber this TJPA Site Lease or any rights hereunder or the leasehold created hereby by trust agreement, indenture or deed of trust or otherwise or sublet the Property or any Component without the written consent of the City (unless a default or event of default under the TJPA Sublease or the TJPA Trust Agreement shall have occurred and be continuing, in which case the consent of the City shall not be required), except that the Trustee expressly approves and consents to the TJPA Sublease, the TJPA Leaseback and the TJPA Trust Agreement, and the pledge of the Trustee's right, title and interest in and to this TJPA Site Lease and the TJPA Sublease, including the Base Rentals and other payments under the TJPA Sublease.

**Section 8. Right of Entry.** The TJPA reserves the right for any of its duly authorized representatives to enter upon the Property at any reasonable time.

**Section 9. Expiration.** The Trustee agrees, upon the expiration of this TJPA Site Lease, to quit and surrender the Property.

**Section 10. Quiet Enjoyment.** The Trustee at all times during the term of this TJPA Site Lease shall peaceably and quietly have, hold and enjoy all of the Property, subject to the TJPA Sublease and the TJPA Leaseback.

**Section 11. Taxes.** The TJPA covenants and agrees to pay any and all taxes and assessments levied or assessed upon the Property and improvements thereon.

**Section 12. Eminent Domain.** If the Property or any Component shall be taken under the power of eminent domain, the interest of the Trustee shall be recognized and is hereby determined to be the aggregate amount of unpaid Base Rental and Additional Rental with respect to the Property or Component under the TJPA Sublease through the remainder of its term (excluding any contingent or potential liabilities), and such proceeds shall be paid to the Trustee, in accordance with the terms of the TJPA Sublease and the TJPA Trust Agreement.

**Section 13. Default.** In the event that the Trustee or its assignee shall be in default in the performance of any obligation on its part to be performed under the terms of this TJPA Site Lease, the TJPA may exercise any and all remedies granted by law, except that no merger of this TJPA Site Lease and of the TJPA Leaseback shall be deemed to occur as a result thereof; provided, however, that the TJPA shall have no power to terminate this TJPA Site Lease by reason of any default on the part of the Trustee or its assignee if such termination would prejudice the exercise of the remedies provided the Trustee in Section 12 of the TJPA Sublease. So long as any such assignee of the Trustee or any successor in interest to the Trustee shall duly perform the terms and conditions of this TJPA Site Lease, such assignee shall be deemed to be and shall become the tenant of the TJPA hereunder and shall be entitled to all of the rights and privileges granted under any such assignment.

In furtherance of the foregoing, the TJPA and the Trustee agree that: (i) the TJPA will simultaneously mail to each Credit Provider a copy of any notice given by the TJPA to the Trustee; (ii) prior to taking any action upon a default by the Trustee or its assignee in the performance of any obligation under the terms of this TJPA Site Lease, the TJPA shall provide written notice thereof to each Credit Provider, and thereupon such Credit Provider shall have the right, but not the obligation, to cure any such default. In that connection, the TJPA will not take action to effect a termination of this TJPA Site Lease or to re-enter or take possession of the Property or any Component as a consequence of such default except upon the prior written direction of 100% of the Credit Providers. Furthermore, if this TJPA Site Lease shall be rejected or disaffirmed pursuant to any bankruptcy law or other law affecting creditors' rights or if this TJPA Site Lease is terminated for any other reason whatsoever, the TJPA will use its best efforts to enter into a new lease of the Property at the request of the Required Credit Providers, for the remainder of the term of this TJPA Site Lease, effective as of the date of such rejection or disaffirmance or termination. So long as (x) any Credit Facility facilitating a Series of Commercial Paper Certificates is in effect or there shall remain outstanding any obligations to an LC Bank in respect of payments made under any Credit Facility, (y) any Direct Placement Revolving Credit Agreement is in effect or there shall remain outstanding any obligations to a Direct Placement Bank in respect of payments made under any Direct Placement Revolving Credit Agreement, or (z) any Certificate Purchase Agreement is in effect or there shall remain outstanding any Lease Revenue Certificate purchased thereunder, (i) the TJPA will not accept a voluntary surrender of this TJPA Site Lease and (ii) this TJPA Site Lease shall not be modified in any material respect without, in each case, the prior written consent of 100% of the Credit Providers.

**Section 14. Notices.** All notices, requests, demands or other communications under this TJPA Site Lease by any person shall be in writing and shall be sufficiently given on the date of service if served personally upon the person to whom notice is to be given or on receipt if sent by facsimile transmission or electronic facility or courier or if mailed by registered or certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

City: Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, California 94105  
Attention: Executive Director

Trustee: [to come]

or to such other address or addresses as any such person shall have designated to the other by notice given in accordance with the provisions of this Section 14.

Copies of any such notices, requests, demands or other communications under this TJPA Site Lease given by either the TJPA or the Trustee shall be provided to each Credit Provider as set forth in the applicable Credit Provider Agreement, or to such other address or addresses as each Credit Provider shall have designated to the TJPA and the Trustee by notice given in accordance with the provisions of this Section 14.

**Section 15. Partial Invalidity.** If any one or more of the terms, provisions, promises, covenants or conditions of this TJPA Site Lease shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this TJPA Site Lease shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

**Section 16. Governing Law; Venue.** This TJPA Site Lease is made in the State under the Constitution and laws of the State and is to be so construed. If any party to this TJPA Site Lease initiates any legal or equitable action to enforce the terms of this TJPA Site Lease, to declare the rights of the parties under this TJPA Site Lease or which relates to this TJPA Site Lease in any manner, each such party agrees that the place of making and for performance of this TJPA Site Lease is the City and County of San Francisco, State of California, and the proper venue for any such action is any court of competent jurisdiction.

**Section 17. Amendments.** This TJPA Site Lease may be amended only in accordance with and as permitted by the terms of Section 8.02 of the TJPA Trust Agreement.

**Section 18. Execution in Counterparts.** This TJPA Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

**Section 19. No Merger.** If both the TJPA's and the Trustee's estates under this TJPA Site Lease, the TJPA Sublease or the TJPA Leaseback or any other lease relating to any Property or any portion thereof shall at any time by any reason become vested in one owner, this TJPA Site Lease and the estate created hereby shall not be destroyed or terminated by the doctrine of merger unless the TJPA so elects as evidenced by recording a written declaration so stating, and, unless and until the TJPA so elects, the TJPA and the Trustee shall continue to have and enjoy all of their respective rights and privileges as to the separate estates.

**Section 20. Third Party Beneficiaries.** Each Credit Provider shall be a third party beneficiary of this TJPA Site Lease with the power to enforce the same until the later of (i) the date the respective Credit Facility or Direct Placement Revolving Credit Agreement has terminated and been surrendered to such Credit Provider for cancellation and (ii) the date all amounts payable under the respective Credit Provider Agreement and Revolving Certificates or Direct Placement Revolving Certificate, as applicable, have been satisfied in full.

**Section 21. [TJPA Requirements.** Additional requirements of the TJPA with respect to this TJPA Site Lease are attached as Exhibit B and are incorporated by reference herein, and, by executing this TJPA Site Lease, the Trustee is agreeing to comply with those provisions.]



IN WITNESS WHEREOF, the parties have executed this TJPA Site Lease as of the date first above written.

TRANSBAY JOINT POWERS AUTHORITY,  
as Lessor

By: \_\_\_\_\_  
Executive Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Legal Counsel

\_\_\_\_\_, as  
Trustee and Lessee

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

All that real property situated in the City and County of San Francisco, State of California, described as follows, and any improvements thereto:

[See attached pages]

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CERTIFICATE PURCHASE AGREEMENT

dated [June \_\_, 2016]

by and between

CITY AND COUNTY OF SAN FRANCISCO

AND

WELLS FARGO BANK, NATIONAL ASSOCIATION

relating to

CITY AND COUNTY OF SAN FRANCISCO  
LEASE REVENUE DIRECT PLACEMENT  
REVOLVING CERTIFICATES OF PARTICIPATION, SERIES A

AND

CITY AND COUNTY OF SAN FRANCISCO  
LEASE REVENUE DIRECT PLACEMENT  
REVOLVING CERTIFICATES OF PARTICIPATION, SERIES A (TAXABLE)

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## CERTIFICATE PURCHASE AGREEMENT

[June \_\_, 2016]

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 316  
San Francisco, California 94102  
Attention: City Controller

Ladies and Gentlemen:

The undersigned Wells Fargo Bank, National Association (the “*Bank*”) offers to enter into this Certificate Purchase Agreement (as amended, supplemented or otherwise modified from time to time, the “*Agreement*”) with the City and County of San Francisco (the “*City*”), for the purchase by the Bank and sale by the City of the Certificates specified below. This offer is made subject to the City’s written acceptance on or before 5:00 p.m., San Francisco, California time, on the date first written above, and upon such acceptance this Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the City and the Bank.

### ARTICLE I

#### DEFINITIONS

*Section 1.1. Defined Terms.* Capitalized terms not otherwise defined herein shall have the same meanings as are set forth in the Trust Agreement (as defined herein). In addition to the terms defined elsewhere in this Agreement, the following terms shall have the indicated meanings:

“*1933 Act*” means the Securities Act of 1933, as the same shall from time to time be supplemented or amended.

“*Additional Rental*” shall have the meaning set forth in the Sublease.

“*Affiliate*” means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

*"Alternate Rate"* means:

(A) with respect to Tax-Exempt Certificates, a fluctuating rate of interest per annum (rounded upward to the fifth decimal place) determined daily, equal to the Prime Rate *plus* the Tax-Exempt Applicable Spread; and

(B) with respect to Taxable Certificates, a fluctuating rate of interest per annum (rounded upward to the fifth decimal place) determined daily, equal to the Prime Rate *plus* the Taxable Applicable Spread; and

*provided*, that subject to Section 3.5 hereof, at no time shall the Alternate Rate exceed the Maximum Rate.

*"Amortization End Date"* means the earliest to occur of (a) the fifth (5th) anniversary of the Term-Out Commencement Date and (b) the date on which all Certificates are redeemed, repaid, prepaid or cancelled in accordance with the terms hereof and in the Trust Agreement.

*"Amortization Period"* has the meaning set forth in Section 2.5(a) hereof.

*"Applicable Factor"* means 70%.

*"Approving Opinion"* means, with respect to any action relating to Tax-Exempt Certificates, an opinion delivered by Bond Counsel to the effect that such action (i) is permitted by this Agreement and the other Related Documents and (ii) will not adversely affect the exclusion of interest with respect to such Tax-Exempt Certificates from gross income of the Bank for purposes of federal income taxation.

*"Authorized Representative"* shall have the meaning set forth in the Trust Agreement.

*"Available Commitment"* means, on any date, an initial amount equal to \$160,000,000 and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to the principal amount of any Certificate purchased by the Bank pursuant to the terms hereof; (b) upward in an amount equal to the principal amount of any Certificate paid by the City pursuant to the terms of Section 2.5 hereof prior to the Termination Date; and (c) downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof; *provided, that*, after giving effect to any of the foregoing adjustments the Available Commitment shall never exceed \$160,000,000 at any one time.

*"Bank"* or *"Bank"* has the meaning specified in the introductory paragraph hereof.

*"Bank Agreement"* means any credit agreement, bond purchase agreement, liquidity agreement, direct purchase agreement or other agreement or instrument (or any amendment, supplement or modification thereto) entered into by the City with any Person, directly or indirectly, or otherwise consented to by the City, under which any Person or Persons undertakes to purchase debt, make loans, extend credit or liquidity to the City in connection with any Lease Obligation Debt.

*"Bank Rate"* means a fluctuating interest rate per annum which, for each day, shall equal (i) for the period from and including the Term-Out Commencement Date to and including the one hundred eightieth (180th) day immediately succeeding the Term-Out Commencement Date, the Base Rate from time to time in effect and (ii) from the period from and after the one hundred eighty-first (181st) day immediately succeeding the Term-Out Commencement Date, the Base Rate from time to time in effect *plus* one percent (1.0%); *provided that* if an Event of Default has occurred and is continuing, the Bank Rate shall equal the Default Rate.

*"Base Rate"* means, for any day, a fluctuating rate of interest per annum equal to the greatest of (i) the Prime Rate in effect at such time *plus* one percent (1.0%), (ii) the Federal Funds Rate in effect at such time *plus* two percent (2.0%), and (iii) six percent (6.0%).

*"Base Rental"* shall mean the amounts payable of "Base Rental" as set forth in the Sublease.

*"Base Rental Period"* shall have the meaning set forth in the Trust Agreement.

*"Bond Counsel"* means the law firm of Jones Hall, A Professional Law Corporation, or any nationally recognized bond counsel selected by the City and acceptable to the Bank.

*"BSA"* has the meaning set forth in Section 8.11 hereof.

*"Business Day"* means any day (i) when banks are not required or authorized by law or executive order to be closed in San Francisco, California, New York, New York or the city in which the office of the Bank at which Requests for Purchase are to be honored is located, (ii) when the New York Stock Exchange is not required or authorized by law or executive order to be closed and (iii) with respect to all notices and determinations in connection with, and payments of principal and interest with respect to, any Certificate, any day that is a Business Day described in clauses (i) and (ii) and that is also a day for trading by and between banks in Dollar deposits in the London interbank market.

*"CAFR"* has the meaning set forth in Section 6.1(a)(i) hereof.

*"Certificate"* or *"Certificates"* has the meaning specified in Section 2.1(a) hereof.

*"Certificateholder"* or *"Holder"* means the Bank and each Bank Transferee or Non-Bank Transferee pursuant to Section 8.2 hereof so long as such Bank Transferee or Non-Bank Transferee is an owner of Certificates.

*"Change in Law"* means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation, Risk-Based Capital Guidelines, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; *provided that* notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, ruling,



guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities shall in each case be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"*Charter*" means The Charter of the City and County of San Francisco adopted November 7, 1995, and effective as of July 1, 1996, as amended and supplemented to date.

"*City*" means the City and County of San Francisco, California.

"*City Rating*" means the long-term unenhanced debt ratings assigned by each of Fitch, S&P and Moody's to any unenhanced Lease Obligation Debt of the City (without giving effect to any bond insurance or other credit enhancement).

"*Closing*" has the meaning specified in Section 2.2 hereof.

"*Closing Date*" means the date on which the Closing occurs.

"*Code*" means the Internal Revenue Code of 1986, as amended, and when reference is made to a particular section thereof, the applicable Treasury Regulations from time to time promulgated or proposed thereunder.

"*Commitment*" means the agreement of the Bank pursuant to Section 2.1 hereof to make purchases of Certificates under the terms hereof for the account of the City.

"*Commitment Expiration Date*" means [June \_\_, 2019], unless extended as provided herein.

"*Commitment Fee*" has the meaning set forth in Section 2.6(a) hereof.

"*Commitment Fee Rate*" has the meaning set forth in Section 2.6(a) hereof.

"*Components*" shall have the meaning set forth in the Sublease.

"*Computation Date*" means the second London Business Day preceding the first Business Day of each month:

"*Contingent Obligation*" means, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any indebtedness, leases, dividends, or other obligations ("*primary obligations*") of any other Person (the "*primary obligor*") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation, or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to

purchase property, securities, or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided, however*, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

“*Controlled Group*” means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the City, are treated as a single employer under Section 414 of the Code.

“*Credit Protection Provider*” means, collectively, (i) any party, including the Bank or any other Certificateholder, who issues a letter of credit or provides other credit protection with respect to the Certificates and (ii) any party that participates in any such credit protection or liquidity support.

“*Credit Provider*” shall have the meaning set forth in the Trust Agreement.

“*Debt*” shall mean, with respect to any Person, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person as lessee under capital leases; (c) all obligations of such Person to pay the deferred purchase price of property or services; (d) certificates of participation evidencing an undivided ownership interest in payments made by such Person as lessee under capital leases, as purchaser under an installment sale agreement or otherwise as an obligor in connection therewith; (e) all Guarantees by such Person of Debt of another Person; (f) the face amount of any letter of credit issued for the account of such Person and, without duplication, all drawings made and reimbursement obligations arising thereunder; (g) all Debt of a second Person secured by any lien on any property owned by such first Person, whether or not such Debt has been assumed; (h) all obligations of such Person to pay a specified purchase price for goods or services whether or not delivered or accepted, including but not limited to, take-or-pay or similar obligations; (i) all Contingent Obligations of such Person and (j) all obligations of such Person due and payable under Swap Contracts; *provided, however*, that Debt shall not include trade payables arising in the ordinary course of business; and *provided, further, however* that with respect to the City, Debt shall exclude conduit, enterprise and other Debt that have no claim on the General Fund of the City.

“*Default*” means any condition or event that constitutes an Event of Default or that, with the giving of notice or lapse of time or both, would constitute an Event of Default.

“*Default Rate*” means, for any day, a fluctuating rate per annum equal to the sum of the Base Rate in effect on such day *plus* three percent (3.00%).

"*Determination of Taxability*" means and shall be deemed to have occurred on the first to occur of the following:

(i) on the date when the City files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

(ii) on the date when the Certificateholder or any former Certificateholder notifies the City that it has received a written opinion by a nationally recognized firm of attorneys of substantial expertise on the subject of tax-exempt municipal finance to the effect that an Event of Taxability shall have occurred unless, within two hundred seventy (270) days after receipt by the City of such notification from the Certificateholder or any former Certificateholder, the City shall deliver to the Certificateholder and any former Certificateholder (A) the opinion of another nationally recognized firm of attorneys of substantial expertise on the subject of tax-exempt municipal finance that no Event of Taxability has occurred, or (B) a ruling or determination letter issued to or on behalf of the City by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the City shall be advised in writing by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time, including an employee subordinate to one of these officers who has been authorized to provide such advice) that, based upon filings of the City, or upon any review or audit of the City or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(iv) on the date when the City shall receive notice from the Certificateholder or any former Certificateholder that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Certificateholder or such former Certificateholder the interest with respect to any Tax-Exempt Certificate due to the occurrence of an Event of Taxability;

*provided, however*, no Determination of Taxability shall occur under subparagraph (iii) or (iv) hereunder unless the City has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; *provided further, however*, that upon demand from the Certificateholder or former Certificateholder, the City shall promptly reimburse such Certificateholder or former Certificateholder for any payments, including any taxes, interest,

penalties or other charges, such Certificateholder (or former Certificateholder) shall be obligated to make as a result of the Determination of Taxability.

*"Dollar"* and *"\$"* mean lawful money of the United States.

*"Environmental Regulation"* means any federal, state, or local statute, law, rule, regulation, ordinance, code, policy, or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, or judgment, relating to health, safety, or the environment or to Hazardous Materials, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601 et seq.; the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. § 3608 et. seq.; the California Superfund Statute, Cal. Health & Safety C. § 25300 et seq.; legislation promulgated pursuant to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (*"Proposition 65"*), Cal. Health & Safety C. § 25249.5 et seq.; Environmental Protection Agency regulations pertaining to asbestos, including 40 C.F.R. Part 61, Subpart M; and Occupational Safety and Health Administration regulations pertaining to asbestos, including 29 C.F.R. § 1910.1001 and 1926.58.

*"ERISA"* means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

*"Event of Default"* with respect to this Agreement has the meaning set forth in Section 7.1 of this Agreement and, with respect to any Related Document, has the meaning assigned therein.

*"Event of Taxability"* means a (i) change in Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the City, or the failure to take any action by the City, or the making by the City of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of the Certificates) which has the effect of causing interest paid or payable with respect to any Tax-Exempt Certificate to become includable, in whole or in part, in the gross income of the Certificateholder or any former Certificateholder for federal income tax purposes or (ii) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid or payable with respect to any Tax-Exempt Certificate to become includable, in whole or in part, in the gross income of the Certificateholder or any former Certificateholder for federal income tax purposes with respect to the Certificates.

*"Excess Interest Amount"* has the meaning set forth in Section 3.5 hereof.

*"Excluded Tax"* means, with respect to the Bank or any Certificateholder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Bank or such Certificateholder is organized or in which its principal office is located, and (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Bank is located.

*"Federal Funds Rate"* means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that: (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one-hundredth of one percent) charged to the Bank on such day on such transactions as determined by the Bank. Notwithstanding anything herein to the contrary, if the Federal Funds Rate as determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%) for purposes of this Agreement.

*"Fiscal Year"* means the twelve-month period commencing on July 1 of each year; *provided, however,* that the City may, from time to time, agree on a different twelve-month period as the Fiscal Year.

*"Fitch"* means Fitch, Inc., and its successors and assigns.

*"GAAP"* means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or any successor authority) that are applicable as of the date of determination, consistently applied.

*"General Fund"* has the meaning of the term "General Fund" as used in the Charter.

*"Governmental Authority"* means the government of the United States of America or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or European Central Bank), or any arbitrator, mediator or other Person with authority to bind a party at law.

*"Guarantee"* by any Person shall mean any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt of any other Person and, without limiting the

generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), (ii) entered into for the purpose of assuring in any other manner the obligee of such Debt of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (iii) with respect to any letter of credit issued for the account of such other Person or as to which such other Person is otherwise liable for reimbursement of drawings, *provided* that the term Guarantee shall not include (i) endorsements for collection or deposit in the ordinary course of business, or (ii) performance or completion guarantees. The term "Guarantee" used as a verb has a corresponding meaning.

*"Hazardous Materials"* means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contains dielectric fluid containing polychlorinated biphenyls, and radon gas; (b) any chemicals, materials, or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials" extremely hazardous wastes, "restricted wastes," "toxic substances," "toxic pollutants," "contaminants," "special wastes," or "pollutants," or words of similar import, under any applicable Environmental Regulation; and (c) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any governmental authority.

*"Indemnified Party"* has the meaning set forth in Section 3.2 hereof.

*"Indemnified Taxes"* means Taxes other than Excluded Taxes.

*"Initial Commitment Amount"* means \$160,000,000.

*"Interest Payment Date"* means as to any Certificate, the first Business Day of each month and the date of any payment or prepayment of principal of such Certificate.

*"Interest Period"* means the period commencing on and including the first Business Day of each month to but not including the first Business Day of the immediately succeeding month; *provided* that with respect to any Certificate executed and delivered or deemed executed and delivered on a date other than the first Business Day of a month, "Interest Period" shall mean the period commencing on and including the date of issuance (or deemed issuance) to be not including the first Business Day of the immediately succeeding month.

*"Law"* means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

*"Lease Obligation Debt"* means any Debt of the City, the payment of which is payable from and/or secured by lease revenue rental payments payable from the General Fund of the City.

*"LIBOR Rate"* means the rate of interest per annum determined by the Bank based on the rate for United States dollar deposits for delivery on the LIBOR Reset Date for a period equal to one month as reported on Reuters Screen LIBOR01 page (or any successor page) at approximately 11:00 a.m., London time, on each Computation Date (or if not so reported, then as determined by the Bank from another recognized source of interbank quotation). Notwithstanding anything in this Agreement to the contrary, if the LIBOR Rate determined as provided above would be less than zero percent (0.0%), then the LIBOR Rate shall be deemed to be zero percent (0.00%).

*"LIBOR Reset Date"* means the first Business Day of each month; *provided* that with respect to any Certificate executed and delivered or deemed executed and delivered on a date other than the first Business Day of a month, "LIBOR Reset Date" shall mean such date of issuance or deemed issuance.

*"Lien"* means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

*"Margin Rate Factor"* means the product of (a) one minus the Maximum Federal Corporate Tax Rate multiplied by (b) 1.53846. The effective date of any change in the Margin Rate Factor shall be the effective date of the decrease or increase (as applicable) in the Maximum Federal Corporate Tax Rate resulting in such change. As of the Closing Date, the Margin Rate Factor is 1.0.

*"Material City Debt"* shall mean any Debt of the City which is outstanding in a principal amount of \$25,000,000 or more.

*"Maximum Base Rental"* shall mean the amounts specified in the Sublease as Maximum Base Rental.

*"Maximum Federal Corporate Tax Rate"* means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect from time to time (or, if as a result of a change in the Code, the rate of income taxation imposed on corporations generally shall not be applicable to the Bank, the maximum statutory rate of federal income taxation which could apply to the Bank). As of the Closing Date, the Maximum Federal Corporate Tax Rate is 35%.

*"Maximum Rate"* means the lesser of (i) twelve percent (12%) per annum and (ii) the maximum rate of interest allowed by applicable law.

*"Minimum Required Rental Payment"* shall have the meaning set forth in the Sublease.

*"Minimum Supplemental Rental Payment"* shall have the meaning set forth in the Sublease.

*"Miscellaneous Taxes"* means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Related Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Related Document.

*"Moody's"* means Moody's Investors Service, Inc. and any successor rating agency.

*"Obligations"* means the obligations of the City under this Agreement to repay all the Certificates, together with interest thereon, pursuant to and in accordance with this Agreement and the Certificates, all fees, expenses and charges payable or reimbursable hereunder to the Bank (including, without limitation, any amounts to reimburse the Bank for any advances or expenditures by it under any of such documents) and all other payment obligations of the City to the Bank arising under or in relation to this Agreement or the other Related Documents, in each case whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired.

*"OFAC"* has the meaning set forth in Section 8.11 hereof.

*"Participant"* means any entity to which the Bank has granted a participation in the obligations of the Bank hereunder and of the City hereunder and under the Certificates.

*"Patriot Act"* has the meaning set forth in Section 8.11 hereof.

*"Permitted Encumbrances"* shall have the meaning set forth in the Trust Agreement.

*"Person"* means an individual, a corporation, a partnership, an association, a limited liability company, a partnership, a trust, or any other entity or organization, including a Governmental Authority.

*"Plan"* means, with respect to the City at any time, an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained, or has within the preceding five plan years been maintained, by a member of the Controlled Group for employees of a member of the Controlled Group of which the City is a part, (ii) is maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which a member of the Controlled Group of which the City is a part is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions.

*"Pledged Property"* has the meaning set forth in the Trust Agreement.



*"Prime Rate"* means on any day, the rate of interest per annum then most recently established by the Bank as its "prime rate." Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by the Bank to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and the Bank may make various business or other loans at rates of interest having no relationship to such rate. If the Bank ceases to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported. Notwithstanding anything herein to the contrary, if the Prime Rate determined as provided above would be less than zero percent (0.0%), then the Prime Rate shall be deemed to be zero percent (0.0%) for purposes of this Agreement.

*"Project Costs"* has the meaning set forth in the Trust Agreement.

*"Property"* shall have the meaning set forth in the Sublease.

*"Purchase"* means each purchase of a Certificate described in Section 2.3 hereof.

*"Purchase Date"* means each date on which a Purchase occurs.

*"Quarterly Payment Date"* means the first Business Day of each February, May, August and November.

*"Rating Agency"* means either of S&P, Fitch and/or Moody's, as context may require.

*"Reduction Fee"* means an amount equal to the product of (A) the Commitment Fee Rate in effect on the date of the permanent reduction of the Commitment pursuant to Section 2.7(a) hereof, (B) the difference between (x) the Initial Commitment Amount and (y) the sum of the Available Commitment after the reduction and the aggregate principal amount of the Certificates outstanding after the reduction and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to and including the first anniversary of the Closing Date, and the denominator of which is 360.

*"Related Documents"* means this Agreement, the Trust Agreement, the Site Lease, the Sublease, the Certificates and any exhibits, schedules, instruments or agreements relating thereto, as the same may be amended, modified or supplemented in accordance with their terms and the terms hereof.

*"Request for Purchase"* means the request for a purchase of a Certificate by the Bank, in the form of Exhibit A hereto.

*"Risk-Based Capital Guidelines"* means (a) the risk-based capital guidelines in effect in the United States of America, including transition rules, and (b) the corresponding capital

regulations promulgated by regulatory authorities outside the United States of America including transition rules, and any amendment to such regulations that are applicable to the Bank.

“*S&P*” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and any successor rating agency.

“*Site Lease*” means the Site Lease dated as of June 1, 2016, by and between the City and the Trustee, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

“*State*” means the State of California.

“*Sublease*” means the Sublease dated as of June 1, 2016, by and between the City and the Trustee, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

“*Swap Contract*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Taxable Applicable Spread*” means, initially 56 basis points (0.56%), which is subject to maintenance of the current City Rating. In the event of a change in the City Rating, the Taxable Applicable Spread shall equal the number of basis points set forth in the Level associated with the City Rating as set forth below:

	City Rating			Taxable Applicable Spread
	Moody's	S&P	Fitch	basis points (%)
Level I	Aa3 or above	AA- or above	AA- or above	56.0 bps (0.560%)
Level II	A1	A+	A+	63.5 bps (0.635%)
Level III	A2	A	A	73.5 bps (0.735%)
Level IV	A3	A-	A-	83.5 bps (0.835%)
Level V	Baa1 or below	BBB+ or below	BBB+ or below	113.5 bps (1.135%)

For the purpose of the foregoing, in the event (i) all three Rating Agencies provide a City Rating, the Taxable Applicable Spread shall be based on the lower of the two highest City Ratings, (ii) only two Rating Agencies provide a City Rating and there is a split City Rating (i.e., one of the Rating Agency's City Ratings is at a different level than the City Rating of the other Rating Agency), the Taxable Applicable Spread shall be based upon the lower City Rating and (iii) only one Rating Agency provides a City Rating, the Taxable Applicable Spread shall be based on such City Rating. Any change in the Taxable Applicable Spread resulting from a change in the City Rating shall be and become effective as of and on the date of the announcement of the change in the City Rating. References to the City Rating above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, including, without limitation, any recalibration of the City Rating in connection with the adoption of a "global" rating scale, each City Rating from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The City acknowledges that as of the Closing Date the Taxable Applicable Spread is that specified above for Level I.

"Taxable Certificate" has the meaning set forth in Section 2.1(a) hereof.

"Taxable Certificate Commitment" means, on any date, an initial amount equal to \$160,000,000 and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to any Certificate executed and delivered by the City under the Tax-Exempt Certificate Commitment and/or the Taxable Certificate Commitment, as applicable; (b) upward in an amount equal to the principal amount of any Certificate executed and delivered under the Tax-Exempt Certificate Commitment and/or the Taxable Certificate Commitment, as applicable, that is repaid or prepaid in the manner provided herein prior to the Termination Date; (c) downward in an amount equal to any reduction thereof effected pursuant to Section 2.7 hereof; and (d) downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof; *provided*, that, after giving effect to any of the foregoing adjustments the Taxable Certificate Commitment shall never exceed \$160,000,000 at any one time.

“*Taxable Date*” means the date on which interest with respect to any Tax-Exempt Certificate is first includable in gross income of the Certificateholder (including, without limitation, any previous Certificateholder) thereof as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

“*Taxable Gross-Up Rate*” means, with respect to a Taxable Period, the product of (i) the interest rate on the Tax-Exempt Certificate during such period and (ii) 1.54.

“*Taxable LIBOR Rate*” means a floating rate per annum (rounded upward to the fifth decimal place) equal to the sum of the LIBOR Rate, *plus* the Taxable Applicable Spread; *provided, however*, that immediately and upon the occurrence of an Event of Default (and without any notice given with respect thereto) and during the continuation of such Event of Default, “*Taxable LIBOR Rate*” shall mean the Default Rate.

“*Taxable Period*” has the meaning set forth in Section 2.8(a) hereof.

“*Taxable Projects*” has the meaning set forth in the Trust Agreement.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

“*Tax-Exempt Applicable Spread*” means, initially 37.5 basis points (0.375%), which is subject to maintenance of the current City Rating. In the event of a change in the City Rating, the Tax-Exempt Applicable Spread shall equal the number of basis points set forth in the Level associated with the City Rating as set forth schedule below:

	City Rating			Tax-Exempt Applicable Spread basis points (%)
	Moody's	S&P	Fitch	
Level I	Aa3 or above	AA- or above	AA- or above	37.5 bps (0.375%)
Level II	A1	A+	A+	45.0 bps (0.450%)
Level III	A2	A	A	55.0 bps (0.550%)
Level IV	A3	A-	A-	65.0 bps (0.650%)
Level V	Baa1 or below	BBB+ or below	BBB+ or below	95.0 bps (0.950%)

For the purpose of the foregoing, in the event (i) all three Rating Agencies provide a City Rating, the Tax-Exempt Applicable Spread shall be based on the lower of the two highest City Ratings, (ii) only two Rating Agencies provide a City Rating and there is a split City Rating (i.e., one of the Rating Agency's City Ratings is at a different level than the City Rating of the other Rating

Agency), the Tax-Exempt Applicable Spread shall be based upon the lower City Rating and (iii) only one Rating Agency provides a City Rating, the Tax-Exempt Applicable Spread shall be based on such City Rating. Any change in the Tax-Exempt Applicable Spread resulting from a change in the City Rating shall be and become effective as of and on the date of the announcement of the change in the City Rating. References to the City Rating above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, including, without limitation, any recalibration of the City Rating in connection with the adoption of a "global" rating scale, each City Rating from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The City acknowledges that as of the Closing Date the Tax-Exempt Applicable Spread is that specified above for Level I.

"*Tax-Exempt Certificate*" has the meaning set forth in Section 2.1(a) hereof.

"*Tax-Exempt Certificate Commitment*" means, on any date, an initial amount equal to \$160,000,000 and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to any Certificate executed and delivered by the City under the Tax-Exempt Certificate Commitment and/or the Taxable Certificate Commitment, as applicable; (b) upward in an amount equal to the principal amount of any Certificate executed and delivered under the Tax-Exempt Certificate Commitment and/or the Taxable Certificate Commitment, as applicable, that is repaid or prepaid in the manner provided herein prior to the Termination Date; (c) downward in an amount equal to any reduction thereof effected pursuant to Section 2.7 hereof; and (d) downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof; *provided*, that, after giving effect to any of the foregoing adjustments the Tax-Exempt Certificate Commitment shall never exceed \$160,000,000 at any one time.

"*Tax-Exempt LIBOR Rate*" means a floating rate per annum (rounded upward to the fifth decimal place) that is equal to the product of (x) the sum of (a) the product of (i) LIBOR Rate, *multiplied* by (ii) the Applicable Factor, *plus* (b) the Tax-Exempt Applicable Spread, *multiplied* by (y) the Margin Rate Factor; *provided, however*, that immediately and upon the occurrence of an Event of Default (and without any notice given with respect thereto) and during the continuation of such Event of Default, "*Tax-Exempt LIBOR Rate*" shall mean the Default Rate.

"*Tax-Exempt Projects*" has the meaning set forth in the Trust Agreement.

"*Termination Date*" means the earliest of (i) the Commitment Expiration Date, as such date may be extended pursuant to Section 2.10 hereof, (ii) the date on which the Commitment and Available Commitment are terminated or reduced to zero in accordance with Section 2.7 hereof, and (iii) the date on which the Bank declares the Commitment and the Available Commitment to be terminated in accordance with Section 7.2 hereof.

"*Termination Fee*" means an amount equal to the product of (A) the Commitment Fee Rate in effect on the date of termination of the Commitment pursuant to Section 2.7(b) hereof, (B) the difference between (x) the Initial Commitment Amount and (y) the principal amount of

any permanent reduction to the Commitment pursuant to Section 2.7(a) hereof for which a Reduction Fee has been paid to the Bank and (C) a fraction, the numerator of which is equal to the number of days from and including the date of termination to and including the first anniversary of the Closing Date, and the denominator of which is 360.

“*Term-Out Commencement Date*” means the earlier of (i) the Commitment Expiration Date, as such date may be extended pursuant to Section 2.10 hereof, and (ii) the date on which the Bank declares the Commitment and the Available Commitment to be terminated in accordance with Section 7.2 hereof.

“*Trust Agreement*” means the Trust Agreement dated as of June 1, 2016, by and between the City and the Trustee, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

“*Trustee*” means U.S. Bank National Association, in its capacity as trustee under the Trust Agreement, and its successor or successors or any other Person which may at any time be substituted in its place pursuant to the Trust Agreement and the terms hereof.

*Section 1.2. Accounting Terms and Determinations.* Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP. If, after the Closing Date, there shall occur any change in GAAP from those used in the preparation of the financial statements referred to in Sections 6.1(i) hereof and such change shall result in a change in the method of calculation of any financial covenant, standard or term found in this Agreement including, without limitation, a recharacterization of operating leases to the effect that certain operating leases are to be treated as capital leases, either the City or the Bank may by notice to the other party hereto, require that the Bank and the City negotiate in good faith to amend such covenants, standards, and terms so as equitably to reflect such change in accounting principles, with the desired result being that the criteria for evaluating the financial condition of the City shall be the same as if such change had not been made. No delay by the City or the Bank in requiring such negotiation shall limit their right to so require such a negotiation at any time after such a change in accounting principles. Until any such covenant, standard, or term is amended in accordance with this Section 1.2, financial covenants shall be computed and determined in accordance with GAAP in effect prior to such change in accounting principles.

*Section 1.3. Interpretation.* The following rules shall apply to the construction of this Agreement unless the context requires otherwise: (i) the singular includes the plural, and the plural the singular; (ii) words importing any gender include the other gender; (iii) references to statutes are to be construed as including all statutory provisions consolidating and amending, and all regulations promulgated pursuant to, such statutes; (iv) references to “*writing*” include printing, photocopy, typing, lithography and other means of reproducing words in a tangible visible font; (v) the words “*including*,” “*includes*” and “*include*” shall be deemed to be followed by the words “*without limitation*”; (vi) references to the introductory paragraph, recitals, articles, sections (or clauses or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Agreement unless otherwise indicated; (vii) references to

agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent that such amendments and other modifications are permitted or not prohibited by the terms of this Agreement; (viii) section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose; (ix) references to Persons include their respective permitted successors and assigns; and (x) in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding." All references to "funds" herein shall include all accounts and subaccounts therein unless the context clearly requires otherwise.

*Section 1.4. Times of Day.* Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

*Section 1.5. Relation to Other Documents; Acknowledgment of Different Provisions of Related Documents; Incorporation by Reference.* (a) Nothing in this Agreement shall be deemed to amend, or relieve the City of its obligations under, any Related Document to which it is a party. Conversely, to the extent that the provisions of any Related Document allow the City to take certain actions, or not to take certain actions, with regard for example to permitted liens, transfers of assets, maintenance of financial ratios and similar matters, the City nevertheless shall be fully bound by the provisions of this Agreement.

(b) Except as provided in subsection (c) of this Section 1.5, all references to other documents shall be deemed to include all amendments, modifications and supplements thereto to the extent such amendment, modification or supplement is made in accordance with the provisions of such document and this Agreement.

## ARTICLE II

### SALE AND PURCHASE; CLOSING

*Section 2.1. Purchase and Sale of Certificates.* (a) From the Closing Date through the Termination Date, and upon and subject to the terms and conditions and on the basis of the representations, warranties and agreements contained herein, the Bank hereby agrees, when requested by the City pursuant to this Agreement, to purchase from the City from time to time (but in no event more than three (3) per calendar month), in an aggregate principal amount not to exceed the Available Commitment, and the City hereby agrees to sell and deliver to the Bank from time to time the "City and County of San Francisco Lease Revenue Direct Placement Revolving Certificates of Participation, Series A (Taxable)" executed and delivered from time to time, in accordance with the Trust Agreement and evidenced by a master certificate in the form attached as Exhibit C-2 to the Trust Agreement (the "*Taxable Certificates*"), and the "City and County of San Francisco Lease Revenue Direct Placement Revolving Certificates of Participation, Series A" executed and delivered from time to time in accordance with the Trust Agreement and evidenced by a master certificate in the form attached as Exhibit C-1 to the Trust Agreement (the "*Tax-Exempt Certificates*" and, together with the Tax-Exempt Certificates,

collectively herein the "*Certificates*"). The Taxable Certificates are being executed and delivered pursuant to the Trust Agreement for the purpose of financing the Project Costs of the Taxable Projects and the Tax-Exempt Certificates are being executed and delivered pursuant to the Trust Agreement for the purpose of financing the Projects Costs of the Tax-Exempt Projects. The Certificates represent undivided ownership interest in Base Rental required to be made by the City under the Sublease and are secured by a pledge of and first lien on the Pledged Property under the Trust Agreement.

(b) Pursuant to and subject to the terms of this Agreement, each Certificate shall be sold to the Bank at a purchase price equal to the principal amount of each Certificate with no accrued interest, and the Bank shall pay such purchase price to the City upon delivery of such Certificate to the Bank on the related Purchase Date and such Certificate shall be deemed to be executed and delivered to the Bank on such date.

(c) Each Certificate shall (i) be dated the date such Certificate is deemed to be executed and delivered to the Bank, (ii) be secured by the Pledged Property in the manner described in Section 2.1(a) hereof and the pledge clause immediately following the introductory "Whereas" clause of the Trust Agreement, (iii) mature on [\_\_\_\_\_, 20\_\_\_, as set forth in the Trust Agreement], with principal and interest to be paid as specified in this Agreement (iv) be in a minimum principal amount of \$5,000,000 or an integral multiple of \$250,000 in excess thereof. Interest with respect to the Certificates shall be calculated on the basis of a year of 360 days and actual days elapsed from the related Purchase Date.

*Section 2.2. Closing.* At such date and time as shall have been mutually agreed upon by the City and the Bank, the certificates, opinions and other documents required by Section 5.1 below shall be executed and delivered (all of the foregoing actions are herein referred to collectively as the "*Closing*"). Assuming the Closing is completed in accordance with the terms and conditions of this Agreement and the Trust Agreement then, subject to the provisions of this Agreement and the conditions set forth in Section 5.2 hereof, the Bank shall purchase each Certificate and pay the purchase price therefor specified in Section 2.1(b) hereof (and the City shall cause the execution of such Certificate and deliver such Certificate) at each Purchase.

*Section 2.3. Method of Purchase.* (a) Each purchase of a Certificate shall be made upon the City's irrevocable written notice to the Bank in the form of a Request for Purchase with blanks appropriately completed. Each Request for Purchase shall be signed by an Authorized Representative and shall specify: (1) the Purchase Date which shall be a Business Day and shall be at least three (3) Business Days after the date of the Request for Purchase; (2) the principal amount of the Certificate to be purchased, which together with all other Certificates then outstanding shall not exceed the Available Commitment as of the proposed Purchase Date; and (3) whether the requested Certificate shall be a Taxable Certificate and bear interest at the Taxable LIBOR Rate or shall be a Tax-Exempt Certificate and bear interest at a Tax-Exempt LIBOR Rate, as applicable. Each Request for Purchase must be received by the Bank not later than 10:00 a.m. three (3) Business Days immediately prior to the requested Purchase Date.

(b) Upon receipt of a Request for Purchase by the Bank, the Bank, subject to the terms and conditions of this Agreement, shall be required to make a purchase of a Certificate by 3:00



p.m. on the proposed Purchase Date for the account of the City in an amount equal to the amount of the requested purchase. Notwithstanding the foregoing, in the event such Request for Purchase is received by the Bank after 10:00 a.m. on the Business Day which is three (3) Business Days immediately prior to the day of the proposed Purchase, the Bank shall be required to make the related Purchase for a Certificate by 3:00 p.m. on the fourth Business Day after receipt of the related Request for Purchase.

(c) If, after examination, the Bank shall have determined that a Request for Purchase does not conform to the terms and conditions hereof, then the Bank shall use its best efforts to give notice to the City to the effect that documentation was not in accordance with the terms and conditions hereof and stating the reasons therefor. The City may attempt to correct any such nonconforming Request for Purchase, if, and to the extent that, the City is entitled (without regard to the provisions of this sentence) and able to do so. If the City fails to specify a type of Certificate in a Request for Purchase, then the applicable Certificates shall be made as a Certificate bearing interest at a Taxable LIBOR Rate.

*Section 2.4. Interest Rates.* (a) Prior to the Term-Out Commencement Date and except as otherwise provided in this Section 2.4, each Taxable Certificate shall bear interest at the Taxable LIBOR Rate and each Tax-Exempt Certificate shall bear interest at the Tax-Exempt LIBOR Rate.

(b) From and after the Term-Out Commencement Date and except as otherwise provided in this Section 2.4, each Certificate shall bear interest at the Bank Rate.

(c) From and after the occurrence of an Event of Default, each Certificate and any other amounts payable hereunder shall bear interest at the Default Rate.

(d) From and after a Taxable Date, each Tax-Exempt Certificate shall bear interest at the Taxable Gross-Up Rate.

(e) All computations of interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue with respect to the Certificates from and including the day on which Certificate was executed and delivered (or deemed executed and delivered), and shall not accrue with respect to such Certificate, or any portion thereof, for the day on which such Certificate or any principal portion is paid. Interest with respect to Certificates bearing interest at the Taxable LIBOR Rate or the Tax-Exempt LIBOR Rate, shall be determined by the Bank on each Computation Date and become effective on the immediately succeeding LIBOR Reset Date for the related Interest Period. Interest with respect to Certificates bearing interest at the Bank Rate or the Default Rate shall be determined and reset each day. Each determination by the Bank of an interest rate shall be conclusive and binding for all purposes, absent manifest error.

*Section 2.5. Payment of Interest and Principal.* (a) (i) Accrued but unpaid interest with respect to each Certificate shall be due and payable on each Interest Payment Date.

(ii) The principal amount of each outstanding Certificate is due and payable on the Term-Out Commencement Date; *provided* that if the Bank has not received the principal amount

of any such Certificate on such date, the City shall cause the principal amount of such Certificates to be redeemed in installments as to principal, commencing on the first Quarterly Payment Date following the Term-Out Commencement Date, and on each Quarterly Payment Date thereafter, with the final installment in an amount equal to the entire then-outstanding principal amount of such Certificates to be redeemed on the Amortization End Date (the period commencing on the Term-Out Commencement Date and ending on the Amortization End Date is herein referred to as the "*Amortization Period*"). Each quarterly installment shall be that amount of principal which will result in equal (as nearly as possible) aggregate quarterly installments over the Amortization Period; *provided, however*, that the unpaid amount of the Certificates during the Amortization Period shall be paid by the City in each year only to the extent of the then fair rental value with respect to the Components subject to the Sublease for such Base Rental Period, and to the extent not so repaid, the Certificates shall be paid during each subsequent Base Rental Period, to the extent owed, to the extent of the then fair rental value with respect to the Components subject to the Sublease for each such subsequent Base Rental Period, and the Certificates shall continue to be an obligation of the City pursuant to the Sublease.

(b) Subject to Section 2.9 hereof, the City may cause any Certificate to be prepaid, in whole or in part, on any Business Day provided at least three (3) Business Days' prior written notice is given by the City to the Bank. Each such notice shall specify the date and amount of such prepayment and the Certificates to be prepaid. Each such notice of optional prepayment shall be irrevocable and shall bind the City to cause such prepayment to be made in accordance with such notice. Any prepayment of Certificates shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. All prepayments of principal shall include accrued interest to the date of prepayment and all other amounts due and payable at such time pursuant to this Agreement.

(c) If the payment date for the principal of or interest with respect to a Certificate is a day other than a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended period of time shall be included in the computation of interest; *provided, however*, the payment of interest with respect to a Certificate on such extended date shall have the same force and effect as if made on the original payment date.

#### *Section 2.6. Fees.*

(a) *Commitment Fees.* The City agrees to pay to the Bank a nonrefundable annual commitment fee (the "*Commitment Fee*") initially accruing at a rate of 20 basis points (0.20%) per annum multiplied by the daily Available Commitment, which is subject to maintenance of the current City Rating. In the event of a change in the City Rating, the Commitment Fee shall be calculated based on the number of basis points set forth in the Level associated with the City Rating as set forth in the schedule (the "*Commitment Fee Rate*") below multiplied by the daily Available Commitment:

	City Rating			Commitment Fee Rate basis points (%)
	Moody's	S&P	Fitch	
Level I	Aa3 or above	AA- or above	AA- or above	20.0 bps (0.200%)
Level II	A1	A+	A+	22.5 bps (0.225%)
Level III	A2	A	A	27.5 bps (0.275%)
Level IV	A3	A-	A-	32.5 bps (0.325%)
Level V	Baa1 or below	BBB+ or below	BBB+ or below	57.5 bps (0.575%)

For the purpose of the foregoing, in the event (i) all three Rating Agencies provide a City Rating, the Commitment Fee Rate shall be based on the lower of the two highest City Ratings, (ii) only two Rating Agencies provide a City Rating and there is a split City Rating (i.e., one of the Rating Agency's City Ratings is at a different level than the City Rating of the other Rating Agency), the Commitment Fee Rate shall be based upon the lower City Rating and (iii) only one Rating Agency provides a City Rating, the Commitment Fee Rate shall be based on such City Rating. Any change in the Commitment Fee resulting from a change in the City Rating shall be and become effective as of and on the date of the announcement of the change in the City Rating. The Commitment Fee shall be payable quarterly in arrears on the first Business Day of each July, October, January and April of each calendar year (beginning on the first such date to occur after the Closing Date) and on the Commitment Expiration Date, or such earlier date on which the Commitment may be terminated in accordance with the terms of this Agreement. References to the City Rating above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such City Rating Agency, including, without limitation, any recalibration of the City Rating in connection with the adoption of a "global" rating scale, each City Rating from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. Upon the occurrence of and during the continuance of an Event of Default, the Commitment Fee Rate shall increase automatically to 1.00% per annum above the Commitment Fee Rate set forth in Level V, without prior notice to the City. The City acknowledges that as of the Closing Date the Commitment Fee Rate is that specified above for Level I.

(b) *Termination or Reduction Fee.* The City shall pay to the Bank a Reduction Fee or Termination Fee, as applicable, in connection with each permanent reduction or termination of the Available Commitment or Commitment pursuant to Section 2.7 hereof prior to the first anniversary of the Closing Date, in an amount equal to the Reduction Fee or Termination Fee, as applicable, payable on the date of such termination or each such reduction.

(c) *Amendment, Consent or Waiver Fee.* Upon each amendment hereof, consent or waiver hereunder or under any Related Document, the City shall pay or cause to be paid

attorneys' fees and expenses, if any, incurred by the Bank in processing such amendment, consent or waiver and a fee in a minimum amount of \$2,500.

(d) *Costs, Expenses and Taxes.* The City will promptly pay on demand: (i) the reasonable fees, costs and expenses of the Bank incurred in connection with the preparation, negotiation, execution and delivery of this Agreement, the Certificates and the other Related Documents, (ii) the reasonable fees and disbursements of Chapman and Cutler LLP, special counsel to the Bank, incurred in connection with the preparation, execution, filing and administration and delivery of this Agreement and the other Related Documents, (iii) the reasonable fees and disbursements of counsel or other reasonably required consultants to the Bank with respect to advising the Bank as to the rights and responsibilities under this Agreement and the other Related Documents after the occurrence of any Default or alleged Default hereunder, or an Event of Default, (iv) all costs and expenses, if any, in connection with any waiver or amendment of, or the giving of any approval or consent under, or any response thereto or the enforcement of this Agreement, the Related Documents and any other documents which may be delivered in connection herewith or therewith, including in each case the reasonable fees and disbursements of counsel to the Bank or other reasonably required consultants and (v) any amounts advanced by or on behalf of the Bank to the extent required to cure any Default, Event of Default or event of nonperformance hereunder or any Related Document, together with interest at the Default Rate. In addition, the City shall pay any and all stamp taxes, transfer taxes, documentary taxes, and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, and recording of this Agreement and the security contemplated by the Related Documents (other than taxes based on the net income of the Bank) and, to the extent permitted by Law, agrees to indemnify and hold the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying, or omission to pay, such taxes and fees, including interest and penalties thereon; *provided, however,* that the City may reasonably contest any such taxes or fees with the prior written consent of the Bank, which consent, if an Event of Default does not then exist, shall not be unreasonably withheld. In addition, the City agrees to pay, after the occurrence of a Default or an Event of Default, all costs and expenses (including reasonable attorneys' fees and costs of settlement) incurred by the Bank in enforcing any obligations or in collecting any payments due from the City hereunder by reason of such Default or Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any collection, insolvency, bankruptcy proceedings or other enforcement proceedings resulting therefrom.

(e) If the City shall fail to pay any amount payable under this Section 2.6 as and when due, each such unpaid amount shall bear interest for each day from and including the date it was due until paid in full at the applicable Default Rate. The obligations of the City under this Section 2.6 shall survive the termination of this Agreement.

*Section 2.7. Reduction and Termination.* (a) Subject to the provisions of Section 2.6(b) hereof, the Available Commitment shall be reduced from time to time as requested by the City within three (3) days of the City's written notice to the Bank requesting such reduction in the form of Exhibit C hereto; *provided,* that (i) each such reduction amount shall be in an amount equal to \$1,000,000 or an integral multiple thereof, and (ii) any reduction in the Available

Commitment shall not be effective until the Bank delivers to the City a notice in the form attached hereto as Exhibit D reflecting such reduction.

(b) Subject to the provisions of Section 2.6(b) hereof, the City may at any time and at its sole option terminate the Commitment upon three (3) Business Days' prior written notice to the Bank in the form of Exhibit C hereto. As a condition to any such termination, the City shall pay or cause to be paid all Obligations owed to the Bank.

*Section 2.8. Taxability.* (a) In the event a Taxable Date occurs, to the extent not paid to the Bank and each other Holder pursuant to Section 2.4(d) hereof, the City hereby agrees to cause to be paid to the Bank or the Holder of a Tax-Exempt Certificate on demand therefor (1) an amount equal to the difference between (A) the amount of interest that would have been paid to the Bank or the Holder of the Tax-Exempt Certificate, as applicable, with respect to any Tax-Exempt Certificate during the period for which interest with respect such Tax-Exempt Certificate is includable in the gross income of the Bank or the Holder of the Tax-Exempt Certificate, if such Tax-Exempt Certificate had borne interest at the Taxable Gross-Up Rate, beginning on the Taxable Date (the "*Taxable Period*"), and (B) the amount of interest actually paid to the Bank or the Holder of the Tax-Exempt Certificate, as applicable, during the Taxable Period, and (2) an amount equal to any interest, penalties or charges owed by the Bank or a Holder of the Tax-Exempt Certificate, as applicable, as a result of interest with respect to the Tax-Exempt Certificates becoming includable in the gross income of the Bank or such Holder of the Tax-Exempt Certificate, as applicable, together with any and all reasonable attorneys' fees, court costs, or other out-of-pocket costs incurred by the Bank or such Holder of the Tax-Exempt Certificate, as applicable, in connection therewith.

(b) The obligations of the City under this Section 2.8 shall survive the termination of the Commitment and this Agreement.

*Section 2.9. Funding Indemnity.* In the event the Bank shall incur any loss, cost, or expense (including, without limitation, any loss, cost, or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by the Bank to purchase or hold the Certificates or the relending or reinvesting of such deposits or other funds or amounts paid or prepaid to the Bank) as a result of any redemption or repayment of the Certificates on a date other than a LIBOR Reset Date for any reason, whether before or after default, and whether or not such payment is required by any provision of this Agreement or the Trust Agreement, then upon the demand of the Bank, the City shall pay to the Bank a redemption or repayment premium, as applicable, in such amount as will reimburse the Bank for such loss, cost, or expense. If the Bank requests such redemption or repayment premium, as applicable, it shall provide to the City a certificate setting forth the computation of the loss, cost, or expense giving rise to the request for such redemption or repayment premium, as applicable, in reasonable detail and such certificate shall be conclusive if reasonably determined. Without prejudice to the survival of any other agreement of the City hereunder, the agreements and obligations of the City contained in this Section shall survive the termination of this Agreement and the payment in full of the Certificates and the obligations of the City thereunder and hereunder.

*Section 2.10. Extension of Commitment Expiration Date.* The City may request an extension of the Commitment Expiration Date in writing in the form of Exhibit B hereto not more than one (1) year prior to the then current Commitment Expiration Date and not less than 120 days prior to the then current Commitment Expiration Date. The Bank will make reasonable efforts to respond to such request within sixty (60) days after receipt of all information necessary, in the Bank's judgment, to permit the Bank to make an informed credit decision. If the Bank fails to definitively respond to such request within such 60-day period, the Bank shall be deemed to have refused to grant the extension requested. The Bank may, in its sole and absolute discretion, decide to accept or reject any such proposed extension and no extension shall become effective unless the Bank shall have consented thereto in writing in the form of Exhibit E hereto or otherwise. The Bank's consent, if granted, shall be conditioned upon the preparation, execution and delivery of documentation in form and substance satisfactory to the Bank (which may include, but shall not be limited to the delivery of an Approving Opinion to the Bank).

### ARTICLE III

#### LIABILITY, INDEMNITY AND PAYMENT

*Section 3.1. Liability of the City.* The City and the Bank agree that the obligation of the City to pay the Obligations are contractual obligations of the City payable solely from the Pledged Property and shall not be affected by, and the Bank shall not be responsible for, among other things, (i) the validity, genuineness or enforceability of this Agreement, the Certificates or documents, notices or endorsements relating thereto (even if this Agreement or any documents, notices endorsements relating thereto should in fact prove to be in any and all respects invalid; fraudulent or forged), (ii) the use to which the amounts disbursed by the Bank may be put, or (iii) any other circumstances or happenings whatsoever, whether or not similar to any of the foregoing.

*Section 3.2. Indemnification by the City.* (a) The City, to the extent permitted by law, shall hereby indemnify and hold the Bank, and its directors, officers, employees and agents (the "Indemnified Parties") harmless from and against any and all claims, damages, losses, liabilities, costs or expenses which such Indemnified Parties may incur or which may be claimed against such Indemnified Parties by any person, as well as to the extent set forth in Section 6.1(w) hereof or by reason of or in connection with (i) the validity, sufficiency, enforceability or genuineness of any Related Document; (ii) the issuance or deemed issuance of any Certificate or the use of any proceeds of any Certificate; (iii) the execution, delivery and performance of this Agreement or any Related Document; or (iv) any Property; *provided, however*, that the City shall not be required to indemnify an Indemnified Party pursuant to this Section 3.2 for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of the Bank.

(b) To the extent not prohibited by applicable law, the City agrees to indemnify and hold the Bank harmless (on a net after-tax basis) from any present or future claim or liability for stamp, transfer, documentary, excise or other similar tax and any penalties or interest with respect thereto, which may be assessed, levied or collected by any jurisdiction in connection with

the execution, delivery and performance of, or any payment made under, this Agreement, the Certificates and the other Related Documents, or any amendment thereto.

*Section 3.3. Increased Costs.* (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, liquidity ratio, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Bank, any Credit Protection Provider or any Certificateholder;

(ii) subject the Bank, any Credit Protection Provider or any Certificateholder to any Taxes of any kind whatsoever with respect to this Agreement or the Certificate, or change the basis of taxation of payments to the Bank or such Certificateholder in respect thereof (except for Indemnified Taxes covered by Section 3.4 hereof and the imposition of, or any change in the rate of any Excluded Tax payable by the Bank or such Certificateholder); or

(iii) impose on the Bank, any Credit Protection Provider or any Certificateholder any other condition, cost or expense affecting this Agreement or the Certificates;

and the result of any of the foregoing shall be to increase the cost to the Bank, any Credit Protection Provider or such Certificateholder of owning the Certificates (or of maintaining its obligation to purchase the Certificates), or to reduce the amount of any sum received or receivable by the Bank, such Credit Protection Provider or such Certificateholder hereunder or under the Certificates (whether of principal, interest or any other amount) then, upon written request of the Bank, any Credit Protection Provider or such Certificateholder as set forth in subsection (c) below, the City shall promptly pay to the Bank, such Credit Protection Provider or such Certificateholder, as the case may be, such additional amount or amounts as will compensate the Bank or such Certificateholder, as the case may be, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Bank, any Credit Protection Provider or any Certificateholder determines that any Change in Law affecting the Bank, such Credit Protection Provider or such Certificateholder or the Bank's, such Credit Protection Provider's or such Certificateholder's parent or holding company, if any, regarding capital requirements, has or would have the effect of reducing the rate of return on the Bank's, such Credit Protection Provider's or such Certificateholder's capital or the capital of the Bank's, such Credit Protection Provider's or such Certificateholder's parent or holding company holding, if any, as a consequence of this Agreement, or ownership of the Certificates, to a level below that which the Bank, such Credit Protection Provider or such Certificateholder or the Bank's, such Credit Protection Provider's or such Certificateholder's parent or holding company could have achieved but for such Change in Law (taking into consideration the Bank's, such Credit Protection Provider's or such Certificateholder's policies and the policies of the Bank's, such Credit Protection Provider's or such Certificateholder's parent or holding company with respect to capital adequacy), then from time to time upon written request of the Bank, such Credit

Protection Provider or such Certificateholder as set forth in subsection (c) below, the City shall promptly pay to the Bank, such Credit Protection Provider or such Certificateholder, as the case may be, such additional amount or amounts as will compensate the Bank, such Credit Protection Provider or such Certificateholder or the Bank's, such Credit Protection Provider's or such Certificateholder's parent or holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of the Bank, any Credit Protection Provider or any Certificateholder setting forth the amount or amounts necessary to compensate the Bank, any such Credit Protection Provider or any such Certificateholder or the Bank's, any such Credit Protection Provider's or any such Certificateholder's parent or holding company, as the case may be, as specified in subsection (a) or (b) above and delivered to the City, shall be conclusive absent manifest error. The City shall pay the Bank, such Credit Protection Provider or any such Certificateholder, as the case may be, the amount shown as due on any such certificate within sixty (60) days after receipt thereof. The Bank shall use its best efforts to notify the City of any such impending or announced change in law, regulation or interpretation referred to in subsection (a) or (b) of this Section 3.3 promptly upon receipt by it of actual notice of such change; *provided, however*, that any delay or failure to so notify the City shall not in any manner relieve the City of their obligations under this Section 3.3.

(d) *Delay in Requests.* Failure or delay on the part of the Bank, any such Credit Protection Provider or any such Certificateholder to demand compensation pursuant to this Section shall not constitute a waiver of the Bank's, any such Credit Protection Provider's or any such Certificateholder's right to demand such compensation; *provided* that the City shall not be required to compensate the Bank, any such Credit Protection Provider or any such Certificateholder pursuant to this Section for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that the Bank, any such Credit Protection Provider or any such Certificateholder, as the case may be, notifies the City of the Change in Law giving rise to such increased costs or reductions, and of the Bank's, any such Credit Protection Provider's or any such Certificateholder's intention to claim compensation therefore (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty-day period referred to above shall be extended to include the period of retroactive effect thereof).

#### *Section 3.4. Taxes.*

(a) *Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.* Any and all payments by or on account of any obligation of the City hereunder or under the Certificates shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Miscellaneous Taxes; *provided* that if the City shall be required by applicable Law to deduct any Indemnified Taxes (including any Miscellaneous Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Bank, such Participant or such Certificateholder receives an amount equal to the sum it would have received had no such deductions been made, (ii) the City shall make such deductions and (iii) the City shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.



(b) *Payment of Miscellaneous Taxes by the City.* Without limiting the provisions of paragraph (a) above, the City shall timely pay any Miscellaneous Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) *Indemnification by the City.* To the extent permitted by law, the City shall indemnify the Bank, each Participant and each Certificateholder, within sixty (60) days after demand therefor, for the full amount of any Indemnified Taxes or Miscellaneous Taxes (including Indemnified Taxes or Miscellaneous Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Bank, such Participant or such Certificateholder and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Miscellaneous Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate stating the amount of such payment or liability delivered to the City by the Bank, any Participant or the other Certificateholders shall be conclusive absent manifest error. In addition, to the extent permitted by Law, the City shall indemnify the Bank, any Participant and the other Certificateholders, within thirty (30) days after demand therefor, for any incremental Taxes that may become payable by the Bank, any Participant or any Certificateholder as a result of any failure of the City to pay any Taxes when due to the appropriate Governmental Authority or to deliver to the Bank, any Participant and the other holders of a Certificate, as applicable, pursuant to clause (d) below, documentation evidencing the payment of Taxes.

(d) *Evidence of Payments.* As soon as practicable after any payment of Indemnified Taxes or Miscellaneous Taxes by the City to a Governmental Authority, the City shall deliver to the Bank, such Participant or such Certificateholder, as applicable, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Bank, such Participant or such Certificateholder, as applicable.

(e) *Treatment of Certain Refunds.* If the Bank, any Participant or any Certificateholder determines, in its sole discretion, that it has received a refund of any Taxes or Miscellaneous Taxes as to which it has been indemnified pursuant to this Section (including additional amounts paid by the City pursuant to this Section), it shall pay to the City an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, under this Section with respect to the Taxes or Miscellaneous Taxes giving rise to such refund), net of all out-of-pocket expenses of the Bank, such Participant or such Certificateholder, as applicable, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the City, upon the request of the Bank, such Participant or such Certificateholder, as applicable, agrees to repay the amount paid over pursuant to this Section (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Bank, such Participant or such Certificateholder, as applicable, in the event the Bank, such Participant or such Certificateholder, as applicable, is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Bank, such Participant or such Certificateholder, as applicable, be required to pay any amount to the City pursuant to this paragraph (e) the payment of which would place the Bank, such Participant or such Certificateholder, as applicable, in a less favorable net after-Tax position than the Bank, such Participant or such Certificateholder, as applicable, would have

been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require the Bank, such Participant or such Certificateholder, as applicable, to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the City or any other Person.

(f) *Survival.* Without prejudice to the survival of any other agreement of the City hereunder, the agreements and obligations of the City, the Bank, and Participant or any Certificateholder contained in this Section shall survive the termination of this Agreement and the Sublease and the payment in full of the Certificates and the Obligations of the City thereunder and hereunder and payment in full of all Base Rental and Additional Rental.

(g) *Status of Bank; Tax Documentation.* (i) If the Bank, a Participant or a Certificateholder is entitled to an exemption from or reduction of withholding Taxes with respect to payments made hereunder or under any Related Document, the Bank, such Participant or such Certificateholder, as applicable, shall deliver to the City at the time or times reasonably requested by the City, such properly completed and executed documentation reasonably requested by the City or as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, the Bank, such Participant or such Certificateholder if reasonably requested by the City, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the City as will enable the City to determine whether or not the Bank, such Participant or such Certificateholder is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.4(g)(ii) below) shall not be required if, in the Bank's, such Participant's or such Certificateholder's reasonable judgment, such completion, execution or submission would subject the Bank, such Participant or such Certificateholder to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of the Bank, such Participant or such Certificateholder.

(ii) Without limiting the generality of the foregoing, if the City is resident for tax purposes in the United States, the Bank, such Participant or such Certificateholder shall deliver to the City (and from time to time thereafter upon the reasonable request of the City), executed originals of IRS Form W-9 certifying that the Bank, such Participant or such Certificateholder, as applicable, is exempt from U.S. federal backup withholding tax.

*Section 3.5. Maximum Interest Rate; Payment of Fee.* If the rate of interest payable on the Certificates or Obligations hereunder shall exceed the Maximum Rate for any period for which interest is payable, then (i) interest at the Maximum Rate shall be due and payable with respect to such interest period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and (B) the Maximum Rate (the "Excess Interest"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed such Maximum Rate, at which time the City shall pay or cause to be paid to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal such Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all

deferred Excess Interest is fully paid to the Bank. Upon the termination of this Agreement, in consideration for any limitation of the rate of interest which may otherwise be payable on the Certificates or other Obligations hereunder, the City shall pay or cause to be paid to the Bank a fee equal to the amount of all unpaid deferred Excess Interest (the "Excess Interest Fee"); provided that the Excess Interest Fee shall be payable as and to the extent that the then fair rental value with respect to the Components subject to the Sublease for such Base Rental Period exceeds the sum of all other Reimbursement Obligations remaining unpaid hereunder and the amount of interest accruing on the Certificates during such Base Rental Period. In accordance with Section 5922 of the California Government Code, the City hereby represents and warrants that the obligations of the City under the Certificates and all other Obligations hereunder are not subject to any limitation as to maximum interest rate.

*Section 3.6. Liability of the Bank.* Neither the Bank nor any of its officers, directors, employees, representatives or agents shall be liable or responsible for (i) the use which may be made of any Certificates or this Agreement or for any acts, omissions, errors, interruptions, delays in transmission, dispatch or delivery of any message or advice, however transmitted, of the Bank in connection with this Agreement or the Certificates, (ii) any action, inaction or omission which may be taken by the Bank in connection with this Agreement or the Certificates, (iii) the validity, sufficiency or genuineness of documents, or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged, (iv) payment by the Bank against presentation of documents which do not comply with the terms of this Agreement or a Request for Purchase, including failure of any documents to bear any reference or adequate reference to this Agreement, or (v) any other circumstances whatsoever in making or failing to make payment under this Agreement or pursuant to a Request for Purchase, except for acts or events described in the immediately preceding clauses (i) through (v), to the extent, but only to the extent, of any direct, as opposed to special, indirect, consequential or punitive, damages (the right to receive special, indirect, consequential or punitive damages being hereby waived) suffered by it which the City proves were caused by (y) the Bank's willful misconduct or gross negligence in determining whether documents presented under this Agreement comply with the terms of this Agreement or (z) the Bank's failure to pay hereunder after the presentation to it of a Request for Purchase strictly complying with the terms and conditions of this Agreement. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

*Section 3.7. Obligations Unconditional.* The City's obligation to repay the Certificates and all of its other Obligations under this Agreement shall be absolute and unconditional under any and all circumstances, including without limitation: (a) any lack of validity or enforceability of this Agreement, the Certificates or any of the other Related Documents; (b) any amendment or waiver of or any consent to departure from all or any of the Related Documents; (c) the existence of any claim, set-off, defense or other right which the City may have at any time against the Bank or any other person or entity, whether in connection with this Agreement, the other Related Documents, the transactions contemplated herein or therein or any unrelated transaction; or (d) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; and irrespective of any setoff, counterclaim or defense to payment which the City may have against the Bank, any Participant, or any other Person, including, without limitation, any defense

based on the failure of any nonapplication or misapplication of the proceeds of Certificates hereunder, and irrespective of the legality, validity, regularity or enforceability of this Agreement, the Certificates or any or all other Related Documents, and notwithstanding any amendment or waiver of (other than an amendment or waiver signed by the Bank explicitly reciting the release or discharge of any such obligation), or any consent to, or departure from, this Agreement, the Certificates or any or all other Related Documents or any exchange, release, or nonperfection of any collateral securing the obligations of the City hereunder; *provided, however,* that nothing contained in this Section 3.7 shall abrogate or otherwise affect the rights of the City pursuant to Section 3.6 hereof or the rights of the City pursuant to Section 3.5 of the Sublease.

*Section 3.8. Illegality.* If the Bank determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Bank to make, maintain or fund Certificates by reference to the LIBOR Rate, or to determine or charge interest rates based upon the LIBOR Rate, or any Governmental Authority has imposed material restrictions on the authority of the Bank to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by the Bank to the City, any obligation of the Bank to make Certificates shall be suspended until the Bank notifies the City that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the City shall, upon demand from the Bank convert the interest with respect to all Certificates to Certificates that bear interest at the Alternate Rate on the next Business Day. Upon any such conversion, the City shall also pay accrued interest with respect to the amount so converted.

*Section 3.9. Inability to Determine Rates.* If the Bank determines that for any reason in connection with request for a Certificate that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount, (b) adequate and reasonable means do not exist for determining the LIBOR Rate or (c) LIBOR Rate, as the case may be, does not adequately and fairly reflect the cost to the Bank of funding such Certificate, the Bank will promptly so notify the City. Thereafter, the obligation of the Bank to make or maintain Certificates shall be suspended until the Bank revokes such notice. Upon receipt of such notice, (i) the City shall immediately revoke any pending request for a purchase of or borrowing of Certificates, and deliver notice to the Bank that such Certificates will be converted to Certificates bearing interest at the Alternate Rate in the amount specified therein and (ii) the interest rate with respect to all outstanding Certificates shall be automatically converted to the interest rate set forth in such notice on the next Business Day. Upon any such conversion, the City shall also pay accrued interest with respect to the amount so converted.

*Section 3.10. Pledge by the City.* To provide security to the Bank for the payment by the City of the Obligations and any and all amounts now or hereafter owing to the Bank under this Agreement and the Certificates, the City hereby pledges to the Bank the Pledged Property, subject, however, to the pledge of the Pledged Property to the Trustee for the benefit of the owners of the Certificates set forth in the Trust Agreement. The pledge of the Pledged Property made by the City hereunder is valid, binding and perfected from the time when it is made and the Pledged Property so pledged shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid, binding and perfected as against all parties having claims of any kind in tort, contract or otherwise against the

City irrespective of whether such parties have notice thereof. No instrument by which such pledges are created nor any financing statement need be recorded or filed. Such lien shall be on a parity with the lien in favor of the Bank and the Trustee on the Pledged Property under the Trust Agreement. The obligations of the City under this Agreement are a special obligation of the City payable solely from the Pledged Property. Furthermore, the City agrees that the Bank constitutes a Credit Provider under the Trust Agreement and the other Related Documents.

*Section 3.11. Adjustment of Base Rental.* (a) To the extent any Obligation or accrued interest thereon has not been paid as and when due or any deferred Excess Interest remains unpaid, following the Termination Date and for so long thereafter as any Obligations remain unpaid, the City shall increase the amount of the Base Rental payable under the Sublease for the Property to the greater of (i) the Maximum Base Rental for the Property or (ii) the maximum fair rental value of the Property determined in accordance with subsection (b) below.

(b) To the extent any Obligation or accrued interest thereon has not been paid as and when due or any deferred Excess Interest remains unpaid, following the Termination Date and for so long thereafter as any Obligations remain unpaid, unless the Sublease has terminated in accordance with its terms, the City agrees, at the Bank's sole written request, from time to time (but not more than once in any twelve month period), to determine or cause to be determined, the fair rental value for one or more Components. Upon consultation with special counsel and the Bank, such determination shall be by a Class C appraisal conducted by an employee of the City and shall be at the sole expense of the City. In addition, the City agrees to extend the term of (i) the Site Lease in accordance with Section 4 thereof and (ii) the Sublease in accordance with Section 2.2 thereof, if, on the stated expiration thereof, any amounts remain owing to the Bank hereunder or under any of the other Related Documents.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES

*Section 4.1 Representations and Warranties.* The City represents and warrants to the Bank as follows:

(a) *Existence.* The City is validly existing as a charter city and county duly organized and created and validly existing under the laws and Constitution of the State, with full right and power to own its properties and to carry on its affairs as now being conducted and to cause the execution and delivery of the Certificates, to pledge the security and to execute, deliver and perform its obligations under this Agreement and each Related Document to which it is a party.

(b) *Authorization; Contravention.* The execution, delivery and performance by the City of this Agreement, the Certificates and the other Related Documents to which it is a party are within the City's powers, have been duly authorized by all necessary action, require no further consent or action by or in respect of, or filing with, any governmental body, agency, official or other Person and do not violate or contravene, or

constitute a default under, any provision of applicable law, charter, ordinance or regulation or of any material agreement, judgment, injunction, order, writ, determination, award, decree or instrument binding upon the City or by which the City or its properties may be bound or affected, or result in the creation or imposition of any lien or encumbrance on any asset of the City (other than pursuant to such enumerated documents). The City is not a party to, or otherwise subject to, any provision contained in any instrument evidencing indebtedness of the City, any agreement relating thereto, or any other contract or agreement (including its charter) that limits the amount of, or otherwise imposes restrictions on, the incurring of obligations, of the City that would materially and adversely affect the ability of the City to perform its obligations hereunder or under any other Related Documents to which it is a party.

(c) *Binding Effect.* Assuming due execution by the other parties thereto, this Agreement and the other Related Documents to which the City is a party each constitutes a valid, binding and enforceable agreement of the City, subject to applicable laws affecting creditors' rights generally and general principles of equity regardless of whether such enforceability is considered in a proceeding at law or in equity.

(d) *No Default.* The City is not, in any material respect, in breach of or default under its organizational documents, or any applicable law or administrative regulation of the State or of the United States, relating, in each case, to the transactions contemplated hereby or by the other Related Documents, or any applicable judgment, decree, loan agreement, note, resolution, ordinance or other material agreement to which it is a party or is otherwise subject. Late delivery of financial statements or other reporting documentation shall not be deemed material for purposes of this Section.

(e) *Litigation.* Except as disclosed in writing to the Bank prior to the Closing Date, there is no action, suit or proceeding pending with service of process having been accomplished against, or to the knowledge of the City, threatened against or affecting, the City before any court or arbitrator or any governmental body, agency or official seeking to restrain or enjoin the sale, execution or delivery of the Certificates or in any way contesting or affecting the validity of the Certificates or in which there is a reasonable possibility of an adverse decision which could have a material adverse effect on (i) the ability of the City to perform its obligations hereunder or under the Related Documents to which it is a party or (ii) the enforceability or validity of the Trust Agreement or any of the other Related Documents.

(f) *No Sovereign Immunity.* The City does not enjoy any rights of immunity on the grounds of sovereign immunity in respect of its obligations hereunder or under any Related Document to which it is a party or by which it is bound.

(g) *Incorporation of Representations and Warranties by Reference.* The City hereby makes to the Bank the same representations and warranties made by the City as are set forth in the Related Documents (other than this Agreement) to which it is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference with the same effect as if each and every

such representation and warranty and defined term were set forth herein in its entirety. No amendment to such representations and warranties or defined terms made pursuant to the Related Documents (other than this Agreement) to which it is a party shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the consent of the Bank.

(h) *No Proposed Legal Changes.* There is no amendment, or, to the knowledge of the City, no proposed amendment certified for placement on a statewide ballot, to the Constitution of the State of California or any published administrative interpretation of the Constitution of the State of California or any State of California law, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect (i) the execution and delivery of this Agreement or the other Related Documents to which the City is a party, or (ii) the performance by the City of its obligations under this Agreement or the other Related Documents to which the City is a party.

(i) *Title to Property; Sublease.* The City has good and marketable fee simple title to all of the Components, subject only to Permitted Encumbrances. The Sublease is in full force and effect. The City, as lessee under the Sublease, is in peaceable possession of the Property. No waiver, indulgence or postponement of any of the City's obligations under the Sublease has been granted by the Trustee. There exists no event of default or event, occurrence, condition or act that, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a default under the Sublease.

(j) *Disclosure.* Except as disclosed in writing to the Bank prior to the Closing Date, there is no fact known to the City, as of the date this representation is made, that would have a material adverse effect on (i) the ability of the City to perform its obligations hereunder or under the other Related Documents to which it is a party or (ii) the enforceability or validity of any of the Related Documents.

(k) *Financial Information.* The consolidated statement of financial position of the City as of June 30, 2015, as well as each CAFR of the City as of any more recent date, delivered to the Bank pursuant to this Agreement (the "*Submitted Financial Statements*"), were prepared in accordance with GAAP consistently applied throughout the periods involved and fairly present the financial condition of the City as at such date and the results of the operations of the City for the period ended on such date, all in accordance with GAAP consistently applied, and since the date of such financial information, there has been no change in the business, financial condition, results of operations, or prospects of the City which would materially and adversely affect the ability of the City to perform its obligations hereunder or under any other Related Documents to which it is a party which has not been disclosed by the City to the Bank.

(l) *Legal Matters.* The City is in material compliance with all applicable laws, rules, regulations and orders of any governmental authority having jurisdiction over the City, non-compliance with which would materially and adversely affect the ability of

the City to perform its obligations hereunder or under any other Related Documents to which it is a party.

(m) *Environmental Matters.* In the ordinary course of its business, the City conducts an ongoing review of Environmental Regulations on the business, operations and properties of the City, in the course of which it identifies and evaluates associated liabilities and costs (including, without limitation, any capital or operating expenditures required for clean-up or closure of properties presently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract; any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of such review the City has reasonably concluded that Environmental Regulations are unlikely to have a material adverse effect on the Property or the ability of the City to pay any Base Rental or Additional Rental or any of its obligations hereunder or under any other Related Document.

(n) *Regulations T, U and X.* The City is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, U or X issued by the Board of Governors of the Federal Reserve System); and no proceeds of any Certificates will be or have been used to extend credit to others for the purpose of purchasing or carrying any margin stock.

(o) *ERISA.* Other than as disclosed in writing to the Bank prior to the Closing Date, the City does not maintain or contribute to, and has not maintained or contributed to, any Plan that is subject to Title IV of ERISA and does not have any under funded pension liabilities the effect of which could reasonably be expected to result in a material adverse effect on the City's ability to satisfy its obligations under this Agreement or the other Related Documents.

(p) *No Tax or Fee.* Neither the execution or delivery of this Agreement or the advance of any amounts pursuant to this Agreement will give rise to any tax or fee imposed by any local or state agency or governmental body.

(q) *Usury.* The terms of this Agreement and the Related Documents regarding calculation and payment of interest and fees do not violate any applicable usury laws.

(r) *Essentiality.* The Property is an essential asset of the City necessary to serve the needs of the residents of the City. The City believes that at all times while any rental payments or any obligation of the County under the Related Documents remains unpaid, the Property will remain an essential asset of the County.



(s) *Fair Rental Value.* The total Maximum Base Rental for the Property does not exceed the fair rental value of the Property. In making such determination of fair rental value, consideration has been given to the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the City and the general public.

(t) *Additional Rentals.* All Obligations of the City hereunder, other than the principal of and interest with respect to the Certificates, shall be paid as Additional Rentals pursuant to Section 3.1(g) of the Sublease.

## ARTICLE V

### CONDITIONS

*Section 5.1. Conditions to Closing.* The effectiveness of this Agreement and the obligation of the Bank to purchase the Certificates hereunder is subject to the conditions precedent that the Bank shall have received the items listed below in this Section, each dated and in form and substance as is satisfactory to the Bank:

(a) The Bank shall have received:

(i) Certified copies of the resolutions of the City approving this Agreement, the other Related Documents and the other matters contemplated hereby and thereby, and all other documents, including records of proceedings of the City, instruments, governmental approvals, third party approvals and opinions as the Bank and its counsel may reasonably request evidencing any other necessary action.

(ii) A certificate of the City stating the names and true signatures of the officers of the City authorized to sign this Agreement and the other documents to be delivered by the City hereunder.

(iii) Executed or certified copies, as applicable, of each of the Related Documents in form and substance satisfactory to the Bank.

(iv) A letter addressed to the Bank from Jones Hall, Special Counsel, entitling the Bank to rely on such firm's approving opinion addressed to the City with respect to the Tax-Exempt Certificates.

(v) An opinion or opinions of Jones Hall, Special Counsel, in form and substance satisfactory to the Bank and its counsel, addressed to the Bank, to the effect that (A) this Agreement has been duly authorized, executed and delivered by the City and constitutes a legal, valid and binding agreement of the City enforceable against the City in accordance with its respective terms (except that (i) the enforcement of the Agreement may be limited by bankruptcy and other

similar laws relating to creditors' rights, (ii) certain equitable remedies may be unavailable and (iii) the indemnification provision may be limited by securities laws and public policy), (B) the Certificates have been duly executed and delivered pursuant to the Trust Agreement and constitute legal, valid and binding obligations enforceable in accordance with their terms (except that (i) the enforcement thereof may be limited by bankruptcy and other similar laws relating to creditors' rights, (ii) certain equitable remedies may be unavailable and (iii) the indemnification provision may be limited by securities laws and public policy), (C) the Bank, for so long as it is the owner of any Certificates, is entitled to the benefits of the Trust Agreement on a parity with all Holders of Certificates, (D) the City has the authority and power to execute this Agreement, and (E) that the terms of the Trust Agreement, the Sublease and this Agreement create a valid pledge of and lien of the Pledged Property to secure the Certificates and the amounts owed to the Bank hereunder and under the Fee Agreement.

(vi) Evidence that the long-term unenhanced rating assigned to the Lease Obligation Debt is not less than "AA-" by S&P and "Aa3" by Moody's.

(vii) Each of the Tax-Exempt Certificate and the Taxable Certificate shall be executed and delivered in physical certificated form and registered in the name of the Bank.

(viii) A certificate of the City setting forth the annual fair rental value of each Component.

(ix) Certificate(s) of the City stating that (A) on the Closing Date, no Default or Event of Default has occurred and is continuing, and that (B) on the Closing Date, all representations and warranties of the City contained herein or otherwise made in writing in connection herewith shall be true and correct with the same force and effect as though such representations and warranties had been made on and as of such time.

(x) An opinion of the City Attorney of the City as counsel to the City, in form and substance satisfactory to the Bank and its counsel, and addressed to the Bank.

(xi) Audited financial statements for the City for the two most recently available fiscal years and the most recent operating budget summaries for the City's General Fund for the current fiscal year.

(xii) Evidence that the City has appropriated amounts sufficient to pay the Base Rental due, or anticipated to be due, in the Fiscal Year ending June 30, 2016, with respect to the Components.

(xiii) Evidence of the City's current hazard and rental interruption insurance for the Components such that the amount payable under the related

policy shall be not less than from an amount equal to two (2) years' maximum Base Rental for all the Components, assuming an interest rate of 12% per annum and such insurance shall be satisfactory to the Bank. The Bank shall have received a certificate from the City's Risk Manager stating that the City's current policies of insurance and any self-insurance maintained by the City comply with the provisions of Section 4.3 of the Sublease. Any such commercial insurance policies shall name the Bank as loss payee and additional insured and shall be issued by insurers rated "A" or better by Best's or approved by the Bank.

(xiv) A copy of the investment policy of the City.

(xv) Certificates of the Trustee evidencing the signatures and offices of officers of each executing the Related Documents, and with respect to such other matters as the Bank may reasonably request, and an opinion of counsel to the Trustee, in form and substance satisfactory to the Bank and its counsel, and addressed to the Bank.

(xvi) Written evidence satisfactory to the Bank that a separate CUSIP number has been obtained and reserved from Standard and Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc. for the Tax-Exempt Certificate and the Taxable Certificate (such CUSIP number shall also be made available on the Bloomberg Municipal Bond Description Screen or otherwise provided electronically to the Bank pursuant to a third party provider of such information).

(xvii) Such other documents, certificates, opinions, approvals and filings with respect to the Related Documents and this Agreement as the Bank may reasonably request.

(b) All other legal matters pertaining to the execution and delivery of this Agreement, the Related Documents and the execution and delivery of the first installment of the Certificates shall be reasonably satisfactory to the Bank and its counsel.

(c) The City shall have made payment to (i) the Bank of all amounts due on the Closing Date hereunder and (ii) Chapman and Cutler LLP, as special counsel to the Bank, its legal fees and expenses incurred in connection with the preparation, review, negotiation, execution and delivery of the Related Documents.

*Section 5.2. Conditions Precedent Purchases.* The obligation of the Bank to Purchase each Certificate is subject to the satisfaction of the following conditions precedent on the Purchase Date:

(a) no Default or Event of Default shall have occurred and be continuing;

(b) the representations and warranties of the City set forth in Article IV hereof (other than Section 4.1(g)) shall be true and correct on and as of such date, as if made on such date;

(c) the Purchaser shall have received a Request for Purchase as required under, and in strict conformity with, Section 2.3 hereof; and

**[(d) with respect the Purchase of a Tax-Exempt Certificate only, neither the City nor the Bank shall have received written notice from Bond Counsel that the approving opinion delivered pursuant to Section 5.1(a)(iv) hereof may no longer be relied upon.]<sup>1</sup>**

OR

**(d) with respect the Purchase of a Tax-Exempt Certificate only, the Bank shall have received from Bond Counsel an approving opinion to the effect that the interest with respect to such subsequently executed and delivered Tax-Exempt Certificate is excludable from gross income for federal income tax purposes, substantially in the form of [Exhibit \_\_\_] hereto.]<sup>2</sup>**

*Section 5.3. Conditions Precedent to Issuance of Certificates.* The City hereby agrees that it shall not permit the execution and delivery of any Certificates prior to the date on which the Bank receives evidence of title insurance on the Components insuring the Trustee and naming the Bank an additional insured, in an amount not less than the Initial Commitment Amount, subject only to such exceptions as shall be acceptable to the Bank, with such endorsements and affirmative coverages as may be reasonably required by the Bank, including such endorsements as may be reasonably required by the Bank, and otherwise in form and substance satisfactory to the Bank and its counsel and issued by an insurance company acceptable to the Bank and its counsel and authorized to issue such insurance in the State of California.

## ARTICLE VI

### COVENANTS OF THE CITY

*Section 6.1. Covenants.* The City covenants and agrees, from the date hereof and until the payment in full of all Obligations, unless the Bank shall otherwise consent in writing:

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<sup>1</sup> Option to be used if Bond Counsel intends to deliver one opinion at closing that speaks to the tax-exempt status of each Tax-Exempt Certificate subsequently executed and delivered.

<sup>2</sup> Option to be used if Bond Counsel intends to deliver an approving opinion at closing and also an approving opinion with respect to each subsequently executed and delivered Tax-Exempt Certificate.

(a) *Information.* The City will prepare or cause to be prepared and deliver to the Bank the following:

(i) as promptly as available, and in any event no later than 270 days after the end of each fiscal year of the City, the complete Comprehensive Annual Financial Report (“CAFR”) of the City, certified as to the fairness of presentation and conformity with GAAP consistently applied, by a recognized firm of independent certified public accountants;

(ii) concurrently with the delivery of the financial statements delivered to the Bank pursuant to (a)(i) above, a certificate from an Authorized Representative certifying that such Authorized Representative has no knowledge of any event which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse or both, that has occurred and is continuing and a certificate from an Authorized Representative of the City certifying that such Authorized Representative has no knowledge of any event which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse or both, that has occurred and is continuing;

(iii) within ninety (90) days of adoption of the most recently adopted annual operating budget of the City with respect to the City’s General Fund, evidence that such annual operating budget with respect to the City’s General Fund includes therein as a separate line item all Minimum Required Rental Payments and Additional Payments due during such period, if not otherwise paid from capitalized interest funded by proceeds of the Certificates; and

(iv) such other information respecting the affairs, conditions and/or operations, financial or otherwise, of the City or the Property, as the Bank may from time to time reasonably request.

All factual information hereinafter delivered by City in writing to the Bank will be, to the knowledge of the authorized person delivering such information after reasonable inquiry, accurate and complete in all material respects on the date as of which such information is certified.

(b) *No Amendment Without Consent of the Bank.* Without the prior written consent of the Bank, the City will not agree or consent to any amendment, supplement, waiver or modification of any provision of any Related Document to which the City is a party that affects the rights, interests, security or remedies of the Bank hereunder.

(c) *Incorporation of Covenants by Reference.* The City agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Related Documents to which it is a party, which provisions, as well as related defined terms contained herein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth

herein in its entirety. To the extent that any such incorporated provision permits any Person to waive compliance with or consent to such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such provision shall be complied with only if it is waived or consented to by the Bank and such document, opinion or other instrument shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Bank.

(d) *Outstanding Certificates.*

(i) The City will not cause the execution and delivery or deem to cause the execution and delivery any Tax-Exempt Certificates if the aggregate amount of such Tax-Exempt Certificates to be executed or delivered exceeds the Tax-Exempt Certificate Commitment.

(ii) The City will not cause the execution and delivery or deem to cause the execution and delivery any Taxable Certificates if the aggregate amount of such Taxable Certificates to be executed or delivered exceeds the Taxable Certificate Commitment.

(e) *Defaults.* The City will promptly (and in any event within five Business Days) notify the Bank of the occurrence of any Default or Event of Default specifying the details of such Default or Event of Default or event of default and the action that the City proposes to take with respect thereto.

(f) *Books, Records.* The City will permit, during normal business hours and from time to time, upon reasonable prior notice, the Bank or any of its agents or representatives to examine and make copies of and abstracts from the records and books of account of the City (except records and books of accounts the examination of which by the Bank is prohibited by law), and to discuss the affairs, finances and accounts of the City with any representative or any other appropriate officer of the City or the City's independent public accountants. Without limiting the foregoing, upon reasonable prior notice the City shall permit the Bank to visit and inspect any of the Property during regular business hours as often as the Bank may reasonably request.

(g) *Other Obligations.* The City will comply with and observe all other obligations and requirements set forth in the Trust Agreement and each other Related Document to which it is a party (including without limitation all provisions therein for the benefit of the Bank) in all material respects and in all laws, statutes and regulations binding upon it, noncompliance with which would materially adversely affect the City's ability to perform its obligations under the Certificates, this Agreement or any of the Related Documents.

(h) *Litigation; Material Change.* The City shall promptly notify the Bank of (i) the existence and status of any litigation which individually or in the aggregate could, in the event of an unfavorable outcome, or (ii) the occurrence of any other event or

change which could have a material adverse effect on (A) the ability of the City to perform its obligations hereunder or under the other Related Documents or (B) the enforceability or validity of the Trust Agreement or any of the other Related Documents.

(i) *Obligations under Related Documents.* The City shall take all actions as may be reasonably requested by the Bank to enforce the obligations under the Related Documents of each of the other parties thereto.

(j) *Trustee.* The City will not, without the prior written consent of the Bank (which consent shall not be unreasonably withheld or delayed), appoint or permit the appointment of a successor Trustee. The City shall at all times maintain a Trustee under the Trust Agreement.

(k) *Limitation on Voluntary Liens.* (i) The City shall not create a pledge, lien or charge on any part of the Property or the Pledged Property, other than the lien in favor of Holders of the Certificates and the Bank. (ii) The City covenants to keep the Components and all parts thereof free from judgments, and materialmen's and mechanics' liens, claims, demands, encumbrances, liabilities and other liens of whatever nature or character, which, in each case, might hamper the City in utilizing the Components; and promptly, upon request of the Bank, to take such action from time to time as may be reasonably necessary or proper to remedy or cure any cloud upon or defect in the title to the Components or any part thereof, whether now existing or hereafter developing, to prosecute all actions, suits, or other proceedings as may be reasonably appropriate for such purpose.

(l) *City to Maintain Existence.* The City agrees that it will maintain its existence as a charter city and county under the laws and Constitution of the State of California.

(m) *Further Assurances.* The City will execute, acknowledge where appropriate, and deliver from time to time promptly at the request of the Bank all such instruments and documents as in the opinion of the Bank are reasonably necessary or desirable to carry out the intent and purposes of this Agreement.

(n) *No Impairment.* The City will not take any action, or cause or permit the Trustee to take any action, under the Trust Agreement, the Sublease or any other Related Document inconsistent with the rights and remedies of the Bank under this Agreement.

(o) *Additional Obligations.* The City will not issue or cause the execution and delivery or authorize the issuance or the execution and delivery of any obligations payable from Base Rental or Additional Rental due under the Sublease other than the Certificates.

(p) *References to the Bank.* The City will not refer to the Bank in any official statement, offering memorandum, or private placement memorandum without the Bank's prior written consent thereto.

(q) *Title Insurance.* Title insurance shall be provided and maintained in the manner and in form and substance as set forth in the Sublease; *provided* that notwithstanding anything contained in the Sublease or any other Related Document to the contrary, any policy of title insurance shall be subject only to such exceptions as shall be acceptable to the Bank, with such endorsements and affirmative coverages as may be reasonably required by the Bank, including endorsements regarding zoning and access to public roads, and otherwise in form and substance satisfactory to the Bank and its counsel and issued by an insurance company acceptable to the Bank and its counsel and authorized to issue such insurance in the State.

(r) *Maintenance of Insurance.* Insurance shall be provided and maintained in the manner and in form and substance as set forth in the Sublease.

(s) *Covenants and Legal Duties.* Subject to Section 3.1(g) of the Sublease, the City agrees to include all Minimum Required Rental Payments and Additional Rental due under the Sublease in each Fiscal Year in its annual budget and to make the necessary annual appropriations for all such Minimum Required Rental Payments and Additional Rental, and for all Minimum Supplemental Rental Payments, if any, subject to Section 3.5 of the Sublease. The covenants on the part of the City herein contained and in the Sublease 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 such covenants and agreements.

(t) *Use Proceeds.* The City shall cause the Trustee to use the proceeds of Taxable Certificates for the purpose of financing the Project Costs of the Taxable Projects and the proceeds of Tax-Exempt Certificates for the purpose of financing the Project Costs of Tax-Exempt Projects.

(u) *Ratings.* The City shall give written notice to the Bank as soon as practicable of the increase, decrease, withdrawal or suspension of any rating maintained by Moody's, Fitch or S&P, to the extent such Rating Agency is then maintaining a rating on Lease Obligation Debt, in respect of the City's unenhanced Lease Obligation Debt, unless such rating is terminated due to the payment in full of such certificates of participation; *provided* that the requirement to provide such notice shall be satisfied if such information is publicly available on the Electronic Municipal Market Access system maintained by the Municipal Securities Rulemaking Board. The City shall cause to be maintained at all times long-term unenhanced ratings on its Lease Obligation Debt from at least two (2) of Moody's, Fitch and S&P.

(v) *Voluntary Rent Abatement.* Except as required by law and the terms of the Sublease, the City shall not seek or assert a claim for abatement of rental payments under the Sublease.

(w) *Immunity.* To the fullest extent permitted by law, the City agrees not to assert the defense of immunity (on the grounds of sovereignty or otherwise) in any



proceeding by the Bank to enforce any of the obligations of the City under this Agreement or any other Related Document.

(x) *Alternate Financing.* The City agrees to use its best efforts to obtain an alternate financing in the event that (i) the Bank decides not to extend the Commitment Expiration Date and any Certificates are then outstanding or (ii) the Commitment and Available Commitment is terminated on the Termination Date and any Certificates are then outstanding.

(y) *ERISA.* The City will comply in all material respects with Title IV of ERISA, if, when and to the extent applicable.

(z) *Swap Agreements.* (i) The City will use its best efforts to enter into all future Swap Contracts with a claim on the General Fund of the City with counterparties rated "AA-" (or its equivalent) or better by at least one Fitch, S&P or Moody's. (ii) In no event shall any swap counterparty with respect to any such Swap Contract with a claim on the General Fund of the City be rated lower than "A" (or its equivalent) by any one of Fitch, S&P or Moody's, without the prior written consent of the Bank, at the time of entering into such Swap Contract.

(aa) *Future Credit Facilities.* In the event that the City shall, directly or indirectly, enter into or otherwise consent to any Bank Agreement, which such Bank Agreement provides such Person with additional or more restrictive covenants, additional or more restrictive events of default, shorter amortization periods with respect to term outs and/or rights or remedies than are provided to the Bank in this Agreement or a maximum rate with respect to the obligations under the related Bank Agreement in excess of the Maximum Rate hereunder (collectively, the "Additional Rights"), such Additional Rights shall automatically be deemed to be incorporated into this Agreement and the Bank shall have the benefits of such Additional Rights. Upon the request of the Bank, the City shall promptly, enter into an amendment to this Agreement to include such Additional Rights, provided that the Bank shall maintain the benefit of such Additional Rights even if the City fails to provide such amendment. Notwithstanding the foregoing, no Additional Rights (except for those relating to shorter amortization periods with respect to term outs or a maximum rate as described further below) shall be incorporated by reference into this Agreement, and the City shall have no obligation to enter into an amendment to include any such Additional Rights, if the related Bank Agreement is entered into by the City after the four (4) month anniversary of the Closing Date; except that any Additional Rights relating to shorter amortization periods with respect to term outs or a maximum rate with respect to the obligations under the related Bank Agreement in excess of the Maximum Rate hereunder shall be incorporated herein by reference pursuant to this Section 6.1(aa), and the City shall enter into an amendment hereto to include such Additional Rights, no matter when such Bank Agreement is entered into. If the City shall amend the related Bank Agreement such that it no longer provides for such Additional Rights, then, without the consent of the Bank this Agreement shall be deemed to automatically no longer contain the related Additional Rights and the Bank shall no longer have the benefits of any such Additional Rights.

(bb) *Fair Rental Value.* In the event the aggregate fair rental value of all of the Components is less than the aggregate principal of and interest with respect to all Certificates outstanding after the Term-Out Commencement Date in any calendar year, the City will use its best efforts to either (i) take all steps necessary to seek an appropriation from the City's General Fund in an amount equal to such difference between the aggregate principal of and interest with respect to all Certificates outstanding after the Term-Out Commencement Date and such fair rental value and use such appropriation to prepay such Certificates or (ii) obtain alternative financing to otherwise refinance the Certificates.

(cc) *Tax-Exempt Status.* The City shall not take any action or omit to take any action, which action, if taken or omitted, would adversely affect the exclusion of interest with respect to the Tax-Exempt Certificates from gross income for federal income tax purposes.

## ARTICLE VII

### DEFAULTS AND REMEDIES

*Section 7.1. Events of Default.* The occurrence of any of the following events (whatever the reason for such event and whether voluntary, involuntary, or effected by operation of law) shall be an "Event of Default" hereunder:

(a) the City shall fail to pay (i) any principal of or interest with respect to any Certificate when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) or (ii) any Commitment Fee or any other amount payable hereunder and, in the case of such Commitment Fee or other amount, such failure shall continue for a period of three (3) Business Days from the date such Obligation was due;

(b) (i) The City shall default in the performance of any of the covenants set forth in Section 6.1(b), (d), (g), (j), (k)(i), (l), (n), (o), (q), (r), (s), (t), (v), (w) or (z)(ii) hereof or (ii) Certificates shall be executed and delivered prior to satisfaction of the condition precedent set forth in Section 5.3 hereof;

(c) The City shall default in the performance of any other term, covenant or agreement set forth herein and such failure shall continue for a period of thirty (30) days after the earlier to occur of (i) written notice thereof shall have been given to the City by the Bank or (ii) the tenth (10th) day after the Controller of the City shall have actual knowledge of such default;

(d) Any representation, warranty, certification or statement made by the City (or incorporated by reference) in this Agreement or by the City in any other Related Document or in any certificate, financial statement or other document delivered pursuant to this Agreement or any other Related Document shall prove to have been incorrect in any material respect when made or deemed made;

(e) The City shall (A) fail to make any payment on any Material City Debt (other than the Certificates) or any interest or premium thereon when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Material City Debt; or (B) fail to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument relating to any Material City Debt when required to be performed or observed, and such failure shall not be waived and shall continue after the later of (1) five Business Days after notice of such failure or (2) the applicable grace period, if any, specified in such agreement or instrument, if the effect of such failure to perform or observe is to accelerate the maturity of such Material City Debt; or (C) any Material City Debt shall be declared to be due and payable or be required to be prepaid (other than by a regularly scheduled required prepayment or an optional prepayment), prior to the stated maturity thereof; *provided, however*, that in the case of clause (A) or (B) any such failure shall not be considered an Event of Default hereunder if the same is being contested in good faith and by appropriate proceedings and such contest shall operate to stay the acceleration of the maturity of such Material City Debt;

(f) The City or the Trustee shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall declare a moratorium, or shall take any action to authorize any of the foregoing; or any Governmental Authority of appropriate jurisdiction shall declare a moratorium with respect to any of the debt of the City;

(g) A case or other proceeding shall be commenced against the City or the Trustee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case shall remain undismissed and unstayed for a period of sixty (60) days; or an order for relief shall be entered against the City or the Trustee under the federal bankruptcy laws as now or hereafter in effect, or any writ, judgment, warrant of attachment, execution or similar process shall be issued or levied against a substantial part of the property, assets or business of the City or the Trustee, and such proceedings or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be stayed, released, appealed, vacated or fully bonded, within the time permitted by law after commencement, filing or levy, as the case may be;

(h) Any provision of this Agreement or any Related Document shall cease for any reason whatsoever to be a valid and binding agreement of the City or the Trustee, or the City or the Trustee shall contest the validity or enforceability thereof;

(i) Any pledge or security interest created hereunder or under the Trust Agreement to secure any amounts due under this Agreement shall fail to be valid or fully enforceable;

(j) An event of default shall occur under any of the Related Documents (other than this Agreement) or the City shall fail to make any payment under the Sublease when and as due;

(k) The highest long-term unenhanced rating assigned by Moody's, Fitch or S&P, to the extent such Rating Agency is then maintaining a rating on Lease Obligation Debt; on any Lease Obligation Debt of the City shall be withdrawn, suspended or otherwise unavailable for credit related reasons or reduced below "Baa1" (or its equivalent), "BBB+" (or its equivalent) or "BBB+" (or its equivalent), respectively;

(l) One or more final, nonappealable judgments or orders for the payment of money in the aggregate amount of \$25,000,000 or more shall be rendered against the City and such judgment or order shall continue unsatisfied and unstayed for a period of sixty (60) days; or

(m) Any *Event of Default* (or term of like meaning or effect) shall have occurred under any Bank Agreement related Lease Obligation Debt of the City.

*Section 7.2. Rights and Remedies upon Default.* Upon the occurrence of an Event of Default hereunder, the Bank may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(a) by written notice to the City, declare the Commitment and/or the Available Commitment to be terminated and thereafter the Bank will have no further obligation to purchase Certificates hereunder;

(b) by written notice to the City, declare the commencement of the Amortization Period pursuant to which the principal of and interest with respect to the Certificates shall be repaid as set forth in Section 2.5(a)(ii) hereof and demand the other Obligations under this Agreement (other than the principal of and interest with respect to the Certificates) to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived;

(c) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the Related Documents or to enforce performance or observance of any obligation, agreement or covenant of the City under

the Related Documents, whether for specific performance of any agreement or covenant of the City or in aid of the execution of any power granted to the Bank in the Related Documents;

(d) cure any Default, Event of Default or event of nonperformance hereunder or under any Related Document; *provided, however*, that the Bank shall have no obligation to effect such a cure; and

(e) exercise, or cause to be exercised, any and all remedies as it may have under the Related Documents and as otherwise available at law and at equity.

Notwithstanding anything to the contrary contained in the preceding sentence, upon the occurrence or existence of an Event of Default of the type described in Section 7.1(f) of 7.1(g), the remedies described in the foregoing clauses (a) and (b) shall occur immediately and automatically without prior notice or further action on the part of the Bank or any other person. Anything in this Agreement to the contrary notwithstanding, from and after the occurrence an Event of Default; all Certificates and other Obligations hereunder shall bear interest at the Default Rate.

*Section 7.3. Suits at Law or in Equity and Mandamus.* If any Event of Default shall occur, then and in every such case the Bank shall be entitled to proceed to protect and enforce its rights by such appropriate judicial proceeding as it may deem most effectual to protect and enforce any such right, either by suit, in equity, or by action at law, whether for the specific performance of any covenant or agreement contained in this Agreement, in aid of the exercise of any power granted in this Agreement, or to enforce any other legal or equitable right vested in the Bank by this Agreement, the Certificates or by law. The provisions of this Agreement shall be a contract with each and every Certificateholder and the duties of the City shall be enforceable by any Certificateholder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

*Section 7.4. No Waiver.* No failure on the part of Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. No delay or omission by the Bank in the exercise of any right, remedy or power or in the pursuit of any remedy shall impair any such right remedy or power or be construed to be a waiver of any default on the part of the Bank or to be acquiescence therein. No express or implied waiver by the Bank of any Event of Default shall in any way be a waiver of any future or subsequent Event of Default.

*Section 7.5. Discontinuance of Proceedings.* In case the Bank shall proceed to invoke any right, remedy or recourse permitted hereunder or under the Related Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Bank shall have the unqualified right so to do and, in such event, the City and the Bank shall be restored to their former positions with respect to the Obligations, the Related Documents and otherwise, and the

rights, remedies, recourse and powers of the Bank hereunder shall continue as if the same had never been invoked.

## ARTICLE VIII

### GENERAL

*Section 8.1. Notices.* All notices, requests, demands, directions and other communications (collectively "notices") under the provisions of this Agreement shall be in writing (including facsimile communication), unless otherwise expressly permitted hereunder, and shall be sent by first-class mail or overnight delivery and shall be deemed received as follows: (i) if by first class mail, five (5) days after mailing; (ii) if by overnight delivery, on the next Business Day; (iii) if by telephone, when given to a person who confirms such receipt; and (iv) if by facsimile, when confirmation of receipt is obtained. All notices shall be sent to the applicable party at the following address or in accordance with the last unrevoked written direction from such party to the other parties hereto:

The City:	City and County of San Francisco 1 Dr. Carlton B. Goodlett Place room 316 San Francisco, California 94102 Attention: City Controller Facsimile: ( ) [ ] Telephone: ( ) [ ]
The Bank:	Wells Fargo Bank, National Association _____ _____ Attention: _____ Facsimile: ( ) ____ - ____ Telephone: ( ) ____ - ____
The Bank, with respect to Requests for Purchase	Wells Fargo Bank, National Association _____ _____ Attention: _____ Facsimile: ( ) ____ - ____ Telephone: ( ) ____ - ____
The Trustee:	U.S. Bank National Association One California Street, Suite 1000 San Francisco, California 94111 Attention: Corporate Trust Services Facsimile: (415) 677--3769 Telephone: ( ) [ ]

The Bank may rely on any notice (including telephone communication) purportedly made by or on behalf of the other, and shall have no duty to verify the identity or authority of the Person giving such notice, unless such actions or omissions would amount to gross negligence or intentional misconduct.

*Section 8.2. Successors and Assigns.*

(a) *Successors and Assigns Generally.* This Agreement is a continuing obligation and shall be binding upon the City, its successors, transferees and assigns and shall inure to the benefit of the Certificateholders and their respective permitted successors, transferees and assigns. The City may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Bank. Notwithstanding anything to the contrary set forth herein, so long as no Event of Default shall have occurred and be continuing hereunder, Wells Fargo Bank, National Association may not assign its obligations to purchase Certificates pursuant to the terms of this Agreement without the prior written consent of the City (such consent not to be unreasonably withheld). Each Certificateholder may, in its sole discretion and in accordance with applicable Law, from time to time assign, sell or transfer in whole or in part, this Agreement, its interest in the Certificates and the Related Documents in accordance with the provisions of paragraph (b) or (c) of this Section. Each Certificateholder may at any time and from time to time enter into participation agreements in accordance with the provisions of paragraph (d) of this Section. Each Certificateholder may at any time pledge or assign a security interest subject to the restrictions of paragraph (e) of this Section. Upon acceptance and notification thereof to the City and the Trustee, the successor to the Bank for such purposes shall thereupon succeed to and become vested with all of the rights, powers, privileges and responsibilities of the Bank, and Wells Fargo Bank, National Association or any other Person being replaced as the Bank shall be discharged from its duties and obligations as the Bank hereunder.

(b) *Sales and Transfers to a Bank Transferee.* Without limitation of the foregoing generality, Wells Fargo Bank, National Association may at any time sell or otherwise transfer to one or more transferees all or a portion of the Certificates to a Person that is (i) a Bank Affiliate or (ii) a trust or other custodial arrangement established by the Bank or a Bank Affiliate, the owners of any beneficial interest in which are limited to "qualified institutional buyers" as defined in Rule 144A promulgated under the 1933 Act (each, a "Bank Transferee"). From and after the date of such sale or transfer, Wells Fargo Bank, National Association (and its successors) shall continue to have all of the rights of the Bank hereunder and under the other Related Documents as if no such transfer or sale had occurred; *provided, however,* that (A) no such sale or transfer referred to in clause (b)(i) or (b)(ii) hereof shall in any way affect the obligations of the Bank hereunder, (B) any such sale or transfer referred to in clause (b)(i) or (b)(ii) hereof shall be in a minimum amount of \$250,000, (C) the City and the Trustee shall be required to deal only with the Bank with respect to any matters under this Agreement and (D) in the case of a sale or transfer referred to in clause (b)(i) or (b)(ii) hereof, only Wells Fargo Bank, National Association shall be entitled to enforce the provisions of this Agreement against the City.

(c) *Sales and Transfers to a Non-Bank Transferee.* Without limitation of the foregoing generality, a Certificateholder may at any time sell or otherwise transfer to one or more transferees which are not Bank Transferees but each of which constitutes (i) a "qualified institutional buyer" as defined in Rule 144A promulgated under the 1933 Act and (ii) a commercial bank organized under the laws of the United States, or any state thereof, or any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, and, in any such case, having a combined capital and surplus, determined as of the date of any transfer pursuant to this clause (c), of not less than \$5,000,000,000 (each a "Non-Bank Transferee") all or a portion of the Certificates if (A) written notice of such sale or transfer, including that such sale or transfer is to a Non-Bank Transferee, together with addresses and related information with respect to the Non-Bank Transferee, shall have been given to the City, the Trustee and the Bank (if different than the Certificateholder) by such selling Certificateholder and Non-Bank Transferee; *provided, however,* that any sale or transfer shall be in a minimum amount of \$250,000, and (B) the Non-Bank Transferee shall have delivered to the City, the Trustee and the selling Certificateholder, an investment letter in substantially the form attached as Exhibit F to this Agreement (the "*Investor Letter*").

From and after the date the City, the Trustee and the selling Certificateholder have received written notice and an executed Investor Letter, (A) the Non-Bank Transferee thereunder shall be a party hereto and shall have the rights and obligations of a Certificateholder hereunder and under the other Related Documents, and this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to effect the addition of the Non-Bank Transferee, and any reference to the assigning Certificateholder hereunder and under the other Related Documents shall thereafter refer to such transferring Certificateholder and to the Non-Bank Transferee to the extent of their respective interests, and (B) if the transferring Certificateholder no longer owns any Certificates, then it shall relinquish its rights and be released from its obligations hereunder and under the Related Documents.

(d) *Participations.* The Bank shall have the right to grant participations in all or a portion of the Bank's interest in the Certificates, this Agreement and the other Related Documents to one or more other banking institutions; *provided, however,* that (i) no such participation by any such participant shall in any way affect the obligations of the Bank hereunder and (ii) the City shall be required to deal only with the Bank, with respect to any matters under this Agreement, the Certificates and the other Related Documents and no such participant shall be entitled to enforce any provision hereunder against the City.

(e) *Certain Pledges.* The Bank may at any time pledge or grant a security interest in all or any portion of its rights under the Certificates, this Agreement and the Related Documents to secure obligations of the Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such pledgee or assignee for the Bank as a party hereto.

*Section 8.3. Amendments.* Any provision of this Agreement may be amended or modified if, but only if, such amendment or modification is in writing and is signed by the City and the Bank.



*Section 8.4. Governing Law; Consent to Jurisdiction and Venue; Service of Process.*

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

(b) EACH PARTY HERETO CONSENTS TO AND SUBMITS TO IN PERSONAM JURISDICTION AND VENUE IN THE STATE OF CALIFORNIA AND IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. EACH PARTY ASSERTS THAT IT HAS PURPOSEFULLY AVAILED ITSELF OF THE BENEFITS OF THE LAWS OF THE STATE OF CALIFORNIA AND WAIVES ANY OBJECTION TO IN PERSONAM JURISDICTION ON THE GROUNDS OF MINIMUM CONTACTS, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY PLEA OF FORUM NON CONVENIENS. THIS CONSENT TO AND SUBMISSION TO JURISDICTION IS WITH REGARD TO ANY ACTION RELATED TO THIS AGREEMENT. REGARDLESS OF WHETHER THE PARTY'S ACTIONS TOOK PLACE IN THE STATE OF CALIFORNIA OR ELSEWHERE IN THE UNITED STATES, THIS SUBMISSION TO JURISDICTION IS NONEXCLUSIVE, AND DOES NOT PRECLUDE EITHER PARTY FROM OBTAINING JURISDICTION OVER THE OTHER IN ANY COURT OTHERWISE HAVING JURISDICTION.

(c) TO THE EXTENT PERMITTED BY APPLICABLE LAWS, EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE RELATED DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO HEREBY CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE SHALL BE EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND CONSENT AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(d) The covenants and waivers made pursuant to this Section 8.4 shall be irrevocable and unmodifiable, whether in writing or orally, and shall be applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

*Section 8.5. Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts," if

introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually-signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e-mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

*Section 8.6. Severability.* If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

*Section 8.7. Survival of this Agreement.* All covenants, agreements, representations and warranties made in this Agreement shall survive the extension by the Bank of the Commitment and shall continue in full force and effect so long as the Commitment shall be unexpired or any sums drawn or due thereunder or any other obligations shall be outstanding and unpaid, regardless of any investigation made by any Person and so long as any amount payable hereunder remains unpaid. The agreement of the City to indemnify the Bank and each Indemnified Party under Section 3.2 hereof shall continue in full force and effect notwithstanding a termination of the Commitment or the fulfillment of all Obligations. The obligations of the City under Sections 3.3 and 2.6(d) hereof shall also continue in full force and effect notwithstanding a termination of the Commitment or the fulfillment of all Obligations. Whenever in this Agreement the Bank is referred to, such reference shall be deemed to include the successors and assigns of the Bank and all covenants, promises and agreements by or on behalf of the City which are contained in this Agreement shall inure to the benefit of the successors and assigns of the Bank.

*Section 8.8. Effectiveness.* This Agreement shall become effective upon the execution by the Bank and the acceptance hereof by the City.

*Section 8.9. Headings.* The headings of the Sections of this Agreement are inserted for convenience only and shall not be deemed to be a part hereof.

*Section 8.10. No Personal Liability.* None of the City's officers, employees, or agents (including, without limitation, any person executing this Agreement) shall be liable personally for any Obligation or be subject to any personal liability or accountability by reason of the City's issuance of any Certificate or for entering into this Agreement.

*Section 8.11. Patriot Act; Government Regulations.* (a) The Bank hereby notifies the City that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*Patriot Act*"), the Bank is required to obtain, verify and record information that includes the name and address of the City and other information that will allow the Bank to identify the City in accordance with the Patriot Act.

(b) The City shall ensure that (a) no person who controls the City is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("*OFAC*"), the Department of the Treasury or included in any Executive Orders, that prohibits or limits the Bank from making any advance or extension of credit to the City or from otherwise conducting business with the City, and (b) the Certificates proceeds shall not be used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto. Further, the City shall comply with all applicable Bank Secrecy Act ("*BSA*") laws and regulations, as amended. The City agrees to provide documentary and other evidence of City's identity as may be requested by the Bank at any time to enable the Bank to verify the City's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the Patriot Act.

*Section 8.12. City Requirements.* The Bank hereby agrees to the City's requirements, as provided in Exhibit H attached hereto and incorporated hereby by this reference.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Certificate Purchase Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO

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

APPROVED AS TO FORM:  
CITY ATTORNEY

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

WELLS FARGO BANK, NATIONAL ASSOCIATION

By \_\_\_\_\_

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

Title: \_\_\_\_\_

EXHIBIT A

[FORM OF REQUEST FOR PURCHASE]

REQUEST FOR PURCHASE

Wells Fargo Bank, National Association

[Address]

Telephone:

Facsimile:

Attention:

Email:

Ladies and Gentlemen:

The undersigned, an Authorized Representative, refers to the Certificate Purchase Agreement, dated [June \_\_, 2016] (together with any amendments or supplements thereto, the "Agreement"), by and between the City and County of San Francisco (the "City") and Wells Fargo Bank, National Association (the "Bank") (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.3 of the Agreement, that the Bank make a Purchase of Certificates under the Agreement; and in that connection sets forth below the following information relating to such Purchase (the "Proposed Purchase"):

1. The Business Day of the Proposed Purchase is \_\_\_\_\_, 20\_\_ (the "Purchase Date"), which is at least three Business Days after the date hereof.

2. The principal amount of the Proposed Purchase of a Certificate is \$ \_\_\_\_\_, which, together with all other Certificates then outstanding, is not greater than the Available Commitment as of the Purchase Date set forth in 1 above.

3. The Certificate shall be a [Taxable Certificate and bear interest at the Taxable LIBOR Rate] [Tax-Exempt Certificate and bear interest at a Tax-Exempt LIBOR Rate].

[ 4. with respect to Tax-Exempt Certificates only, neither the City nor the Bank shall have received written notice from Bond Counsel that the approving opinion delivered pursuant to Section 5.1(a)(iv) of the Agreement may no longer be relied upon.<sup>3</sup>

<sup>3</sup> Option to be used if Bond Counsel intends to deliver one approving opinion at closing that speaks to the tax-exempt status of Tax-Exempt Certificate subsequently issued. We then need comfort that we can continue to rely on such opinion.

OR

4 with respect to Tax-Exempt Certificates only, the Bank shall have received from Bond Counsel an approving opinion to the effect that the interest with respect to such Tax-Exempt Certificate is excludable from gross income for federal income tax purposes, substantially in the form of [Exhibit \_] hereto.]<sup>4</sup>

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<sup>4</sup> Option to be used if Bond Counsel intends to deliver an approving opinion at closing and also in connection with the issuance of each subsequent Tax-Exempt Certificate.

The Proposed Purchase shall be made by the Bank by wire transfer of immediately available funds to the undersigned in accordance with the instructions set forth below:

**[Insert wire instructions]**

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Very truly yours,

CITY AND COUNTY OF SAN FRANCISCO

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



**EXHIBIT B**

**[FORM OF REQUEST FOR EXTENSION]**

**REQUEST FOR EXTENSION**

**[Date]**

Wells Fargo Bank, National Association

**[Address]**

Telephone:

Facsimile:

Attention:

Email:

Ladies and Gentlemen:

Reference is made to the Certificate Purchase Agreement dated **[June \_\_, 2016]** (together with any amendments or supplements thereto, the "*Agreement*") by and between the undersigned, the City and County of San Francisco (the "*City*") and Wells Fargo Bank, National Association (the "*Bank*"). All terms defined in the Agreement are used herein as defined therein.

The City hereby requests, pursuant to Section 2.10 of the Agreement, that the Commitment Expiration Date with respect to the Available Commitment as of the date hereof be extended to \_\_\_\_\_, \_\_\_\_\_. Pursuant to such Section 2.10, we have enclosed with this request the following information:

1. a reasonably detailed description of any and all Defaults that have occurred and are continuing;
2. confirmation that all representations and warranties of the City as set forth in Article IV of the Agreement and each Related Document are true and correct as though made on the date hereof and that no Default or Event of Default has occurred and is continuing on the date hereof; and
3. any other pertinent information previously requested by the Bank.

The Bank is asked to notify the City of its decision with respect to this request within 60 days of the date of receipt hereof. If the Bank fails to notify the City of the Bank's decision within such 60-day period, the Bank shall be deemed to have rejected such request.

Very truly yours,

CITY AND COUNTY OF SAN FRANCISCO

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

EXHIBIT C

[FORM OF NOTICE OF TERMINATION OR REDUCTION]

NOTICE OF TERMINATION OR REDUCTION

[Date]

Wells Fargo Bank, National Association

[Address]

Telephone:

Facsimile:

Attention:

Email:

Ladies and Gentlemen:

Re: Certificate Purchase Agreement dated [June \_\_, 2016]

The City and County of San Francisco (the "*City*"), through its undersigned, an Authorized Representative, hereby certifies to Wells Fargo Bank, National Association (the "*Bank*"), with reference to the Certificate Purchase Agreement dated [June \_\_, 2016] (together with any amendments or supplements thereto, the "*Agreement*"), by and between the City and the Bank (the terms defined therein and not otherwise defined herein being used herein as therein defined):

[(1) The City hereby informs you that the Commitment is terminated in accordance with the Agreement.]

OR

[(1) The City hereby informs you that the Available Commitment is reduced from [insert amount as of the date of Certificate] to [insert new amount], such reduction to be effective on \_\_\_\_\_.]

IN WITNESS WHEREOF, the City has executed and delivered this Notice this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

CITY AND COUNTY OF SAN FRANCISCO

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

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

Title: \_\_\_\_\_

**EXHIBIT D**

**[FORM OF NOTICE OF REDUCTION]**

**NOTICE OF REDUCTION**

**[Date]**

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 316  
San Francisco, California 94102  
Attention: City Controller

Ladies and Gentlemen:

We hereby notify you that pursuant to Section 2.7(a) of the Certificate Purchase Agreement dated [June \_\_, 2016], by and between the undersigned, the City and County of San Francisco (the "City") and Wells Fargo Bank, National Association (the "Bank"), the Available Commitment is reduced from [insert amount as of the date of Certificate] to [insert new amount], such reduction to be effective on \_\_\_\_\_.

Very truly yours,

WELLS FARGO BANK, NATIONAL ASSOCIATION

By \_\_\_\_\_

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

Title: \_\_\_\_\_

**EXHIBIT E**

**[FORM OF NOTICE OF EXTENSION]**

**NOTICE OF EXTENSION**

**[Date]**

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 316  
San Francisco, California 94102  
Attention: City Controller

Ladies and Gentlemen:

We hereby notify you that pursuant to Section 2.10(b) of the Certificate Purchase Agreement dated [June \_\_, 2016], by and between the City and County of San Francisco (the "City") and the undersigned, Wells Fargo Bank, National Association (the "Bank"), the Commitment Expiration Date with respect to the Commitment as of the date hereof shall be extended to \_\_\_\_\_, \_\_\_\_\_. Your acknowledgment hereof shall be deemed to be your representation and warranty that all your representations and warranties contained in Article IV of the Agreement and each other Related Document are true and correct and will be true and correct as of the date hereof and that no Default or Event of Default has occurred and is continuing.

Very truly yours,

WELLS FARGO BANK, NATIONAL ASSOCIATION

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

Acknowledged as of \_\_\_\_\_, \_\_\_\_\_ by

CITY AND COUNTY OF SAN FRANCISCO

By \_\_\_\_\_

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

Title: \_\_\_\_\_

**EXHIBIT F**

**FORM OF INVESTOR LETTER**

[June \_\_, 2016]

City and County of San Francisco  
San Francisco, California

RE: \$160,000,000  
[City and County of San Francisco  
Lease Revenue Direct Placement  
Revolving Certificates of Participation, Series \_]

[City and County of San Francisco  
Lease Revenue Direct Placement  
Revolving Certificates of Participation, Series \_ (Taxable)]

Ladies and Gentlemen:

This letter is to provide you with certain representations and agreements with respect to our purchase of the above-referenced certificates (the "*Certificates*"). The Certificates were executed and delivered under and secured in the manner set forth pursuant to that certain Trust Agreement by and between the City and County of San Francisco (the "*City*") and [U.S. Bank National Association] (the "*Trustee*") on [\_\_\_\_\_, 2016] (the "*Trust Agreement*"). [Wells Fargo Bank, National Association] (the "*Bank*," the "*undersigned*," "*us*" or "*we*," as applicable) is purchasing the Certificates pursuant a Certificate Purchase Agreement dated [June \_\_, 2016], by and between the City and the Bank. We hereby represent and warrant to you and agree with you as follows:

1. We understand that the Certificates have not been registered pursuant to the Securities Act of 1933, as amended (the "*1933 Act*"), the securities laws of any state nor has the Trust Agreement been qualified pursuant to the Trust Indenture Act of 1939, as amended, in reliance upon certain exemptions set forth therein. We acknowledge that the Certificates (i) are not being registered or otherwise qualified for sale under the "blue sky" laws and regulations of any state, (ii) will not be listed on any securities exchange, and (iii) will not carry a rating from any rating service.

2. We have not offered, offered to sell, offered for sale or sold any of the Certificates by means of any form of general solicitation or general advertising, and we are not an underwriter of the Certificates within the meaning of Section 2(11) of the 1933 Act.



3. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Certificates.

4. We have authority to purchase the Certificates and to execute this letter and any other instruments and documents required to be executed by the purchaser in connection with the purchase of the Certificates.

5. The undersigned is a duly appointed, qualified and acting representative of the Bank and is authorized to cause the Bank to make the certifications, representations and warranties contained herein by execution of this letter on behalf of the Bank.

6. The Bank is a "qualified institutional buyer" as defined in Rule 144A promulgated under the 1933 Act and is able to bear the economic risks of such investment.

7. The undersigned understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Certificates. The undersigned has made its own inquiry and analysis with respect to the City, the Certificates and the security therefor, and other material factors affecting the security for and payment of the Certificates.

8. The undersigned acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding the City, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the City, the Certificates and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Certificates.

9. The Certificates are being acquired by the Bank for investment for its own account and not with a present view toward resale or distribution; *provided, however*, that the Bank reserves the right to sell, transfer or redistribute the Certificates, but agrees that any such sale, transfer or distribution by the Bank shall be to a Person:

(a) that is an affiliate of the Bank;

(b) that is a trust or other custodial arrangement established by the Bank or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers; or

(c) that the Bank reasonably believes to be a qualified institutional buyer and a commercial bank organized under the laws of the United States, or any state thereof, or any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, and, in any case, having a combined capital and surplus of not less than \$5,000,000,000 as of the date of such sale, transfer or distribution who executes an investor letter substantially in the form of this letter.

Very truly yours,

[BANK]

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

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

Title: \_\_\_\_\_

## EXHIBIT G

### CITY REQUIREMENTS

#### 1. Nondiscrimination; Penalties.

(a) *Nondiscrimination.* In the performance of this Agreement, the Bank agrees not to discriminate against any employee, City employee working with the Bank, applicant for employment with the Bank, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) *Subcontracts.* The Bank shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the City) and shall require all subcontractors to comply with such provisions. The Bank's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) *Nondiscrimination in Benefits.* The Bank, as of the date of this Agreement, does not and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by the City, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

(d) *Condition to Contract.* As a condition to this Agreement, the Bank shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) *Incorporation of Administrative Code Provisions by Reference.* The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though

fully set forth herein. The Bank shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Bank understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Bank and/or deducted from any payments due the Bank.

2. *MacBride Principles—Northern Ireland.* Pursuant to San Francisco Administrative Code §12F.5, the City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this Agreement on behalf of the Bank acknowledges and agrees that he or she has read and understood this section.

3. *Tropical Hardwood and Virgin Redwood.* Pursuant to §804(b) of the San Francisco Environment Code, the City urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

4. *Drug-Free Workplace Policy.* The Bank acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. The Bank agrees that any violation of this prohibition by the Bank, its employees, agents or assigns will be deemed a material breach of this Agreement.

5. *Sunshine Ordinance.* In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between the City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

6. *Limitations on Contributions.* Through execution of this Agreement, the Bank acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months

after the date the contract is approved. The Bank acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Bank further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Bank's board of directors; the Bank's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Bank; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Bank. Additionally, the Bank acknowledges that the Bank must inform each of the persons described in the preceding sentence of the prohibitions contained in said Section 1.126.

7. *Requiring Minimum Compensation for Covered Employees.* The Bank agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of the Bank's obligations under the MCO is set forth in this Section. The Bank is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, the Bank agrees to all of the following:

(a) The MCO requires the Bank to pay the Bank's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and the Bank is obligated to keep informed of the then-current requirements. Any subcontract entered into by the Bank shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is the Bank's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, the City may pursue any of the remedies set forth in this Section against the Bank. Nothing in this Section shall be deemed to grant the Bank the right to subcontract.

(b) The Bank shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

(c) The Bank shall maintain employee and payroll records as required by the MCO. If the Bank fail to do so, it shall be presumed that the Bank paid no more than the minimum wage required under State law.

(d) The City, upon reasonable notice to the Bank, is authorized to inspect the Bank's job sites during normal business hours.

(e) The Bank's commitment to provide the minimum compensation required by the MCO is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Bank fail to comply with these requirements. The Bank agree that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for the Bank's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(f) The Bank understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including at its option the liquidated damages provided for therein), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, the Bank fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Bank fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(g) The Bank represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(h) If the Bank is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with the City for the fiscal year is less than \$25,000, but the Bank later enters into an agreement or agreements that cause the Bank to exceed that amount in a fiscal year, the Bank shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Bank and the City to exceed \$25,000 in the fiscal year.

8. *Requiring Health Benefits for Covered Employees.* The Bank agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, the Bank shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Bank chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Bank is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) The Bank's failure to comply with the HCAO shall constitute a material breach of this Agreement. The City shall notify the Bank if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, the Bank fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Bank fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Subcontract entered into by the Bank shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Bank shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. The Bank shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against the Bank based on the Subcontractor's failure to comply, provided that the City has first provided the Bank with notice and an opportunity to obtain a cure of the violation.

(e) The Bank shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the City with regard to the Bank's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) The Bank represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) The Bank shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

(h) The Bank shall keep itself informed of the current requirements of the HCAO.

(i) The Bank shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(j) The Bank shall provide the City with access to records pertaining to compliance with HCAO after receiving a written request from the City to do so and being provided at least ten business days to respond.

(k) The Bank shall allow the City to inspect the Bank's job sites and have access to the Bank's employees in order to monitor and determine compliance with HCAO.

(l) The City may conduct random audits of the Bank to ascertain its compliance with HCAO. The Bank agrees to cooperate with the City when it conducts such audits.

(m) If the Bank is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Bank later enters into an agreement or agreements that cause either Bank's aggregate amount of all agreements with the City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Bank and the City to be equal to or greater than \$75,000 in the fiscal year.

9. *Prohibition on Political Activity with City Funds.* In accordance with San Francisco Administrative Code Chapter 12.G, the Bank may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "*Political Activity*") in the performance of the services provided under this Agreement. The Bank agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event the Bank violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the Bank from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider the Bank's use of profit as a violation of this section.

10. *Protection of Private Information.* The Bank has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. The Bank agrees that any failure of the Bank to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, bring a false claim action against the Bank pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Bank.



11. *Graffiti Removal.* Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

The Bank shall remove all graffiti from any real property owned or leased by the Bank in the City and County of San Francisco within forty eight (48) hours of the earlier of the Bank's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require the Bank to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the (Red wine to first to find!) Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of the Bank to comply with this section of this Agreement shall constitute a breach of this Agreement.

12. *Airport Intellectual Property.* Pursuant to Resolution No. 01-0118, adopted by the City on April 18, 2001, the City affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior consent.

13. *Submitting False Claims; Monetary Penalties.* Pursuant to San Francisco Administrative Code §21.35, any Bank, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. An underwriter, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. An underwriter, subcontractor or consultant will be deemed to have submitted a false claim to the City if the underwriter, subcontractor or consultant:

(a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

14. *Conflict of Interest.* Through its execution of this Agreement, the Bank acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

15. *Assignment.* The Bank is prohibited from assigning, delegating or transferring this Agreement or any part of it unless such assignment, delegation or transfer is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any contract made in violation of this provision shall confer no rights on any party and shall be null and void.

16. *Food Service Waste Reduction Requirements.* The Bank agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, the Bank agrees that if either breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Bank agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that the City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by the City because of the Bank's failure to comply with this provision.

**CERTIFICATE PURCHASE AGREEMENT**

dated [June \_\_, 2016]

by and between

**CITY AND COUNTY OF SAN FRANCISCO**

**AND**

**METROPOLITAN TRANSPORTATION COMMISSION**

relating to

**CITY AND COUNTY OF SAN FRANCISCO  
LEASE REVENUE DIRECT PLACEMENT  
REVOLVING CERTIFICATES OF PARTICIPATION, SERIES \_ (TAXABLE)**

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## CERTIFICATE PURCHASE AGREEMENT

[June \_\_, 2016]

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 316  
San Francisco, California 94102  
Attention: City Controller

Ladies and Gentlemen:

The undersigned Metropolitan Transportation Commission (the "MTC") offers to enter into this Certificate Purchase Agreement (as amended, supplemented or otherwise modified from time to time, the "Agreement") with the City and County of San Francisco (the "City"), for the purchase by the MTC and sale by the City of the Certificates specified below. This offer is made subject to the City's written acceptance on or before 5:00 p.m., San Francisco, California time, on the date first written above, and upon such acceptance this Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the City and the MTC.

### ARTICLE I

#### DEFINITIONS

**Section 1.1. Defined Terms.** Capitalized terms not otherwise defined herein shall have the same meanings as are set forth in the Trust Agreement (as defined herein). In addition to the terms defined elsewhere in this Agreement, the following terms shall have the indicated meanings:

**"1933 Act"** means the Securities Act of 1933, as the same shall from time to time be supplemented or amended.

**"Additional Rental"** shall have the meaning set forth in the Sublease.

**"Alternate Rate"** means a fluctuating rate of interest per annum (rounded upward to the fifth decimal place) determined daily, equal to the Prime Rate plus the Applicable Spread; and *provided*, that subject to Section 3.5 hereof, at no time shall the Alternate Rate exceed the Maximum Rate.

**"Amortization End Date"** means the earliest to occur of (a) the fifth (5th) anniversary of the Term-Out Commencement Date and (b) the date on which all Certificates are redeemed, repaid, prepaid or cancelled in accordance with the terms hereof and in the Trust Agreement.

**"Amortization Period"** has the meaning set forth in Section 2.5(a) hereof.

**"Applicable Spread"** means, initially 61 basis points (0.61%), which is subject to maintenance of the current City Rating. In the event of a change in the City Rating, the Applicable Spread shall equal the number of basis points set forth in the Level associated with the City Rating as set forth below:

City Rating	City Rating			Applicable Spread
	Moody's	S&P	Fitch	basis points (%)
Level I	Aa3 or above	AA- or above	AA- or above	61.0 bps (0.610%)
Level II	A1	A+	A+	68.5 bps (0.685%)
Level III	A2	A	A	78.5 bps (0.885%)
Level IV	A3	A-	A-	88.5 bps (0.885%)
Level V	Baa1 or below	BBB+ or below	BBB+ or below	118.5 bps (1.185%)

For the purpose of the foregoing, in the event (i) all three Rating Agencies provide a City Rating, the Taxable Applicable Spread shall be based on the lower of the two highest City Ratings, (ii) only two Rating Agencies provide a City Rating and there is a split City Rating (i.e., one of the Rating Agency's City Ratings is at a different level than the City Rating of the other Rating Agency), the Taxable Applicable Spread shall be based upon the lower City Rating and (iii) only one Rating Agency provides a City Rating, the Taxable Applicable Spread shall be based on such City Rating. Any change in the Applicable Spread resulting from a change in the City Rating shall be and become effective as of and on the date of the announcement of the change in the City Rating. References to the City Rating above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, including, without limitation, any recalibration of the City Rating in connection with the adoption of a "global" rating scale, each City Rating from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The City acknowledges that as of the Closing Date the Applicable Spread is that specified above for Level I.

**"Approving Opinion"** means, with respect to any action relating to Certificates, an opinion delivered by Bond Counsel to the effect that such action is permitted by this Agreement and the other Related Documents.

**"Authorized Representative"** shall have the meaning set forth in the Trust Agreement.

**"Available Commitment"** means, on any date, an initial amount equal to \$100,000,000 and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to the principal amount of any Certificate purchased by the MTC pursuant to the terms hereof; (b) upward in an amount equal to the principal amount of any Certificate paid by the City pursuant to the terms of Section 2.5 hereof prior to the Termination Date; and (c) downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof; *provided, that*, after giving effect to any of the foregoing adjustments the Available Commitment shall never exceed \$100,000,000 at any one time.

**"Base Rate"** means, for any day, a fluctuating rate of interest per annum equal to the greatest of (i) the Prime Rate in effect at such time plus one percent (1.0%), (ii) the Federal Funds Rate in effect at such time plus two percent (2.0%), and (iii) [six] percent ([6.0]%).

**"Base Rental"** shall mean the amounts payable of "Base Rental" as set forth in the Sublease.

**"Base Rental Period"** shall have the meaning set forth in the Trust Agreement.

**"Bond Counsel"** means the law firm of Jones Hall, A Professional Law Corporation, or any nationally recognized bond counsel selected by the City and acceptable to the MTC.

**"Business Day"** means any day (i) when banks are not required or authorized by law or executive order to be closed in San Francisco, California, New York, New York or the city in which the office of the MTC at which Requests for Purchase are to be honored is located, (ii) when the New York Stock Exchange is not required or authorized by law or executive order to be closed and (iii) with respect to all notices and determinations in connection with, and payments of principal and interest with respect to, any Certificate, any day that is a Business Day described in clauses (i) and (ii) and that is also a day for trading by and between banks in Dollar deposits in the London interbank market.

**"CAFR"** has the meaning set forth in Section 6.1(a)(i) hereof.

**"Certificate" or "Certificates"** has the meaning specified in Section 2.1(a) hereof.

**"Certificate LIBOR Rate"** means a floating rate per annum (rounded upward to the fifth decimal place) equal to the sum of the LIBOR Rate, plus the Applicable Spread; *provided, however,* that immediately and upon the occurrence of an Event of Default (and without any notice given with respect thereto) and during the continuation of such Event of Default, "Certificate LIBOR Rate" shall mean the Default Rate.

**"Certificateholder" or "Holder"** means the MTC and each transferee pursuant to Section 8.2 hereof..

**"Charter"** means The Charter of the City and County of San Francisco adopted November 7, 1995, and effective as of July 1, 1996, as amended and supplemented to date.

**"City"** means the City and County of San Francisco, California.

**"City Rating"** means the long-term unenhanced debt ratings assigned by each of Fitch, S&P and Moody's to any unenhanced Lease Obligation Debt of the City (without giving effect to any bond insurance or other credit enhancement).

**"Closing"** has the meaning specified in Section 2.2 hereof.

**"Closing Date"** means the date on which the Closing occurs.

**"Code"** means the Internal Revenue Code of 1986, as amended, and when reference is made to a particular section thereof, the applicable Treasury Regulations from time to time promulgated or proposed thereunder.

**"Commitment"** means the agreement of the MTC pursuant to Section 2.1 hereof to make purchases of Certificates under the terms hereof for the account of the City.



**"Commitment Expiration Date"** means [June \_\_, 2021], unless extended as provided herein, but in no event later than [June \_\_, 2026].

**"Components"** shall have the meaning set forth in the Sublease.

**"Computation Date"** means the second London Business Day preceding the first Business Day of each month.

**"Contingent Obligation"** means, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any indebtedness, leases, dividends, or other obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation, or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities, or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided, however*, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

**"Controlled Group"** means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the City, are treated as a single employer under Section 414 of the Code.

**"Credit Provider"** shall have the meaning set forth in the Trust Agreement.

**"Debt"** shall mean, with respect to any Person, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person as lessee under capital leases; (c) all obligations of such Person to pay the deferred purchase price of property or services; (d) certificates of participation evidencing an undivided ownership interest in payments made by such Person as lessee under capital leases, as purchaser under an installment sale agreement or otherwise as an obligor in connection therewith; (e) all Guarantees by such Person of Debt of another Person; (f) the face amount of any letter of credit issued for the account of such Person and, without duplication, all drawings made and reimbursement obligations arising thereunder; (g) all Debt of a second Person secured by any lien on any property owned by such first Person, whether or not such Debt has been assumed; (h) all obligations of such Person to pay a specified purchase price for goods or services whether or not delivered or accepted, including but not limited to, take or pay or similar obligations; (i) all Contingent Obligations of such Person and (j) all obligations of such Person due and payable under Swap Contracts; *provided, however*, that Debt shall not include trade payables arising in the ordinary course of business; and *provided, further, however* that with respect to the City, Debt shall exclude conduit, enterprise and other Debt that have no claim on the General Fund of the City.

**"Default"** means any condition or event that constitutes an Event of Default or that, with the giving of notice or lapse of time or both, would constitute an Event of Default.

**"Default Rate"** means, for any day, a fluctuating rate per annum equal to the sum of the Base Rate in effect on such day plus three percent (3.00%).

**"Dollar"** and **"\$"** mean lawful money of the United States.

**"Environmental Regulation"** means any federal, state, or local statute, law, rule, regulation, ordinance, code, policy, or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, or judgment, relating to health, safety, or the environment or to Hazardous Materials, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601 et seq.; the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. § 3608 et seq.; the California Superfund Statute, Cal. Health & Safety C. § 25300 et seq.; legislation promulgated pursuant to the California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), Cal. Health & Safety C. § 25249.5 et seq.; Environmental Protection Agency regulations pertaining to asbestos, including 40 C.F.R. Part 61, Subpart M; and Occupational Safety and Health Administration regulations pertaining to asbestos, including 29 C.F.R. § 1910.1001 and 1926.58.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

**"Event of Default"** with respect to this Agreement has the meaning set forth in Section 7.1 of this Agreement and, with respect to any Related Document, has the meaning assigned therein.

**"Excess Interest Amount"** has the meaning set forth in Section 3.5 hereof.

**"Federal Funds Rate"** means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided that*: (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one hundredth of one percent) charged to the MTC on such day on such transactions as determined by the MTC. Notwithstanding anything herein to the contrary, if the Federal Funds Rate as determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%) for purposes of this Agreement.

**"Fiscal Year"** means the twelve-month period commencing on July 1 of each year; *provided, however*, that the City may, from time to time, agree on a different twelve-month period as the Fiscal Year.

**"Fitch"** means Fitch, Inc., and its successors and assigns.

**"GAAP"** means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or any successor authority) that are applicable as of the date of determination, consistently applied.

**"General Fund"** has the meaning of the term "General Fund" as used in the Charter.

**"Governmental Authority"** means the government of the United States of America or any other nation or any political subdivision thereof or any governmental or quasi governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or European Central Bank), or any arbitrator, mediator or other Person with authority to bind a party at law.

**"Guarantee"** by any Person shall mean any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), (ii) entered into for the purpose of assuring in any other manner the obligee of such Debt of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (iii) with respect to any letter of credit issued for the account of such other Person or as to which such other Person is otherwise liable for reimbursement of drawings, *provided* that the term Guarantee shall not include (i) endorsements for collection or deposit in the ordinary course of business, or (ii) performance or completion guarantees. The term "Guarantee" used as a verb has a corresponding meaning.

**"Hazardous Materials"** means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contains dielectric fluid containing polychlorinated biphenyls, and radon gas; (b) any chemicals, materials, or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials" extremely hazardous wastes, "restricted wastes," "toxic substances," "toxic pollutants," "contaminants," "special wastes," or "pollutants," or words of similar import, under any applicable Environmental Regulation; and (c) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any governmental authority.

**"Indemnified Party"** has the meaning set forth in Section 3.2 hereof.

**"Initial Commitment Amount"** means \$100,000,000.

**"Interest Payment Date"** means as to any Certificate, the first Business Day of each month and the date of any payment or prepayment of principal of such Certificate.

**"Interest Period"** means the period commencing on and including the first Business Day of each month to but not including the first Business Day of the immediately succeeding month; *provided* that with respect to any Certificate executed and delivered or deemed executed and delivered on a date other than the first Business Day of a month, "Interest Period" shall mean the period commencing on and including the date of issuance (or deemed issuance) to be not including the first Business Day of the immediately succeeding month.

**"Law"** means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

**"Lease Obligation Debt"** means any Debt of the City, the payment of which is payable from and/or secured by lease revenue rental payments payable from the General Fund of the City.

**"LIBOR Rate"** means the rate of interest per annum determined by [Wells Fargo Bank, National Association] based on the rate for United States dollar deposits for delivery on the LIBOR Reset Date for a period equal to one month as reported on Reuters Screen LIBOR01 page (or any successor page) at approximately 11:00 a.m., London time, on each Computation Date (or if not so reported, then as determined by [Wells Fargo Bank, National Association] from another recognized source of interbank quotation). Notwithstanding anything in this Agreement to the contrary, if the LIBOR Rate determined as provided above would be less than zero percent (0.0%), then the LIBOR Rate shall be deemed to be zero percent (0.00%) for purposes of this Agreement.

**"LIBOR Reset Date"** means the first Business Day of each month; *provided* that with respect to any Certificate executed and delivered or deemed executed and delivered on a date other than the first Business Day of a month, "LIBOR Reset Date" shall mean such date of execution and delivery or deemed execution and delivery.

**"Lien"** means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

**"Material City Debt"** shall mean any Debt of the City that is outstanding in a principal amount of \$25,000,000 or more.

**"Maximum Base Rental"** shall mean the amounts specified in the Sublease as Maximum Base Rental.

**"Maximum Rate"** means the lesser of (i) twelve percent (12%) per annum and (ii) the maximum rate of interest allowed by applicable law.

**"Minimum Required Rental Payment"** shall have the meaning set forth in the Sublease.

**"Minimum Supplemental Rental Payment"** shall have the meaning set forth in the Sublease.

**"Moody's"** means Moody's Investors Service, Inc. and any successor rating agency.

**"MTC"** has the meaning specified in the introductory paragraph hereof.

**"Obligations"** means the obligations of the City under this Agreement to repay all the Certificates, together with interest thereon, pursuant to and in accordance with this Agreement and the Certificates, all fees, expenses and charges payable or reimbursable hereunder to the MTC (including, without limitation, any amounts to reimburse the MTC for any advances or expenditures by it under any of such documents) and all other payment obligations of the City to the MTC arising under or in relation to this Agreement or the other Related Documents, in each, case whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired.

**"Patriot Act"** has the meaning set forth in Section 8.11 hereof.

**"Permitted Encumbrances"** shall have the meaning set forth in the Trust Agreement.

**"Person"** means an individual, a corporation, a partnership, an association, a limited liability company, a partnership, a trust, or any other entity or organization, including a Governmental Authority.

**"Plan"** means, with respect to the City at any time, an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained, or has within the preceding five plan years been maintained, by a member of the Controlled Group for employees of a member of the Controlled Group of which the City is a part, (ii) is maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which a member of the Controlled Group of which the City is a part is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions.

**"Pledged Property"** has the meaning set forth in the Trust Agreement.

**"Prime Rate"** means on any day, the rate of interest per annum then most recently established by [Wells Fargo Bank, National Association] as its "prime rate." Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by [Wells Fargo Bank, National Association] to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that the [Wells Fargo Bank, National Association] may make various business or other loans at rates of interest having no relationship to such rate. If [Wells Fargo Bank, National Association] ceases to establish or publish a prime rate from which the Prime Rate is then determined, the applicable

variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported. Notwithstanding anything herein to the contrary, if the Prime Rate determined as provided above would be less than zero percent (0.0%), then the Prime Rate shall be deemed to be zero percent (0.0%) for purposes of this Agreement.

**"Project Costs"** has the meaning set forth in the Trust Agreement.

**"Property"** shall have the meaning set forth in the Sublease.

**"Purchase"** means each purchase of a Certificate described in Section 2.3 hereof.

**"Purchase Date"** means each date on which a Purchase occurs.

**"Quarterly Payment Date"** means the first Business Day of each February, May, August and November.

**"Rating Agency"** means either of S&P, Fitch and/or Moody's, as context may require.

**"Related Documents"** means this Agreement, the Trust Agreement, the Site Lease, the Sublease, the Certificates and any exhibits, schedules, instruments or agreements relating thereto, as the same may be amended, modified or supplemented in accordance with their terms and the terms hereof.

**"Request for Purchase"** means the request for a purchase of a Certificate by the MTC, in the form of Exhibit A hereto.

**"S&P"** means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, and any successor rating agency.

**"Site Lease"** means the Site Lease dated as of June 1, 2016, by and between the City and the Trustee, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

**"State"** means the State of California.

**"Sublease"** means the Sublease dated as of June 1, 2016, by and between the City and the Trustee, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

**"Swap Contract"** means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b)

any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

**"Taxable Projects"** has the meaning set forth in the Trust Agreement.

**"Term-Out Commencement Date"** means the earlier of (i) the Commitment Expiration Date, as such date may be extended pursuant to Section 2.10 hereof, and (ii) the date on which the MTC declares the Commitment and the Available Commitment to be terminated in accordance with Section 7.2 hereof.

**"Term-Out Rate"** means a fluctuating interest rate per annum which, for each day, shall equal (i) for the period from and including the Term-Out Commencement Date to and including the one hundred eightieth (180th) day immediately succeeding the Term-Out Commencement Date, the Base Rate from time to time in effect and (ii) from the period from and after the one hundred eighty first (181st) day immediately succeeding the Term-Out Commencement Date, the Base Rate from time to time in effect plus one percent (1.0%)%; *provided* that if an Event of Default has occurred and is continuing, the Term-Out Rate shall equal the Default Rate.

**"Trust Agreement"** means the Trust Agreement dated as of June 1, 2016, by and between the City and the Trustee, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

**"Trustee"** means [U.S. Bank National Association], in its capacity as trustee under the Trust Agreement, and its successor or successors or any other Person which may at any time be substituted in its place pursuant to the Trust Agreement and the terms hereof.

**Section 1.2. Accounting Terms and Determinations.** Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP. If, after the Closing Date, there shall occur any change in GAAP from those used in the preparation of the financial statements referred to in Sections 6.1(i) hereof and such change shall result in a change in the method of calculation of any financial covenant, standard or term found in this Agreement including, without limitation, a recharacterization of operating leases to the effect that certain operating leases are to be treated as capital leases, either the City or the MTC may by notice to the other party hereto, require that the MTC and the City negotiate in good faith to amend such covenants, standards, and terms so as equitably to reflect such change in accounting principles, with the desired result being that the criteria for evaluating the financial condition of the City shall be the same as if such change had not been made. No delay by the City or the MTC in requiring such negotiation shall limit their right to so require such a negotiation at any time after such a change in accounting principles. Until any such covenant, standard, or term is amended in accordance with this Section 1.2, financial covenants shall be computed and determined in accordance with GAAP in effect prior to such change in accounting principles.

**Section 1.3. Interpretation.** The following rules shall apply to the construction of this Agreement unless the context requires otherwise: (i) the singular includes the plural, and the plural the singular; (ii) words importing any gender include the other gender; (iii) references to

statutes are to be construed as including all statutory provisions consolidating and amending, and all regulations promulgated pursuant to, such statutes; (iv) references to "writing" include printing, photocopy, typing, lithography and other means of reproducing words in a tangible visible font; (v) the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; (vi) references to the introductory paragraph, recitals, articles, sections (or clauses or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Agreement unless otherwise indicated; (vii) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent that such amendments and other modifications are permitted or not prohibited by the terms of this Agreement; (viii) section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose; (ix) references to Persons include their respective permitted successors and assigns; and (x) in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding." All references to "funds" herein shall include all accounts and subaccounts therein unless the context clearly requires otherwise.

**Section 1.4. Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

**Section 1.5. Relation to Other Documents; Acknowledgment of Different Provisions of Related Documents; Incorporation by Reference.** (a) Nothing in this Agreement shall be deemed to amend, or relieve the City of its obligations under, any Related Document to which it is a party. Conversely, to the extent that the provisions of any Related Document allow the City to take certain actions, or not to take certain actions, with regard for example to permitted liens, transfers of assets, maintenance of financial ratios and similar matters, the City nevertheless shall be fully bound by the provisions of this Agreement.

(b) Except as provided in subsection (c) of this Section 1.5, all references to other documents shall be deemed to include all amendments, modifications and supplements thereto to the extent such amendment, modification or supplement is made in accordance with the provisions of such document and this Agreement.

## ARTICLE II

### SALE AND PURCHASE; CLOSING

**Section 2.1. Purchase and Sale of Certificates.** (a) From the Closing Date through the Termination Date, and upon and subject to the terms and conditions and on the basis of the representations, warranties and agreements contained herein, the MTC hereby agrees, when requested by the City pursuant to this Agreement, to purchase from the City from time to time (but in no event more than \_\_\_ ( ) per calendar month), in an aggregate principal amount not to exceed the Available Commitment, and the City hereby agrees to sell and deliver to the MTC from time to time the "City and County of San Francisco Lease Revenue Direct Placement Revolving Certificates of Participation, Series \_\_\_ (Taxable)" executed and delivered from time to time, in accordance with the Trust Agreement and evidenced by a master certificate in the form attached as [Exhibit \_\_\_] to the Trust Agreement (the "Certificates") The Certificates are being issued pursuant to the Trust Agreement for the purpose of financing the Project Costs of the Taxable Projects. The Certificates represent undivided ownership interest in Base Rental



required to be made by the City under the Sublease and are secured by a pledge of and first lien on the Pledged Property under the Trust Agreement.

(b) Pursuant to and subject to the terms of this Agreement, each Certificate shall be sold to the MTC at a purchase price equal to the principal amount of each Certificate with no accrued interest, and the MTC shall pay such purchase price to the City upon delivery of such Certificate to the MTC on the related Purchase Date and such Certificate shall be deemed to be executed and delivered to the MTC on such date.

(c) Each Certificate shall (i) be dated the date such Certificate is deemed to be executed and delivered to the MTC, (ii) be secured by the Pledged Property in the manner described in Section 2.1(a) hereof and the pledge clause immediately following the introductory "Whereas" clause of the Trust Agreement, (iii) mature on [June \_\_, 2021], with principal and interest to be paid as specified in this Agreement (iv) be in a minimum principal amount of \$[5,000,000] or an integral multiple of \$[250,000]

in excess thereof. Interest with respect to the Certificates shall be calculated on the basis of a year of 360 days and actual days elapsed from the related Purchase Date.

**Section 2.2. Closing.** At such date and time as shall have been mutually agreed upon by the City and the MTC, the certificates, opinions and other documents required by Section 5.1 below shall be executed and delivered (all of the foregoing actions are herein referred to collectively as the "Closing"). Assuming the Closing is completed in accordance with the terms and conditions of this Agreement and the Trust Agreement then, subject to the provisions of this Agreement and the conditions set forth in Section 5.2 hereof, the MTC shall purchase each Certificate and pay the purchase price therefor specified in Section 2.1(b) hereof (and the City shall cause the execution and delivery of such Certificate) at each Purchase.

**Section 2.3. Method of Purchase.** (a) Each purchase of a Certificate shall be made upon the City's irrevocable written notice to the MTC in the form of a Request for Purchase with blanks appropriately completed. Each Request for Purchase shall be signed by an Authorized Representative and shall specify: (1) the Purchase Date which shall be a Business Day and shall be at least \_\_\_\_\_ ( ) Business Days after the date of the Request for Purchase; and (2) the principal amount of the Certificate to be purchased, which together with all other Certificates then outstanding shall not exceed the Available Commitment as of the proposed Purchase Date. Each Request for Purchase must be received by the MTC not later than 10:00 a.m. \_\_\_\_\_ ( ) Business Days immediately prior to the requested Purchase Date.

(b) Upon receipt of a Request for Purchase by the MTC, the MTC, subject to the terms and conditions of this Agreement, shall be required to make a purchase of a Certificate by 3:00 p.m. on the proposed Purchase Date for the account of the City in an amount equal to the amount of the requested purchase. Notwithstanding the foregoing, in the event such Request for Purchase is received by the MTC after 10:00 a.m. on the Business Day which is \_\_\_\_\_ ( ) Business Days immediately prior to the day of the proposed Purchase, the MTC shall be required to make the related Purchase for a Certificate by 3:00 p.m. on the fourth Business Day after receipt of the related Request for Purchase.

(c) If, after examination, the MTC shall have determined that a Request for Purchase does not conform to the terms and conditions hereof, then the MTC shall use its best efforts to give notice to the City to the effect that documentation was not in accordance with the terms and conditions hereof and stating the reasons therefor. The City may attempt to correct any such nonconforming Request for Purchase, if, and to the extent that, the City is entitled (without

regard to the provisions of this sentence) and able to do so. If the City fails to specify a type of Certificate in a Request for Purchase, then the applicable Certificates shall be made as a Certificate bearing interest at a Certificate LIBOR Rate.

**Section 2.4. Interest Rates.** (a) Prior to the Term-Out Commencement Date and except as otherwise provided in this Section 2.4, each Certificate shall bear interest at the Certificate LIBOR Rate.

(b) From and after the Term-Out Commencement Date and except as otherwise provided in this Section 2.4, each Certificate shall bear interest at the Term-Out Rate.

(c) From and after the occurrence of an Event of Default, each Certificate and any other amounts payable hereunder shall bear interest at the Default Rate.

(d) All computations of interest shall be made on the basis of a 360 day year and actual days elapsed. Interest shall accrue with respect to the Certificates from and including the day on which Certificate was executed and delivered (or deemed executed and delivered), and shall not accrue on such Certificate, or any portion thereof, for the day on which such Certificate or any principal portion is paid. Interest with respect to Certificates bearing interest at the Certificate LIBOR Rate, shall be determined by the MTC on each Computation Date and become effective on the immediately succeeding LIBOR Reset Date for the related Interest Period. Interest with respect to Certificates bearing interest at the Term-Out Rate or the Default Rate shall be determined and reset each day. Each determination by the Bank of an interest rate shall be conclusive and binding for all purposes, absent manifest error.

**Section 2.5. Payment of Interest and Principal.** (a) (i) Accrued but unpaid interest with respect to each Certificate shall be due and payable on each Interest Payment Date.

(ii) The principal amount of each outstanding Certificate is due and payable on the Term-Out Commencement Date; *provided* that if the Bank has not received the principal amount of any such Certificate on such date, the City shall cause the principal amount of such Certificates to be redeemed in installments as to principal, commencing on the first Quarterly Payment Date following the Term-Out Commencement Date, and on each Quarterly Payment Date thereafter, with the final installment in an amount equal to the entire then outstanding principal amount of such Certificates to be redeemed on the Amortization End Date (the period commencing on the Term-Out Commencement Date and ending on the Amortization End Date is herein referred to as the "Amortization Period"). Each quarterly installment shall be that amount of principal which will result in equal (as nearly as possible) aggregate quarterly installments over the Amortization Period; *provided, however*, that the unpaid amount of the Certificates during the Amortization Period shall be paid by the City in each year only to the extent of the then fair rental value with respect to the Components subject to the Sublease for such Base Rental Period, and to the extent not so repaid, the Certificates shall be paid during each subsequent Base Rental Period, to the extent owed, to the extent of the then fair rental value with respect to the Components subject to the Sublease for each such subsequent Base Rental Period, and the Certificates shall continue to be an obligation of the City pursuant to the Sublease.

(b) Subject to Section 2.9 hereof, the City may cause any Certificate to be prepaid, in whole or in part, on any Business Day provided at least three (3) Business Days' prior written notice is given by the City to the MTC. Each such notice shall specify the date and amount of such prepayment and the Certificates to be prepaid. Each such notice of optional prepayment

shall be irrevocable and shall bind the City to cause such prepayment to be made in accordance with such notice. Any prepayment of Certificates shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. All prepayments of principal shall include accrued interest to the date of prepayment and all other amounts due and payable at such time pursuant to this Agreement.

(c) If the payment date for the principal of or interest on a Certificate is a day other than a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended period of time shall be included in the computation of interest; *provided, however*, the payment of interest with respect to a Certificate on such extended date shall have the same force and effect as if made on the original payment date.

#### **Section 2.6. Fees.**

(a) Amendment, Consent or Waiver Fee. Upon each amendment hereof, consent or waiver hereunder or under any Related Document, the City shall pay or cause to be paid attorneys' fees and expenses, if any, incurred by the MTC in processing such amendment, consent or waiver and a fee in a minimum amount of \$\_\_\_\_\_.

(b) Costs, Expenses and Taxes. The City will promptly pay on demand: (i) the reasonable fees, costs and expenses of the MTC incurred in connection with the preparation, negotiation, execution and delivery of this Agreement, the Certificates and the other Related Documents, (ii) the reasonable fees and disbursements of counsel to the MTC, incurred in connection with the review, execution, filing and administration and delivery of this Agreement and the other Related Documents, (iii) the reasonable fees and disbursements of counsel or other reasonably required consultants to the MTC with respect to advising the MTC as to the rights and responsibilities under this Agreement and the other Related Documents after the occurrence of any Default or alleged Default hereunder, or an Event of Default, (iv) all costs and expenses, if any, in connection with any waiver or amendment of, or the giving of any approval or consent under, or any response thereto or the enforcement of this Agreement, the Related Documents and any other documents which may be delivered in connection herewith or therewith, including in each case the reasonable fees and disbursements of counsel to the MTC or other reasonably required consultants and (v) any amounts advanced by or on behalf of the MTC to the extent required to cure any Default, Event of Default or event of nonperformance hereunder or any Related Document, together with interest at the Default Rate. In addition, the City shall pay any and all stamp taxes, transfer taxes, documentary taxes, and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, and recording of this Agreement and the security contemplated by the Related Documents (other than taxes based on the net income of the MTC) and, to the extent permitted by Law, agrees to indemnify and hold the MTC harmless from and against any and all liabilities with respect to or resulting from any delay in paying, or omission to pay, such taxes and fees, including interest and penalties thereon; *provided, however*, that the City may reasonably contest any such taxes or fees with the prior written consent of the MTC, which consent, if an Event of Default does not then exist, shall not be unreasonably withheld. In addition, the City agrees to pay, after the occurrence of a Default or an Event of Default, all costs and expenses (including reasonable attorneys' fees and costs of settlement) incurred by the MTC in enforcing any obligations or in collecting any payments due from the City hereunder by reason of such Default or Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any collection, insolvency, bankruptcy proceedings or other enforcement proceedings resulting therefrom.

(c) If the City shall fail to pay any amount payable under this Section 2.6 for 30 days after it is due, each such unpaid amount shall bear interest for each day from and including the date it was due until paid in full at the applicable Default Rate. The obligations of the City under this Section 2.6 shall survive the termination of this Agreement.

**Section 2.7. Reduction and Termination.** (a) Subject to the provisions of Section 2.6(b) hereof, the Available Commitment shall be reduced from time to time as requested by the City within three (3) days of the City's written notice to the MTC requesting such reduction in the form of Exhibit C hereto; *provided*, that each such reduction amount shall be in an amount equal to \$1,000,000 or an integral multiple thereof, and (ii) any reduction in the Available Commitment shall not be effective until the MTC delivers to the City a notice in the form attached hereto as Exhibit D reflecting such reduction.

(b) Subject to the provisions of Section 2.6(b) hereof, the City may at any time and at its sole option terminate the Commitment upon three (3) Business Days' prior written notice to the MTC in the form of Exhibit C hereto. As a condition to any such termination, the City shall pay or cause to be paid all Obligations owed to the MTC.

**Section 2.8.** [Reserved].

**Section 2.9.** [Reserved].

**Section 2.10. Extension of Commitment Expiration Date.** The City may request an extension of the Commitment Expiration Date in writing in the form of Exhibit B hereto not more than one (1) year prior to the then current Commitment Expiration Date and not less than 120 days prior to the then current Commitment Expiration Date. Upon such request, the MTC agrees that the term of this Agreement shall be extended for the period requested by the City, but in no event for more than five years unless otherwise agreed to in writing by the MTC. The Certificate LIBOR Rate for such extended period shall be determined by the City and MTC approaching three mutually agreed-upon banks or other financial institutions that normally purchase obligations such as the Certificates and requesting each such bank or other financial institution to offer a bid for the Certificates based on a spread above LIBOR. The Certificate LIBOR Rate for such extended period will be the [mean/median] of the three bids received. This Agreement shall be amended or supplemented as may be required in connection with such extension.

## ARTICLE III

### LIABILITY, INDEMNITY AND PAYMENT

**Section 3.1. Liability of the City.** The City and the MTC agree that the obligation of the City to pay the Obligations are contractual obligations of the City payable solely from the Pledged Property and shall not be affected by, and the MTC shall not be responsible for, among other things, (i) the validity, genuineness or enforceability of this Agreement, the Certificates or documents, notices or endorsements relating thereto (even if this Agreement or any documents, notices endorsements relating thereto should in fact prove to be in any and all respects invalid, fraudulent or forged), (ii) the use to which the amounts disbursed by the MTC may be put, or (iii) any other circumstances or happenings whatsoever, whether or not similar to any of the foregoing.

**Section 3.2. Indemnification by the City.** (a) The City, to the extent permitted by law, shall hereby indemnify and hold the MTC, and its directors, officers, employees and agents (the "Indemnified Parties") harmless from and against any and all claims, damages, losses, liabilities, costs or expenses which such Indemnified Parties may incur or which may be claimed against such Indemnified Parties by any person, as well as to the extent set forth in Section 6.1(w) hereof or by reason of or in connection with (i) the validity, sufficiency, enforceability or genuineness of any Related Document; (ii) the issuance or deemed issuance of any Certificate or the use of any proceeds of any Certificate; (iii) the execution, delivery and performance of this Agreement or any Related Document; or (iv) any Property; *provided, however*, that the City shall not be required to indemnify an Indemnified Party pursuant to this Section 3.2 for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of the MTC.

(b) To the extent not prohibited by applicable law, the City agrees to indemnify and hold the MTC harmless (from any present or future claim or liability for stamp, transfer, documentary, excise or other similar tax and any penalties or interest with respect thereto, which may be assessed, levied or collected by any jurisdiction in connection with the execution, delivery and performance of, or any payment made under, this Agreement, the Certificates and the other Related Documents, or any amendment thereto.

**Section 3.3. [Reserved].**

**Section 3.4. [Reserved].**

**Section 3.5. Maximum Interest Rate; Payment of Fee.** If the rate of interest payable on the Certificates or Obligations hereunder shall exceed the Maximum Rate for any period for which interest is payable, then (i) interest at the Maximum Rate shall be due and payable with respect to such interest period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and (B) the Maximum Rate (the "Excess Interest"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed such Maximum Rate, at which time the City shall pay or cause to be paid to the MTC, with respect to amounts then payable to the MTC that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the MTC to equal such Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the MTC. Upon the termination of this Agreement, in consideration for any limitation of the rate of interest which may otherwise be payable on the Certificates or other Obligations hereunder, the City shall pay or cause to be paid to the MTC a fee equal to the amount of all unpaid deferred Excess Interest (the "Excess Interest Fee"); provided that the Excess Interest Fee shall be payable as and to the extent that the then fair rental value with respect to the Components subject to the Sublease for such Base Rental Period exceeds the sum of all other Reimbursement Obligations remaining unpaid hereunder and the amount of interest accruing on the Certificates during such Base Rental Period. In accordance with Section 5922 of the California Government Code, the City hereby represents and warrants that the obligations of the City under the Certificates and all other Obligations hereunder are not subject to any limitation as to maximum interest rate.

**Section 3.6. Liability of the MTC.** Neither the MTC nor any of its officers, directors, employees, representatives or agents shall be liable or responsible for (i) the use which may be made of any Certificates or this Agreement or for any acts, omissions, errors, interruptions,

delays in transmission, dispatch or delivery of any message or advice, however transmitted, of the MTC in connection with this Agreement or the Certificates, (ii) any action, inaction or omission which may be taken by the MTC in connection with this Agreement or the Certificates, (iii) the validity, sufficiency or genuineness of documents, or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged, (iv) payment by the MTC against presentation of documents which do not comply with the terms of this Agreement or a Request for Purchase, including failure of any documents to bear any reference or adequate reference to this Agreement, or (v) any other circumstances whatsoever in making or failing to make payment under this Agreement or pursuant to a Request for Purchase, except for acts or events described in the immediately preceding clauses (i) through (v), to the extent, but only to the extent, of any direct, as opposed to special, indirect, consequential or punitive, damages (the right to receive special, indirect, consequential or punitive damages being hereby waived) suffered by it which the City proves were caused by (y) the MTC's willful misconduct or gross negligence in determining whether documents presented under this Agreement comply with the terms of this Agreement or (z) the MTC's failure to pay hereunder after the presentation to it of a Request for Purchase strictly complying with the terms and conditions of this Agreement. In furtherance and not in limitation of the foregoing, the MTC may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

**Section 3.7. Obligations Unconditional.** The City's obligation to repay the Certificates and all of its other Obligations under this Agreement shall be absolute and unconditional under any and all circumstances, including without limitation: (a) any lack of validity or enforceability of this Agreement, the Certificates or any of the other Related Documents; (b) any amendment or waiver of or any consent to departure from all or any of the Related Documents; (c) the existence of any claim, set off, defense or other right which the City may have at any time against the MTC or any other person or entity, whether in connection with this Agreement, the other Related Documents, the transactions contemplated herein or therein or any unrelated transaction; or (d) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; and irrespective of any setoff, counterclaim or defense to payment which the City may have against the MTC or any other Person, including, without limitation, any defense based on the failure of any nonapplication or misapplication of the proceeds of Certificates hereunder, and irrespective of the legality, validity, regularity or enforceability of this Agreement, the Certificates or any or all other Related Documents, and notwithstanding any amendment or waiver of (other than an amendment or waiver signed by the MTC explicitly reciting the release or discharge of any such obligation), or any consent to, or departure from, this Agreement, the Certificates or any or all other Related Documents or any exchange, release, or nonperfection of any collateral securing the obligations of the City hereunder; *provided, however*, that nothing contained in this Section 3.7 shall abrogate or otherwise affect the rights of the City pursuant to Section 3.6 hereof or the rights of the City pursuant to Section 3.5 of the Sublease.

**Section 3.8. Illegality.** If the MTC determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the MTC to make, maintain or fund Certificates by reference to the LIBOR Rate, or to determine or charge interest rates based upon the LIBOR Rate, or any Governmental Authority has imposed material restrictions on the authority of the MTC to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by the MTC to the City, any obligation of the MTC to make Certificates shall be suspended until the MTC notifies the City that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the City shall, upon demand from the MTC convert the interest with respect to all Certificates to Certificates

that bear interest at the Alternate Rate on the next Business Day. Upon any such conversion, the City shall also pay accrued interest with respect to the amount so converted.

**Section 3.9. Inability to Determine Rates.** If the MTC and the City determine that for any reason in connection with request for a Certificate that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount, (b) adequate and reasonable means do not exist for determining the LIBOR Rate or (c) LIBOR Rate, as the case may be, does not adequately and fairly reflect the cost to the MTC of funding such Certificate, the MTC will promptly so notify the City. Thereafter, the obligation of the MTC to make or maintain Certificates shall be suspended until the MTC revokes such notice. Upon receipt of such notice, (i) the City shall immediately revoke any pending request for a purchase of or borrowing of Certificates, and deliver notice to the MTC that such Certificates will be converted to Certificates bearing interest at the Alternate Rate in the amount specified therein and (ii) the interest rate with respect all outstanding Certificates shall be automatically converted to the interest rate set forth in such notice on the next Business Day. Upon any such conversion, the City shall also pay accrued interest with respect to the amount so converted.

**Section 3.10. Pledge by the City.** To provide security to the MTC for the payment by the City of the Obligations and any and all amounts now or hereafter owing to the MTC under this Agreement and the Certificates, the City hereby pledges to the MTC the Pledged Property, subject, however, to the pledge of the Pledged Property to the Trustee for the benefit of the owners of the Certificates set forth in the Trust Agreement. The pledge of the Pledged Property made by the City hereunder is valid, binding and perfected from the time when it is made and the Pledged Property so pledged shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid, binding and perfected as against all parties having claims of any kind in tort, contract or otherwise against the City irrespective of whether such parties have notice thereof. No instrument by which such pledges are created nor any financing statement need be recorded or filed. Such lien shall be on a parity with the lien in favor of the MTC and the Trustee on the Pledged Property under the Trust Agreement. The obligations of the City under this Agreement are a special obligation of the City payable solely from the Pledged Property. Furthermore, the City agrees that the MTC constitutes a Credit Provider under the Trust Agreement and the other Related Documents.

**Section 3.11. Adjustment of Base Rental.** (a) To the extent any Obligation or accrued interest thereon has not been paid as and when due or any deferred Excess Interest remains unpaid, following the Termination Date and for so long thereafter as any Obligations remain unpaid, the City shall increase the amount of the Base Rental payable under the Sublease for the Property to the greater of (i) the Maximum Base Rental for the Property or (ii) the maximum fair rental value of the Property determined in accordance with subsection (b) below.

(b) To the extent any Obligation or accrued interest thereon has not been paid as and when due or any deferred Excess Interest remains unpaid, following the Termination Date and for so long thereafter as any Obligations remain unpaid, unless the Sublease has terminated in accordance with its terms, the City agrees, at the MTC's sole written request, from time to time (but not more than once in any twelve month period), to determine or cause to be determined, the fair rental value for one or more Components. Upon consultation with special counsel and the MTC, such determination shall be by a [Class C] appraisal conducted by an employee of the City and shall be at the sole expense of the City. In addition, the City agrees to extend the term of (i) the Site Lease in accordance with Section 4 thereof and (ii) the Sublease

in accordance with Section 2.2 thereof, if, on the stated expiration thereof, any amounts remain owing to the MTC hereunder or under any of the other Related Documents.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

**Section 4.1 Representations and Warranties.** The City represents and warrants to the MTC as follows:

(a) Existence. The City is validly existing as a charter city and county duly organized and created and validly existing under the laws and Constitution of the State, with full right and power to own its properties and to carry on its affairs as now being conducted and to cause the execution and delivery of the Certificates, to pledge the security and to execute, deliver and perform its obligations under this Agreement and each Related Document to which it is a party.

(b) Authorization; Contravention. The execution, delivery and performance by the City of this Agreement, the Certificates and the other Related Documents to which it is a party are within the City's powers, have been duly authorized by all necessary action, require no further consent or action by or in respect of, or filing with, any governmental body, agency, official or other Person and do not violate or contravene, or constitute a default under, any provision of applicable law, charter, ordinance or regulation or of any material agreement, judgment, injunction, order, writ, determination, award, decree or instrument binding upon the City or by which the City or its properties may be bound or affected, or result in the creation or imposition of any lien or encumbrance on any asset of the City (other than pursuant to such enumerated documents). The City is not a party to, or otherwise subject to, any provision contained in any instrument evidencing indebtedness of the City, any agreement relating thereto, or any other contract or agreement (including its charter) that limits the amount of, or otherwise imposes restrictions on, the incurring of obligations of the City that would materially and adversely affect the ability of the City to perform its obligations hereunder or under any other Related Documents to which it is a party.

(c) Binding Effect. Assuming due execution by the other parties thereto, this Agreement and the other Related Documents to which the City is a party each constitutes a valid, binding and enforceable agreement of the City, subject to applicable laws affecting creditors' rights generally and general principles of equity regardless of whether such enforceability is considered in a proceeding at law or in equity.

(d) No Default. The City is not, in any material respect, in breach of or default under its organizational documents, or any applicable law or administrative regulation of the State or of the United States, relating, in each case, to the transactions contemplated hereby or by the other Related Documents, or any applicable judgment, decree, loan agreement, note, resolution, ordinance or other material agreement to which it is a party or is otherwise subject. Late delivery of financial statements or other reporting documentation shall not be deemed material for purposes of this Section.

(e) Litigation. Except as disclosed in writing to the MTC prior to the Closing Date, there is no action, suit or proceeding pending with service of process having been accomplished against, or to the knowledge of the City, threatened against or affecting, the City before any court or arbitrator or any governmental body, agency or official seeking to restrain or enjoin the



sale, execution or delivery of the Certificates or in any way contesting or affecting the validity of the Certificates or in which there is a reasonable possibility of an adverse decision which could have a material adverse effect on (i) the ability of the City to perform its obligations hereunder or under the Related Documents to which it is a party or (ii) the enforceability or validity of the Trust Agreement or any of the other Related Documents.

(f) No Sovereign Immunity. The City does not enjoy any rights of immunity on the grounds of sovereign immunity in respect of its obligations hereunder or under any Related Document to which it is a party or by which it is bound.

(g) Incorporation of Representations and Warranties by Reference. The City hereby makes to the MTC the same representations and warranties made by the City as are set forth in the Related Documents (other than this Agreement) to which it is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. No amendment to such representations and warranties or defined terms made pursuant to the Related Documents (other than this Agreement) to which it is a party shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the consent of the MTC.

(h) No Proposed Legal Changes. There is no amendment, or, to the knowledge of the City, no proposed amendment certified for placement on a statewide ballot, to the Constitution of the State of California or any published administrative interpretation of the Constitution of the State of California or any State of California law, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect (i) the execution and delivery of this Agreement or the other Related Documents to which the City is a party, or (ii) the performance by the City of its obligations under this Agreement or the other Related Documents to which the City is a party.

(i) Title to Property; Sublease. The City has good and marketable fee simple title to all of the Components, subject only to Permitted Encumbrances. The Sublease is in full force and effect. The City, as lessee under the Sublease, is in peaceable possession of the Property. No waiver, indulgence or postponement of any of the City's obligations under the Sublease has been granted by the Trustee. There exists no event of default or event, occurrence, condition or act that, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a default under the Sublease.

(j) Disclosure. Except as disclosed in writing to the MTC prior to the Closing Date, there is no fact known to the City, as of the date this representation is made, that would have a material adverse effect on (i) the ability of the City to perform its obligations hereunder or under the other Related Documents to which it is a party or (ii) the enforceability or validity of any of the Related Documents.

(k) Financial Information. The consolidated statement of financial position of the City as of June 30, 2015, as well as each CAFR of the City as of any more recent date, delivered to the MTC pursuant to this Agreement (the "Submitted Financial Statements"), were prepared in accordance with GAAP consistently applied throughout the periods involved and fairly present the financial condition of the City as at such date and the results of the operations of the City for the period ended on such date, all in accordance with GAAP consistently applied, and since the

date of such financial information, there has been no change in the business, financial condition, results of operations, or prospects of the City which would materially and adversely affect the ability of the City to perform its obligations hereunder or under any other Related Documents to which it is a party which has not been disclosed by the City to the MTC.

(l) Legal Matters. The City is in material compliance with all applicable laws, rules, regulations and orders of any governmental authority having jurisdiction over the City, non-compliance with which would materially and adversely affect the ability of the City to perform its obligations hereunder or under any other Related Documents to which it is a party.

(m) Environmental Matters. In the ordinary course of its business, the City conducts an ongoing review of Environmental Regulations on the business, operations and properties of the City, in the course of which it identifies and evaluates associated liabilities and costs (including, without limitation, any capital or operating expenditures required for clean-up or closure of properties presently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of such review the City has reasonably concluded that Environmental Regulations are unlikely to have a material adverse effect on the Property or the ability of the City to pay any Base Rental or Additional Rental or any of its obligations hereunder or under any other Related Document.

(n) Regulations T, U and X. The City is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, U or X issued by the Board of Governors of the Federal Reserve System); and no proceeds of any Certificates will be or have been used to extend credit to others for the purpose of purchasing or carrying any margin stock.

(o) ERISA. Other than as disclosed in writing to the MTC prior to the Closing Date, the City does not maintain or contribute to, and has not maintained or contributed to, any Plan that is subject to Title IV of ERISA and does not have any under funded pension liabilities the effect of which could reasonably be expected to result in a material adverse effect on the City's ability to satisfy its obligations under this Agreement or the other Related Documents.

(p) No Tax or Fee. Neither the execution or delivery of this Agreement or the advance of any amounts pursuant to this Agreement will give rise to any tax or fee imposed by any local or state agency or governmental body.

(q) Usury. The terms of this Agreement and the Related Documents regarding calculation and payment of interest and fees do not violate any applicable usury laws.

(r) Essentiality. The Property is an essential asset of the City necessary to serve the needs of the residents of the City. The City believes that at all times while any rental payments or any obligation of the County under the Related Documents remains unpaid, the Property will remain an essential asset of the County.

(s) Fair Rental Value. The total Maximum Base Rental for the Property does not exceed the fair rental value of the Property. In making such determination of fair rental value,

consideration has been given to the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the City and the general public.

(t) Additional Rentals. All Obligations of the City hereunder, other than the principal of and interest with respect the Certificates, shall be paid as Additional Rentals pursuant to Section 3.1(g) of the Sublease.

## ARTICLE V

### CONDITIONS

**Section 5.1. Conditions to Closing.** The effectiveness of this Agreement and the obligation of the MTC to purchase the Certificates hereunder is subject to the conditions precedent that the MTC shall have received the items listed below in this Section, each dated and in form and substance as is satisfactory to the MTC:

(a) The MTC shall have received:

(i) Certified copies of the resolutions of the City approving this Agreement, the other Related Documents and the other matters contemplated hereby and thereby, and all other documents, including records of proceedings of the City, instruments, governmental approvals, third party approvals and opinions as the MTC and its counsel may reasonably request evidencing any other necessary action.

(ii) A certificate of the City stating the names and true signatures of the officers of the City authorized to sign this Agreement and the other documents to be delivered by the City hereunder.

(iii) Executed or certified copies, as applicable, of each of the Related Documents in form and substance satisfactory to the MTC.

(iv) A letter addressed to the MTC from Jones Hall, Special Counsel, entitling the MTC to rely on such firm's approving opinion addressed to the City with respect to the Certificates.

(v) An opinion or opinions of Jones Hall, Special Counsel, in form and substance satisfactory to the MTC and its counsel, addressed to the MTC, to the effect that (A) this Agreement has been duly authorized, executed and delivered by the City and constitutes a legal, valid and binding agreement of the City enforceable against the City in accordance with its respective terms (except that (i) the enforcement of the Agreement may be limited by bankruptcy and other similar laws relating to creditors' rights, (ii) certain equitable remedies may be unavailable and (iii) the indemnification provision may be limited by securities laws and public policy), (B) the Certificates have been duly executed and delivered pursuant to the Trust Agreement and constitute legal, valid and binding obligations enforceable in accordance with their terms (except that (i) the enforcement thereof may be limited by bankruptcy and other similar laws relating to creditors' rights, (ii) certain equitable remedies may be unavailable and (iii) the indemnification provision may be limited by securities laws and public policy), (C) the MTC, for so long as it owner of any Certificates, is entitled to the benefits of the Trust Agreement on a parity with all Holders of Certificates, (D) the City has the authority and

power to execute this Agreement, and (E) that the terms of the Trust Agreement, the Sublease and this Agreement create a valid pledge of and lien of the Pledged Property to secure the Certificates and the amounts owed to the MTC hereunder and under the Fee Agreement.

(vi) Evidence that the long-term unenhanced rating assigned to the Lease Obligation Debt is not less than "AA-" by S&P and "Aa3" by Moody's.

(vii) Each Certificate shall be executed and delivered in physical certificated form and registered in the name of the MTC.

(viii) A certificate of the City setting forth the annual fair rental value of each Component.

(ix) Certificate(s) of the City stating that (A) on the Closing Date, no Default or Event of Default has occurred and is continuing, and that (B) on the Closing Date, all representations and warranties of the City contained herein or otherwise made in writing in connection herewith shall be true and correct with the same force and effect as though such representations and warranties had been made on and as of such time.

(x) An opinion of the City Attorney of the City as counsel to the City, in form and substance satisfactory to the MTC and its counsel, and addressed to the MTC.

(xi) Audited financial statements for the City for the two most recently available fiscal years and the most recent operating budget summaries for the City's General Fund for the current fiscal year.

(xii) Evidence that the City has appropriated amounts sufficient to pay the Base Rental due, or anticipated to be due, in the Fiscal Year ending June 30, 2016, with respect to the Components.

(xiii) Evidence of the City's current hazard and rental interruption insurance for the Components such that the amount payable under the related policy shall be not less than from an amount equal to two (2) years' maximum Base Rental for all the Components, assuming an interest rate of 12% per annum and such insurance shall be satisfactory to the MTC. The MTC shall have received a certificate from the City's Risk Manager stating that the City's current policies of insurance and any self-insurance maintained by the City comply with the provisions of Section 4.3 of the Sublease. Any such commercial insurance policies shall name the MTC as loss payee and additional insured and shall be issued by insurers rated "A" or better by Best's or approved by the MTC.

(xiv) A copy of the investment policy of the City.

(xv) Certificates of the Trustee evidencing the signatures and offices of officers of each executing the Related Documents, and with respect to such other matters as the MTC may reasonably request, and an opinion of counsel to the Trustee, in form and substance satisfactory to the MTC and its counsel, and addressed to the MTC.

(xvi) Written evidence satisfactory to the MTC that a CUSIP number has been obtained and reserved from Standard and Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc. for the Certificates (such CUSIP number shall also be made available on the Bloomberg Municipal Bond Description Screen or otherwise provided electronically to the MTC pursuant to a third party provider of such information).

(xvii) Such other documents, certificates, opinions, approvals and filings with respect to the Related Documents and this Agreement as the MTC may reasonably request.

(b) All other legal matters pertaining to the execution and delivery of this Agreement, the Related Documents and the execution and delivery of the first installment of the Certificates shall be reasonably satisfactory to the MTC and its counsel.

(c) The City shall have made payment to (i) the MTC of all amounts due on the Closing Date hereunder and (ii) Chapman and Cutler LLP, as special counsel to the MTC, its legal fees and expenses incurred in connection with the preparation, review, negotiation, execution and delivery of the Related Documents.

**Section 5.2. Conditions Precedent Purchases.** The obligation of the MTC to Purchase each Certificate is subject to the satisfaction of the following conditions precedent on the Purchase Date:

(a) no Default or Event of Default shall have occurred and be continuing;

(b) the representations and warranties of the City set forth in Article IV hereof (other than Section 4.1(g)) shall be true and correct on and as of such date, as if made on such date; and

(c) the Purchaser shall have received a Request for Purchase as required under, and in strict conformity with, Section 2.3 hereof.

**Section 5.3. Conditions Precedent to Issuance of Certificates.** The City hereby agrees that it shall not permit the execution and delivery of any Certificates prior to the date on which the MTC receives evidence of title insurance on the Components insuring the Trustee and naming the MTC an additional insured, in an amount not less than the Initial Commitment Amount, subject only to such exceptions as shall be acceptable to the MTC, with such endorsements and affirmative coverages as may be reasonably required by the MTC, including such endorsements as may be reasonably required by the MTC, and otherwise in form and substance satisfactory to the MTC and its counsel and issued by an insurance company acceptable to the MTC and its counsel and authorized to issue such insurance in the State of California.

## ARTICLE VI

### COVENANTS OF THE CITY

**Section 6.1. Covenants.** The City covenants and agrees, from the date hereof and until the payment in full of all Obligations, unless the MTC shall otherwise consent in writing:

(a) Information. The City will prepare or cause to be prepared and deliver to the MTC the following:

(i) as promptly as available, and in any event no later than 270 days after the end of each fiscal year of the City, the complete Comprehensive Annual Financial Report ("CAFR") of the City, certified as to the fairness of presentation and conformity with GAAP consistently applied, by a recognized firm of independent certified public accountants;

(ii) concurrently with the delivery of the financial statements delivered to the MTC pursuant to (a)(i) above, a certificate from an Authorized Representative certifying that such Authorized Representative has no knowledge of any event which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse or both, that has occurred and is continuing and a certificate from an Authorized Representative of the City certifying that such Authorized Representative has no knowledge of any event which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse or both, that has occurred and is continuing;

(iii) within ninety (90) days of adoption of the most recently adopted annual operating budget of the City with respect to the City's General Fund, evidence that such annual operating budget with respect to the City's General Fund includes therein as a separate line item all Minimum Required Rental Payments and Additional Payments due during such period, if not otherwise paid from capitalized interest funded by proceeds of the Certificates; and

(iv) such other information respecting the affairs, conditions and/or operations, financial or otherwise, of the City or the Property, as the MTC may from time to time reasonably request.

All factual information hereinafter delivered by City in writing to the MTC will be, to the knowledge of the authorized person delivering such information after reasonable inquiry, accurate and complete in all material respects on the date as of which such information is certified.

(b) No Amendment Without Consent of the MTC. Without the prior written consent of the MTC, the City will not agree or consent to any amendment, supplement, waiver or modification of any provision of any Related Document to which the City is a party that affects the rights, interests, security or remedies of the MTC hereunder.

(c) Incorporation of Covenants by Reference. The City agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Related Documents to which it is a party, which provisions, as well as related defined terms contained herein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety. To the extent that any such incorporated provision permits any Person to waive compliance with or consent to such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such provision shall be complied with only if it is waived or consented to by the MTC and such document, opinion or other instrument shall be acceptable or satisfactory only if it is acceptable or satisfactory to the MTC.

(d) Outstanding Certificates. The City will not cause the execution and delivery or deem to be cause the execution and delivery any Taxable Certificates if the aggregate amount of such Taxable Certificates to be executed and delivered exceeds the Certificate Commitment.

(e) Defaults. The City will promptly (and in any event within ten Business Days) notify the MTC of the occurrence of any Default or Event of Default specifying the details of such Default or Event of Default or event of default and the action that the City proposes to take with respect thereto.

(f) Books, Records. The City will permit, during normal business hours and from time to time, upon reasonable prior notice, the MTC or any of its agents or representatives to examine and make copies of and abstracts from the records and books of account of the City (except records and books of accounts the examination of which by the MTC is prohibited by law); and to discuss the affairs, finances and accounts of the City with any representative or any other appropriate officer of the City or the City's independent public accountants. Without limiting the foregoing, upon reasonable prior notice the City shall permit the MTC to visit and inspect any of the Property during regular business hours as often as the MTC may reasonably request.

(g) Other Obligations. The City will comply with and observe all other obligations and requirements set forth in the Trust Agreement and each other Related Document to which it is a party (including without limitation all provisions therein for the benefit of the MTC) in all material respects and in all laws, statutes and regulations binding upon it, noncompliance with which would materially adversely affect the City's ability to perform its obligations under the Certificates, this Agreement or any of the Related Documents.

(h) Litigation; Material Change. The City shall promptly notify the MTC of (i) the existence and status of any litigation which individually or in the aggregate could, in the event of an unfavorable outcome, or (ii) the occurrence of any other event or change which could have a material adverse effect on (A) the ability of the City to perform its obligations hereunder or under the other Related Documents or (B) the enforceability or validity of the Trust Agreement or any of the other Related Documents.

(i) Obligations under Related Documents. The City shall take all actions as may be reasonably requested by the MTC to enforce the obligations under the Related Documents of each of the other parties thereto.

(j) Trustee. The City will not, without the prior written consent of the MTC (which consent shall not be unreasonably withheld or delayed), appoint or permit the appointment of a successor Trustee. The City shall at all times maintain a Trustee under the Trust Agreement.

(k) Limitation on Voluntary Liens. (i) The City shall not create a pledge, lien or charge on any part of the Property or the Pledged Property, other than the lien in favor of Holders of the Certificates and the MTC. (ii) The City covenants to keep the Components and all parts thereof free from judgments, and materialmen's and mechanics' liens, claims, demands, encumbrances, liabilities and other liens of whatever nature or character, which, in each case, might hamper the City in utilizing the Components; and promptly, upon request of the MTC, to take such action from time to time as may be reasonably necessary or proper to remedy or cure any cloud upon or defect in the title to the Components or any part thereof,

whether now existing or hereafter developing, to prosecute all actions, suits, or other proceedings as may be reasonably appropriate for such purpose.

(l) City to Maintain Existence. The City agrees that it will maintain its existence as a charter city and county under the laws and Constitution of the State of California.

(m) Further Assurances. The City will execute, acknowledge where appropriate, and deliver from time to time promptly at the request of the MTC all such instruments and documents as in the opinion of the MTC are reasonably necessary or desirable to carry out the intent and purposes of this Agreement.

(n) No Impairment. The City will not take any action, or cause or permit the Trustee to take any action, under the Trust Agreement, the Sublease or any other Related Document inconsistent with the rights and remedies of the MTC under this Agreement.

(o) Additional Obligations. The City will not issue or cause the execution and delivery or authorize the issuance or the execution and delivery of any obligations payable from Base Rental or Additional Rental due under the Sublease other than the Certificates.

(p) References to the MTC. The City will not refer to the MTC in any official statement, offering memorandum, or private placement memorandum without the MTC's prior written consent thereto.

(q) Title Insurance. Title insurance shall be provided and maintained in the manner and in form and substance as set forth in the Sublease; *provided* that notwithstanding anything contained in the Sublease or any other Related Document to the contrary, any policy of title insurance shall be subject only to such exceptions as shall be acceptable to the MTC, with such endorsements and affirmative coverages as may be reasonably required by the MTC, including endorsements regarding zoning and access to public roads, and otherwise in form and substance satisfactory to the MTC and its counsel and issued by an insurance company acceptable to the MTC and its counsel and authorized to issue such insurance in the State.

(r) Maintenance of Insurance. Insurance shall be provided and maintained in the manner and in form and substance as set forth in the Sublease.

(s) Covenants and Legal Duties. Subject to Section 3.1(g) of the Sublease, the City agrees to include all Minimum Required Rental Payments and Additional Rental due under the Sublease in each Fiscal Year in its annual budget and to make the necessary annual appropriations for all such Minimum Required Rental Payments and Additional Rental, and for all Minimum Supplemental Rental Payments, if any, subject to Section 3.5 of the Sublease. The covenants on the part of the City herein contained and in the Sublease 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 such covenants and agreements.

(t) Use Proceeds. The City shall cause the Trustee to use the proceeds of Taxable Certificates for the purpose of financing the Project Costs of the Taxable Projects.

(u) Ratings. The City shall give written notice to the MTC as soon as practicable of the increase, decrease, withdrawal or suspension of any rating maintained by Moody's, Fitch or



S&P, to the extent such Rating Agency is then maintaining a rating on Lease Obligation Debt, in respect of the City's unenhanced Lease Obligation Debt, unless such rating is terminated due to the payment in full of such certificates of participation; *provided* that the requirement to provide such notice shall be satisfied if such information is publicly available on the Electronic Municipal Market Access system maintained by the Municipal Securities Rulemaking Board. The City shall cause to be maintained at all times long-term unenhanced ratings on its Lease Obligation Debt from at least two (2) of Moody's, Fitch and S&P.

(v) Voluntary Rent Abatement. Except as required by law and the terms of the Sublease, the City shall not seek or assert a claim for abatement of rental payments under the Sublease.

(w) Immunity. To the fullest extent permitted by law, the City agrees not to assert the defense of immunity (on the grounds of sovereignty or otherwise) in any proceeding by the MTC to enforce any of the obligations of the City under this Agreement or any other Related Document.

(x) Alternate Financing. The City agrees to use its best efforts to obtain an alternate financing in the event that (i) the MTC decides not to extend the Commitment Expiration Date and any Certificates are then outstanding or (ii) the Commitment and Available Commitment is terminated on the Termination Date and any Certificates are then outstanding.

(y) ERISA. The City will comply in all material respects with Title IV of ERISA, if, when and to the extent applicable.

(z) Swap Agreements. (i) The City will use its best efforts to enter into all future Swap Contracts with a claim on the General Fund of the City with counterparties rated "AA-" (or its equivalent) or better by at least one Fitch, S&P or Moody's. (ii) In no event shall any swap counterparty with respect to any such Swap Contract with a claim on the General Fund of the City be rated lower than "A" (or its equivalent) by any one of Fitch, S&P or Moody's, without the prior written consent of the MTC, at the time of entering into such Swap Contract.

(aa) Fair Rental Value. In the event the aggregate fair rental value of all of the Components is less than the aggregate principal of and interest with respect to all Certificates outstanding after the Term-Out Commencement Date in any calendar year, the City will use its best efforts to either (i) take all steps necessary to seek an appropriation from the City's General Fund in an amount equal to such difference between the aggregate principal of and interest with respect to all Certificates outstanding after the Term-Out Commencement Date and such fair rental value and use such appropriation to prepay such Certificates or (ii) obtain alternative financing to otherwise refinance the Certificates.

## ARTICLE VII

### DEFAULTS AND REMEDIES

**Section 7.1. Events of Default.** The occurrence of any of the following events (whatever the reason for such event and whether voluntary, involuntary, or effected by operation of law) shall be an "Event of Default" hereunder:

(a) the City shall fail to pay (i) any principal of or interest with respect to any Certificate when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise);

(b) (i) The City shall default in the performance of any of the covenants set forth in Section 5.1(b), (d), (g), (j), (k)(i), (l), (n), (o), (q), (r), (s), (t), (v), (w) or (z)(ii) hereof or (ii) Certificates shall be executed and delivered prior to satisfaction of the condition precedent set forth in Section 5.3 hereof;

(c) The City shall default in the performance of any other term, covenant or agreement set forth herein and such failure shall continue for a period of thirty (30) days after the earlier to occur of (i) written notice thereof shall have been given to the City by the MTC or (ii) the tenth (10th) day after the Controller of the City shall have actual knowledge of such default;

(d) Any representation, warranty, certification or statement made by the City (or incorporated by reference) in this Agreement or by the City in any other Related Document or in any certificate, financial statement or other document delivered pursuant to this Agreement or any other Related Document shall prove to have been incorrect in any material respect when made or deemed made;

(e) The City shall (A) fail to make any payment on any Material City Debt (other than the Certificates) or any interest or premium thereon when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Material City Debt; or (B) fail to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument relating to any Material City Debt when required to be performed or observed; and such failure shall not be waived and shall continue after the later of (1) five Business Days after notice of such failure or (2) the applicable grace period, if any, specified in such agreement or instrument, if the effect of such failure to perform or observe is to accelerate the maturity of such Material City Debt; or (C) any Material City Debt shall be declared to be due and payable or be required to be prepaid (other than by a regularly scheduled required prepayment or an optional prepayment), prior to the stated maturity thereof; *provided, however*, that in the case of clause (A) or (B) any such failure shall not be considered an Event of Default hereunder if the same is being contested in good faith and by appropriate proceedings and such contest shall operate to stay the acceleration of the maturity of such Material City Debt;

(f) The City or the Trustee shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall declare a moratorium, or shall take any action to authorize any of the foregoing; or any Governmental Authority of appropriate jurisdiction shall declare a moratorium with respect to any of the debt of the City;

(g) A case or other proceeding shall be commenced against the City or the Trustee seeking liquidation, reorganization or other relief with respect to it or its debts under any

bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case shall remain undismissed and unstayed for a period of sixty (60) days; or an order for relief shall be entered against the City or the Trustee under the federal bankruptcy laws as now or hereafter in effect, or any writ, judgment, warrant of attachment, execution or similar process shall be issued or levied against a substantial part of the property, assets or business of the City or the Trustee, and such proceedings or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be stayed, released, appealed, vacated or fully bonded, within the time permitted by law after commencement, filing or levy, as the case may be;

(h) Any provision of this Agreement or any Related Document shall cease for any reason whatsoever to be a valid and binding agreement of the City or the Trustee, or the City or the Trustee shall contest the validity or enforceability thereof;

(i) Any pledge or security interest created hereunder or under the Trust Agreement to secure any amounts due under this Agreement shall fail to be valid or fully enforceable;

(j) An event of default shall occur under any of the Related Documents (other than this Agreement) or the City shall fail to make any payment under the Sublease when and as due;

(k) The highest long-term unenhanced rating assigned by Moody's, Fitch or S&P, to the extent such Rating Agency is then maintaining a rating on Lease Obligation Debt, on any Lease Obligation Debt of the City shall be withdrawn, suspended or otherwise unavailable for credit related reasons or reduced below "Baa3" (or its equivalent), "BBB-" (or its equivalent) or "BBB-" (or its equivalent), respectively;

(l) One or more final, nonappealable judgments or orders for the payment of money in the aggregate amount of \$25,000,000 or more shall be rendered against the City and such judgment or order shall continue unsatisfied and unstayed for a period of sixty (60) days; or

(m) Any Event of Default (or term of like meaning or effect) shall have occurred under any Bank Agreement related Lease Obligation Debt of the City.

**Section 7.2. Rights and Remedies upon Default.** Upon the occurrence of an Event of Default hereunder, the MTC may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(a) by written notice to the City, declare the Commitment and/or the Available Commitment to be terminated and thereafter the MTC will have no further obligation to purchase Certificates hereunder;

(b) by written notice to the City, declare the commencement of the Amortization Period pursuant to which the principal and interest with respect to the Certificates shall be repaid as set forth in Section 2.5(a)(ii) hereof and demand the other Obligations under this Agreement (other than the principal and interest with respect to the Certificates) to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived;

(c) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the Related Documents or to enforce performance or observance of any obligation, agreement or covenant of the City under the Related Documents, whether for specific performance of any agreement or covenant of the City or in aid of the execution of any power granted to the MTC in the Related Documents;

(d) cure any Default, Event of Default or event of nonperformance hereunder or under any Related Document; *provided, however*, that the MTC shall have no obligation to effect such a cure; and

(e) exercise, or cause to be exercised, any and all remedies as it may have under the Related Documents and as otherwise available at law and at equity.

Notwithstanding anything to the contrary contained in the preceding sentence, upon the occurrence or existence of an Event of Default of the type described in Section 7.1(f) of 7.1(g), the remedies described in the foregoing clauses (a) and (b) shall occur immediately and automatically without prior notice or further action on the part of the MTC or any other person. Anything in this Agreement to the contrary notwithstanding, from and after the occurrence an Event of Default, all Certificates and other Obligations hereunder shall bear interest at the Default Rate.

**Section 7.3. Suits at Law or in Equity and Mandamus.** If any Event of Default shall occur, then and in every such case the MTC shall be entitled to proceed to protect and enforce its rights by such appropriate judicial proceeding as it may deem most effectual to protect and enforce any such right, either by suit, in equity, or by action at law, whether for the specific performance of any covenant or agreement contained in this Agreement, in aid of the exercise of any power granted in this Agreement, or to enforce any other legal or equitable right vested in the MTC by this Agreement, the Certificates or by law. The provisions of this Agreement shall be a contract with each and every Certificateholder and the duties of the City shall be enforceable by any Certificateholder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

**Section 7.4. No Waiver.** No failure on the part of MTC to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. No delay or omission by the MTC in the exercise of any right, remedy or power or in the pursuit of any remedy shall impair any such right remedy or power or be construed to be a waiver of any default on the part of the MTC or to be acquiescence therein. No express or implied waiver by the MTC of any Event of Default shall in any way be a waiver of any future or subsequent Event of Default.

**Section 7.5. Discontinuance of Proceedings.** In case the MTC shall proceed to invoke any right, remedy or recourse permitted hereunder or under the Related Documents and shall thereafter elect to discontinue or abandon the same for any reason, the MTC shall have the unqualified right so to do and, in such event, the City and the MTC shall be restored to their former positions with respect to the Obligations, the Related Documents and otherwise, and the rights, remedies, recourse and powers of the MTC hereunder shall continue as if the same had never been invoked.

**ARTICLE VIII**

**GENERAL**

**Section 8.1. Notices.** All notices, requests, demands, directions and other communications (collectively "notices") under the provisions of this Agreement shall be in writing (including facsimile communication), unless otherwise expressly permitted hereunder, and shall be sent by first class mail or overnight delivery and shall be deemed received as follows: (i) if by first class mail, five (5) days after mailing; (ii) if by overnight delivery, on the next Business Day; (iii) if by telephone, when given to a person who confirms such receipt; and (iv) if by facsimile, when confirmation of receipt is obtained. All notices shall be sent to the applicable party at the following address or in accordance with the last unrevoked written direction from such party to the other parties hereto:

The City: City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place,  
room 316  
San Francisco, California 94102  
Attention: City Controller  
Facsimile: ( ) [ ]  
Telephone: ( ) [ ]

The MTC: Metropolitan Transportation Commission  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_

The MTC, with respect to Requests for Purchase  
Metropolitan Transportation Commission  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_

The Trustee: [U.S. Bank National Association]  
[ ]  
[ ]  
Attention: [ ]  
Facsimile: ( ) [ ]  
Telephone: ( ) [ ]

The MTC may rely on any notice (including telephone communication) purportedly made by or on behalf of the other, and shall have no duty to verify the identity or authority of the Person giving such notice, unless such actions or omissions would amount to gross negligence or intentional misconduct.

**Section 8.2. Successors and Assigns.** This Agreement is a continuing obligation and shall be binding upon the City, its successors, transferees and assigns and shall inure to the benefit of the owners of the Certificates and their respective permitted successors, transferees and assigns. The City may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the MTC. Notwithstanding anything to the contrary set forth herein, so long as no Event of Default shall have occurred and be continuing hereunder, MTC may not assign its obligations to purchase Certificates pursuant to the terms of this Agreement without the prior written consent of the City (such consent not to be unreasonably withheld), and may not assign, sell or transfer in whole or in part, this Agreement, its interest in the Certificates and the Related Documents without the prior written consent of the City (such consent not to be unreasonably withheld). In the event that the MTC decides to assign, sell or transfer in whole or in part, this Agreement, its interest in the Certificates and the Related Documents and the city consents to such assignment, sale or transfer, the assignee, purchaser or transferee shall deliver to the City, the Trustee and the MTC an investment letter in substantially the form attached as Exhibit F to this Agreement (the "Investor Letter"). Any assignment, sale or transfer that does not comply with the terms of the prior sentence shall be void.

**Section 8.3. Amendments.** Any provision of this Agreement may be amended or modified if, but only if, such amendment or modification is in writing and is signed by the City and the MTC.

**Section 8.4. Governing Law; Consent to Jurisdiction and Venue; Service of Process.** (a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

(b) EACH PARTY HERETO CONSENTS TO AND SUBMITS TO IN PERSONAM JURISDICTION AND VENUE IN THE STATE OF CALIFORNIA AND IN THE FEDERAL DISTRICT COURTS WHICH ARE LOCATED IN THE NORTHERN DISTRICT OF CALIFORNIA OR THE SUPERIOR COURT LOCATED IN THE CITY AND COUNTY OF SAN FRANCISCO. EACH PARTY ASSERTS THAT IT HAS PURPOSEFULLY AVAILED ITSELF OF THE BENEFITS OF THE LAWS OF THE STATE OF CALIFORNIA AND WAIVES ANY OBJECTION TO IN PERSONAM JURISDICTION ON THE GROUNDS OF MINIMUM CONTACTS, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY PLEA OF FORUM NON CONVENIENS. THIS CONSENT TO AND SUBMISSION TO JURISDICTION IS WITH REGARD TO ANY ACTION RELATED TO THIS AGREEMENT. REGARDLESS OF WHETHER THE PARTY'S ACTIONS TOOK PLACE IN THE STATE OF CALIFORNIA OR ELSEWHERE IN THE UNITED STATES, THIS SUBMISSION TO JURISDICTION IS NONEXCLUSIVE, AND DOES NOT PRECLUDE EITHER PARTY FROM OBTAINING JURISDICTION OVER THE OTHER IN ANY COURT OTHERWISE HAVING JURISDICTION.

(c) TO THE EXTENT PERMITTED BY APPLICABLE LAWS, EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE RELATED DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO HEREBY

CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE SHALL BE EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND CONSENT AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(d) The covenants and waivers made pursuant to this Section 8.4 shall be irrevocable and unmodifiable, whether in writing or orally, and shall be applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

**Section 8.5. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts," if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

**Section 8.6. Severability.** If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

**Section 8.7. Survival of this Agreement.** All covenants, agreements, representations and warranties made in this Agreement shall survive the extension by the MTC of the Commitment and shall continue in full force and effect so long as the Commitment shall be unexpired or any sums drawn or due thereunder or any other obligations shall be outstanding and unpaid, regardless of any investigation made by any Person and so long as any amount payable hereunder remains unpaid. The agreement of the City to indemnify the

MTC and each Indemnified Party under Section 3.2 hereof shall continue in full force and effect notwithstanding a termination of the Commitment or the fulfillment of all Obligations. The obligations of the City under Sections 3.3 and 2.6(d) hereof shall also continue in full force and effect notwithstanding a termination of the Commitment or the fulfillment of all Obligations. Whenever in this Agreement the MTC is referred to, such reference shall be deemed to include the successors and assigns of the MTC and all covenants, promises and agreements by or on behalf of the City which are contained in this Agreement shall inure to the benefit of the successors and assigns of the MTC.

**Section 8.8. Effectiveness.** This Agreement shall become effective upon the execution by the MTC and the acceptance hereof by the City.

**Section 8.9. Headings.** The headings of the Sections of this Agreement are inserted for convenience only and shall not be deemed to be a part hereof.

**Section 8.10. No Personal Liability.** None of the City's officers, employees, or agents (including, without limitation, any person executing this Agreement) shall be liable personally for any Obligation or be subject to any personal liability or accountability by reason of the City's issuance of any Certificate or for entering into this Agreement.

**Section 8.11. [Reserved].**

**Section 8.12. City Requirements.** The MTC hereby agrees to the City's requirements, as provided in Exhibit H attached hereto and incorporated hereby by this reference.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, the parties hereto have caused this Certificate Purchase Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO

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

APPROVED AS TO FORM:

CITY ATTORNEY

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

THE METROPOLITAN TRANSPORTATION  
COMMISSION CITY AND COUNTY OF SAN  
FRANCISCO

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

**EXHIBIT A**

**[FORM OF REQUEST FOR PURCHASE]**

**REQUEST FOR PURCHASE**

Metropolitan Transportation Commission

[Address]

Telephone:

Facsimile:

Attention:

Email:

Ladies and Gentlemen:

The undersigned, an Authorized Representative, refers to the Certificate Purchase Agreement, dated [June \_\_, 2016] (together with any amendments or supplements thereto, the "Agreement"), by and between the City and County of San Francisco (the "City") and the Metropolitan Transportation Commission (the "MTC") (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.3 of the Agreement, that the MTC make a Purchase of Certificates under the Agreement, and in that connection sets forth below the following information relating to such Purchase (the "Proposed Purchase"):

1. The Business Day of the Proposed Purchase is \_\_\_\_\_, 20\_\_ (the "Purchase Date"), which is at least three Business Days after the date hereof.
2. The principal amount of the Proposed Purchase of a Certificate is \$\_\_\_\_\_, which, together with all other Certificates then outstanding, is not greater than the Available Commitment as of the Purchase Date set forth in 1 above.
3. The Certificate shall bear interest at the Certificate LIBOR Rate

The Proposed Purchase shall be made by the MTC by wire transfer of immediately available funds to the undersigned in accordance with the instructions set forth below:

[Insert wire instructions]

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

Very truly yours,

CITY AND COUNTY OF SAN FRANCISCO

By \_\_\_\_\_

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

Title: \_\_\_\_\_

EXHIBIT B

[FORM OF REQUEST FOR EXTENSION]

REQUEST FOR EXTENSION

[Date]

Metropolitan Transportation Commission

[Address]

Telephone:

Facsimile:

Attention:

Email:

Ladies and Gentlemen:

Reference is made to the Certificate Purchase Agreement dated [June \_\_, 2016] (together with any amendments or supplements thereto, the "Agreement") by and between the undersigned, the City and County of San Francisco (the "City") and the Metropolitan Transportation Commission (the "MTC"). All terms defined in the Agreement are used herein as defined therein.

The City hereby requests, pursuant to Section 2.10 of the Agreement, that the Commitment Expiration Date with respect to the Available Commitment as of the date hereof be extended to \_\_\_\_\_, \_\_\_\_\_. Pursuant to such Section 2.10, we have enclosed with this request the following information:

1. a reasonably detailed description of any and all Defaults that have occurred and are continuing;
2. confirmation that all representations and warranties of the City as set forth in Article IV of the Agreement and each Related Document are true and correct as though made on the date hereof and that no Default or Event of Default has occurred and is continuing on the date hereof; and
3. any other pertinent information previously requested by the MTC.

The MTC is asked to notify the City of its decision with respect to this request within 60 days of the date of receipt hereof. If the MTC fails to notify the City of the MTC's decision within such 60 day period, the MTC shall be deemed to have rejected such request.

Very truly yours,

CITY AND COUNTY OF SAN FRANCISCO

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

**EXHIBIT C**

**[FORM OF NOTICE OF TERMINATION OR REDUCTION]**

**NOTICE OF TERMINATION OR REDUCTION**

[Date]  
Metropolitan Transportation Commission  
[Address]  
Telephone:  
Facsimile:  
Attention:  
Email:

Ladies and Gentlemen:

Re: Certificate Purchase Agreement dated [June \_\_, 2016]

The City and County of San Francisco (the "City"), through its undersigned, an Authorized Representative, hereby certifies to the Metropolitan Transportation Commission (the "MTC"), with reference to the Certificate Purchase Agreement dated [June \_\_, 2016] (together with any amendments or supplements thereto, the "Agreement"), by and between the City and the MTC (the terms defined therein and not otherwise defined herein being used herein as therein defined):

[(1) The City hereby informs you that the Commitment is terminated in accordance with the Agreement.]

OR

[(1) The City hereby informs you that the Available Commitment is reduced from [insert amount as of the date of Certificate] to [insert new amount], such reduction to be effective on \_\_\_\_\_.]

IN WITNESS WHEREOF, the City has executed and delivered this Notice this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

CITY AND COUNTY OF SAN FRANCISCO

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



**EXHIBIT D**

**[FORM OF NOTICE OF REDUCTION]**

**NOTICE OF REDUCTION**

[Date]

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 316  
San Francisco, California 94102  
Attention: City Controller

Ladies and Gentlemen:

We hereby notify you that pursuant to Section 2.7(a) of the Certificate Purchase Agreement dated [June \_\_, 2016], by and between the undersigned, the City and County of San Francisco (the "City") and Metropolitan Transportation Commission (the "MTC"), the Available Commitment is reduced from [insert amount as of the date of Certificate] to [insert new amount], such reduction to be effective on \_\_\_\_\_.

Very truly yours,

METROPOLITAN TRANSPORTATION  
COMMISSION

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

**EXHIBIT E**  
**[RESERVED]**

**EXHIBIT F**

**FORM OF INVESTOR LETTER**

[June \_\_, 2016]

City and County of San Francisco  
San Francisco, California

RE: \$100,000,000 City and County of San Francisco Lease Revenue Direct  
Placement Revolving Certificates of Participation, Series (Taxable)

Ladies and Gentlemen:

This letter is to provide you with certain representations and agreements with respect to our purchase of the above-referenced certificates (the "Certificates"). The Certificates were executed and delivered under and secured in the manner set forth pursuant to that certain Trust Agreement by and between the City and County of San Francisco (the "City") and [U.S. Bank National Association] (the "Trustee") on [\_\_\_\_\_, 2016] (the "Trust Agreement"). The Metropolitan Transportation Commission (the "MTC," the "undersigned," "us" or "we," as applicable) is purchasing the Certificates pursuant a Certificate Purchase Agreement dated [June \_\_, 2016], by and between the City and the MTC. We hereby represent and warrant to you and agree with you as follows:

1. We understand that the Certificates have not been registered pursuant to the Securities Act of 1933, as amended (the "1933 Act"), the securities laws of any state nor has the Trust Agreement been qualified pursuant to the Trust Indenture Act of 1939, as amended, in reliance upon certain exemptions set forth therein. We acknowledge that the Certificates (i) are not being registered or otherwise qualified for sale under the "blue sky" laws and regulations of any state, (ii) will not be listed on any securities exchange, and (iii) will not carry a rating from any rating service.

2. We have not offered, offered to sell, offered for sale or sold any of the Certificates by means of any form of general solicitation or general advertising, and we are not an underwriter of the Certificates within the meaning of Section 2(11) of the 1933 Act.

3. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other governmental obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Certificates.

4. We have authority to purchase the Certificates and to execute this letter and any other instruments and documents required to be executed by the purchaser in connection with the purchase of the Certificates.

5. The undersigned is a duly appointed, qualified and acting representative of the MTC and is authorized to cause the MTC to make the certifications, representations and warranties contained herein by execution of this letter on behalf of the MTC.

6. The MTC is able to bear the economic risk associated with its purchase of the Certificates.

7. The undersigned understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Certificates. The undersigned has made its own inquiry and analysis with respect to the City, the Certificates and the security therefor, and other material factors affecting the security for and payment of the Certificates.

8. The undersigned acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding the City, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the City, the Certificates and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Certificates.

9. The Certificates are being acquired by the MTC for investment for its own account and not with a present view toward resale or distribution; *provided, however*, that the MTC reserves the right to sell, transfer or redistribute the Certificates, but agrees that any such sale, transfer or distribution by the MTC shall be to a Person:

(a) that is an affiliate of the MTC; and

(b) that is a trust or other custodial arrangement established by the MTC or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers.

Very truly yours,

METROPOLITAN TRANSPORTATION  
COMMISSION

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

**EXHIBIT G**

**CITY REQUIREMENTS**

**[most recent requirements to be attached]**



**DELIVERY AND PAYING AGENT AGREEMENT**

Dated as of [June 1], 2016

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

Re: City and County of San Francisco Lease Revenue Commercial Paper Certificates (the "Commercial Paper Certificates") consisting of:

Tax Exempt Lease Revenue Commercial Paper Certificates (the "Tax-Exempt Commercial Paper Certificates ")

and

Taxable Lease Revenue Commercial Paper Certificates (the "Taxable Commercial Paper Certificates ")

Ladies and Gentlemen:

This letter will set forth the understandings made between you and the undersigned, the City and County of San Francisco, a charter city and county duly organized and existing under the laws of the State of California (the "City"), whereby you have agreed to act (i) as depository for the safekeeping of certain certificates of participation of the City which may be issued and sold in the tax-exempt and taxable commercial paper markets (collectively, the "Commercial Paper Certificates"), (ii) as delivery agent on behalf of the City in connection with the delivery of the Commercial Paper Certificates, and (iii) as paying agent to undertake certain obligations as described below on behalf of the holders of the Commercial Paper Certificates. Capitalized terms not otherwise defined herein will have the meanings set forth in that certain Trust Agreement, dated as of [June 1], 2016 (as amended, supplemented or modified from time to time, the "Trust Agreement"), between the City and \_\_\_\_\_, as Trustee.

1. Appointment of Agent. The City hereby requests that you act, on the terms and conditions specified herein and in the Trust Agreement, as delivery and paying agent for its Commercial Paper Certificates to be delivered from time to time. Pursuant to the terms of the Trust Agreement, the City may deliver and sell Commercial Paper Certificates, which will be short-term certificates of participation issued in reliance upon an exemption from the registration requirements of the Securities Act of 1933, as amended (the "Act"), afforded by Section 3(a)(2) thereof. The Commercial Paper Certificates will be placed initially through

and \_\_\_\_\_ (collectively, the "Dealer"). The Commercial Paper Certificates may be delivered as physical certificates (the "Physical Commercial Paper Certificates") substantially in the form of Exhibit A-1, in the case of the Tax-Exempt Commercial Paper Certificates, and Exhibit A-2, in the case of the Taxable Commercial Paper Certificates, to the Trust Agreement, or as obligations ("Book-Entry Commercial Paper Certificates") evidenced

by a Master Certificate substantially in the form of Exhibit B-1, in the case of the Tax-Exempt Commercial Paper Certificates, and Exhibit B-2, in the case of the Taxable Commercial Paper Certificates, to the Trust Agreement. The Master Certificates and the City's obligations thereunder will be issued in accordance with applicable rules and regulations of DTC.

2. Master Certificate: Supply of Commercial Paper Certificates.

(a) The Book-Entry Commercial Paper Certificates will be evidenced by (i) a Master Certificate representing 100% of the principal amount of each series of the Tax-Exempt Commercial Paper Certificates as may be Outstanding from time to time and (ii) a Master Certificate representing 100% of each series of the principal amount of the Taxable Commercial Paper Notes as may be Outstanding from time to time. Each Master Certificate will bear the manual or facsimile signature of an Authorized Representative (as hereinafter defined), be countersigned for authentication by you, be registered in the name of the Nominee and be unavailable for transfer to the beneficial owners thereof.

You will maintain the Master Certificates in safekeeping, in accordance with your customary practices, on behalf of the Nominee, as the registered owner thereof. As long as the Nominee is the registered owner of the Master Certificates, the beneficial ownership interests therein will be shown on, and the transfer of ownership thereof will be effected through, entries on the books maintained by DTC and the books of its Participants. The Master Certificates and the Book-Entry Commercial Paper Certificates represented thereby will be subject to DTC's rules and procedures in effect at the time of the delivery of Book-Entry Commercial Paper Certificates, as the same will be amended from time to time. You will cooperate with the City in assuring compliance with such rules and procedures. In connection with the DTC Same Day Funds ("SDFS") Money Market Instrument ("MMI") program, the City understands that as one of the conditions of its participation therein, it will be necessary for the City and you to execute a Letter of Representations and for DTC to receive and accept such Letter of Representations. So long as the Master Certificates are issued and any Book-Entry Commercial Paper Certificates are Outstanding, no Physical Commercial Paper Certificates may be issued.

(b) In the event that the Master Certificates and the Book-Entry Commercial Paper Certificates are no longer Outstanding, the City will from time to time furnish you with an adequate supply of Physical Commercial Paper Certificates, which will be serially numbered and will have been executed by manual or facsimile signature by an Authorized Representative (as hereinafter defined), with the Certificate number, principal amount, payee, date of issue, maturity date, interest rate and maturity value left undetermined. Pending receipt of instructions pursuant to this Agreement, you will hold the Physical Commercial Paper Certificates in safekeeping for the account of the City in accordance with your customary practice.

3. Authorized Representatives. From time to time the City will furnish you with a written instrument certifying the incumbency and specimen signatures of officers or agents of the City authorized to (a) execute the Master Certificates, representing the Book-Entry Commercial Paper Certificates, (b) execute Physical Commercial Paper Certificates, and (c) to give instruction under paragraph 4 hereof or to take other action hereunder on behalf of the City (each an "Authorized Representative"). Until you receive a subsequent incumbency certificate of the City, you are entitled to rely on the last such certificate delivered to you for purposes of determining the Authorized Representatives. You will not have any responsibility to the City to determine by whom or by what means a facsimile signature may have been affixed on the Commercial Paper Certificates.



Any Commercial Paper Certificates bearing the manual or facsimile signature of a person who is an Authorized Representative on the date such signature is affixed will be valid and binding after the completion and authentication thereof by you notwithstanding that such person has died or has otherwise ceased to hold his or her office on the date such Commercial Paper Certificates is countersigned or delivered to you.

4. Completion, Authentication and Delivery of Commercial Paper Certificates.

(a) Instructions for the delivery of Commercial Paper Certificates will be given via e-mail, facsimile transmission or by telephone. Instructions given by telephone, facsimile transmission or in writing will be given by an Authorized Representative, or by an officer or employee of a Dealer (an "Authorized Dealer Representative"), or any other person who, in each case, has been designated by an Authorized Representative in writing to you as a person authorized to give such instructions hereunder.

(1) The City will instruct you to issue Tax-Exempt Commercial Paper Certificates or Taxable Commercial Paper Certificates as Book-Entry Commercial Paper Certificates by entering the appropriate DTC instrument codes and, after issuing such instructions, it is understood that the records maintained by you will represent the aggregate principal amount of Book-Entry Commercial Paper Certificates then outstanding and the aggregate unpaid interest thereon unless subsequently modified by the City with appropriate notice to you. At or before the close of business New York time, on the settlement date of each Book-Entry Commercial Paper Certificate, you will: (a) determine the net proceeds due the City on such day and (b) credit the Funds and Accounts established under the Trust Agreement, in immediately available funds, such net proceeds in accordance with the instructions provided to you by the City or the Dealer and the provisions of this Agreement (including paragraph 5), if and only if you have received confirmation from DTC that each Book-Entry Commercial Paper Certificate has settled in accordance with DTC's appropriate rules, regulations and procedures. The City hereby agrees with you that it will repay such Book-Entry Commercial Paper Certificates in accordance with the instructions provided to you by the City or the Dealer, and that the aggregate amount owing at any time by the City in connection with all Outstanding Book-Entry Commercial Paper Certificates will be the amount of (x) the aggregate principal amount of such Book-Entry Commercial Paper Certificates plus the aggregate interest to be paid thereon at the scheduled maturity thereof (it being understood that if any such interest-bearing Book-Entry Commercial Paper Certificate is prepaid by the City prior to its scheduled maturity, then such interest amount will be adjusted based upon a 365-day or 366-day year, whichever is applicable, to reflect such prepayment) less (y) the aggregate of the face amount of such Book-Entry Commercial Paper Certificates plus the aggregate interest paid by the City on all Book-Entry Commercial Paper Certificates which have either matured or been presented for prepayment.

(2) Upon receipt of instructions to issue Physical Commercial Paper Certificates as described in this paragraph 2, you will also withdraw the necessary Physical Commercial Paper Certificate(s) from safekeeping and, in accordance with such instructions, will:

(A) complete each Physical Commercial Paper Certificate as to its certificate number, principal amount (which will not be less than \$100,000), interest rate, payee, date of issue, maturity date (which will be a Business Day

and will not be more than 270 days from the date of issue nor later than five days prior to the expiration or termination of the applicable Credit Facility unless the City has arranged for an Alternate Credit Facility), maturity value and place of payment; and

(B) manually countersign each Physical Commercial Paper Certificate, which signature may be by anyone of your officers or employees duly authorized and designated for this purpose; and

(C) deliver the Physical Commercial Paper Certificate(s) to the Dealer or its designated consignees, which delivery will be against receipt for payment as herein provided or as otherwise provided in such instructions in accordance with Paragraph 5.

(b) Instructions delivered by telephone, facsimile transmission or in writing must be received by you by 1:00 p.m. New York time, if the Commercial Paper Certificate(s) are to be delivered the same day. Telephonic and e-mail instructions will be confirmed in writing or by facsimile the same day by 4:00 p.m. New York time.

(c) The City understands that although you have been instructed to deliver Physical Commercial Paper Certificates against payment, delivery of Physical Commercial Paper Certificates will, in accordance with the custom prevailing in the commercial paper market, be made before receipt of payment in immediately available funds. Therefore, once you have delivered a Physical Commercial Paper Certificate to a Dealer or its designated consignee as provided in Paragraph 4(a)(2)(C), the City will bear the risk that such Dealer or designated consignee fails to remit payment for the Physical Commercial Paper Certificates to you. It is understood that each delivery of Physical Commercial Paper Certificates hereunder will be subject to the rules of the New York Clearing House in effect at the time of such delivery.

(d) Notwithstanding anything to the contrary contained herein, and notwithstanding any contrary instructions from the City, you will not issue or deliver any Commercial Paper Certificates pursuant to such instructions if, immediately after delivery of such Commercial Paper Certificates, the aggregate principal amount of all Commercial Paper Certificates and the Revolving Bank Certificates (as defined in the Trust Agreement) Outstanding would exceed the Maximum Principal Amount. Additionally, no Commercial Paper Certificate will be issued that (i) matures on a day that is not a Business Day; or (ii) has a term in excess of 270 days; or (iii) has a maturity date less than five days prior to the expiration of the applicable Credit Facility unless the City has arranged for an Alternate Credit Facility pursuant to Section 6.02 of the Trust Agreement; or (iv) bears interest at a rate in excess of the Maximum Interest Rate; provided, however, that the amount of the Commercial Paper Certificates to be Outstanding and interest accrued or to accrue thereon as of the date of such delivery may not exceed the amount then available to be drawn under the applicable Credit Facility.

(e) Notwithstanding anything to the contrary herein, if any officer or administrator of your Corporate Trust Department receives a No-Delivery Notice or the Final Drawing Notice from a Bank, you will cease completing, countersigning and issuing, and will use reasonable efforts to cease delivery of related Commercial Paper Certificates, notwithstanding any contrary instructions from the City, until such time as such Bank has rescinded the No-Delivery Notice or the Final Drawing Notice, as applicable, and has consented to the delivery of related Commercial Paper Certificates by a notice in writing to you.

(f) Additionally, the Delivery and Paying Agent hereby agrees to comply with the provisions of Section 2.16 of the Trust Agreement regarding the redemption of Callable Commercial Paper Certificates, including the giving of notices required by Section 2.16(a), the giving of the notice of redemption with respect to the Callable Commercial Paper Certificates, the payment of the Callable Commercial Paper Certificates and, if applicable, the rescission of proposed redemption of Callable Commercial Paper Certificates in the event of a Failed Settlement.

5. Proceeds of Sale of the Commercial Paper Certificates. Contemporaneously with the execution and delivery of this Agreement, and for the purposes of this Agreement and the Trust Agreement, you will establish funds and accounts required by Section 4.06 of the Trust Agreement. Funds received in payment for the Commercial Paper Certificates are to be credited to the Delivery and Paying Agent Fund or transferred to the Accounts in the Project Fund or the Accounts in the Costs of Issuance Fund held by the Delivery and Paying Agent and applied in accordance with the provisions of the Trust Agreement and instructions provided to you by the City or the Dealer, as provided in the Trust Agreement. You will apply the purchase price for Commercial Paper Certificates for the purposes set forth in Section 3.02 of the Trust Agreement and in accordance with the written instructions of the City. You will apply the funds on deposit in the Delivery and Paying Agent Fund for the purposes and at the times set forth in Section 4.06 of the Trust Agreement, and will invest such funds as provided in the Trust Agreement. In addition, you will authenticate and deliver the Commercial Paper Certificates and accept the duties and obligations of the Delivery and Paying Agent described in the Trust Agreement, but only upon the terms and conditions described therein.

6. Payment of Matured Commercial Paper Certificates; Payments to Bank.

(a) On the date that any Commercial Paper Certificate is scheduled to mature or if the Delivery and Paying Agent has received the Final Drawing Notice pursuant to the applicable Credit Facility, the Delivery and Paying Agent will, by no later than 11:00 a.m. New York time on such maturity date or, in the case of receipt of the Final Drawing Notice, immediately upon receipt of such Final Drawing Notice, request an Advance in accordance with the terms of the applicable Credit Facility by delivering by facsimile a Payment Draft (as defined in the applicable Credit Facility) in the form annexed to the applicable Credit Facility, and any required certificates, as appropriate, in an amount equal to the principal of and interest with respect to the Commercial Paper Certificates maturing on such date or, in the case of receipt of the Final Drawing Notice, in an amount equal to the principal amount that is outstanding on such date plus interest that will accrue to the respective maturity dates of such Commercial Paper Certificates. The proceeds of all such Advances made pursuant to the applicable Credit Facility will be deposited in the Payment Account within the Delivery and Paying Agent Fund and expended for the payment of principal of and interest with respect to related maturing Commercial Paper Certificates. When any matured Commercial Paper Certificate is presented to you for payment by the holder thereof, payment will be made from and charged to the applicable subaccount within the Payment Account within the Delivery and Paying Agent Fund.

(b) On the date that any Callable Commercial Paper Certificate is subject to redemption, the Delivery and Paying Agent will, by no later than 11:00 a.m. New York time on such redemption date, request an Advance in accordance with the terms of the applicable Credit Facility by delivering by facsimile a Payment Draft (as defined in the applicable Credit Facility) in the form annexed to the applicable Credit Facility, and any required certificates, as appropriate, in an amount equal to the interest with respect to the Callable Commercial Paper Certificates payable on such Redemption Date on such date. The proceeds of all such

Advances made pursuant to the applicable Credit Facility will be deposited in the Payment Account within the Delivery and Paying Agent Fund and expended for the payment of interest with respect to related maturing Commercial Paper Certificates.

(c) The Delivery and Paying Agent will pay to the Bank from moneys on deposit in the applicable subaccount of the Bank Reimbursement Account, the Base Rental Account and the Administrative Expense Account of the Delivery and Paying Agent, amounts required to be paid to such Bank pursuant to the applicable Reimbursement Agreement.

7. Reliance on Instructions. You will incur no liability to the City in acting hereunder upon telephonic, facsimile or other instructions contemplated hereby; which the recipient thereof reasonably believed in good faith to have been given by an Authorized Representative or Authorized Dealer Representative, as the case may be. If a discrepancy exists with respect to the telephonic instructions as recorded and the written instructions, the written instructions will be deemed the controlling and proper instructions. It is understood that all telephonic instructions may be recorded by you, and the City hereby consents to such recording.

8. Cancellation of Commercial Paper Certificates. You will in due course cancel Physical Commercial Paper Certificate(s) presented for payment and return them to the City. Promptly upon the written request of the City, you agree to cancel and return to the City all unissued Commercial Paper Certificates in your possession at the time of such request.

9. Representations and Warranties of City. Each instruction given to you in accordance with Paragraph 4 will constitute a representation and warranty to you by the City that the delivery and delivery of the Commercial Paper Certificates have been duly and validly authorized by the City and that the Book-Entry Commercial Paper Certificates, or, in the case of the Physical Commercial Paper Certificates, that the Physical Commercial Paper Certificates when completed, countersigned and delivered pursuant hereto, will constitute the legal, valid and binding obligations of the City, and that your appointment to act for the City hereunder has been duly authorized by all necessary corporate action of the City.

10. Notice: Addresses.

(a) All communications by or on behalf of the Trustee, the City or the Dealer, by telephone or otherwise, relating to the completion, authentication, delivery or payment of the Commercial Paper Certificate(s) are to be directed to your Commercial Paper Issuance Unit of your Corporate Trust Department (or such other department or division which you will specify in writing to the Trustee, the City or the Dealer). The City will send all Commercial Paper Certificates to be completed and delivered by you to your Commercial Paper Issuance Unit of your Corporate Trust Department (or such other department or division as you will specify in writing to the City). You will advise the Trustee, the City and the Dealer from time to time of the individuals generally responsible for the administration of this Agreement, will from time to time certify incumbency and specimen signatures of officers or employees authorized to countersign Commercial Paper Certificates and will supply a list of employees authorized to receive telephonic instructions.

(b) Notices and other communications hereunder will (except to the extent otherwise expressly provided) be in writing and will be addressed as follows, or to such other address as the party receiving such notice has previously specified to the party sending such notice:

if to the City:

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place,  
Room 316  
San Francisco, California 94102  
Attention: City Controller

if to you:

if to the Dealers:

if to the LC Banks:

With a copy to:

if to the Trustee:

Notices will be deemed delivered when received at the address specified above. For purposes of this paragraph, "when received" means actual receipt (i) of an electronic communication by a telex machine, telecopier or time-sharing terminal specified in or pursuant to this Agreement; (ii) of an oral communication by any person answering the telephone at your office specified in subparagraph 10(a) hereof and otherwise at the office of the individual or department specified in or pursuant to this Agreement; or (iii) of a written communication hand-delivered or mailed to the office specified in or pursuant to this Agreement.

11. Additional Information. Upon the request of the City given at any time and from time to time, you will promptly provide the City with information with respect to the Commercial Paper Certificate(s) issued and paid hereunder. Such request will be in written form and will include the serial number, principal amount, date of issue, maturity date and interest rate of each Commercial Paper Certificate that has been issued or paid by you and for which the request is being made. You and the City will discuss from time to time the extent to which such information is reasonably available and the times at which you can reasonably furnish such information.

12. Liability. Neither you nor your officers, employees or agents will be liable for any act or omission hereunder, except in the case of ordinary negligence or willful misconduct, in which case you will indemnify, defend and hold harmless the City's officers, employees and agents from and against any liability, claim, damage cost or expense (including legal fees and expenses) related to or arising out of such ordinary negligent action or inaction or willful misconduct, except to the extent that they are caused directly by the City's gross negligence or willful misconduct. This indemnity obligation will survive termination of this Agreement.

13. Indemnification. The City agrees to indemnify you and your officers, employees and agent from and against all liabilities, claims, damages, costs and expense (including legal fees and expenses) relating to or arising out of their actions or inactions in connection with this Agreement, except to the extent they are caused by your negligence or willful misconduct. This indemnity will survive termination of this Agreement.

14. Waiver of Setoff Offset Lien or Counterclaim. You hereby waive to the fullest extent possible under applicable law any and all rights of setoff, offset, lien or counterclaim you may have with respect to any amounts held by you in the Delivery and Paying Agent Fund, including without limitation the Payment Account and the Bank Reimbursement Account, by reason of any claim you may have against the City, a Bank or any other person.

15. Benefit of Agreement. This Agreement is solely for the benefit of the parties hereto, the LC Banks and the holders of any Certificates, and no other person will acquire or have any right under or by virtue hereof.

16. Termination. This Agreement may be terminated as provided in the Trust Agreement, but such termination will not affect the respective liabilities of the parties hereunder arising prior to such termination.

17. Governing Law; Venue. This Agreement is to be delivered and construed and enforced in accordance with, and the rights of the parties will be governed by, the laws of the State of California. If any party to this Agreement initiates any legal or equitable action to enforce the terms of this Agreement, to declare the rights of the parties under this Agreement or which relates to this Agreement in any manner, each such party agrees that the place of making and for performance of this Agreement is the City and County of San Francisco, State of California, and the proper venue for any such action is any court of competent jurisdiction.

18. Fees. You will receive fees from the City for acting as depository, delivery agent and paying agent hereunder in such amounts as you and the City will agree from time to time in writing.

19. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which is deemed to be an original and all of which will constitute but one and the same agreement.

20. Amendments. This Agreement may be amended in writing by the parties hereto, but only with the prior written consent of the Banks.

21. Additional City Requirements. Additional requirements of the City with respect to this Agreement are attached as Exhibit A and are incorporated by reference herein, and by executing this Agreement, you are agreeing to comply with those provisions.

Please indicate your agreement with and acceptance of the foregoing terms and provisions by signing the counterpart of this letter as indicated below.

CITY AND COUNTY OF SAN FRANCISCO

By \_\_\_\_\_  
Controller

APPROVED AS TO FORM:  
City Attorney

By: \_\_\_\_\_  
City Attorney

AGREED TO AND ACCEPTED:

\_\_\_\_\_  
as Delivery and Paying Agent

By \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**ADDITIONAL CITY REQUIREMENTS**



## TRANSBAY PROJECT COST OVERSIGHT AGREEMENT

This Transbay Project Cost Oversight Agreement (this "Agreement") dated as of \_\_\_\_\_, 2016, is between the Transbay Joint Powers Authority, a joint powers authority ("TJPA"), the City and County of San Francisco, a municipal corporation and charter city and county ("City"), acting through its Controller's Office ("Controller"), and the Metropolitan Transportation Commission, a state agency ("MTC") (each individually a "Party" and, collectively, the "Parties"). The Parties are entering into this Agreement in connection with the provision by the City and MTC of the Interim Financing to the TJPA, as described in the Recitals below.

### RECITALS

This Agreement is made with reference to the following facts and circumstances:

- A. The TJPA is a joint powers agency comprised of the City, the Alameda-Contra Costa Transit District, the Peninsula Corridor Joint Powers Board, and the State of California Department of Transportation (ex officio). The TJPA is responsible for the financing, design, development, construction, and operation of the Transbay Transit Center Program (the "Transbay Project"). In particular, the Transbay Project includes (1) the design and construction of a temporary terminal and then the permanent Transbay Transit Center, including open space on the roof of the Transit Center, a bus ramp, a bus storage facility, and the Train Box component of the rail extension ("Phase 1"); (2) the extension of Caltrain rail tracks from their current San Francisco terminus at Fourth and Townsend Streets to a new underground terminus beneath the Transbay Transit Center to accommodate Caltrain and California High Speed Rail ("Phase 2"); and (3) in coordination with the Office of Community Investment and Infrastructure, the successor to the former Redevelopment Agency, certain transit infrastructure activities related to implementation of the Redevelopment Plan for the Transbay Redevelopment Project Area.
- B. As provided in Section 6 of the Joint Powers Agreement establishing the TJPA and Article XII of the TJPA's Bylaws, the TJPA designated the City as the "Administrator" for the TJPA, authorizing the City to provide necessary administrative services for the TJPA under an administrative services agreement. In doing so, the members of the TJPA acknowledged that appointing the City as the administrator may present conflicts of interest, and they expressly waived any liability on the part of the City arising out of any such conflict of interest.
- C. In 2001, the TJPA entered an Administrative Services Agreement with the City, confirming the terms under which the TJPA may request that the City in its capacity as Administrator for the TJPA assist the TJPA, in cooperation with consultants and contractors to the TJPA, to advance the Transbay Project. Under that Agreement, the City has from time to time provided such assistance to TJPA staff, consultants, and

contractors, including through two previous intergovernmental agreements that the TJPA approved in 2007 and 2008 with the SF Public Works.

- D. On January 13, 2015, under the Mello-Roos Community Facilities Act of 1982, as amended (the "Mello-Roos Act"), Government Code section 53311 et seq., the City and County of San Francisco Community Facilities District No. 2014-1 (the "CFD") was formed. SF Public Works has ultimate responsibility for managing certain of the facilities that will be constructed under the CFD. Under the Mello-Roos Act, the City and the TJPA executed a Joint Community Facilities Agreement (the "JCFA") to provide for financing design and construction of certain facilities of the Transbay Project by the City through the CFD. On June 30, 2015, the City and the TJPA entered a binding memorandum of understanding to define the City's "project management oversight" role regarding the facilities to be constructed under the CFD as described in the JCFA (the "2015 SF Public Works MOU").
- E. On November 12, 2015, the TJPA Board of Directors (sometimes "TJPA Board" or "Board") adopted Resolution No. 15-043, adding a new Section 9.6(g) of the Bylaws of the TJPA, to provide as follows: "Construction of the Transbay Terminal Project. Notwithstanding the provisions of subsection (c), the Board may designate a person or entity to oversee all aspects of construction of the Transbay Project (including design and project controls related to construction), who shall take direction from and report directly to the Board and who shall also inform the Executive Director of such actions. Without limiting the foregoing, the Board may authorize the Authority to enter into an agreement with the City's Department of Public Works to perform this function."
- F. Consistent with TJPA Bylaws Section 9.6(g), on March 10, 2016, the TJPA Board of Directors adopted Resolution No. 16-006 giving SF Public Works exclusive authority, subject to TJPA Board supervision, to oversee all aspects of construction of the Transbay Project, including, without limitation, design and project controls related to construction of the Transbay Project, which shall include the facilities identified in the JCFA. The Resolution provides that this authority includes the supervision and direction of the contractors and the TJPA engineer employees directly overseeing construction as it relates to all aspects of construction of the Transbay Project. The Resolution further provides that SF Public Works shall take direction from and report directly to the TJPA Board on all aspects of construction of the Transbay Project, and shall have a mutual responsibility with the TJPA's Executive Director to work closely and collaboratively together and to keep each informed of any significant actions taken.
- G. In furtherance of the TJPA Board Resolution described immediately above as well as Section 6 of the TJPA's Joint Powers Agreement, Article XII of the TJPA's Bylaws, the Administrative Services Agreement, and the JCFA, the TJPA and the City have entered or are entering into an additional Intergovernmental Agreement under which SF Public Works agrees to perform construction management and oversight services for the Transbay Project (the "2016 SF Public Works Construction Oversight Agreement").
- H. In 2015, MTC conducted a cost and risk review of Phase 1 of the Transbay Project. As a result of that review, MTC recommended a Phase 1 budget increase to \$2.259 billion.

While the TJPA has identified federal, state and local funding sources of approximately \$2.012 billion, there are still unidentified funding needs to close the gap. In light of such short-term funding needs and at the TJPA's request, the City, subject to approval of the City's Board of Supervisors, is willing to execute and deliver lease revenue commercial paper certificates of participation and direct placement revolving certificates of participation, in the maximum amount of \$260,000,000 (the "Interim Financing"), which includes the estimated cost of issuance and the financing. To facilitate the City's execution and delivery of the Interim Financing, and subject to approval by the Bay Area Toll Authority ("BATA"), BATA would hold as an investment up to \$100 million of such commercial paper certificates. It is expected that the indebtedness under the Interim Financing, which is an obligation of the City's General Fund, will be repaid in part from an allocation of a portion of the CFD special taxes generated in the Transbay Redevelopment Project Area, and an allocation of a portion of the property tax increment that will be derived from the Transbay Redevelopment Project will pay on-going debt service on the outstanding balance, as and when such funds are available. The TJPA would be expected to secure a long-term take-out of the Interim Financing when the TJPA's net tax increment revenue stream matures.

- I. Notwithstanding the construction management and oversight role of SF Public Works under the 2016 SF Public Works Construction Management Agreement and the role of the Cost Review Committee under this Agreement, the TJPA, through its Board of Directors, retains ultimate responsibility for the Transbay Project.

## AGREEMENT

ACCORDINGLY, in consideration of the public benefits and other matters described in the foregoing recitals, the obligations contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the TJPA, MTC and the City agree as follows:

### 1. COST REVIEW COMMITTEE

In connection with the Interim Financing and for the entire term that the indebtedness under the Interim Financing is outstanding, the TJPA agrees to work with a Cost Review Committee (the "Committee") to help ensure financial oversight of the TJPA's activities and projects, as follows.

A. **Membership of Committee; Access to Expert Advice.** The Committee shall consist of the following three voting members, or their designated representatives: the City's Controller, the Executive Director of the MTC, and the Executive Director or Chief Financial Officer of the TJPA. The Committee may seek expert advice as the Committee determines is appropriate to exercise its financial oversight, including from one or more of the City's Public Finance Director and the Executive Director of the San Francisco County Transportation Authority, or their designated representatives, and a City employee designated by the City Administrator with a background in construction management.

**B. Purpose and Authority.** The purpose of the Committee is to provide recommendations to help ensure that the TJPA is implementing the Transbay Program in a cost-effective manner and that the Interim Financing is timely repaid and to oversee the proper expenditure by the TJPA of the proceeds of the Interim Financing. In furtherance of that purpose, the Committee shall have following authority during the time that the Interim Financing is outstanding:

(i) The Committee may make recommendations to the TJPA Board about any proposed budget or budget amendment, before the TJPA Board considers taking action on any such budget or amendment;

(ii) The Committee may make recommendations to the TJPA Board about any new contract or amendment of an existing contract, with a cost to the TJPA in each instance in excess of \$250,000, before the TJPA Board considers such contract or contract amendment for approval, and if TJPA Board approval is not required, before the TJPA staff enter into any such contract or contract amendment;

(iii) The Committee may make recommendations to the TJPA Board about any construction contract change order with a cost to the TJPA in each instance in excess of \$250,000, before the TJPA Board considers the change order for approval, and if TJPA Board approval is not required, before the TJPA staff approve any such change order;

(iv) The Committee may make recommendations to the TJPA Board or TJPA staff regarding adoption and implementation of internal controls for financial management;

(v) The Committee must approve any expenditure of the proceeds of the Interim Financing before the TJPA may make such expenditure or take any action committing to expend any such proceeds, provided that once the Committee grants an approval and the TJPA subsequent to that approval takes action to commit to expend those funds, such approval may not be reversed by the Committee; and

(vi) The Committee may obtain financial or performance audits or reviews as the Committee may from time to time deem necessary, with the cost of such audits to be borne the TJPA, and the TJPA shall cooperate fully in such audits and reviews. Such audits or reviews may be performed by the City, the MTC or any consultant or expert that the Committee may select.

In connection with the Committee's role under clauses (i)–(iii) above, the TJPA shall give the Committee at least 10 business days written notice of any proposed action before placing the item on the agenda for the action by the TJPA Board. The Committee may recommend approval, including with conditions, or disapproval, provided that if it recommends disapproval of any matter the Committee shall state generally its reasons why and describe any actions it recommends that the TJPA take. The Committee shall use its good faith efforts to provide any recommendations within a reasonable period, but in no event more than 10 business days after receiving notice of a proposed action by the TJPA. The Committee and TJPA staff shall use good faith efforts to resolve any recommendation of disapproval of any matter so that the Committee and staff can make a reconciled recommendation to the TJPA Board.

In connection with its approval authority under clause (v) above, the Committee may approve any matter subject to conditions or may request further information from or action by the TJPA before considering granting approval. If the Committee disapproves any matter it shall state generally its reasons why and describe any actions the TJPA may take to gain its approval. The Committee shall use its good faith efforts to respond to requests for approval within a reasonable period.

C. **Meetings and Approvals.** The Committee shall meet at least quarterly, and otherwise on an as needed basis as is necessary to facilitate timely review and approvals required by this agreement. Its meetings shall be subject to all applicable laws, including the open meeting and sunshine laws applicable to such bodies in the State of California and the City and County of San Francisco. The TJPA shall cooperate with the Committee in connection with the development of agenda for each meeting, and making TJPA staff available for such purposes. The Committee may meet with a quorum of two of its members, and may act with the approval of at least two of its three voting members. The Committee may from time to time increase any of the dollar thresholds for review established under clauses (ii) – (iii) above, by majority vote of its members and written notice to the TJPA .

D. **Rules and Procedures.** The Committee may adopt rules and procedures for how it operates, including rules for delegating its review or approval authority to one or more individual members of the Committee or increasing the approval thresholds permitted in clauses (i) – (iii), so that it may issue its recommendations and approvals on a timely basis consistent with the needs of the TJPA to implement the Transbay Project.

E. **Documents and Information.** The TJPA's Executive Director and staff shall cooperate fully with the Committee and shall furnish such documents and information as the Committee or any of its individual members may request from time to time, in furtherance of its authority as described above; notwithstanding the foregoing, the TJPA shall not be required to provide copies of documents or information that are protected from disclosure by the attorney-client privilege or other privileges and protections.

F. **Waiver of Liability.** In light of the limited financial purposes of the review by the Committee, any approval granted by or recommendation made by the Committee shall not be deemed approval of the Transbay Project or any substantive component of it, nor shall it imply any assurance that the action proposed complies with applicable laws, regulations, grants or agreements. The TJPA waives any liability on the part of the Committee, the City or the MTC (including BATA) arising out of the Committee's exercise, or any failure to exercise, of any of its authority or rights under this Agreement.

G. **Termination.** This Agreement shall terminate when the indebtedness under the Interim Financing is fully paid.

## 2 GENERAL

A. **Amendments.** This Agreement may be amended or modified only by written agreement signed by all three Parties.

B. **Severability.** If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall be given effect to the fullest extent reasonably possible.

C. **Relationship to Other Agreements.** This Agreement is intended to be separate from and consistent with the 2015 SF Public Works MOU and the 2016 SF Public Works Construction Oversight Agreement.

D. **Successors and Assigns.** This Agreement shall inure to the benefit of and bind the respective successors and assigns of the TJPA, MTC and the City. This Agreement is for the exclusive benefit of the Parties and not for the benefit of any other person or entity and shall not be deemed to have conferred any rights, express or implied, upon any other person or entity.

E. **Interpretation of Agreement.**

(i) **Attachments.** Whenever an "Exhibit" or "Attachment" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Attachments are incorporated in this Agreement by reference.

(ii) **Captions.** Whenever a section or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The title of this Agreement, and the captions preceding the articles and sections of this Agreement have been inserted for convenience of reference only. Such title and captions shall not define or limit the scope or intent of any provision of this Agreement.

(iii) **Words of Inclusion.** The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(iv) **References.** Wherever reference is made to any provision, term or matter "in this Agreement," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Agreement or any specific subdivision thereof.

(v) **Recitals.** In the event of any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail. The Recitals in this Agreement are included for convenience of reference only and are not intended to create or imply covenants under this Agreement.

F. **Cooperation.** In connection with this Agreement, the Committee and the TJPA shall deal with one another in good faith and reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. In so doing, each of the Parties shall each refrain from doing anything that would render its performance under this Agreement impossible and each shall

do everything that this Agreement contemplates that the Party shall do to accomplish the objectives and purposes of this Agreement. Also, the Committee shall also cooperate and coordinate with SF Public Works as it performs its functions under the 2016 Transbay Transit Program Construction Oversight Agreement.

G. **Entire Agreement.** This Agreement (including any Attachments) contain all the representations and the entire agreement between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement may be introduced as evidence in any litigation or other dispute resolution proceeding by either Party and no court or other body shall consider those drafts in interpreting this Agreement.

H. **Notices.** All notices required by this Agreement shall be given to the TJPA, MTC and the City in writing, by first-class mail, postage prepaid, addressed as follows:

TJPA: Chair of the Board of Directors  
Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, CA 94105

and to: Executive Director  
Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, CA 94105

MTC: Steve Heminger  
Executive Director  
Metropolitan Transportation Commission  
375 Beale Street  
San Francisco CA 94105

City: Controller  
City and County of San Francisco  
City Hall, Room 316  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Every notice given to a Party under to the terms of this Agreement must state (or must be accompanied by a cover letter that states) substantially the following:

- (i) the Section of this Agreement to which the notice is given and the action or response required, if any;
- (ii) if applicable, the period of time within which the recipient of the notice must respond;

- (iii) if approval or review is being requested, shall be clearly marked “Request for Approval/Review under the Transbay Project Cost Review Oversight Agreement”; and
- (iv) if a notice of a disapproval or an objection that requires reasonableness, shall specify with particularity the reasons.

I. **Non-Waiver.** Any delay or failure by either Party to exercise any of its respective rights or remedies under this Agreement shall not be deemed a waiver of that or any other right contained in this Agreement.

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

K. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

TRANSBAY JOINT POWERS AUTHORITY

\_\_\_\_\_  
Greg Harper, Chair of the Board of Directors

APPROVED AS TO FORM:

By \_\_\_\_\_  
TJPA Legal Counsel

METROPOLITAN TRANSPORTATION  
COMMISSION

\_\_\_\_\_  
Steve Heminger, Executive Director

APPROVED AS TO FORM:

By \_\_\_\_\_  
Adrienne Weil  
MTC General Counsel

CONTROLLER'S OFFICE

\_\_\_\_\_  
Benjamin Rosenfield, Controller

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By \_\_\_\_\_  
Deputy City Attorney



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LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT

Dated as of \_\_\_\_\_ 1, 2016

between

CITY AND COUNTY OF SAN FRANCISCO

and

---

relating to

CITY AND COUNTY OF SAN FRANCISCO  
TAX-EXEMPT LEASE REVENUE  
COMMERCIAL PAPER CERTIFICATES OF PARTICIPATION, SERIES \_

and

CITY AND COUNTY OF SAN FRANCISCO  
TAXABLE LEASE REVENUE  
COMMERCIAL PAPER CERTIFICATES OF PARTICIPATION, SERIES \_-T

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## LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT

LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT, dated as of \_\_\_\_\_ 1, 2016, between the CITY AND COUNTY OF SAN FRANCISCO (the "City") and \_\_\_\_\_ (together with its successors and assigns, the "Bank").

WHEREAS, pursuant to a Trust Agreement, dated as of \_\_\_\_\_ 1, 2016, by and between the City and U.S. Bank National Association, as trustee (the "Trustee") as it is from time to time amended or supplemented in accordance with the terms and provisions thereof (the "Trust Agreement"), the City may from time to time cause the execution and delivery of its Tax-Exempt Lease Revenue Commercial Paper Certificates of Participation, Series \_ and Taxable Lease Revenue Certificates of Participation, Series \_-T (the "Certificates" and each, a "Certificate") in an aggregate amount not to exceed \$ \_\_\_\_\_ at any time;

WHEREAS, the Trust Agreement provides, as a condition precedent to the execution and delivery of the Certificates, for delivery to the Delivery and Paying Agent (as defined in the Trust Agreement) of a letter of credit with respect to the Certificates; and

WHEREAS, the Bank has agreed to issue its irrevocable direct-pay letter of credit pursuant to this Agreement;

NOW THEREFORE, in consideration of the premises and in order to induce the Bank to issue the Letter of Credit, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

*Section 1.1. Certain Defined Terms.* The following terms, as used herein, have the following meanings:

"*Additional Rental*" shall have the meaning set forth in the Sublease.

"*Advance*" means any Principal Advance or Default Advance.

"*Advance Rate*" means, for any day, a rate per annum equal to (i) for the period from and including the date the related Principal Advance was made to but not including the earlier to occur of (x) the thirty-first (31st) day immediately succeeding the date the Related Principal Advance was made and (y) the related Term Loan Conversion Date, the Base Rate from time to time in effect; (ii) for the period from and including the thirty-first (31st) day immediately succeeding the date the related Principal Advance was made to but not including the related Term Loan Conversion Date, the sum of the Base Rate from time to time in effect *plus* one percent (1.00%); and (iii) from and after the Term Loan Conversion Date, the sum of the Base Rate from time to time in effect *plus* \_\_\_\_\_ percent (\_\_\_\_%); *provided, however*, that upon the

occurrence and during the continuance of any Event of Default hereunder, the Advance Rate shall equal the Default Rate; *provided further* that in no event shall the Advance Rate be less than the highest rate then borne by any outstanding Certificate.

*"Agreement"* means this Letter of Credit and Reimbursement Agreement as the same may from time to time be amended, supplemented or otherwise modified in accordance with its terms.

*"Alternate Credit Facility"* shall have the meaning set forth in the Trust Agreement.

*"Authorized Representative"* shall have the meaning set forth in the Trust Agreement.

*"Bank"* has the meaning set forth in the introductory paragraph hereof.

*"Bank Agreement"* means any credit agreement, bond purchase agreement, liquidity agreement, direct purchase agreement or other agreement or instrument (or any amendment, supplement or modification thereto) entered into by the City with any Person, directly or indirectly, or otherwise consented to by the City, under which any Person or Persons undertakes to purchase debt, make loans, extend credit or liquidity to the City in connection with any Lease Obligation Debt.

*"Base Rate"* shall mean, for any day, the highest of (i) the sum of the Prime Rate in effect on such day plus one percent (\_\_\_\_%) per annum, (ii) the sum of the Federal Funds Rate, plus two percent (\_\_\_\_%) per annum and (iii) six percent (\_\_\_\_%) per annum.

*"Base Rental"* shall mean the amounts payable of "Base Rental" as set forth in the Sublease.

*"Base Rental Period"* shall have the meaning set forth in the Trust Agreement.

*"Business Day"* means any day other than (i) a Saturday or Sunday or a day on which banking institutions are authorized or required by law or executive order to be closed in the State of California, the State of New York or the Commonwealth of Massachusetts for commercial banking purposes; (ii) a day on which the New York Stock Exchange is authorized or required by law or executive order to be closed; and (iii) a day upon on which banking institutions are authorized or required by law or executive order to be closed in the cities and states in which demands for payment may be presented under the Letter of Credit.

*"CAFR"* has the meaning set forth in Section 5.1(a)(i) hereof.

*"Certificateholder," "Holder of Certificates" or "Holder"* or any similar term, when used with reference to a Certificate or Certificates, means any person who shall be the bearer of any Outstanding Certificates not registered, or the registered owner of any Outstanding Certificate which shall at the time be registered other than to bearer as provided in the Trust Agreement.

“Certificate” and “Certificates” each has the meaning assigned in the first recital of this Agreement.

“Charter” means The Charter of the City and County of San Francisco adopted November 7, 1995, and effective as of July 1, 1996, as amended and supplemented to date.

“City” means the City and County of San Francisco, California and its successors and assigns.

“Components” shall have the meaning set forth in the Sublease.

“Contingent Obligation” means, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any indebtedness, leases, dividends, or other obligations (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation, or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities, or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided, however*, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

“Credit Event” means either one of the following: the making of any Principal Advance; or the conversion of a Principal Advance to a Term Loan.

“Date of Issuance” means \_\_\_\_\_, 2016, subject to the satisfaction of the conditions precedent set forth in Section 3.1 hereof.

“Dealer” means, with respect to the Certificates, any Dealer appointed by the City pursuant to a Dealer Agreement, or any successors or assigns permitted under such Dealer Agreement or any other dealer for the Certificates appointed by the City pursuant to the Trust Agreement. The Dealers as of the Date of Issuance are \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_.

“Dealer Agreement” means (i) each Commercial Paper Dealer Agreement, dated as of \_\_\_\_\_ 1, 2016, between the City and the applicable Dealer, providing for the acceptance by such Dealer of the duties and obligations imposed thereby and imposing certain other duties and obligations as the same shall have been amended, supplemented or otherwise modified as



permitted thereby and (ii) any other similar agreement by and between the City and any other dealer for the Certificates appointed by the City pursuant to the Trust Agreement.

*"Debt"* shall mean, with respect to any Person, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person as lessee under capital leases; (c) all obligations of such Person to pay the deferred purchase price of property or services; (d) certificates of participation evidencing an undivided ownership interest in payments made by such Person as lessee under capital leases, as purchaser under an installment sale agreement or otherwise as an obligor in connection therewith; (e) all Guarantees by such Person of Debt of another Person; (f) the face amount of any letter of credit issued for the account of such Person and, without duplication, all drawings made and reimbursement obligations arising thereunder; (g) all Debt of a second Person secured by any lien on any property owned by such first Person, whether or not such Debt has been assumed; (h) all obligations of such Person to pay a specified purchase price for goods or services whether or not delivered or accepted, including but not limited to, take-or-pay or similar obligations; (i) all Contingent Obligations of such Person and (j) all obligations of such Person due and payable under Swap Contracts; *provided, however*, that Debt shall not include trade payables arising in the ordinary course of business; and *provided, further, however* that with respect to the City, Debt shall exclude conduit, enterprise and other Debt that have no claim on the General Fund of the City.

*"Default"* means an event which with the giving of notice or passage of time, or both, shall constitute an Event of Default.

*"Default Advance"* has the meaning assigned that term in Section 2.6.

*"Default Rate"* means, on any particular date, a rate of interest per annum equal to the sum of the Base Rate in effect on such date, *plus* \_\_\_\_\_ percent (\_\_\_\_%) per annum.

*"Delivery and Paying Agent Agreement"* means the Delivery and Paying Agent Agreement, dated as of \_\_\_\_\_ 1, 2016, by and between the City and U.S. Bank National Association, as Delivery and Paying Agent for the Certificates, providing for the acceptance by such Delivery and Paying Agent of the duties and obligations imposed thereby and imposing certain other duties and obligations, as the same shall have been amended, supplemented or otherwise modified as permitted thereby.

*"Delivery and Paying Agent"* means the Delivery and Paying Agent appointed with respect to the Certificates pursuant to Article V of the Trust Agreement, and having the duties, responsibilities and rights provided for therein, and its successor or successors and any other bank or trust company which may at any time be substituted in its place pursuant thereto.

*"Dodd-Frank Act"* means the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as enacted by the United States Congress, and signed into law on July 21, 2010, and all statutes, rules, guidelines or directives promulgated thereunder.

*"Environmental Regulation"* means any federal, state, or local statute, law, rule, regulation, ordinance, code, policy, or rule of common law now or hereafter in effect and in each

case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, or judgment, relating to health, safety, or the environment or to Hazardous Materials, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601 et seq.; the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. § 3608 et. seq.; the California Superfund Statute, Cal. Health & Safety C. § 25300 et seq.; legislation promulgated pursuant to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (“*Proposition 65*”), Cal. Health & Safety C. § 25249.5 et seq.; Environmental Protection Agency regulations pertaining to asbestos, including 40 C.F.R. Part 61, Subpart M; and Occupational Safety and Health Administration regulations pertaining to asbestos, including 29 C.F.R. § 1910.1001 and 1926.58.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

“*Event of Default*” has the meaning assigned that term in Section 6.1.

“*Excess Interest Fee*” has the meaning assigned that term in Section 2.15.

“*Federal Funds Rate*” shall mean for any day, the overnight rate of interest per annum quoted by the Bank for the overnight sale to other major banks and financial institutions of federal funds on such day (or, if such day is not a Business Day, the next preceding Business Day). Each determination of the Federal Funds Rate by the Bank shall be deemed conclusive and binding on the City absent manifest error.

“*Fee Agreement*” means that certain Fee Agreement dated \_\_\_\_\_, 2016, between the City and the Bank, as the same may be supplemented and amended.

“*Final Drawing Notice*” has the meaning assigned that term in the Letter of Credit.

“*Fiscal Year*” shall mean the twelve-month period commencing on July 1 of each year; *provided, however*, that the City may, from time to time, agree on a different twelve-month period as the Fiscal Year.

“*Fitch*” means Fitch, Inc., and its successors and assigns.

“*GAAP*” shall mean generally accepted accounting principles in the United States of America from time to time as set forth in (a) the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, and (b) statements and pronouncements of the Governmental Accounting Standards Board, as modified by the opinions, statements and pronouncements of any similar accounting body of comparable standing having authority over accounting by governmental entities.

*"General Fund"* has the meaning of the term "General Fund" as used in the Charter.

*"Guarantee"* by any Person shall mean any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), (ii) entered into for the purpose of assuring in any other manner the obligee of such Debt of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (iii) with respect to any letter of credit issued for the account of such other Person or as to which such other Person is otherwise liable for reimbursement of drawings, *provided* that the term *Guarantee* shall not include (i) endorsements for collection or deposit in the ordinary course of business, or (ii) performance or completion guarantees. The term *"Guarantee"* used as a verb has a corresponding meaning.

*"Hazardous Materials"* means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contains dielectric fluid containing polychlorinated biphenyls, and radon gas; (b) any chemicals, materials, or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials" extremely hazardous wastes, "restricted wastes," "toxic substances," "toxic pollutants," "contaminants," "special wastes," or "pollutants," or words of similar import, under any applicable Environmental Regulation; and (c) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any governmental authority.

*"Lease Obligation Debt"* means any Debt of the City, the payment of which is payable from and/or secured by lease revenue rental payments payable from the general fund of the City.

*"Letter of Credit"* means an irrevocable direct-pay letter of credit issued by the Bank in substantially the form of Exhibit A hereto.

*"Letter of Credit Termination Date"* has the meaning assigned to that term in the Letter of Credit.

*"Letter of Credit Fee Rate"* has the meaning assigned to that term in the Fee Agreement.

*"Material City Debt"* shall mean any Debt of the City which is outstanding in a principal amount of \$25,000,000 or more.

*"Maximum Base Rental"* shall mean the amounts specified in the Sublease as Maximum Base Rental.

*"Maximum Rate"* means the lesser of (i) twelve percent (12%) per annum and (ii) the maximum rate of interest allowed by applicable law.

*"Minimum Required Rental Payment"* shall have the meaning set forth in the Sublease.

*"Moody's"* means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, except that if such corporation shall no longer perform the functions of a securities rating agency for any reason, the term *"Moody's"* shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

*"No-Delivery Notice"* has the meaning assigned that term in Section 3.3.

*"Notice of Extension"* shall mean a notice from the Bank to the Delivery and Paying Agent in the form of Annex E to the Letter of Credit.

*"Obligations"* means the Reimbursement Obligations (which includes amounts owing to the Bank as evidenced by the Revolving Bank Certificate), the fees set forth in the Fee Agreement and all other obligations of the City to the Bank arising under or in relation to this Agreement and the Fee Agreement.

*"Offering Memorandum"* shall mean the Offering Memorandum with respect to the Certificates, prepared in connection with the Certificates and any supplements or amendments thereto, and the documents, if any, incorporated therein by reference.

*"Original Stated Amount"* means \$ \_\_\_\_\_.

*"Outstanding,"* when used in reference to Certificates means, as of a particular date, all Certificates authenticated and delivered pursuant to the Trust Agreement except: (i) any Certificate cancelled at or before such date, (ii) any Certificate deemed to have been paid in accordance with the Trust Agreement and (iii) any Certificate in lieu of or in substitution for which another Certificate shall have been authenticated and delivered pursuant to the Trust Agreement.

*"Participant Bank"* means any institution to which the Bank has granted a participation in or assigned, sold, or otherwise transferred the whole or any part of the Bank's rights or obligations (or both) under this Agreement or any other Related Document.

*"Payment Certificate"* has the meaning assigned to that term in the Letter of Credit.

*"Payment Office"* has the meaning set forth in Section 7.2 hereof.

*"Permitted Encumbrances"* shall have the meaning set forth in the Trust Agreement.

*"Person"* means any natural person, firm, partnership, association, corporation, joint exercise of powers authority or public body.

*"Pledged Property"* shall have the meaning set forth in the Trust Agreement.

*"Prime Rate"* means the rate of interest announced by the Bank from time to time as its prime commercial rate or equivalent, as in effect on such day for United States dollar loans, with any change in the Prime Rate resulting from a change in said prime commercial rate to be effective as of the date of the relevant change in said prime commercial rate, it being understood that such rate may not be the Bank's best or lowest rate.

*"Principal Advance"* has the meaning assigned that term in Section 2.5 hereof.

*"Property"* shall have the meaning set forth in the Sublease.

*"Quarterly Payment Date"* means the first day of each February, May, August and November.

*"Rating Agency"* means Moody's, Fitch or S&P.

*"Reduction Fee"* has the meaning set forth in the Fee Agreement.

*"Reimbursement Obligations"* means any and all obligations of the City to reimburse the Bank for any amount drawn under the Letter of Credit and all obligations to repay the Bank for all Principal Advances, Default Advances and Term Loans, including in each instance all interest accrued thereon.

*"Related Documents"* means this Agreement, the Fee Agreement, the Trust Agreement, the Letter of Credit, the Certificates, the Revolving Bank Certificate, the Delivery and Paying Agent Agreement, the Offering Memorandum, the Site Lease, the Sublease and the Dealer Agreements.

*"Request for Extension"* shall mean a notice from the City to the Bank in the form of Exhibit C attached hereto.

*"Revolving Bank Certificate"* means the revolving bank certificate, in the form of Exhibit B attached hereto, executed and delivered to the Bank pursuant to Section 2.11 hereof, and as from time to time amended or supplemented in accordance therewith, to evidence the indebtedness of the City due and owing to the Bank under this Agreement with respect to amounts drawn on the Letter of Credit.

*"Risk-Based Capital Guidelines"* means (i) the risk-based capital guidelines in effect in the United States on the Date of Issuance, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations adopted prior to the Date of Issuance.

*"S&P"* means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services Business LLC, a corporation organized and existing under the laws of the State of New York, its successors and assigns, except that if such corporation shall no longer perform the functions of a securities rating agency for any reason, the term "S&P" shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

“*Site Lease*” means the Site Lease, dated as of \_\_\_\_\_ 1, 2016, by and between the City and the Trustee, as from time to time amended or supplemented in accordance therewith.

“*State*” means the State of California.

“*Stated Amount*” has the meaning assigned that term in the Letter of Credit.

“*Stated Expiration Date*” means \_\_\_\_\_, 20\_\_\_\_, 20\_\_\_\_, as such date may be extended from time to time in accordance with the Letter of Credit.

“*Sublease*” means the Sublease dated as of \_\_\_\_\_ 1, 2016, by and between the City and the Trustee, as from time to time amended or supplemented in accordance therewith.

“*Swap Contract*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Taxes*” has the meaning assigned that term in Section 2.9(b).

“*Term Loan*” has the meaning assigned that term in Section 2.6.

“*Term Loan Conversion Date*” in respect of any Principal Advance, means the earlier of (i) the 180th day after the date that such Principal Advance is made and (ii) the Letter of Credit Termination Date.

“*Termination Fee*” has the meaning assigned that term in the Fee Agreement.

“*Trust Agreement*” means the Trust Agreement dated as of \_\_\_\_\_ 1, 2016, by and between the City and the Trustee, as from time to time amended or supplemented in accordance therewith.

"Trustee" shall mean \_\_\_\_\_, and its successor or successors, and any other person which may at any time be substituted in its place pursuant to the Trust Agreement.

*Section 1.2. Computation of Time Periods.* In this Agreement, in the computation of a period of time from a specified date to a later specified date, unless otherwise specified herein, the word "from" means "from and including" and the words "till" and "until" each mean "to but excluding." All references to time shall mean New York City time, whether or not so expressed.

*Section 1.3. Accounting Terms.* All accounting terms not specifically defined herein shall be construed in accordance with generally accepted United States accounting principles consistently applied.

*Section 1.4. Terms Defined in Trust Agreement.* Any capitalized term not defined herein shall have the meaning ascribed to such term in the Trust Agreement.

*Section 1.5. Construction.* The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (d) all references herein to Articles, Sections and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Agreement.

## ARTICLE II

### AMOUNT AND TERMS OF THE LETTER OF CREDIT

*Section 2.1. The Letter of Credit.* The Bank agrees, on the terms and conditions hereinafter set forth, to issue the Letter of Credit to the Delivery and Paying Agent in the Original Stated Amount and expiring by its terms not later than the Stated Expiration Date.

*Section 2.2. Issuance of the Letter of Credit.* The Bank will issue the Letter of Credit to the Delivery and Paying Agent on the Date of Issuance, upon the fulfillment of the applicable conditions precedent set forth in Section 3.1.

*Section 2.3. Fees.* The City agrees to perform its obligations provided for in the Fee Agreement, including, without limitation, the payment of any and all fees provided for therein. The terms and provisions of the Fee Agreement are incorporated herein by reference. All

references herein to amounts due hereunder or under this Agreement shall be deemed to include all amounts and obligation due under the Fee Agreement.

*Section 2.4. Payment of Amounts Drawn on Letter of Credit.* (a) The City will pay or cause to be paid to the Bank an amount equal to that amount drawn on the Bank under the Letter of Credit pursuant to any Payment Certificate with respect to the payment of accrued interest on maturing Certificates or, subject to the provisions of Section 2.5 hereof, any Payment Certificate with respect to the payment of principal of maturing Certificates, on the same Business Day such drawing is honored.

(b) Any amount drawn under the Letter of Credit pursuant to a Payment Certificate that is not repaid to the Bank when due as provided in clause (a) of Section 2.4, shall bear interest at the Default Rate until paid in full, payable on demand. Principal Advances, Default Advances and Term Loans shall be repaid to the Bank as provided in Sections 2.5 and 2.6 hereof.

(c) Any amount drawn under the Letter of Credit shall be noted by the Bank as principal due and owing on the grid attached to the Revolving Bank Certificate pursuant to Section 2.11; *provided* that neither the failure of the Bank to notate such amount nor any error in any such notation shall affect the obligations of the City hereunder or under the Revolving Bank Certificate.

*Section 2.5. Principal Advances.* If the Bank shall make any payment under the Letter of Credit pursuant to a Payment Certificate with respect to the payment of principal of maturing Certificates and the conditions precedent set forth in Section 3.2 shall have been fulfilled, and the City (at its option) does not reimburse or cause to be reimbursed the Bank in connection therewith on the same Business Day, then such payment shall constitute a principal advance made by the Bank to the City on the date and in the amount of such payment (each such advance being a "*Principal Advance*" and, collectively, the "*Principal Advances*"). The City shall pay or cause to be paid interest on the unpaid amount of each Principal Advance from the date that such Principal Advance is made by the Bank until such amount is repaid in full. Such interest shall be payable monthly in arrears (based on the actual days elapsed since the date of such Principal Advance, divided by 360), on the first Business Day of each calendar month during the term of each Principal Advance and, with respect to any such amount repaid, on the date any such amount is repaid, at a rate per annum equal to the applicable Advance Rate.

*Section 2.6. Conversion of Principal Advances to Term Loans; Term Loans; Default Advances.* (a) Subject to the satisfaction of the conditions set forth in Section 3.2 hereof, any amount of a Principal Advance (but not a Default Advance) remaining unpaid by the City to the Bank under Section 2.5 on the Term Loan Conversion Date shall be converted to a term loan (each, a "*Term Loan*" and, collectively, the "*Term Loans*"). The City shall repay the principal amount of each Term Loan in installments as to principal, commencing on the first Quarterly Payment Date following the Term Loan Conversion Date, and on each Quarterly Payment Date thereafter, with the final installment in an amount equal to the then outstanding principal amount due and payable on the date which is the fifth anniversary of the date the related Payment Certificate was honored. The principal amount of each Term Loan shall be amortized over such five-year period in equal quarterly installments of principal; *provided, however*, that the unpaid



amount of each Term Loan shall be paid by the City in each year only to the extent of the then fair rental value with respect to the Components subject to the Sublease for such Base Rental Period, and to the extent not so repaid, such Term Loan shall be paid during each subsequent Base Rental Period, to the extent owed, to the extent of the then fair rental value with respect to the Components subject to the Sublease for each such subsequent Base Rental Period, and such Term Loan shall continue to be an obligation of the City pursuant to the Sublease. The City may prepay or cause to be prepaid the outstanding amount of any Term Loan in whole or in part with accrued interest to the date of such prepayment on the amount prepaid. The amount of the Letter of Credit and the amounts available to be drawn thereunder by the Delivery and Paying Agent by any Payment Certificate shall not be increased with respect to the conversion of a Principal Advance to a Term Loan.

(b) Each Term Loan shall bear interest at the applicable Advance Rate, payable monthly in arrears (based on a year of 360-days and the actual number of days elapsed) on the first Business Day of each calendar month during the term of such Term Loan and on the date on which the final installment of principal of the Term Loan is payable.

(c) If (i) the Bank shall make any payment under the Letter of Credit pursuant to a Payment Certificate with respect to the payment of principal of maturing Certificates and the conditions set forth in Section 3.2 shall not have been fulfilled, and the City fails to reimburse or cause to be reimbursed the Bank in connection therewith, (ii) the Bank shall have made a Principal Advance to the City and the conditions set forth in Section 3.2 shall have not been fulfilled on the Term Loan Conversion Date, or (iii) an Event of Default shall have occurred while any Principal Advance or Term Loan remains outstanding, such payment, Principal Advance or Term Loan, as applicable, shall then constitute or become a default advance (and not a Principal Advance) made by the Bank to the City on the date and in the amount of such payment under the Letter of Credit or on such other date (each such default advance being a "Default Advance" and, collectively, the "Default Advances"). The City hereby agrees to pay or cause to be paid to the Bank (i) interest at the Default Rate on any amount of the Default Advance remaining unpaid by the City to the Bank from the date of such Default Advance until payment in full, payable monthly in arrears on the first Business Day of each calendar month, for the immediately preceding calendar month, and (ii) the unpaid amount of each Default Advance payable on each Quarterly Payment Date in an amount equal to the then fair rental value with respect to the Components subject to the Sublease for such quarterly period; *provided, however*, that the unpaid amount of each Default Advance shall be paid or caused to be paid by the City in each year only to the extent of the then fair rental value with respect to the Components subject to the Sublease for such Base Rental Period, and to the extent not so repaid, such Default Advance shall be paid during each subsequent Base Rental Period, to the extent owed, to the extent of the then fair rental value with respect to the Components subject to the Sublease for each such subsequent Base Rental Period, and such Default Advance shall continue to be an obligation of the City pursuant to the Sublease.

*Section 2.7. Prepayment of Principal Advances or Term Loans; Reinstatement of Letter of Credit Amounts.* (a) The City may prepay or cause to be prepaid the amount of any Principal Advance or Term Loan outstanding in whole or in part with accrued interest to the date of such repayment on the amount prepaid. Any prepayment in part under this Section 2.7(a) shall be

applied by the Bank against each such Principal Advance or Term Loan, as the case may be, in the order in which each such Principal Advance or Term Loan, as the case may be, was made.

(b) Any prepayment made under Section 2.7(a) shall be applied by the Bank as a reimbursement of the related drawing (and as a prepayment of the Principal Advance or Term Loan, as the case may be, resulting from such drawing) and, in the case of a prepayment of a Principal Advance, the City irrevocably authorizes the Bank to reinstate the amount available to be drawn under the Letter of Credit by the amount of such prepayment; *provided, however*, that the Delivery and Paying Agent shall not deliver any Certificates (the aggregate principal and interest of which is payable from the amount of the Letter of Credit so reinstated) for sale or otherwise until the Letter of Credit has been reinstated pursuant to the terms of this Agreement and the Letter of Credit. The amount of the Letter of Credit and the amounts available to be drawn thereunder by the Delivery and Paying Agent by any Payment Certificate shall not be increased with respect to repayments of Term Loans or Default Advances, unless otherwise agreed to by the Bank.

(c) In the event that the Delivery and Paying Agent delivers any Certificates while any Principal Advance or Term Loan or any portion of any Principal Advance or any Term Loan remains unpaid, the City shall apply the proceeds of any such Certificates to the prepayment of such outstanding Principal Advance or Term Loan, as the case may be. Any prepayment in part under this Section 2.7(c) shall be applied against each such Principal Advance or Term Loan in the order in which each such Principal Advance or Term Loan, as the case may be, was made.

*Section 2.8. Increased Costs; Capital Adequacy.* (a) In the event of the adoption after the Date of Issuance of any law, rule or regulation (domestic or foreign), or any change after the Date of Issuance in any law, rule or regulation, or the interpretation or application thereof by any court, governmental authority, central bank or comparable authority charged with the enforcement or administration or interpretation thereof, or the compliance with any guidelines or request from any governmental authority, central bank or comparable authority (whether or not having the force of law):

(i) subjects the Bank or any Participant Bank to any tax, deduction or withholding with respect to this Agreement, the Fee Agreement, the Letter of Credit or the Revolving Bank Certificate (other than any tax based upon the overall net income of the Bank or such Participant Bank), or

(ii) imposes, modifies or deems applicable any reserve, liquidity ratio, special deposit, insurance premium (including any assessment or other cost imposed by the Federal Deposit Insurance Corporation or any successor thereto) or similar requirement against credits (including letters of credit) or commitments to extend credit extended by, or assets (funded or contingent) held by, or deposits with or for the account of, or loans by, or other acquisitions of funds or bonds by, the Bank or any Participant Bank, or

(iii) imposes upon the Bank or any Participant Bank any other condition or expense with respect to this Agreement, the commitment or obligations of the Bank or

such Participant Bank hereunder, the Fee Agreement, the Letter of Credit or the Revolving Bank Certificate,

and the result of any of the foregoing is to increase the cost to the Bank or such Participant Bank, reduce the income receivable by the Bank or the Participant Bank, impose any expense upon the Bank or such Participant Bank or reduce the amount of any payment receivable by the Bank or such Participant Bank, with respect to this Agreement, the Fee Agreement, the Letter of Credit or the Revolving Bank Certificate, as reasonably determined and allocated by the Bank or such Participant Bank, by an amount which the Bank or such Participant Bank deems to be material, the Bank shall notify the City thereof by delivery of a certificate of an officer of the Bank or such Participant Bank of the nature described in the next sentence, and the City shall pay or cause to be paid to the Bank promptly, and in any event within thirty (30) days after receipt of such notice, that amount which shall compensate the Bank or such Participant Bank (on an after tax basis, grossing up to cover any taxes payable by the Bank or such Participant Bank on such amount) for such increase in cost, reduction in income, additional expense or reduced amount. A certificate setting forth such increase in cost, reduction in income or additional expense or reduced amount (including such detail as the City may reasonably request), and the manner of calculating the same as determined by the Bank or such Participant Bank, shall be submitted by the Bank to the City and, absent manifest error, shall be conclusive as to the amount thereof; *provided however*, the City shall not be obligated to pay such costs incurred before 180 days prior to the notification thereof, except where (i) the Bank or Participant Bank, as applicable, had no actual knowledge of the action resulting in such increased costs, increased capital or reduction in the rate of return, as applicable, as of the date which is 180 days prior to the notification thereof or (ii) such increased costs, increased capital or reduction in the rate of return apply to the Bank or Participant Bank retroactively to a date prior to the date which is 180 days prior to the notification thereof. In making the determinations contemplated by the above referenced certificate, the Bank or such Participant Bank may make such reasonable estimates, assumptions, allocations and the like that the Bank or such Participant Bank in good faith determines to be appropriate.

(b) If the Bank or any Participant Bank shall have determined that the adoption after the Date of Issuance of any law, rule, regulation or guideline (whether or not having the force of law) regarding liquidity as well as capital adequacy, or any change in any applicable law, rule, regulation or guideline, as the case may be, or any change in the enforcement or interpretation or administration thereof by any court or any administrative or governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Bank or any Participant Bank (or any lending office thereof) with any request or directive regarding liquidity as well as capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on capital of the Bank or such Participant Bank as a consequence of its rights or obligations hereunder, the Fee Agreement, under the Letter of Credit or with respect to the Revolving Bank Certificate to a level below that which the Bank or such Participant Bank could have achieved but for such adoption, change or compliance (taking into consideration the policies of the Bank or such Participant Bank with respect to liquidity and capital adequacy) by an amount deemed by the Bank to be material, the Bank shall notify the City thereof by delivery of a certificate of an officer of the Bank of the nature described in the next sentence, and the City

shall pay or cause to be paid to the Bank promptly, and in any event within thirty (30) days after receipt of such notice, that amount which shall compensate the Bank or such Participant Bank (on an after tax basis, grossing up to cover any taxes payable by the Bank or such Participant Bank on such amount) for such reduction in rate of return on capital; *provided however*, the City shall not be obligated to pay such additional compensation for a period up to 180 days prior to the notification thereof, except where (i) the Bank or Participant Bank, as applicable, had no actual knowledge of the action resulting in such increased costs, increased capital or reduction in the rate of return, as applicable, as of the date which is 180 days prior to the notification thereof or (ii) such increased costs, increased capital or reduction in the rate of return apply to the Bank or Participant Bank retroactively to a date prior to the date which is 180 days prior to the notification thereof. A certificate setting forth such reduction in rate of return on capital (including such detail as the City may reasonably request), and the manner of calculating the same as determined by the Bank or such Participant Bank, shall be submitted by the Bank to the City and, absent manifest error, shall be conclusive as to the amount thereof. In making the determinations contemplated by the above referenced certificate, the Bank or such Participant Bank may make such reasonable estimates, assumptions, allocations and the like that the Bank or such Participant Bank in good faith determines to be appropriate.

(c) The Bank shall notify the City of any such impending or announced change in law, regulation or interpretation referred to in subsection (a) or (b) of this Section 2.8 promptly upon receipt by it of actual notice of such change; *provided, however*, that any delay or failure to so notify the City shall not in any manner relieve the City of their obligations under this Section 2.8.

(d) Notwithstanding anything to the contrary in this Section 2.8, in the event the Bank grants any participation to any Participant Bank pursuant to Section 7.7(b) hereof, the City shall not have any obligation to pay amounts pursuant to this Section 2.8 in an amount greater than that which it would have been required to pay if the Bank had not granted such participation.

(e) The obligations and liabilities under this Section 2.8 shall survive the termination of this Agreement and the Sublease and the obligations of the City hereunder and thereunder and the payment in full of all Base Rental and Additional Rental.

(f) A change in law, rule, regulation or guideline (whether or not having the force of law) shall include, without limitation, (i) any change in the Risk-Based Capital Guidelines or (ii) any adoption of or change in any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) or in the interpretation, promulgation, implementation or administration thereof which affects the amount of capital required or expected to be maintained by the Bank or any Participant Bank or any corporation controlling the Bank or any Participant Bank. Notwithstanding the foregoing, for purposes of this Agreement, all requests, rules, ruling, guidelines, regulations or directives in connection with the Dodd-Frank Act shall be deemed to be a change in law for the purposes of this Section regardless of the date enacted, adopted or issued and all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or the United States financial regulatory authorities or foreign regulatory authorities

shall be deemed to be a change in law for the purposes of this Section regardless of the date enacted, adopted, issued, promulgated or implemented.

*Section 2.9. Payments and Computations.* (a) The City shall make or cause to be made each payment hereunder and under the Fee Agreement (i) representing reimbursement pursuant to Section 2.4 hereof to the Bank of the amount drawn on the Bank pursuant to a Payment Certificate made under the Letter of Credit not later than 4:00 p.m., and (ii) not later than 1:00 p.m. for all other payments, on the day when due, in lawful money of the United States of America to the account of the Bank at its Payment Office in immediately available funds; *provided, however,* that whenever any payment hereunder or under the Fee Agreement shall be due on a day that is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day, and any interest payable thereon shall be payable for such extended time; and *provided, further* that the City shall be permitted to make any payment pursuant to Section 1.2 of the Fee Agreement in next day funds if such payment is made (i) on the Business Day immediately preceding the date on which such payment would otherwise have been due and (ii) in an amount equal to the amount that would have been required to have been paid had the payment not been made in next day funds in reliance upon this proviso. Payment received by the Bank after the applicable time set forth in this Section 2.9 shall be considered to have been made on the next succeeding Business Day. Computations of the Base Rate, the Prime Rate, the Federal Funds Rate, the Advance Rate and the Default Rate hereunder or under the Fee Agreement shall be made by the Bank on the basis of a year of 360 days for the actual number of days elapsed.

(b) All such payments will be made without counterclaim, setoff, condition or defense, free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein (but excluding any tax imposed on the overall net income of the Bank or such Participant Bank pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) in which the principal office of the Bank or such Participant Bank is located) and all interest, penalties or similar liabilities with respect thereto (collectively, "*Taxes*"); *provided, however,* that the City shall have no liability with respect to any Taxes which are imposed on the Bank or any Participant Bank pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) in which the principal office of the Bank or such Participant Bank is located unless (i) the Bank or such Participant Bank is entitled to the benefits of an income tax treaty with the United States that provides for an exemption from United States withholding tax on interest and other amounts payable to the Bank or such Participant Bank, as the case may be, pursuant to the terms of this Agreement, the Revolving Bank Certificate and any other Related Document, or (ii) all interest and other amounts payable to the Bank or such Participant Bank pursuant to the terms of this Agreement, the Revolving Bank Certificate or any other Related Documents will be effectively connected with the conduct by the Bank or such Participant Bank of a trade or business within the United States. If any Taxes are so levied or imposed, the City agrees to pay or cause to be paid to the Bank on demand the full amount of such Taxes and such additional amounts as may be necessary so that every payment of all amounts due hereunder, under the Revolving Bank Certificate or under any Related Document, after withholding or deduction for or on account of any Taxes, will not be less than the amount

provided for herein, in the Revolving Bank Certificate or in such Related Document. The City will deliver to the Bank within forty-five (45) days after the date the payment of any Taxes is due pursuant to applicable law certified copies of tax receipts evidencing such payment by the City. To the extent permitted by law, the City will indemnify and hold harmless the Bank or such Participant Bank and reimburse the Bank upon written request, for the amount of any Taxes so levied or imposed and paid by the Bank or such Participant Bank. The obligations and liabilities under this Section 2.9(b) shall survive the termination of this Agreement and the Sublease and the obligations of the City hereunder and thereunder and the payment in full of all Base Rentals and Additional Rentals.

(c) Unless otherwise provided herein, amounts not paid when due shall bear interest at the Default Rate and shall be payable upon demand.

*Section 2.10. Extension of Stated Expiration Date.* On the Date of Issuance, the Stated Expiration Date shall be \_\_\_\_\_, 20\_\_ ; *provided* that such date shall be subject to extension at any time following the then scheduled Stated Expiration Date, as set forth below and in the Letter of Credit. On any date which is not less than one hundred eighty (180) days prior to the Stated Expiration Date, the City may request in writing that the Bank extend the Stated Expiration Date for an additional term of such period as the parties may agree by delivery to the Bank of a Request for Extension. Within forty-five (45) days of the date of any such Request for Extension, the Bank will notify the City in writing of the decision by the Bank in its absolute discretion whether to extend for such additional period, the Stated Expiration Date for purposes of this Agreement and the Letter of Credit, including in such notice the extended Stated Expiration Date and the conditions of such consent (including conditions relating to legal documentation and the consent of the Delivery and Paying Agent). If the Bank does so agree to extend, the Bank shall deliver an executed Notice of Extension to the Delivery and Paying Agent. If the Bank elects not to extend or fails to send such written notice of such election to extend within such 60-day period, the Bank shall not provide a Notice of Extension to the Trustee, and the Bank shall be deemed to have denied the City's request to extend. The failure of the Bank to give such Notice of Extension shall be deemed a denial of the City's request for extension.

*Section 2.11. Evidence of Obligation; Revolving Bank Certificate.* The Bank shall maintain in accordance with its usual practice an account or accounts evidencing the obligations resulting from each drawing under the Letter of Credit and from each Advance and Term Loan made from time to time hereunder and the amounts of principal and interest payable and paid from time to time hereunder. In any legal action or proceeding in respect of this Agreement, the entries made in such accounts shall be prima facie evidence of the existence and amounts of the obligations of the City therein evidenced.

To evidence the obligations of the City due and owing to the Bank under this Agreement with respect to amounts drawn under the Letter of Credit, the City will cause the execution and delivery of the Revolving Bank Certificate, in the form of Exhibit B attached hereto, to the Bank on the Date of Issuance. The Bank shall note on the grid attached to the Revolving Bank Certificate principal amounts owing to the Bank, and the maturity schedule 17therefore pursuant to Sections 2.5 and 2.6 respecting outstanding Advances and Term Loans converted from

Principal Advances with interest until payment in full pursuant to the terms of the Revolving Bank Certificate. The obligations of the City under this Agreement are payable solely from the Pledged Property.

*Section 2.12. Obligations Absolute.* The obligations of the City under this Agreement shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms thereof, under all circumstances whatsoever, including without limitation the following circumstances:

- (a) any lack of validity or enforceability of any of the Related Documents;
- (b) any amendment to, waiver of or consent to departure from any provision of, this Agreement or any of the Related Documents;
- (c) the existence of any claim, set-off, defense or other right which the City may have at any time against the Trustee, the Delivery and Paying Agent, a Dealer or the Bank (other than the defense of the payment to the Bank in accordance with the terms of this Agreement), any beneficiary or any transferee of the Letter of Credit (or any person or entity for whom any such beneficiary or any such transferee may be acting), or any other Person, whether in connection with this Agreement, any Related Document or any unrelated transaction;
- (d) any demand, statement or any other document presented under the Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;
- (e) any non-application or misapplication by the Delivery and Paying Agent of the proceeds of any drawing under the Letter of Credit;
- (f) payment by the Bank under the Letter of Credit to the person entitled thereto against presentation of a Payment Certificate which does not comply strictly with the terms of the Letter of Credit; or
- (g) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Nothing contained in this Section 2.12 shall operate to prevent the City from bringing a cause of action against the Bank for any liability it may incur as a result of its gross negligence or willful misconduct as provided in Section 7.5 hereof.

Notwithstanding the foregoing, the obligations of the City under this Agreement are a special obligation of the City payable solely from the Pledged Property.

*Section 2.13. Termination.* Notwithstanding any provision of this Agreement, the Fee Agreement or the Letter of Credit to the contrary, the City shall not terminate, replace or permanently reduce the Letter of Credit prior to the Stated Expiration Date except upon (i) the

payment to the Bank of the Termination Fee or Reduction Fee, if any, set forth in the Fee Agreement, (ii) the payment to the Bank of all fees, expenses and other amounts payable hereunder, (iii) the payment to the Bank of all principal and accrued interest owing on the Revolving Bank Certificate and (iv) providing the Bank notice of its intention to do so at least sixty (60) days prior to the date of such termination or replacement; *provided* that all payments to the Bank referred to in clauses (i), (ii) and (iii) above shall be made with immediately available funds.

*Section 2.14. Pledge by the City.* To provide security to the Bank for the payment by the City of the Obligations and any and all amounts now or hereafter owing to the Bank under this Agreement and the Revolving Bank Certificate, the City hereby pledges to the Bank the Pledged Property. The pledge of the Pledged Property made by the City hereunder is valid, binding and perfected from the time when it is made and the Pledged Property so pledged shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid, binding and perfected as against all parties having claims of any kind in tort, contract or otherwise against the City irrespective of whether such parties have notice thereof. No instrument by which such pledges are created nor any financing statement need be recorded or filed. Such lien shall be on a parity with the lien in favor of the Bank and the Delivery and Paying Agent and the Trustee on the Pledged Property under the Trust Agreement. The obligations of the City under this Agreement are a special obligation of the City payable solely from the Pledged Property.

*Section 2.15. Maximum Interest Rate; Payment of Fee.* If the rate of interest payable hereunder shall exceed the Maximum Rate for any period for which interest is payable, then (i) interest at the Maximum Rate shall be due and payable with respect to such interest period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and (B) the Maximum Rate (the "*Excess Interest*"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed such Maximum Rate, at which time the City shall pay or cause to be paid to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal such Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank. Upon the termination of this Agreement, in consideration for any limitation of the rate of interest which may otherwise be payable hereunder, the City shall pay or cause to be paid to the Bank a fee equal to the amount of all unpaid deferred Excess Interest (the "*Excess Interest Fee*"); *provided* that the Excess Interest Fee shall be payable as and to the extent that the then fair rental value with respect to the Components subject to the Sublease for such Base Rental Period exceeds the sum of all other Reimbursement Obligations remaining unpaid hereunder and the amount of interest accruing on the Certificates during such Base Rental Period. In accordance with Section 5922 of the California Government Code, the City hereby represents and warrants that the obligations of the City under the Revolving Bank Certificate and all other Reimbursement Obligations hereunder are not subject to any limitation as to maximum interest rate.



*Section 2.16. Adjustment of Base Rental.* (a) To the extent any Reimbursement Obligation or accrued interest thereon has not been paid as and when due or any deferred Excess Interest remains unpaid, following the Letter of Credit Termination Date and for so long thereafter as any Reimbursement Obligations remain unpaid, the City shall increase the amount of the Base Rental payable under the Sublease for the Property to the greater of (i) the Maximum Base Rental for the Property or (ii) the maximum fair rental value of the Property determined in accordance with subsection (b) below.

(b) To the extent any Reimbursement Obligation or accrued interest thereon has not been paid as and when due or any deferred Excess Interest remains unpaid, following the Letter of Credit Termination Date and for so long thereafter as any Reimbursement Obligations remain unpaid, unless the Sublease has terminated in accordance with its terms, the City agrees, at the Bank's sole written request, from time to time (but not more than once in any twelve month period), to determine or cause to be determined, the fair rental value for one or more Components. Upon consultation with special counsel and the Bank, such determination shall be by a Class C appraisal conducted by an employee of the City and shall be at the sole expense of the City. In addition, the City agrees to extend the term of (i) the Site Lease in accordance with Section 4 thereof and (ii) the Sublease in accordance with Section 2.2 thereof, if, on the stated expiration thereof, any amounts remain owing to the Bank hereunder or under any of the other Related Documents.

### ARTICLE III

#### CONDITIONS OF ISSUANCE

*Section 3.1. Conditions Precedent to the Issuance of the Letter of Credit.* The obligation of the Bank to issue the Letter of Credit is subject to the fulfillment of the following conditions precedent on or before the Date of Issuance in form and substance and in a manner satisfactory to the Bank:

(a) The Bank shall have received:

(i) Certified copies of the resolutions of the City approving this Agreement, the other Related Documents and the other matters contemplated hereby and thereby, and all other documents, including records of proceedings of the City, instruments, governmental approvals, third party approvals and opinions as the Bank and its counsel may reasonably request evidencing any other necessary action.

(ii) A certificate of the City stating the names and true signatures of the officers of the City authorized to sign this Agreement, the Fee Agreement and the other documents to be delivered by the City hereunder.

(iii) Executed or certified copies, as applicable, of each of the Related Documents in form and substance satisfactory to the Bank.

(iv) A letter addressed to the Bank from Jones Hall, Special Counsel, entitling the Bank to rely on such firm's approving opinion addressed to the City.

(v) An opinion of Jones Hall, Special Counsel, in form and substance satisfactory to the Bank and its counsel, addressed to the Bank, to the effect that (A) this Agreement and the Fee Agreement has been duly authorized, executed and delivered by the City and constitute a legal, valid and binding agreements of the City enforceable against the City in accordance with their respective terms (except that (i) the enforcement of the Agreement and the Fee Agreement may be limited by bankruptcy and other similar laws relating to creditors' rights, (ii) certain equitable remedies may be unavailable and (iii) the indemnification provision may be limited by securities laws and public policy), (B) the Revolving Bank Certificate has been duly executed and delivered pursuant to the Trust Agreement in evidence of Advances, Default Advances and Term Loans made by the Bank hereunder and constitutes a legal, valid and binding agreement of the City enforceable against the City in accordance with its terms (except that (i) the enforcement thereof may be limited by bankruptcy and other similar laws relating to creditors' rights, (ii) certain equitable remedies may be unavailable and (iii) the indemnification provision may be limited by securities laws and public policy), (C) the Letter of Credit satisfies the terms and conditions of the Trust Agreement, (D) the Bank is entitled to the benefits of the Trust Agreement on a parity with all holders of the Certificates, (E) the City has the authority and power to execute this Agreement, and (F) that the terms of the Trust Agreement and this Agreement create a valid pledge of and lien of the Pledged Property to secure the Revolving Bank Certificate and the amounts owed to the Bank hereunder and under the Fee Agreement.

(vi) Evidence that the rating assigned to the Certificates by S&P is "[A-1+]" and by Moody's is "[P-1]".

(vii) The Revolving Bank Certificate, duly executed and delivered to the Bank.

(viii) A certificate of the City setting forth the annual fair rental value of each Component:

(ix) Certificate(s) of the City stating that (A) on the Date of Issuance, no Default or Event of Default has occurred and is continuing, or would result from the issuance of the Letter of Credit, and that (B) on the Date of Issuance and after giving effect to the issuance of the Letter of Credit, all representations and warranties of the City contained herein or otherwise made in writing in connection herewith shall be true and correct with the same force and effect as though such representations and warranties had been made on and as of such time.

(x) An opinion of the City Attorney of the City as counsel to the City, in form and substance satisfactory to the Bank and its counsel, and addressed to the Bank.

(xi) Audited financial statements for the City for the two most recently available fiscal years and the most recent operating budget summaries for the City's General Fund for the current fiscal year.

(xii) Evidence that the City has appropriated amounts sufficient to pay the Base Rental due, or anticipated to be due, in the Fiscal Year ending June 30, 2014 with respect to the Components.

(xiii) Reserved.

(xiv) Evidence of the City's current hazard and rental interruption insurance for the Components for a period of at least two (2) years, assuming an interest rate of at least 12% and such insurance shall be satisfactory to the Bank. The Bank shall also have received a certificate from the City's Risk Manager stating that the City's current policies of insurance and any self-insurance maintained by the City comply with the provisions of Section 4.3 of the Sublease. Any such commercial insurance policies shall name the Bank as loss payee and additional insured and shall be issued by insurers rated "A" or better by Best's or approved by the Bank.

(xv) A copy of the investment policy of the City.

(xvi) Certificates of the Trustee and the Delivery and Paying Agent evidencing the signatures and offices of officers of each executing the Related Documents and with respect to the Delivery and Paying Agent, authorized to draw on the Letter of Credit, and with respect to such other matters as the Bank may reasonably request, and an opinion of counsel to each of the Delivery and Paying Agent and the Trustee, in form and substance satisfactory to the Bank and its counsel, and addressed to the Bank.

(xvii) Written evidence satisfactory to the Bank that (A) a separate CUSIP number has been obtained and reserved from Standard and Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc. for the Revolving Bank Certificate (such CUSIP number shall also be made available on the Bloomberg Municipal Bond Description Screen or otherwise provided electronically to the Bank pursuant to a third party provider of such information) and (B) the Revolving Bank Certificate (and its related CUSIP number) shall have been assigned one rating of at least "Baa3" by Moody's, "BBB-" by Fitch or "BBB-" by S&P.

(xviii) Such other documents, certificates, opinions, approvals and filings with respect to the Related Documents and this Agreement as the Bank may reasonably request.

(b) All other legal matters pertaining to the execution and delivery of the Letter of Credit, this Agreement, the Related Documents and the execution and delivery of the first installment of the Certificates shall be reasonably satisfactory to the Bank and its counsel.

(c) The City shall have made payment to the Bank of all amounts due on the Date of Issuance hereunder and under the Fee Agreement.

*Section 3.2. Conditions Precedent to Each Credit Event.* As a condition precedent to the occurrence of each Credit Event hereunder, the following conditions shall be satisfied on the date of such Credit Event:

(a) no Default or Event of Default shall have occurred and be continuing; and

(b) the representations and warranties made by the City in Article 4 hereof (other than in Section 4.1(g)) shall be true and correct on and as of such date, as if made on and as of such date.

On the occurrence of each Credit Event, the City shall be deemed to have represented and warranted that the foregoing conditions precedent have been satisfied.

*Section 3.3. No-Delivery Notice; Final Drawing Notice.* The Bank may deliver a notice to the Delivery and Paying Agent in the form of Annex F to the Letter of Credit (a “No-Delivery Notice”) at any time that the Bank shall have determined that the conditions precedent to the occurrence of a Credit Event set forth in Section 3.2 have not been satisfied. Also the Bank may deliver a notice, in accordance with Section 6.2 hereof, to the Delivery and Payment Agent in the form of Annex G to the Letter of Credit (the “Final Drawing Notice”) at any time an Event of Default shall have occurred and be continuing. Upon receipt of a No-Delivery Notice or a Final Drawing Notice, the Delivery and Paying Agent shall cease authenticating Certificates, as provided in Section 3.01 of the Trust Agreement, unless and until such No-Delivery Notice or Final Drawing Notice is rescinded. Any such No-Delivery Notice received after 10:00 a.m., on any day on which Certificates are being issued, shall be deemed to have been received on the next following Business Day. The Bank shall not incur any liability as a result of the Bank’s giving of any No-Delivery Notice or Final Drawing Notice which, in its good faith judgment, the Bank determines to be in accordance with this Section 3.3. Notwithstanding anything in this Section 3.3 which may be to the contrary, a No-Delivery Notice or Final Drawing Notice shall not affect the obligation of the Bank to honor demands for payment under the Letter of Credit with respect to Certificates authenticated prior to the receipt by the Delivery and Paying Agent of such No-Delivery Notice or Final Drawing Notice, and the Delivery and Paying Agent shall continue to have the right to draw under the Letter of Credit to pay the principal of and accrued interest on maturing Certificates authenticated prior to the receipt by the Delivery and Paying Agent of such No-Delivery Notice or Final Drawing Notice. A No-Delivery Notice or the Final

Drawing Notice may be given by facsimile or electronic mail transmission, confirmed in writing within 24 hours, but the failure to so confirm such No-Delivery Notice or the Final Drawing Notice in writing shall not render such No-Delivery Notice or the Final Drawing Notice ineffective. The Bank will furnish a copy of any No-Delivery Notice or the Final Drawing Notice to the City and the Dealer promptly following delivery thereof to the Delivery and Paying Agent, but the failure to furnish any such copy shall not render ineffective such No-Delivery Notice or the Final Drawing Notice.

*Section 3.4. Conditions Precedent to the Issuance of Certificates.* The City hereby agrees that it shall not permit the issuance of any Certificates prior to the date on which the Bank receives evidence of title insurance on the Components insuring the Trustee and naming the Bank an additional insured, in an amount not less than the Original Stated Amount, subject only to such exceptions as shall be acceptable to the Bank, with such endorsements and affirmative coverages as may be reasonably required by the Bank, including such endorsements as may be reasonably required by the Bank, and otherwise in form and substance satisfactory to the Bank and its counsel and issued by an insurance company acceptable to the Bank and its counsel and authorized to issue such insurance in the State of California.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES

*Section 4.1. City Representations and Warranties.* The City represents and warrants that, as of the date on which this Agreement is executed and as of the date of each draw honored by the Bank under the Letter of Credit and on each Term Loan Conversion Date:

(a) *Existence.* The City is validly existing as a charter city and county duly organized and created and validly existing under the laws and Constitution of the State, with full right and power to own its properties and to carry on its affairs as now being conducted and to cause the execution and delivery of the Certificates, to pledge the security and to execute, deliver and perform its obligations under this Agreement and each Related Document to which it is a party.

(b) *Authorization; Contravention.* The execution, delivery and performance by the City of this Agreement, the Revolving Bank Certificate and the other Related Documents to which it is a party are within the City's powers, have been duly authorized by all necessary action, require no further consent or action by or in respect of, or filing with, any governmental body, agency, official or other Person and do not violate or contravene, or constitute a default under, any provision of applicable law, charter, ordinance or regulation or of any material agreement, judgment, injunction, order, writ, determination, award, decree or instrument binding upon the City or by which the City or its properties may be bound or affected, or result in the creation or imposition of any lien or encumbrance on any asset of the City (other than pursuant to such enumerated documents). The City is not a party to, or otherwise subject to, any provision contained in any instrument evidencing indebtedness of the City, any agreement relating thereto, or any other contract or agreement (including its charter) that limits the amount of, or

otherwise imposes restrictions on, the incurring of obligations of the City that would materially and adversely affect the ability of the City to perform its obligations hereunder or under any other Related Documents to which it is a party.

(c) *Binding Effect.* Assuming due execution by the other parties thereto, this Agreement and the other Related Documents to which the City is a party each constitutes a valid, binding and enforceable agreement of the City, subject to applicable laws affecting creditors' rights generally and general principles of equity regardless of whether such enforceability is considered in a proceeding at law or in equity.

(d) *No Default.* The City is not, in any material respect, in breach of or default under its organizational documents, or any applicable law or administrative regulation of the State or of the United States, relating, in each case, to the transactions contemplated hereby or by the other Related Documents, or any applicable judgment, decree, loan agreement, note, resolution, ordinance or other material agreement to which it is a party or is otherwise subject. Late delivery of financial statements or other reporting documentation shall not be deemed material for purposes of this Section.

(e) *Litigation.* Except as disclosed in writing to the Bank prior to the Date of Issuance, there is no action, suit or proceeding pending with service of process having been accomplished against, or to the knowledge of the City, threatened against or affecting, the City before any court or arbitrator or any governmental body, agency or official seeking to restrain or enjoin the sale, execution or delivery of the Certificates or in any way contesting or affecting the validity of the Certificates or in which there is a reasonable possibility of an adverse decision which could have a material adverse effect on (i) the ability of the City to perform its obligations hereunder or under the Related Documents to which it is a party or (ii) the enforceability or validity of the Trust Agreement or any of the other Related Documents.

(f) *No Sovereign Immunity.* The City does not enjoy any rights of immunity on the grounds of sovereign immunity in respect of its obligations hereunder or under any Related Document to which it is a party or by which it is bound.

(g) *Incorporation of Representations and Warranties by Reference.* The City hereby makes to the Bank the same representations and warranties made by the City as are set forth in the Related Documents (other than this Agreement) to which it is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. No amendment to such representations and warranties or defined terms made pursuant to the Related Documents (other than this Agreement) to which it is a party shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the consent of the Bank.

(h) *No Proposed Legal Changes.* There is no amendment, or, to the knowledge of the City, no proposed amendment certified for placement on a statewide

ballot, to the Constitution of the State of California or any published administrative interpretation of the Constitution of the State of California or any State of California law, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect (i) the execution and delivery of this Agreement or the other Related Documents to which the City is a party, or (ii) the performance by the City of its obligations under this Agreement or the other Related Documents to which the City is a party.

(i) *Offering Memorandum.* The information contained in the Offering Memorandum under the caption "THE CITY AND COUNTY OF SAN FRANCISCO," as of the Date of Issuance, and as of the date of each execution and delivery of Certificates under the Trust Agreement, does not contain any untrue statement of any material fact.

(j) *Title to Property; Sublease.* The City has good and marketable fee simple title to all of the Components, subject only to Permitted Encumbrances. The Sublease is in full force and effect. The City, as lessee under the Sublease, is in peaceable possession of the Property. No waiver, indulgence or postponement of any of the City's obligations under the Sublease has been granted by the Trustee. There exists no event of default or event, occurrence, condition or act that, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a default under the Sublease.

(k) *Disclosure.* Except as disclosed in writing to the Bank prior to the Date of Issuance, there is no fact known to the City, as of the date this representation is made, that would have a material adverse effect on (i) the ability of the City to perform its obligations hereunder or under the other Related Documents to which it is a party or (ii) the enforceability or validity of any of the Related Documents.

(l) *Financial Information.* The consolidated statement of financial position of the City as of June 30, 2015, as well as each CAFR of the City as of any more recent date, delivered to the Bank pursuant to this Agreement (the "*Submitted Financial Statements*"), were prepared in accordance with GAAP consistently applied throughout the periods involved and fairly present the financial condition of the City as at such date and the results of the operations of the City for the period ended on such date, all in accordance with GAAP consistently applied, and since the date of such financial information, there has been no change in the business, financial condition, results of operations, or prospects of the City which would materially and adversely affect the ability of the City to perform its obligations hereunder or under any other Related Documents to which it is a party which has not been disclosed by the City to the Bank.

(m) *Legal Matters.* The City is in material compliance with all applicable laws, rules, regulations and orders of any governmental authority having jurisdiction over the City, non-compliance with which would materially and adversely affect the ability of the City to perform its obligations hereunder or under any other Related Documents to which it is a party.

(n) *Environmental Matters.* In the ordinary course of its business, the City conducts an ongoing review of Environmental Regulations on the business, operations and properties of the City, in the course of which it identifies and evaluates associated liabilities and costs (including, without limitation, any capital or operating expenditures required for clean-up or closure of properties presently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of such review the City has reasonably concluded that Environmental Regulations are unlikely to have a material adverse effect on the Property or the ability of the City to pay any Base Rental or Additional Rental or any of its obligations hereunder or under any other Related Document.

(o) *Regulations T, U and X.* The City is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, U or X issued by the Board of Governors of the Federal Reserve System); and no proceeds of any Certificates will be or have been used to extend credit to others for the purpose of purchasing or carrying any margin stock.

(p) *ERISA.* Other than as disclosed in writing to the Bank prior to the Date of Issuance, the City does not maintain or contribute to, and has not maintained or contributed to, any Plan that is subject to Title IV of ERISA and does not have any under funded pension liabilities the effect of which could reasonably be expected to result in a material adverse effect on the City's ability to satisfy its obligations under this Agreement or the other Related Documents.

(q) *No Tax or Fee.* Neither the execution or delivery of this Agreement or the advance of any amounts pursuant to this Agreement will give rise to any tax or fee imposed by any local or state agency or governmental body.

(r) *Usury.* The terms of this Agreement and the Related Documents regarding calculation and payment of interest and fees do not violate any applicable usury laws.

(s) *Essentiality.* The Property is an essential asset of the City necessary to serve the needs of the residents of the City. The City believes that at all times while any rental payments or any obligation of the County under the Related Documents remains unpaid, the Property will remain an essential asset of the County.

(t) *Fair Rental Value.* The total Maximum Base Rental for the Property does not exceed the fair rental value of the Property. In making such determination of fair rental value, consideration has been given to the uses and purposes which may be served



by the Property and the benefits therefrom which will accrue to the City and the general public.

## ARTICLE V

### COVENANTS

*Section 5.1. Covenants.* The City agrees that so long as the Letter of Credit remains outstanding or any amount payable hereunder remains unpaid:

(a) *Information.* The City will prepare or cause to be prepared and deliver to the Bank the following:

(i) as promptly as available, and in any event no later than 270 days after the end of each fiscal year of the City, the complete Comprehensive Annual Financial Report ("CAFR") of the City, certified as to the fairness of presentation and conformity with GAAP consistently applied, by a recognized firm of independent certified public accountants;

(ii) concurrently with the delivery of the financial statements delivered to the Bank pursuant to (a)(i) above, a certificate from an Authorized Representative certifying that such Authorized Representative has no knowledge of any event which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given, or time elapse or both, that has occurred and is continuing and a certificate from an Authorized Representative of the City certifying that such Authorized Representative has no knowledge of any event which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse or both, that has occurred and is continuing;

(iii) within ninety (90) days of adoption of the most recently adopted annual operating budget of the City with respect to the City's General Fund, evidence that such annual operating budget with respect to the City's General Fund includes therein as a separate line item all Minimum Required Rental Payments and Additional Payments due during such period, if not otherwise paid from capitalized interest funded by proceeds of the Certificates; and

(iv) such other information respecting the affairs, conditions and/or operations, financial or otherwise, of the City or the Property, as the Bank may from time to time reasonably request.

All factual information hereinafter delivered by City in writing to the Bank will be, to the knowledge of the authorized person delivering such information after reasonable inquiry, accurate and complete in all material respects on the date as of which such information is certified.

(b) *No Amendment Without Consent of the Bank.* Without the prior written consent of the Bank, the City will not agree or consent to any amendment, supplement, waiver or modification of any provision of any Related Document to which the City is a party that affects the rights, interests, security or remedies of the Bank hereunder.

(c) *Incorporation of Covenants by Reference.* The City agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Related Documents to which it is a party, which provisions, as well as related defined terms contained herein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety. To the extent that any such incorporated provision permits any Person to waive compliance with or consent to such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such provision shall be complied with only if it is waived or consented to by the Bank and such document, opinion or other instrument shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Bank.

(d) *Outstanding Certificates Plus Interest Thereon Not to Exceed Stated Amount; No-Delivery after Receipt of No-Delivery Notice.*

(i) The City will instruct the Delivery and Paying Agent not to authenticate or deliver any Certificate if, immediately after the authentication and delivery of, and receipt of payment for, such Certificate, the sum of (A) the face value of all discount Certificates and (B) the principal amount of all outstanding non-discount Certificates plus all interest to accrue on such non-discount Certificates to the maturity date thereof, would exceed the Stated Amount.

(ii) The City shall not instruct the Delivery and Paying Agent to authenticate or deliver any Certificate if the Delivery and Paying Agent has received (A) a Final Drawing Notice or (B) a No-Delivery Notice, unless and until such Final Drawing Notice or No-Delivery Notice is rescinded.

(e) *Defaults.* The City will promptly (and in any event within five Business Days) notify the Bank of the occurrence of any Default or Event of Default specifying the details of such Default or Event of Default or event of default and the action that the City proposes to take with respect thereto.

(f) *Books, Records.* The City will permit, during normal business hours and from time to time, upon reasonable prior notice, the Bank or any of its agents or representatives to examine and make copies of and abstracts from the records and books of account of the City (except records and books of accounts the examination of which by the Bank is prohibited by law), and to discuss the affairs, finances and accounts of the City with any representative or any other appropriate officer of the City or the City's independent public accountants. Without limiting the foregoing, upon reasonable prior

notice the City shall permit the Bank to visit and inspect any of the Property during regular business hours as often as the Bank may reasonably request.

(g) *Other Obligations.* The City will comply with and observe all other obligations and requirements set forth in the Trust Agreement and each other Related Document to which it is a party (including without limitation all provisions therein for the benefit of the Bank) in all material respects and in all laws, statutes and regulations binding upon it, noncompliance with which would materially adversely affect the City's ability to perform its obligations under the Certificates, this Agreement or any of the Related Documents.

(h) *Litigation; Material Change.* The City shall promptly notify the Bank of (i) the existence and status of any litigation which individually or in the aggregate could, in the event of an unfavorable outcome, or (ii) the occurrence of any other event or change which could have a material adverse effect on (A) the ability of the City to perform its obligations hereunder or under the other Related Documents or (B) the enforceability or validity of the Trust Agreement or any of the other Related Documents.

(i) *Obligations under Related Documents.* The City shall take all actions as may be reasonably requested by the Bank to enforce the obligations under the Related Documents of each of the other parties thereto.

(j) *Dealer(s); Trustee; Delivery and Paying Agent.* The City will not, without the prior written consent of the Bank (which consent shall not be unreasonably withheld or delayed), appoint or permit the appointment of a successor Dealer or Delivery and Paying Agent. The City shall at all times maintain one or more Dealers and a Trustee and a Delivery and Paying Agent under the Trust Agreement. The City shall at all times cause each Dealer and the Delivery and Paying Agent to market, issue, and deliver, as applicable, Certificates up to the Maximum Rate. If any Reimbursement Obligation remains outstanding and any Dealer fails to sell the Certificates for sixty (60) consecutive days, then the City shall, at the written request of the Bank, cause the applicable Dealer to be replaced with a Dealer reasonably satisfactory to the Bank. Any dealer agreement with a successor Dealer shall provide that (a) such Dealer may resign upon at least 60-days' prior written notice to the City, Delivery and Paying Agent and the Bank and (b) such Dealer shall use its best efforts to sell the Certificates up to the Maximum Rate.

(k) *Limitation on Voluntary Liens.* (i) The City shall not create a pledge, lien or charge on any part of the Property or the Pledged Property, other than the lien in favor of holders of the Certificates and the Bank. (ii) The City covenants to keep the Components and all parts thereof free from judgments, and materialmen's and mechanics' liens, claims, demands, encumbrances, liabilities and other liens of whatever nature or character, which, in each case, might hamper the City in utilizing the Components; and promptly, upon request of the Bank, to take such action from time to time as may be reasonably necessary or proper to remedy or cure any cloud upon or defect in the title to the Components or any part thereof, whether now existing or

hereafter developing, to prosecute all actions, suits, or other proceedings as may be reasonably appropriate for such purpose.

(l) *City to Maintain Existence.* The City agrees that it will maintain its existence as a charter city and county under the laws and Constitution of the State of California.

(m) *Further Assurances.* The City will execute, acknowledge where appropriate, and deliver from time to time promptly at the request of the Bank all such instruments and documents as in the opinion of the Bank are reasonably necessary or desirable to carry out the intent and purposes of this Agreement.

(n) *No Impairment.* The City will not take any action, or cause or permit the Trustee or the Delivery and Paying Agent to take any action, under the Trust Agreement, the Sublease or any other Related Document inconsistent with the rights and remedies of the Bank under this Agreement.

(o) *Additional Obligations.* The City will not issue or authorize the issuance of any obligations payable from Base Rental or Additional Rental due under the Sublease other than the Certificates and the Revolving Bank Certificate.

(p) *References to the Bank.* The City will not refer to the Bank in any official statement, offering memorandum, or private placement memorandum or make any changes in reference to the Bank in any revision of the Offering Memorandum without the Bank's prior written consent thereto, which consent shall not be unreasonably withheld or delayed.

(q) *Title Insurance.* Title insurance shall be provided and maintained in the manner and in form and substance as set forth in the Sublease; *provided* that notwithstanding anything contained in the Sublease or any other Related Document to the contrary, any policy of title insurance shall be subject only to such exceptions as shall be acceptable to the Bank, with such endorsements and affirmative coverages as may be reasonably required by the Bank, including endorsements regarding zoning and access to public roads, and otherwise in form and substance satisfactory to the Bank and its counsel and issued by an insurance company acceptable to the Bank and its counsel and authorized to issue such insurance in the State.

(r) *Maintenance of Insurance.* Insurance shall be provided and maintained in the manner and in form and substance as set forth in the Sublease.

(s) *Covenants and Legal Duties.* Subject to Section 3.1(g) of the Sublease, the City agrees to include all Minimum Required Rental Payments and Additional Rental due under the Sublease in each Fiscal Year in its annual budget and to make the necessary annual appropriations for all such Minimum Required Rental Payments and Additional Rental, and for all Minimum Supplemental Rental Payments, if any, subject to Section 3.5 of the Sublease. The covenants on the part of the City herein contained and

in the Sublease 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 such covenants and agreements.

(t) *Use of Letter of Credit Proceeds.* The City shall cause the Delivery and Paying Agent to use the proceeds of drawings made under the Letter of Credit solely to pay the principal of and interest on maturing Certificates.

(u) *Ratings.* The City shall give written notice to the Bank as soon as practicable of the increase, decrease, withdrawal or suspension of any rating maintained by Moody's, Fitch or S&P, to the extent such Rating Agency is then maintaining a rating on Lease Obligation Debt, in respect of the City's unenhanced Lease Obligation Debt, unless such rating is terminated due to the payment in full of such certificates of participation; *provided* that the requirement to provide such notice shall be satisfied if such information is publicly available on the Electronic Municipal Market Access system maintained by the Municipal Securities Rulemaking Board. The City shall cause to be maintained at all times long-term unenhanced ratings on its Lease Obligation Debt from at least two (2) of Moody's, Fitch and S&P.

(v) *Voluntary Rent Abatement.* Except as required by law and the terms of the Sublease, the City shall not seek or assert a claim for abatement of rental payments under the Sublease.

(w) *Immunity.* To the fullest extent permitted by law, the City agrees not to assert the defense of immunity (on the grounds of sovereignty or otherwise) in any proceeding by the Bank to enforce any of the obligations of the City under this Agreement or any other Related Document.

(x) *Alternate Letter of Credit.* The City agrees to use its best efforts to obtain an Alternate Credit Facility for the Letter of Credit in the event that (i) the Bank decides not to extend the Stated Expiration Date (such replacement to occur on the then current Stated Expiration Date) or (ii) the Letter of Credit shall otherwise terminate in accordance with its terms.

(y) *ERISA.* The City will comply in all material respects with Title IV of ERISA, if, when and to the extent applicable.

(z) *Swap Agreements.* (i) The City will use its best efforts to enter into all future Swap Contracts with a claim on the General Fund of the City with counterparties rated "AA-" (or its equivalent) or better by at least one Fitch, S&P or Moody's. (ii) In no event shall any swap counterparty with respect to any such Swap Contract with a claim on the General Fund of the City be rated lower than "\_\_\_" (or its equivalent) by any one of Fitch, S&P or Moody's, without the prior written consent of the Bank, at the time of entering into such Swap Contract.

(aa) *Future Credit Facilities.* In the event that the City shall, directly or indirectly, enter into or otherwise consent to any Bank Agreement, which such Bank Agreement provides such Person with additional or more restrictive covenants, additional or more restrictive events of default, shorter amortization periods with respect to term outs and/or rights or remedies than are provided to the Bank in this Agreement or a maximum rate with respect to the obligations under the related Bank Agreement in excess of 12% per annum (collectively, the "Additional Rights"), such Additional Rights shall automatically be deemed to be incorporated into this Agreement and the Bank shall have the benefits of such Additional Rights. Upon the request of the Bank, the City shall promptly, enter into an amendment to this Agreement to include such Additional Rights, provided that the Bank shall maintain the benefit of such Additional Rights even if the City fails to provide such amendment. Notwithstanding the foregoing, no Additional Rights (except for those relating to shorter amortization periods with respect to term outs or a maximum rate as described further below) shall be incorporated by reference into this Agreement, and the City shall have no obligation to enter into an amendment to include any such Additional Rights, if the related Bank Agreement is entered into by the City after the four (4) month anniversary of the Date of Issuance; except that any Additional Rights relating to shorter amortization periods with respect to term outs or a maximum rate with respect to the obligations under the related Bank Agreement in excess of 12% per annum shall be incorporated herein by reference pursuant to this Section 5.1(aa), and the City shall enter into an amendment hereto to include such Additional Rights, no matter when such Bank Agreement is entered into. If the City shall amend the related Bank Agreement such that it no longer provides for such Additional Rights, then, without the consent of the Bank this Agreement shall be deemed to automatically no longer contain the related Additional Rights and the Bank shall no longer have the benefits of any such Additional Rights.

(bb) *Fair Rental Value.* In the event the aggregate fair rental value of all of the Components is less than the aggregate principal of and interest on all Term Loans outstanding in any calendar year, the City will use its best efforts to either (i) take all steps necessary to seek an appropriation from the City's general fund in an amount equal to such difference between the aggregate principal of and interest on all Term Loans outstanding and such fair rental value and use such appropriation to prepay the Term Loans or (ii) obtain an Alternate Credit Facility to replace the Letter of Credit or to otherwise refinance the Certificates.

## ARTICLE VI

### EVENTS OF DEFAULT

*Section 6.1. Events of Default.* The occurrence of any of the following events shall be an "Event of Default" hereunder:

(a) The City shall fail to pay (i) any Reimbursement Obligation or interest thereon as and when due hereunder, subject to the proviso in Section 2.6(c) hereof, (ii) any fee set forth in Section 1.1, 1.2, 1.3, 1.4, 1.5 or 1.6 of the Fee Agreement as and

when due hereunder or thereunder and the continuance of such failure for a period of three (3) Business Days, or (iii) any other Obligation (other than Obligations specified in clause (i) or (ii) of this Section 6.1(a)) as and when due hereunder and the continuance of such failure for a period of thirty (30) days after written notice thereof;

(b) (i) The City shall default in the performance of any of the covenants set forth in Section 5.1(b), (d), (g), (j), (k)(i), (l), (n), (o), (q), (r), (s), (t), (v), (w) or (z)(ii) hereof or (ii) Certificates shall be executed and delivered prior to satisfaction of the condition precedent set forth in Section 3.4 hereof;

(c) The City shall default in the performance of any other term, covenant or agreement set forth herein and such failure shall continue for a period of thirty (30) days after the earlier to occur of (i) written notice thereof shall have been given to the City by the Bank or (ii) the tenth (10th) day after the Controller of the City shall have actual knowledge of such default;

(d) Any representation, warranty, certification or statement made by the City (or incorporated by reference) in this Agreement or by the City in any other Related Document or in any certificate, financial statement or other document delivered pursuant to this Agreement or any other Related Document shall prove to have been incorrect in any material respect when made or deemed made;

(e) The City shall (A) fail to make any payment on any Material City Debt (other than the Certificates) or any interest or premium thereon when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Material City Debt; or (B) fail to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument relating to any Material City Debt when required to be performed or observed, and such failure shall not be waived and shall continue after the later of (1) five Business Days after notice of such failure or (2) the applicable grace period, if any, specified in such agreement or instrument, if the effect of such failure to perform or observe is to accelerate the maturity of such Material City Debt; or (C) any Material City Debt shall be declared to be due and payable or be required to be prepaid (other than by a regularly scheduled required prepayment or an optional prepayment), prior to the stated maturity thereof; *provided, however*, that in the case of clause (A) or (B) any such failure shall not be considered an Event of Default hereunder if the same is being contested in good faith and by appropriate proceedings and such contest shall operate to stay the acceleration of the maturity of such Material City Debt;

(f) The City or the Trustee shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or

other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall declare a moratorium, or shall take any action to authorize any of the foregoing; or any Governmental Authority of appropriate jurisdiction shall declare a moratorium with respect to any of the debt of the City;

(g) A case or other proceeding shall be commenced against the City or the Trustee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case shall remain undismissed and unstayed for a period of sixty (60) days; or an order for relief shall be entered against the City or the Trustee under the federal bankruptcy laws as now or hereafter in effect, or any writ, judgment, warrant of attachment, execution or similar process shall be issued or levied against a substantial part of the property, assets or business of the City or the Trustee, and such proceedings or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be stayed, released, appealed, vacated or fully bonded, within the time permitted by law after commencement, filing or levy, as the case may be;

(h) Any provision of this Agreement or any Related Document shall cease for any reason whatsoever to be a valid and binding agreement of the City or the Trustee, or the City or the Trustee shall contest the validity or enforceability thereof;

(i) Any pledge or security interest created hereunder or under the Trust Agreement to secure any amounts due under this Agreement shall fail to be valid or fully enforceable;

(j) An event of default shall occur under any of the Related Documents (other than this Agreement) or the City shall fail to make any payment under the Sublease when and as due;

(k) (i) Any long-term unenhanced rating assigned by Moody's, Fitch or S&P (to the extent such Rating Agency is then maintaining a rating on Lease Obligation Debt) to any Lease Obligation Debt shall be withdrawn, suspended or otherwise unavailable for credit related reasons or (ii) the lowest of the two highest long-term unenhanced ratings assigned by Moody's, Fitch or S&P (to the extent such Rating Agency is then maintaining a rating on Lease Obligation Debt) on any Lease Obligation Debt shall be reduced below "Baa3" (or its equivalent), "BBB-" (or its equivalent) or "BBB-" (or its equivalent), respectively; provided, however, that, notwithstanding the foregoing, to the extent that there are two or less long-term unenhanced ratings assigned to the Lease Obligation Debt, it shall constitute an Event of Default hereunder in the event that any long-term unenhanced ratings assigned by Moody's, Fitch or S&P (to the extent such Rating Agency is then maintaining a rating on Lease Obligation Debt) on any Lease Obligation Debt of the City shall be reduced below "Baa3" (or its equivalent), "BBB-" (or its equivalent) or "BBB-" (or its equivalent), respectively (for purposes of Section



6.01(k)(ii) hereof, Lease Obligation Debt shall mean, (x) in the case of Moody's, if Moody's assigns different long-term unenhanced ratings to Lease Obligation Debt, such Lease Obligation Debt with the highest long-term unenhanced rating assigned by Moody's, (y) in the case of S&P, if S&P assigns different long-term unenhanced ratings to Lease Obligation Debt, such Lease Obligation Debt with the highest long-term unenhanced rating assigned by S&P, and (z) in the case of Fitch, if Fitch assigns different long-term unenhanced ratings to Lease Obligation Debt, such Lease Obligation Debt with the highest long-term unenhanced rating assigned by Fitch;

(l) One or more final, nonappealable judgments or orders for the payment of money in the aggregate amount of \$25,000,000 or more shall be rendered against the City and such judgment or order shall continue unsatisfied and unstayed for a period of sixty (60) days; or

(m) Any *Event of Default* (or term of like meaning or effect) shall have occurred under any Bank Agreement related to any commercial paper certificates of participation issued by or on behalf of the City.

*Section 6.2. Upon an Event of Default.* If any Event of Default shall have occurred and be continuing, the Bank may by notice to the City and the Delivery and Paying Agent, (i) issue a No-Delivery Notice, (ii) issue the Final Drawing Notice (the effect of which shall be to cause the Letter of Credit Termination Date to occur on the fifteenth (15<sup>th</sup>) calendar day after the date of receipt thereof by the Delivery and Paying Agent), (iii) declare the Revolving Bank Certificate, in whole or in part, all or some Reimbursement Obligations, as well as any other Obligation, and all interest thereon to be a Default Advance hereunder due and payable in the manner set forth in Section 2.6 hereof, or (iv) take any other action permitted by equity or law. Notwithstanding anything to the contrary contained in the preceding sentence, upon the occurrence or existence of an Event of Default of the type described in Section 6.1(f) or (g) above, the remedies described in clauses (ii) and (iii) above shall occur immediately and automatically without notice or further action on the part of the Bank or any other person. Anything in Article 2 hereof the contrary notwithstanding, from and after the occurrence an Event of Default, all Obligations shall bear interest at the Default Rate. Upon any action by the Bank as contemplated in the foregoing clauses (i) and (ii), the Stated Amount shall be permanently reduced upon, and by the amount of, each drawing under the Letter of Credit following the occurrence of an Event of Default. Notwithstanding the foregoing, the occurrence of an Event of Default shall not affect the Bank's obligation under the Letter of Credit with respect to Certificates that are outstanding at the time of the occurrence of such Event of Default, and the Delivery and Paying Agent shall continue to have the right to draw under the Letter of Credit to pay the principal of and accrued interest on maturing Certificates that are outstanding at the time of the occurrence of such Event of Default.

Nothing contained in Section 6.2 shall result in, or be construed to require, an acceleration of Base Rental under the Sublease and nothing contained in this Section 6.2 is intended to abrogate abatement of Base Rental made in accordance with the terms of the Sublease. Nothing contain in Section 6.2 shall abrogate the obligation of the Bank to honor properly presented and conforming Drawings under the Letter of Credit prior to the termination of the Letter of Credit in accordance with its terms.

## ARTICLE VII

### MISCELLANEOUS

*Section 7.1. Amendments and Waivers.* No amendment, change, discharge or waiver of any provision of this Agreement, nor consent to any departure by the City therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

No notice to or demand on the City in any case shall entitle the City to any other or further notice or demand in the same, similar or other circumstances.

*Section 7.2. Notices.* All notices and other communications provided for hereunder shall be in writing (including facsimiles) and mailed or faxed or delivered:

If to the City:

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 316  
San Francisco, California 94102  
Attention: City Controller

If to the Bank with respect to draws on the Letter of Credit:

With a copy to:

If to the Bank for payment of obligations  
hereunder or under the Fee Agreement:

Wire instructions with respect to Facility or  
Other Fees:

Wire instructions to Letter of Credit  
reimbursement of drawings:

If to the Delivery and Paying Agent:

If to the Trustee:

or, as to each party, at such other address as shall be designated by such party in a written notice to the other party. All such notices and communications shall, when mailed or faxed, be effective when deposited in the mails or faxed, respectively, addressed as aforesaid, except that

notice to the Bank pursuant to the provisions of Article II shall not be effective until received by the Bank.

*Section 7.3. No Waiver; Remedies.* No failure on the part of the Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. No notice to or demand on the City in any case shall entitle the City to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the Bank to any other or further action in any circumstances without notice or demand. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

*Section 7.4. Indemnification.* (a) The City, to the extent permitted by law, hereby indemnify and hold the Bank, and its directors, officers, employees and agents (the "*Indemnified Parties*") harmless from and against any and all claims, damages, losses, liabilities, costs or expenses which such Indemnified Parties may incur or which may be claimed against such Indemnified Parties by any person, as well as to the extent set forth in Section 5.1(w) hereof or by reason of or in connection with (i) the offering, sale, remarketing or resale of the Certificates (including, without limitation, by reason of any untrue statement or alleged untrue statement of any material fact contained or incorporated by reference in the Related Documents or in any supplement or amendment to the Offering Memorandum or any similar disclosure document (other than in connection with a description of the Bank), or the omission or alleged omission to state therein a material fact necessary to make such statements, in the light of the circumstances in which they are or were made, not misleading (other than in connection with a description of the Bank)); (ii) the validity, sufficiency, enforceability or genuineness of any Related Document; (iii) the issuance of the Letter of Credit or the use of any proceeds of the Letter of Credit; (iv) the execution, delivery and performance of this Agreement, or the making or the failure to honor a properly presented and conforming drawing under the Letter of Credit; or (v) any Property; *provided, however*, that the City shall not be required to indemnify an Indemnified Party pursuant to this Section 7.4 for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of the Bank.

(b) To the extent not prohibited by applicable law, the City agrees to indemnify and hold the Bank harmless (on a net after-tax basis) from any present or future claim or liability for stamp, transfer, documentary, excise or other similar tax and any penalties or interest with respect thereto, which may be assessed, levied or collected by any jurisdiction in connection with the execution, delivery and performance of, or any payment made under, this Agreement, the Certificates and the other Related Documents, or any amendment thereto.

*Section 7.5. Liability of the Bank.* Neither the Bank nor any of its officers, directors, employees or agents shall be liable or responsible for (i) the use which may be made of the proceeds of any Certificates or any drawings under the Letter of Credit, (ii) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon (other than the validity as against the Bank of any agreement to which the Bank is a party), even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged, (iii) the lack of validity or enforceability of this Agreement, the Certificates, any other

Related Document or any other agreement or instrument relating thereto (other than the validity or enforceability as against the Bank of any agreement to which the Bank is a party), (iv) payment by the Bank against presentation of documents that do not comply strictly with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit, (v) errors, omissions, interruptions or delays in transmission or delivery of any messages, by telex, mail, cable, telegraph, facsimile or otherwise, whether or not they have been in cipher, including any drawings under the Letter of Credit, (vi) errors in interpretation of technical terms, (vii) any consequences arising from causes beyond the control of the Bank, including, without limitation, any acts of governmental entities, or (viii) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit; *provided*, that the City shall have claims against the Bank, and the Bank shall be liable to the City to the extent of any direct, as opposed to consequential, special, punitive, exemplary or indirect damages suffered by the City which the City proves were caused by (i) the Bank's willful misconduct or gross negligence in determining whether any drawing presented under the Letter of Credit complied with the terms thereof, or (ii) the Bank's willful failure to honor a properly presented and conforming drawing required to be honored by it under the Letter of Credit. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information (other than actual knowledge to the contrary) to the contrary.

*Section 7.6. Expenses; Documentary Taxes.* The City shall pay or cause to be paid (a) fees and document production costs and disbursements of \_\_\_\_\_, special counsel for the Bank, in connection with the preparation of this Agreement and the Letter of Credit, (b) all reasonable out-of-pocket travel and other expenses incurred by the Bank in connection with this Agreement and the Letter of Credit, (c) all reasonable out-of-pocket expenses of the Bank, including fees and disbursements of counsel, in connection with any waiver or consent hereunder or any amendment hereof or any Default or alleged Default or Event of Default hereunder, and (d) all out-of-pocket expenses incurred by the Bank, including fees and disbursements of counsel, in connection with any Event of Default or any investigation or enforcement proceedings with respect to this Agreement or any Related Document. The City shall reimburse the Bank for any transfer taxes, documentary taxes, assessments or charges made by any governmental authority by reason of the execution a delivery of this Agreement or any Related Document or the acquisition or disposition by the Bank of the Revolving Bank Certificate pursuant to this Agreement.

*Section 7.7. Binding Effect.* (a) This Agreement shall become effective when it shall have been executed by the City and the Bank and thereafter shall be binding upon and inure to the benefit of the City and the Bank and their respective successors and assigns, except that the City shall not have the right to assign its rights or obligations hereunder or any interest herein without the prior written consent of the Bank.

(b) The Bank shall have the right to grant participations from time to time (to be evidenced by one or more participation agreements or certificates of participation) in this Agreement, the Revolving Bank Certificate and the Letter of Credit to one or more Participant Banks, *provided* that the grant of any such participation shall not terminate or otherwise affect any obligation of the Bank hereunder. Each Participant Bank purchasing such a participation

shall in the discretion of the Bank have all rights of the Bank hereunder to the extent of the participation purchased, including, without limitation, the benefits of Sections 2.8, 7.4 and 7.6 hereof. In connection with the granting of participations, the Bank may disclose to any proposed participant any information that the City discloses pursuant to this Agreement. The Bank shall give notice to the City of any Participant Bank that is granted a participation pursuant to this Section 7.7(b).

(c) Any assignment by the Bank of its rights hereunder or any interests herein shall satisfy the conditions precedent to the acceptance of an Alternate Credit Facility under the Trust Agreement. Notwithstanding any other provision of this Agreement, the Bank may assign and pledge all or any portion of the obligations owing to it hereunder or under the other Related Documents to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, *provided* that any payment in respect of such assigned obligations made by the City to the Bank in accordance with the terms of this Agreement shall satisfy the City's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment shall release the Bank from its obligations hereunder.

(d) Notwithstanding any participation granted by the Bank pursuant hereto, the City shall continue to deal solely and exclusively with the Bank in connection with the respective rights and obligations of the City and the Bank hereunder and under the other Related Documents, the grant of such participation interest shall not limit the obligations of the Bank hereunder and the Bank will continue to serve as the only contact for the City for all matters relating to this Agreement

*Section 7.8. Severability.* Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

*Section 7.9. Governing Law; Jurisdiction; Waiver of Jury Trial.* (a) This Agreement shall be governed by, and construed in accordance with, the internal laws of the State; *provided, however,* that obligations of the Bank hereunder shall be governed by, and constructed in accordance with the laws of the State of New York without giving effect to conflicts of laws provisions (other than New York General Obligation Laws 5-1401 and 5-1402).

(b) Each of the parties hereto hereby submits to the exclusive jurisdiction of any federal or state court of competent jurisdiction in the State or in the State of New York for the purpose of any suit, action or other proceeding arising out of or relating to this Agreement; service of process may be accomplished by registered mail, return receipt requested to each of the parties at the address listed for notice in Section 7.2 hereof.

(c) To the extent permitted by law, each of the City and the Bank irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to legal claims

based on the City's or the Bank's performance of its obligations under this Agreement or any other Related Document. If and to the extent that the foregoing waiver of the right to a jury trial is unenforceable for any reason in such forum, the City and the Bank hereby consent to the adjudication of any and all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be empowered to hear and determine any and all issues in such reference whether fact or law. The City and the Bank represent that each has reviewed this waiver and consent and each knowingly and voluntarily waives its jury trial rights and consents to judicial reference following the opportunity to consult with legal counsel of its choice on such matters. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.

(d) The waivers made pursuant to this Section 7.9 shall be irrevocable and unmodifiable, whether in writing or orally, and shall be applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement.

*Section 7.10. Headings.* Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

*Section 7.11. Counterparts.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

*Section 7.12. Integration.* This Agreement is intended to be the final agreement between the parties hereto relating to the subject matter hereof and this Agreement and any agreement, document or instrument attached hereto or referred to herein shall supersede all oral negotiations and prior writings with respect to the subject matter hereof.

*Section 7.13. Patriot Act; Government Regulations.* (a) The Bank hereby notifies the City that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*Patriot Act*"), the Bank is required to obtain, verify and record information that includes the name and address of the City and other information that will allow the Bank to identify the City in accordance with the Patriot Act.

(b) The City shall ensure that (a) no person who controls the City is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("*OFAC*"), the Department of the Treasury or included in any Executive Orders, that prohibits or limits the Bank from making any advance or extension of credit to the City or from otherwise conducting business with the City, and (b) the Certificates proceeds shall not be used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto. Further, the City shall comply with all applicable Bank Secrecy Act ("*BSA*") laws and regulations, as amended. The City agrees to provide documentary and other evidence of City's identity as may be requested by the Bank at any time to enable the Bank to verify the City's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the Patriot Act.

*Section 7.14. City Requirements.* The Bank hereby agrees to the City's requirements, as provided in Exhibit D attached hereto and incorporated hereby by this reference.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Letter of Credit and Reimbursement Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO

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

APPROVED AS TO FORM:

CITY ATTORNEY

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



\_\_\_\_\_

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

EXHIBIT A

[FORM OF IRREVOCABLE DIRECT-PAY LETTER OF CREDIT]

IRREVOCABLE DIRECT-PAY LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 2016

\_\_\_\_\_,  
as Delivery and Paying Agent

\_\_\_\_\_, \_\_\_\_\_  
Attention: Corporate Trust Department

Ladies and Gentlemen:

We hereby establish, at the request and for the account of the City and County of San Francisco (the "City"), in your favor, as delivery and paying agent (the "Delivery and Paying Agent") with respect to the City and County of San Francisco Tax-Exempt Lease Revenue Certificates of Participation, Series \_ and the City and County of San Francisco Taxable Lease Revenue Commercial Paper Certificates of Participation, Series \_-T (the "Certificates"), executed and delivered pursuant to the Trust Agreement dated as of \_\_\_\_\_ 1, 2016 (as amended, supplemented and otherwise modified from time to time, the "Trust Agreement"), by and between the City and \_\_\_\_\_, as trustee (the "Trustee") pursuant to which the Certificates are being executed and delivered, our Irrevocable Direct-Pay Letter of Credit \_\_\_\_\_ (this "Letter of Credit") in the maximum available amount of \_\_\_\_\_ (\$ \_\_\_\_\_) (as such amount may be reduced and reinstated pursuant to the terms hereof, the "Stated Amount"), of which an amount initially equal to \$ \_\_\_\_\_ (as such amount may be reduced or reinstated from time to time in accordance with the terms hereof, the "Principal Component") may be drawn upon from time to time with respect to payment of the unpaid principal amount of Certificates on their stated maturity dates, and an amount initially equal to \$ \_\_\_\_\_ (as such amount may be reduced or reinstated from time to time in accordance with terms hereof, the "Interest Component") may be drawn upon with respect to payment of the interest accrued and unpaid on the Certificates on their stated maturity date, but in no event more than the 270 days' interest accrued and unpaid on the outstanding Certificates immediately preceding any drawing made with respect to the Certificates at an assumed interest rate of 12% based on a year of 360 days, effective on the date hereof and expiring at \_\_\_\_ p.m. (New York time), at our office in Boston, Massachusetts on \_\_\_\_\_, 20 \_\_, unless extended by us in our sole discretion by delivery of a certificate in the form of Annex E ("Notice of Extension of Stated Expiration Date") attached hereto (the "Stated Expiration Date") or terminated earlier as hereafter provided; provided, however, that if such date is not a Business Day, the Stated Expiration Date shall be the next preceding Business Day. The Stated Amount is subject to reductions and reinstatements as provided herein. All drawings under this Letter of Credit will be paid with our own immediately available funds and will not be paid directly or indirectly from funds or collateral on deposit with

or for the account of, or pledged with or for the account of, us by the City. This Letter of Credit is being issued pursuant to that certain Letter of Credit and Reimbursement Agreement dated as of \_\_\_\_\_ 1, 2016 (as the same may at any time be amended or modified in effect, the "*Reimbursement Agreement*"), between the City and the Bank.

We hereby irrevocably authorize you to draw on us in an aggregate amount not to exceed the Stated Amount of this Letter of Credit set forth above and in accordance with the terms and conditions and subject to the reductions and reinstatements in amount as hereinafter set forth, in one or more Drawings (as hereinafter defined) (subject to the provisions contained in the second following paragraph), payable as set forth herein on a Business Day by presentation of your written and completed certificate signed by you in the form of (i) Annex A-1 ("*Certificate for Drawing in Connection with Payment of Principal and Interest*") (with respect to the payment at maturity of the principal of and interest to maturity on Certificates issued in accordance with the Trust Agreement), or (ii) Annex A-2 ("*Certificate for Drawing in Connection with Payment of Principal and Interest after Final Drawing Notice*") (with respect to the payment at maturity of the principal of and interest to maturity on Certificates issued in accordance with the Trust Agreement and that otherwise mature on or after the date that you receive notice from us in the form of Annex G hereto (the "*Final Drawing Notice*")), attached hereto (any such certificate being a "*Drawing*"), in each case in an aggregate amount not exceeding the Stated Amount of this Letter of Credit. "*Business Day*" means any day other than (i) a Saturday or Sunday or a day on which banking institutions are authorized or required by law or executive order to be closed in the State of California, the State of \_\_\_\_\_ or the State of New York for commercial banking purposes; (ii) a day on which the New York Stock Exchange is authorized or required by law or executive order to be closed; and (iii) a day upon which commercial banks are authorized or required by law or executive order to be closed in the cities and states in which demands for payment may be presented under this Letter of Credit.

Upon our honoring any Drawing, the Stated Amount and the amount available to be drawn hereunder by you pursuant to any subsequent Drawing shall be automatically decreased by an amount equal to the amount of such Drawing. In connection therewith, the Stated Amount and the amounts from time to time available to be drawn by you hereunder by any Drawing (except in the case of a Drawing resulting from delivery of the Final Drawing Notice) shall be increased when and to the extent, but only when and to the extent (i) of transfer by you to us on the date such Drawing is honored of proceeds of new Certificates issued on such date or other funds furnished by or on behalf of the City to us for such purpose, in either case in an aggregate amount equal to the amount of such Drawing, or upon written notice from us to you that we have been reimbursed by or on behalf of the City for any amount drawn hereunder by any Drawing and (ii) you have not received from us a No-Delivery Notice in the form attached hereto as Annex F or a Final Draw Notice in the form attached hereto as Annex G; *provided, however*, that in no event shall the Interest Component be reinstated to an amount in excess of 270 days' interest (computed at the rate of 12% per annum and on the basis of a 360 day year) on the then applicable Principal Component.

At our opening of business on the date specified in each certificate in the form of Annex H (a "*Reduction Certificate*") delivered to the Bank which shall be a date which is at least five (5) Business Days following our receipt of the related Reduction Certificate attached hereto

appropriately completed and signed by your duly authorized officer, the Principal Component and the Interest Component shall be permanently reduced to the amounts set forth therein.

Each Drawing shall be dated the date of its presentation, and shall be presented by facsimile (at facsimile number ( ) \_\_\_ - \_\_\_, Attention: \_\_\_\_\_: Letter of Credit No. \_\_\_\_\_ (or such other number or address as we may specify to you in writing), without further need of documentation, including the original of this Letter of Credit, it being understood that each Drawing so submitted is to be the sole operative instrument of drawing. Each Drawing shall be immediately confirmed by telephone (telephone number: ( ) \_\_\_ - \_\_\_\_\_), notifying us of such Drawing; *provided*, that, the failure to confirm such Drawing by telephone shall not affect the validity or effectiveness of the Drawing. If we receive any Drawing at such office, in strict conformity with the terms and conditions of this Letter of Credit, not later than \_\_\_ a.m. (New York time), on a Business Day prior to the termination hereof, we will honor the same by 3:00 p.m. (New York time), on the same day in accordance with your payment instructions. If we receive any Drawing at such office, all in strict conformity with the terms and conditions of the Letter of Credit, after \_\_\_ a.m. (New York time) on a Business Day prior to the termination hereof, we will honor the same by 3:00 p.m. (New York time), on the next succeeding Business Day in accordance with your payment instructions.

Payment under this Letter of Credit shall be made by the Bank by wire transfer of immediately available funds to the Delivery and Paying Agent in accordance with the instructions specified by the Delivery and Paying Agent in the related Drawing. Such account may be changed only by presentation to the Bank of a letter in form satisfactory to the Bank specifying a different account with the Delivery and Paying Agent and executed by the Delivery and Paying Agent.

This Letter of Credit shall expire at \_\_\_ p.m. (New York time) on the date (the earliest of such date to occur referred to herein as the "*Letter of Credit Termination Date*") which is the earliest of (i) the Stated Expiration Date, (ii) the later of the date on which we receive written notice from you in the form of Annex C attached hereto that an Alternate Credit Facility has been substituted for this Letter of Credit in accordance with the Trust Agreement or the effective date of any such Alternate Credit Facility, (iii) the date on which we receive written notice from you in the form of Annex D attached hereto that there are no longer any Certificates Outstanding within the meaning of the Trust Agreement and that you elect to terminate the Letter of Credit or (iv) the earlier of (a) the fifteenth (15<sup>th</sup>) calendar day after the date on which you receive the Final Drawing Notice, and (b) the date on which the Drawing resulting from the delivery of the Final Drawing Notice is honored hereunder.

This Letter of Credit is transferable in its entirety to any transferee whom you have certified to us has succeeded you as Delivery and Paying Agent under the Trust Agreement, and may be successively transferred in its entirety. Transfer of the available balance under this Letter of Credit to such transferee shall be effected by the presentation to us of this Letter of Credit and any amendments thereto accompanied by a Transfer Request in the form of Annex B attached hereto signed by the transferor and the transferee together with the original Letter of Credit. Transfers to designated foreign nationals and /or specially designated nationals are not permitted as being contrary to the U.S. Treasury Department or Foreign Assets Control Regulations. Upon

the Effective Date, as set forth in such Transfer, the transferee instead of the transferor shall, without necessity of further action, be entitled to all the benefits of and rights under this Letter of Credit in the transferor's place.

This Letter of Credit sets forth in full our undertaking but not any of our rights (whether under applicable law or otherwise), and such undertaking but not any of our rights (whether under applicable law or otherwise) shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Certificates), except only the Drawing referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such Drawings.

If a Drawing does not conform to the terms and conditions of the Letter of Credit, we will use our best efforts to notify the Delivery and Paying Agent thereof within the time set forth above for honor of such demand for payment, such notice to be confirmed in writing to the Delivery and Paying Agent within one Business Day, and we shall return all documents to you.

Communications with respect to this Letter of Credit shall be addressed to us at \_\_\_\_\_, Attention: \_\_\_\_\_, specifically referring to the number of this Letter of Credit, or as otherwise provided in writing by us.

Except as expressly stated herein, this Letter of Credit is governed by, and construed in accordance with, the terms of the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (the "ISP98"). As to matters not governed by ISP98, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York, including without limitation the Uniform Commercial Code as in effect in the State of New York, without regard to conflict of laws.

All payments made by us hereunder shall be made from our funds and not with the funds of any other person.

Very truly yours,

\_\_\_\_\_

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

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

ANNEX A-1

[FORM OF CERTIFICATE FOR DRAWING]

CERTIFICATE FOR DRAWING IN CONNECTION  
WITH THE PAYMENT OF PRINCIPAL AND INTEREST

IRREVOCABLE DIRECT-PAY LETTER OF CREDIT No. \_\_\_\_\_

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

\_\_\_\_\_, \_\_\_\_\_  
Facsimile Number: ( ) \_\_\_\_ - \_\_\_\_

The undersigned, a duly authorized officer of the undersigned Delivery and Paying Agent (the "*Delivery and Paying Agent*"), hereby certifies to \_\_\_\_\_ (the "*Bank*"), with reference to Irrevocable Direct-Pay Letter of Credit No. \_\_\_\_\_ (the "*Letter of Credit*," the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Delivery and Paying Agent, as follows:

1. The undersigned is the Delivery and Paying Agent under the Delivery and Paying Agent Agreement and the Trust Agreement and is acting as the agent for the holders of the Certificates.

2. The undersigned is making a drawing under the Letter of Credit with respect to a payment of the principal of and accrued interest on maturing Certificates, which payment is due on \_\_\_\_\_.

3. The amount of the Drawing is equal to \$ \_\_\_\_\_ (the Principal Component of such Drawing equal to \$ \_\_\_\_\_ and the Interest Component of such Drawing equal to \$ \_\_\_\_\_). Such amount was computed in compliance with the terms and conditions of the Certificates and the Trust Agreement. The amount of the Drawing being drawn in respect of the payment of principal of and accrued interest on maturing Certificates does not exceed the Stated Amount of the Letter of Credit.

4. Each such Certificate was authenticated and delivered by us (or a predecessor Delivery and Paying Agent) pursuant to authority under the Trust Agreement.

5. Upon receipt by the undersigned of the amount demanded hereby, (a) the undersigned will deposit the same directly into the Payment Account maintained by the Delivery and Paying Agent pursuant to the Trust Agreement and the Delivery and Paying Agent Agreement and shall apply the same directly to the payment when due of the

principal amount of the Certificates and the interest amount owing on account of the Certificates pursuant to the Trust Agreement, (b) no portion of said amount shall be applied by the undersigned for any other purpose, (c) no portion of said amount shall be commingled with other funds held by the undersigned, except for other funds drawn under the Letter of Credit, and (d) when such Certificates have been presented for payment and paid by us, we will cancel such matured Certificates.

6. Payment by the Bank pursuant to this drawing shall be made to [\_\_\_\_\_, ABA Number \_\_\_\_\_, Account Number \_\_\_\_\_, Attention \_\_\_\_\_.]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_, as  
Delivery and Paying Agent

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



ANNEX A-2

[FORM OF CERTIFICATE FOR DRAWING]

CERTIFICATE FOR DRAWING IN CONNECTION WITH THE  
PAYMENT OF PRINCIPAL AND INTEREST AFTER FINAL DRAWING NOTICE  
IRREVOCABLE DIRECT-PAY LETTER OF CREDIT NO. \_\_\_\_\_

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

\_\_\_\_\_  
Facsimile Number: ( ) -

The undersigned, a duly authorized officer of the undersigned Delivery and Paying Agent (the "*Delivery and Paying Agent*"), hereby certifies to \_\_\_\_\_ (the "*Bank*"), with reference to Irrevocable Direct-Pay Letter of Credit No. \_\_\_\_\_ (the "*Letter of Credit*," the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Delivery and Paying Agent, as follows:

1. The undersigned is the Delivery and Paying Agent under the Delivery and Paying Agent Agreement and the Trust Agreement and is acting as the agent for the holders of the Certificates.
2. The Delivery and Paying Agent has received the Final Drawing Notice.
3. The undersigned is presenting a Drawing under the Letter of Credit with respect to a payment of the principal of and accrued interest on Certificates issued in accordance with the Trust Agreement which mature on or after the date of the Final Drawing Notice.
4. The amount of the Drawing is equal to \$\_\_\_\_\_ (the Principal Component of such Drawing equal to \$\_\_\_\_\_ and the Interest Component of such Drawing equal to \$\_\_\_\_\_). Such amount was computed in compliance with the terms and conditions of the Certificates and the Trust Agreement. The amount of the Drawing being drawn in respect of the payment of principal of, accrued interest on, and interest payable to maturity of, the Certificates does not exceed the Stated Amount of the Letter of Credit. The amount requested for payment hereunder has not been and is not the subject of a prior or contemporaneous request for payment under the Letter of Credit.
5. The Certificates was authenticated and delivered by us (or a predecessor Delivery and Paying Agent) pursuant to authority under the Trust Agreement.

6. Upon receipt by the undersigned of the amount demanded hereby, (a) the undersigned will deposit the same directly into the Payment Account maintained by the Delivery and Paying Agent pursuant to the Trust Agreement and the Delivery and Paying Agent Agreement and apply the same directly to the payment when due of the principal amount of Certificates and the interest amount owing on account of the Certificates pursuant to the Trust Agreement, (b) no portion of said amount shall be applied by the undersigned for any other purpose, (c) no portion of said amount shall be commingled with other funds held by the undersigned, except for other funds drawn under the Letter of Credit, and (d) when such Certificates have been presented for payment and paid by us, we will cancel such matured Certificates.

7. This Certificate is being presented to the Bank on a date which is no later than the fifteenth (15<sup>th</sup>) calendar day after receipt by the Delivery and Paying Agent of the Final Drawing Notice.

8. Payment by the Bank pursuant to this drawing shall be made to [\_\_\_\_\_, ABA Number \_\_\_\_\_, Account Number \_\_\_\_\_, Attention \_\_\_\_\_.]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_, as Delivery and Paying  
Agent

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

ANNEX B

[FORM OF REQUEST FOR TRANSFER]

REQUEST FOR TRANSFER

IRREVOCABLE DIRECT-PAY LETTER OF CREDIT NO. \_\_\_\_\_

Date: \_\_\_\_\_

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

Facsimile Number: ( ) \_\_\_\_ - \_\_\_\_

Re: \_\_\_\_\_ Irrevocable Direct-Pay Letter of Credit  
No \_\_\_\_\_ dated \_\_\_\_\_, 2016

We, the undersigned "Transferor", hereby irrevocably transfer all of our rights to draw under the above referenced Letter of Credit ("Credit") in its entirety to:

NAME OF TRANSFEREE

\_\_\_\_\_  
(Print Name and complete address of the Transferee)

"Transferee"

ADDRESS OF TRANSFEREE

\_\_\_\_\_  
CITY, STATE/COUNTRY ZIP  
\_\_\_\_\_

In accordance with ISP98, Rule 6, regarding transfer of drawing rights, all rights of the undersigned Transferor in such Credit are transferred to the Transferee, who shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the Transferee without necessity of any consent of or notice to the undersigned Transferor.

The original Credit, including amendments to this date, is attached and the undersigned Transferor requests that you endorse an acknowledgment of this transfer on the reverse thereof.

The undersigned Transferor requests that you notify the Transferee of this Credit in such form and manner as you deem appropriate, and the terms and conditions of the Credit as transferred. The undersigned Transferor acknowledges that you incur no obligation hereunder and that the transfer shall not be effective until you have expressly consented to effect the transfer by notice to the Transferee.

If you agree to these instructions, please advise the Transferee of the terms and conditions of this transferred Credit and these instructions.

Payment of transfer fee of U.S. \$1,000 is for the account of the City, who agrees to pay you on demand any expense or cost you may incur in connection with the transfer. Receipt of such shall not constitute consent by you to effect the transfer.

Transferor represents and warrants to Transferring Bank that (i) our execution, delivery, and performance of this request to Transfer (a) are within our powers (b) have been duly authorized (c) constitute our legal, valid, binding and enforceable obligation (d) do not contravene any charter provision, by-law, resolution, contract, or other undertaking binding on or affecting us or any of our properties (e) do not require any notice, filing or other action to, with, or by any governmental authority (f) the enclosed Credit is original and complete, (g) there is no outstanding demand or request for payment or transfer under the Credit affecting the rights to be transferred, (h) the Transferee's name and address are correct and complete and the Transferee's use of the Credit as transferred and the transactions underlying the Credit and the requested Transfer do not violate any applicable United States or other law, rule or regulation.

The Effective Date shall be the date hereafter on which Transferring Bank effects the requested transfer by acknowledging this request and giving notice thereof to Transferee.

WE WAIVE ANY RIGHT TO TRIAL BY JURY THAT WE MAY HAVE IN ANY ACTION OR PROCEEDING RELATING TO OR ARISING OUT OF THIS TRANSFER.

(Signature Page Follows)

This Request is made subject to ISP98 and is subject to and shall be governed by the laws of the State of New York, without regard to principles of conflict of laws.

Sincerely yours,

\_\_\_\_\_  
(Print Name of Transferor)

\_\_\_\_\_  
(Transferor's Authorized Signature)

\_\_\_\_\_  
(Print Authorized Signers Name and Title)

\_\_\_\_\_  
(Telephone Number/Fax Number)

Acknowledged:

\_\_\_\_\_  
(Print Name of Transferee)

\_\_\_\_\_  
(Transferee's Authorized Signature)

\_\_\_\_\_  
(Print Authorized Signers Name and Title)

\_\_\_\_\_  
(Telephone Number/Fax Number)

SIGNATURE GUARANTEED

Signature(s) with title(s) conform(s) with that/those on file with us for this individual, entity or company and signer(s) is/are authorized to execute this agreement. We attest that the individual, company or entity has been identified by us in compliance with USA PATRIOT Act procedures of our bank.

\_\_\_\_\_  
(Print Name of Bank)

\_\_\_\_\_  
(Address of Bank)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Print Name and Title of Authorized Signer)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Date)

SIGNATURE GUARANTEED

Signature(s) with title(s) conform(s) with that/those on file with us for this individual, entity or company and signer(s) is/are authorized to execute this agreement. We attest that the individual, company or entity has been identified by us in compliance with USA PATRIOT Act procedures of our bank.

\_\_\_\_\_  
(Print Name of Bank)

\_\_\_\_\_  
(Address of Bank)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Print Name and Title of Authorized Signer)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Date)

ANNEX C

[FORM OF CERTIFICATE RE: ALTERNATE CREDIT FACILITY]

CERTIFICATE RE: ALTERNATE CREDIT FACILITY

IRREVOCABLE DIRECT-PAY LETTER OF CREDIT NO. \_\_\_\_\_

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

Facsimile Number: ( ) -

The undersigned, a duly authorized signatory of the undersigned Delivery and Paying Agent (the "*Delivery and Paying Agent*"), hereby certifies to \_\_\_\_\_ (the "*Bank*"), with reference to Irrevocable Direct-Pay Letter of Credit No. \_\_\_\_\_ (the "*Letter of Credit*," the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Delivery and Paying Agent, as follows:

1. The undersigned is the Delivery and Paying Agent under the Delivery and Paying Agent Agreement and the Trust Agreement for the holders of the Certificates.
2. The conditions precedent to the acceptance of an Alternate Credit Facility set forth in the Trust Agreement have been satisfied.
3. An Alternate Credit Facility in full and complete substitution for the Letter of Credit has been accepted by the Delivery and Paying Agent and is in effect.
4. There will be no further drawings requested from the Bank under the Letter of Credit.
5. Upon receipt by the Bank of this Certificate the Letter of Credit shall terminate with respect to all outstanding Certificates, and the Letter of Credit is returned to you herewith for cancellation.
6. No payment is demanded of you in connection with this notice.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate as of  
the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_, as  
Delivery and Paying Agent

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

ANNEX D

[FORM OF CERTIFICATE RE: NO OUTSTANDING COMMERCIAL PAPER CERTIFICATES]

CERTIFICATE RE: NO OUTSTANDING COMMERCIAL PAPER CERTIFICATES

IRREVOCABLE DIRECT-PAY LETTER OF CREDIT No. \_\_\_\_\_

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

\_\_\_\_\_, \_\_\_\_\_  
Facsimile Number: ( ) \_\_\_\_ - \_\_\_\_

The undersigned, a duly authorized signatory of the undersigned Delivery and Paying Agent (the "*Delivery and Paying Agent*"), hereby certifies to \_\_\_\_\_ (the "*Bank*"), with reference to Irrevocable Direct-Pay Letter of Credit No. \_\_\_\_\_ (the "*Letter of Credit*," the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Delivery and Paying Agent, as follows:

1. The undersigned is the Delivery and Paying Agent under the Delivery and Paying Agent Agreement and the Trust Agreement for the holders of the Certificates.
2. No Certificates (other than Certificates with respect to which an Alternate Credit Facility is in effect) remain outstanding under the Trust Agreement nor does the City intend to issue any additional Certificates under the Trust Agreement.
3. There will be no further Drawings requested from the Bank under the Letter of Credit, and we hereby elect to terminate the Letter of Credit and return such Letter of Credit to you herewith for cancellation.
4. No payment is demanded of you in connection with this notice.



IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate as of  
the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_, as  
Delivery and Paying Agent

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

ANNEX E

[FORM OF NOTICE OF EXTENSION OF STATED EXPIRATION DATE]

NOTICE OF EXTENSION OF STATED EXPIRATION DATE

IRREVOCABLE DIRECT-PAY LETTER OF CREDIT No. \_\_\_\_\_

\_\_\_\_\_,  
as Delivery and Paying Agent

\_\_\_\_\_,  
Attention: Corporate Trust Department

The undersigned, duly authorized signatory of \_\_\_\_\_ (the "Bank"), hereby certifies to \_\_\_\_\_ (the "Delivery and Paying Agent"), with reference to Irrevocable Direct-Pay Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit," the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Delivery and Paying Agent, as follows:

1. We hereby notify you that, in accordance with the terms of the Letter of Credit and Reimbursement Agreement dated as of \_\_\_\_\_ 1, 2016 (the "Reimbursement Agreement"), as the same may at any time be amended or modified and in effect, between the City and County of San Francisco and the Bank, the Stated Expiration Date of the Letter of Credit has been extended to \_\_\_\_\_.
2. This letter should be attached to the Letter of Credit and made a part thereof.
3. The City's acknowledgment hereof shall be deemed to be the certification by the City that all of its representations and warranties contained in Article IV of the Reimbursement Agreement are true and correct as of the date hereof and that no Default or Event of Default has occurred and is continuing.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Notice as of the  
day of \_\_\_\_\_, \_\_\_\_\_.

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

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

cc: City and County of San Francisco

ANNEX F

[FORM OF NO-DELIVERY NOTICE]

NO-DELIVERY NOTICE

IRREVOCABLE DIRECT-PAY LETTER OF CREDIT No. \_\_\_\_\_

\_\_\_\_\_,  
as Delivery and Paying Agent

\_\_\_\_\_  
Attention: Corporate Trust Department

The undersigned, duly authorized signatories of \_\_\_\_\_ (the "Bank"), hereby certify to \_\_\_\_\_ (the "Delivery and Paying Agent"), with reference to Irrevocable Direct-Pay Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit," the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Delivery and Paying Agent, as follows:

1. We hereby notify you that, in accordance with the terms of the Letter of Credit and Reimbursement Agreement dated as of \_\_\_\_\_ 1, 2016 (as the same may at any time be amended or modified and in effect, the "Reimbursement Agreement"), between the City and County of San Francisco and the Bank, [insert one of the following phrases] [the conditions precedent to the occurrence of a Credit Event (as defined in the Reimbursement Agreement) set forth in Section 3.2 of the Reimbursement Agreement have not been satisfied] [an Event of Default (as defined in the Reimbursement Agreement) has occurred and is continuing].

2. Subject to the following sentence, you shall cease authenticating Certificates, as provided in Section 3.01 of the Trust Agreement, unless and until we rescind this No-Delivery Notice. If you receive this No-Delivery Notice after 9:00 a.m., Chicago time, on a Business Day you shall cease authenticating Certificates on the next Business Day.

3. This No-Delivery Notice shall not affect our obligation to honor demands for payment under the Letter of Credit with respect to Certificates authenticated prior to your receipt of this No-Delivery Notice (or, subject to paragraph 2 above, on the same Business Day that you receive this No-Delivery Notice), and you shall continue to have the right to draw under the Letter of Credit to pay the principal of and accrued interest on maturing Certificates authenticated prior to your receipt of this No-Delivery Notice (or, subject to paragraph 2 above, authenticated on the same Business Day that you receive this No-Delivery Notice).

IN WITNESS WHEREOF, the undersigned have executed and delivered this No-Delivery Notice as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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

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

ANNEX G

[FORM OF FINAL DRAWING NOTICE]

FINAL DRAWING NOTICE

IRREVOCABLE DIRECT-PAY LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_,  
as Delivery and Paying Agent

\_\_\_\_\_  
Attention: Corporate Trust Department

Reference is made to Irrevocable Direct-Pay Letter of Credit No. \_\_\_\_\_  
(the "Letter of Credit"; the terms defined therein and not otherwise defined herein being used  
herein as therein defined) issued by the Bank in your favor as Delivery and Paying Agent.

Please be advised that:

(1) An Event of Default under and as defined in the Reimbursement Agreement has occurred and is continuing.

(2) The Bank hereby instructs the Delivery and Paying Agent, effective upon receipt of this Notice, to cease issuing Certificates.

(3) The Bank hereby notifies the Delivery and Paying Agent that (i) effective upon receipt of this Notice, the Stated Amount available to be drawn under the Letter of Credit will not be reinstated in accordance with the Letter of Credit, (ii) the Delivery and Paying Agent is instructed to present the final Drawing under the Letter of Credit to provide for the payment of Certificates issued in accordance with the Trust Agreement which is outstanding and is maturing or is hereafter to mature, and (iii) the Letter of Credit Termination Date will occur and the Letter of Credit will expire on the earlier of (a) the date which is the fifteenth (15<sup>th</sup>) calendar day after the date of receipt by the Delivery and Paying Agent of this notice, and (b) the date on which the Drawing resulting from the delivery of this Notice is honored by us.

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

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

Acknowledged as of \_\_\_\_\_, \_\_\_\_ by  
\_\_\_\_\_ as  
Delivery and Paying Agent

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

ANNEX H TO

[Form of Reduction Certificate]

Reduction Certificate

IRREVOCABLE DIRECT-PAY LETTER OF CREDIT NO. \_\_\_\_\_

[Date]

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

Facsimile Number: ( ) -

Re: Reduction of Amount of Letter of Credit

Ladies and Gentlemen:

\_\_\_\_\_ (the "Delivery and Paying Agent") hereby certifies to \_\_\_\_\_ (the "Bank") with reference to Irrevocable Direct-Pay Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit"; any other defined terms used herein having their respective meanings set forth in the Letter of Credit) issued by the Bank in favor of the Delivery and Paying Agent that:

(1) The undersigned is the Delivery and Paying Agent under the Delivery and Paying Agent Agreement and Trust Agreement for the holders of the Certificates.

(2) The Delivery and Paying Agent hereby notifies you that on \_\_\_\_\_, 20\_\_ (which such date shall be at least five (5) Business Days following the date hereof) that the Stated Amount of the Letter of Credit shall be reduced to \$\_\_\_\_\_.

(3) On \_\_\_\_\_, 20\_\_ (which such date shall be at least five (5) Business Days following the date hereof), the Principal Component of the Letter of Credit shall be reduced to \$\_\_\_\_\_, which amount, as so reduced, is equal to or not less than the principal amount of all Certificates outstanding as of the date hereof.

(4) On \_\_\_\_\_, 20\_\_ (which such date shall be at least five (5) Business Days following the date hereof), the amount available to be drawn by the Delivery and Paying Agent under the Letter of Credit in respect of accrued and unpaid interest with respect to the Certificates shall be reduced to \$\_\_\_\_\_ (such amount being equal to interest on the Principal Component at an assumed interest rate of 12% for 270 days on the basis of a 360 day year). The amount of the Interest Component, as so reduced, is equal to or not less than the amount of any interest to be due on any Certificate outstanding as of the date hereof.



(5) If any Certificates are outstanding as of the date of this Certificate, the Agency has informed us that it will not issue additional Certificates unless after the issuance of such additional Certificates the aggregate principal amount of Certificates outstanding shall be no greater than the amount of the Principal Component, as so reduced, pursuant to this Certificate and the aggregate interest payable on such principal amount of Certificates outstanding shall be no greater than the amount of the Interest Component as reduced pursuant to this certificate.

(6) The undersigned represents that he/she is a duly authorized representative of the Delivery and Paying Agent.

IN WITNESS WHEREOF, the Delivery and Paying Agent has executed and delivered  
this certificate as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
as Delivery and Paying Agent

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

Name:

Title:

**EXHIBIT B**

**[FORM OF REVOLVING BANK CERTIFICATE]  
REVOLVING BANK CERTIFICATE**

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

CITY AND COUNTY OF SAN FRANCISCO (the "*City*"), for value received, hereby promises to pay to \_\_\_\_\_ (the "*Bank*"), or registered assigns, at the principal office of the Bank in \_\_\_\_\_, \_\_\_\_\_, the sum of \_\_\_\_\_ U.S. DOLLARS (\$ \_\_\_\_\_) or, if less, the aggregate principal amount of all drawings paid by the Bank under the Letter of Credit and all Advances, Term Loans and Default Advances made by the Bank pursuant to the Reimbursement Agreement (as defined below). Capitalized terms not otherwise defined herein shall have the meaning set forth in the Reimbursement Agreement.

The unpaid principal amount hereof from time to time outstanding shall bear interest at the rate or rates and be payable as provided in and calculated in the manner set forth in the Reimbursement Agreement.

Payments of both principal and interest are to be made in lawful money of the United States of America.

Annexed hereto and made a part hereof is a grid (the "*Grid*") on which shall be shown all drawings paid by the Bank and all Advances, Term Loans and Default Advances outstanding from time to time under the Reimbursement Agreement and the amounts of principal and interest payable and paid from time to time under the Reimbursement Agreement. The City hereby appoints the Bank as its agent to endorse the principal amounts owing to the Bank and the maturity schedule therefor pursuant to Section 2.5 and 2.6 of the Reimbursement Agreement respecting outstanding Advances, Term Loans and Default Advances with interest until payment in full pursuant to the terms of this Revolving Bank Certificate, and the date and the amount of each such drawing, Advance, Term Loan or Default Advances or principal or interest repayment made hereunder. In any legal action or proceeding in respect of this Revolving Bank Certificate, the entries made in such accounts shall be prima facie evidence of the existence and the amounts of the obligations of the City recorded therein.

This Revolving Bank Certificate evidences indebtedness incurred under, and is subject to the terms and provisions of, a Letter of Credit and Reimbursement Agreement dated as of \_\_\_\_\_ 1, 2016 as the same may at any time be amended or modified and in effect (the "*Reimbursement Agreement*"), between the City and County of San Francisco and the Bank, to which reference is hereby made for a statement of said terms and provisions, including those under which this Revolving Bank Certificate may be paid prior to its due date or its due date accelerated. The obligations of the City hereunder are payable solely from the Pledged Property in accordance with the terms of the Related Documents.

The City hereby agrees to pay or cause to be paid all expenses, including reasonable attorneys' fees and legal expenses, incurred by the holder of this Revolving Bank Certificate in endeavoring to collect any amounts payable hereunder which are not paid when due whether by acceleration or otherwise.

This Revolving Bank Certificate is made under the laws of the State of California, and for all purposes shall be governed by and construed in accordance with the laws of said State, without regard to principles of conflicts of law.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the Reimbursement Agreement precedent to and in the issuance of this Revolving Bank Certificate, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Revolving Bank Certificate have been duly authorized by resolution of the City duly adopted.

The City hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever.

IN WITNESS WHEREOF, the City and County of San Francisco has caused this Revolving Bank Certificate to be duly executed in its name and on its behalf by a duly authorized officer as of this 26th day of February, 2014.

CITY AND COUNTY OF SAN FRANCISCO

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

**REVOLVING BANK CERTIFICATE GRID**

**DRAWINGS, ADVANCES AND TERM LOANS  
AND PAYMENTS OF PRINCIPAL AND INTEREST**

Date	Drawing, Advance or Term Loan	Amount of Drawing, Advance or Term Loan	Principal Amount of Advances or Term Loans Repaid	Amount of Interest on Advances or Term Loans Repaid	Aggregate Advance or Term Loan Balance	Notation Made By

Note: Additional pages of this Revolving Bank Certificate and Revolving Bank Certificate Grid may be attached to the Revolving Bank Certificate as may be necessary to record certain information regarding each drawing, Advance or Term Loan.

**EXHIBIT C**

**[FORM OF REQUEST FOR EXTENSION OF STATED EXPIRATION DATE]**

REQUEST FOR EXTENSION OF STATED EXPIRATION DATE

The undersigned, duly authorized signatories of the undersigned City and County of San Francisco (the "City"), hereby certify to \_\_\_\_\_ (the "Bank"), with reference to Irrevocable Direct-Pay Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit," the terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Delivery and Paying Agent, as follows:

Pursuant to Section 2.10 of the Letter of Credit and Reimbursement Agreement dated as of \_\_\_\_\_ 1, 2016 (the "Reimbursement Agreement", to which reference is made for the definition of capitalized terms not otherwise defined herein), between the City and the Bank, the City hereby requests an extension of the Stated Expiration Date to \_\_\_\_\_.

All representations and warranties contained in Article IV of the Reimbursement Agreement are true and correct and will be true and correct as of the date of this Certificate as if made on and as of the date hereof and no Event of Default has occurred and is continuing and no event has occurred and is continuing which is or with the passage of time or giving of notice or both would be an Event of Default on and as of the date hereof or will occur as a result of the extension of the Stated Expiration Date of the Letter of Credit.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY AND COUNTY OF SAN FRANCISCO

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

## EXHIBIT D

### CITY REQUIREMENTS

#### 1. Nondiscrimination; Penalties.

(a) *Nondiscrimination.* In the performance of this Agreement, the Bank agrees not to discriminate against any employee, City employee working with the Bank, applicant for employment with the Bank, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) *Subcontracts.* The Bank shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the City) and shall require all subcontractors to comply with such provisions. The Bank's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) *Nondiscrimination in Benefits.* The Bank, as of the date of this Agreement, does not and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by the City, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

(d) *Condition to Contract.* As a condition to this Agreement, the Bank shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) *Incorporation of Administrative Code Provisions by Reference.* The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Bank shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to

the remedies provided in such Chapters. Without limiting the foregoing, the Bank understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Bank and/or deducted from any payments due the Bank.

2. *MacBride Principles—Northern Ireland.* Pursuant to San Francisco Administrative Code §12F.5, the City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this Agreement on behalf of the Bank acknowledges and agrees that he or she has read and understood this section.

3. *Tropical Hardwood and Virgin Redwood.* Pursuant to §804(b) of the San Francisco Environment Code, the City urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

4. *Drug-Free Workplace Policy.* The Bank acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. The Bank agrees that any violation of this prohibition by the Bank, its employees, agents or assigns will be deemed a material breach of this Agreement.

5. *Compliance with Americans with Disabilities Act.* The Bank acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Bank shall provide the services specified in this Trust Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Bank agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Bank, its employees, agents or assigns will constitute a material breach of this Agreement.

6. *Sunshine Ordinance.* In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between the City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

7. *Limitations on Contributions.* Through execution of this Agreement, the Bank acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental



Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Bank acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Bank further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Bank's board of directors; the Bank's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Bank; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Bank. Additionally, the Bank acknowledges that the Bank must inform each of the persons described in the preceding sentence of the prohibitions contained in said Section 1.126. The Bank further agrees to provide to the City the names of each person, entity or committee described above.

8. *Requiring Minimum Compensation for Covered Employees.* The Bank agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of the Bank's obligations under the MCO is set forth in this Section. The Bank is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, the Bank agrees to all of the following:

(a) The MCO requires the Bank to pay the Bank's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and the Bank is obligated to keep informed of the then-current requirements. Any subcontract entered into by the Bank shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is the Bank's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, the City may pursue any of the remedies set forth in this Section against the Bank. Nothing in this Section shall be deemed to grant the Bank the right to subcontract.

(b) The Bank shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

(c) The Bank shall maintain employee and payroll records as required by the MCO. If the Bank fail to do so, it shall be presumed that the Bank paid no more than the minimum wage required under State law.

(d) The City, upon reasonable notice to the Bank, is authorized to inspect the Bank's job sites during normal business hours.

(e) The Bank's commitment to provide the minimum compensation required by the MCO is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Bank fail to comply with these requirements. The Bank agree that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for the Bank's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(f) The Bank understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including at its option the liquidated damages provided for therein), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, the Bank fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Bank fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(g) The Bank represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(h) If the Bank is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with the City for the fiscal year is less than \$25,000, but the Bank later enters into an agreement or agreements that cause the Bank to exceed that amount in a fiscal year, the Bank shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Bank and the City to exceed \$25,000 in the fiscal year.

9. *Requiring Health Benefits for Covered Employees.* The Bank agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, the Bank shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Bank chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Bank is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) The Bank's failure to comply with the HCAO shall constitute a material breach of this Agreement. The City shall notify the Bank if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, the Bank fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Bank fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Subcontract entered into by the Bank shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Bank shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. The Bank shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against the Bank based on the Subcontractor's failure to comply, provided that the City has first provided the Bank with notice and an opportunity to obtain a cure of the violation.

(e) The Bank shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the City with regard to the Bank's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) The Bank represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) The Bank shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the Agreement.

(h) The Bank shall keep itself informed of the current requirements of the HCAO.

(i) The Bank shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(j) The Bank shall provide the City with access to records pertaining to compliance with HCAO after receiving a written request from the City to do so and being provided at least ten business days to respond.

(k) The Bank shall allow the City to inspect the Bank's job sites and have access to the Bank's employees in order to monitor and determine compliance with HCAO.

(l) The City may conduct random audits of the Bank to ascertain its compliance with HCAO. The Bank agrees to cooperate with the City when it conducts such audits.

(m) If the Bank is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Bank later enters into an agreement or agreements that cause either Bank's aggregate amount of all agreements with the City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Bank and the City to be equal to or greater than \$75,000 in the fiscal year.

10. *Prohibition on Political Activity with City Funds.* In accordance with San Francisco Administrative Code Chapter 12.G, the Bank may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "*Political Activity*") in the performance of the services provided under this Agreement. The Bank agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event the Bank violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the Bank from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider the Bank's use of profit as a violation of this section.

11. *Protection of Private Information.* The Bank has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. The Bank agrees that any failure of the Bank to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, bring a false claim action against the Bank pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Bank.

12. *Graffiti Removal.* Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

The Bank shall remove all graffiti from any real property owned or leased by the Bank in the City and County of San Francisco within forty eight (48) hours of the earlier of the Bank's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require the Bank to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the (Red wine to first to find!) Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of the Bank to comply with this section of this Agreement shall constitute a breach of this Agreement.

13. *Airport Intellectual Property.* Pursuant to Resolution No. 01-0118, adopted by the City on April 18, 2001, the City affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may not use the Airport intellectual property,

or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior consent.

14. *Submitting False Claims; Monetary Penalties.* Pursuant to San Francisco Administrative Code §21.35, any Bank, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. An underwriter, bank, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. An underwriter, subcontractor or consultant will be deemed to have submitted a false claim to the City if the underwriter, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

15. *Conflict of Interest.* Through its execution of this Agreement, the Bank acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

16. *Assignment.* The Bank is prohibited from assigning, delegating or transferring this Agreement or any part of it unless such assignment, delegation or transfer is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any contract made in violation of this provision shall confer no rights on any party and shall be null and void.

17. *Food Service Waste Reduction Requirements.* The Bank agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, the Bank agrees that if either breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Bank agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the

second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that the City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by the City because of the Bank's failure to comply with this provision.

18. *Proprietary or Confidential Information of City.* The Bank understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, the Bank may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. The Bank agrees that all information disclosed by City to the Bank shall be held in confidence and used only in the performance of this Agreement. The Bank shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

19. *Earned Income Credit (EIC) Forms.* Administrative Code Section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. The Bank shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Trust Agreement becomes effective (unless the Bank has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by the Bank; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by the Bank of the terms of this Agreement. If, within thirty days after the Bank receives written notice of such a breach, the Bank fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, the Bank fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Trust Agreement or under applicable law. Any Subcontract entered into by the Bank shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.





**FEE AGREEMENT**  
**DATED AS OF \_\_\_\_\_, 2016**

Reference is hereby made to that certain Letter of Credit Reimbursement Agreement dated as of \_\_\_\_\_ 1, 2016 (the "Agreement"), by and between the City and County of San Francisco (the "City") and \_\_\_\_\_ (the "Bank"), relating to the City and County of San Francisco Tax-Exempt Lease Revenue Commercial Paper Certificates of Participation, Series \_ and the City and County of San Francisco Taxable Lease Revenue Commercial Paper Certificates of Participation, Series \_-T (the "Certificates") and (ii) the certain Irrevocable Letter of Credit dated February \_\_, 2016, issued by the Bank pursuant to the Agreement, supporting the Certificates. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

The purpose of this Fee Agreement is to confirm the agreement between the Bank and the City with respect to the Letter of Credit Fees (as defined below) and certain other fees payable by the City to the Bank. This Fee Agreement is the Fee Agreement referenced in the Agreement and the terms hereof are incorporated by reference into the Agreement.

ARTICLE I. FEES.

*Section 1.1. Letter of Credit Fee.* The City hereby agrees to pay to the Bank a non-refundable Letter of Credit Fee quarterly in arrears on the first Business Day of each February, May, August and November (each such date referred to herein as a "Quarterly Payment Date") (commencing on \_\_\_\_\_ 1, 2016, for the period from and including the Date of Issuance to and including \_\_\_\_\_ [30/31], 2016) occurring prior to the Letter of Credit Termination Date and on the Letter of Credit Termination Date in an amount equal to the rate per annum associated with the Rating (as defined below), as specified below (the "Letter of Credit Fee Rate") on the average daily Stated Amount of the Letter of Credit (without giving effect to any temporary reductions thereto that may be subject to reinstatement) and actual number of days elapsed (the "Letter of Credit Fee") during each related period.

LEVEL	FITCH RATING	S&P RATING	MOODY'S RATING	LETTER OF CREDIT FEE RATE
Level 1	AA- or above	AA- or above	Aa3 or above	
Level 2	A+	A+	A1	
Level 3	A	A	A2	
Level 4	A-	A-	A3	
Level 5	BBB+	BBB+	Baa1	
Level 6	BBB	BBB	Baa2	
Level 7	BBB-	BBB-	BBB3	

The term "Rating" as used above shall mean the long-term unenhanced debt ratings assigned by each of Fitch, S&P and Moody's to any unenhanced Lease Obligation Debt of the

City (without giving effect to any bond insurance or other credit enhancement thereon); *provided, however*, that for purposes of the foregoing sentence, Lease Obligation Debt shall mean, (x) in the case of Moody's, if Moody's assigns different long-term unenhanced ratings to Lease Obligation Debt, such Lease Obligation Debt with the highest long-term unenhanced rating assigned by Moody's, (y) in the case of S&P, if S&P assigns different long-term unenhanced ratings to Lease Obligation Debt, such Lease Obligation Debt with the highest long-term unenhanced rating assigned by S&P, and (z) in the case of Fitch, if Fitch assigns different long-term unenhanced ratings to Lease Obligation Debt, such Lease Obligation Debt with the highest long-term unenhanced rating assigned by Fitch. In the event (i) all three Rating Agencies provide a Rating, the Letter of Credit Fee Rate shall be based on the lower of the two highest Ratings, (ii) only two Rating Agencies provide a Rating and there is a split Rating (i.e., one of the Rating Agency's Ratings is at a different level than the Rating of the other Rating Agency), the Letter of Credit Fee Rate shall be based upon the lower Rating and (iii) only one Rating Agency provides a Rating, the Facility Fee Rate shall be based on such Rating. Any change in the Letter of Credit Fee Rate resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to Ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating City, including, without limitation, any recalibration or realignment of the long-term unenhanced debt rating of any unenhanced Lease Obligation Debt of the City in connection with the adoption of a "global" rating scale, each of the Ratings from the Rating City in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The City represents that as of the Date of Issuance, the Letter of Credit Fee Rate is that specified above for Level 1. Upon the occurrence and during the continuance of an Event of Default or in the event any Rating is suspended or withdrawn, the Letter of Credit Fee Rate shall increase by \_\_\_\_% per annum over the Letter of Credit Fee Rate that would otherwise be applicable. The Letter of Credit Fees shall be payable quarterly in arrears, together with interest on the Letter of Credit Fees from the date three (3) Business Days after payment is due until payment in full at the Default Rate. Such Letter of Credit Fees shall be payable in immediately available funds and computed on the basis of a 360-day year and the actual number of days elapsed.

*Section 1.2. Fee.* The City agrees to pay to the Bank, on the date of any drawing under the Letter of Credit, a draw fee (each, a "Draw Fee") of \$\_\_\_\_ for each draw under the Letter of Credit; *provided, however*, that in no event shall the aggregate amount of all Draw Fees paid in any one calendar year exceed \$\_\_\_\_\_.

*Section 1.3. Transfer Fee.* Upon each transfer of the Letter of Credit in accordance with its terms, the City agrees to pay to the Bank a transfer fee in an amount equal to \$1,000, plus, in each case, the reasonable fees and expenses of counsel to the Bank, payable on the date of such transfer.

*Section 1.4. Amendment Fee.* The City shall pay to the Bank an amendment fee in an amount equal to \$\_\_\_\_\_ (or such other amount reasonably determined by the Bank and agreed to by the City) for any change in the terms of pledged security, collateral, covenants or provisions in the Letter of Credit, the Agreement or the Related Documents requested by the City, plus the

Bank's reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) which the Bank may incur by reason of or in connection with such change, payable not later than the effective date of each such amendment.

*Section 1.5. Termination Fee.* Notwithstanding anything set forth herein or in the Agreement to the contrary, the City agrees not to terminate or replace the Letter of Credit prior to the one (1) year anniversary of the Date of Issuance, without the payment by the City to the Bank of a termination fee in an amount equal to the product of (A) the Letter of Credit Fee Rate in effect on the date of termination or replacement, (B) the Stated Amount (without giving effect to any temporary reductions thereto that may be subject to reinstatement) as of the date of termination, and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such termination to and including the one (1) year anniversary of the Date of Issuance, and the denominator of which is 360; *provided further, however*, that no termination fee shall become payable under this Section 1.5 if the City terminates or replaces the Letter of Credit pursuant to the terms hereof and of the Agreement as the result of (i) the Bank's senior unsecured short-term ratings having been reduced below "A-1" (or its equivalent) by S&P, "P-1" (or its equivalent) by Moody's, or "F-1" (or its equivalent) by Fitch or (ii) the Bank's imposition of increased costs pursuant to Section 2.8 of the Agreement.

*Section 1.6. Reduction Fees.* Notwithstanding the foregoing and anything set forth herein or in the Agreement to the contrary, the City agrees not to permanently reduce the Stated Amount of the Letter of Credit prior to the one (1) year anniversary of the Date of Issuance, without the payment by the City to the Bank of a reduction fee in connection with each and every permanent reduction of the Stated Amount in an amount equal to the product of (A) the Letter of Credit Fee Rate in effect on the date of such reduction, (B) the difference between the Stated Amount (without giving effect to any temporary reductions thereto that may be subject to reinstatement) prior to such reduction and the Stated Amount after (without giving effect to any temporary reductions thereto that may be subject to reinstatement) such reduction, and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to and including the one (1) year anniversary of the Date of Issuance, and the denominator of which is 360; *provided, however*, that no reduction fee shall become payable under this Section 1.6 if the City reduces the Stated Amount of the Letter of Credit pursuant to the terms hereof and of the Agreement as the result of (i) the Bank's senior unsecured short-term ratings having been reduced by any Rating City below "A-1" (or its equivalent) by S&P, "P-1" (or its equivalent) by Moody's, or "F-1" (or its equivalent) by Fitch or (ii) the Bank's imposition of increased costs pursuant to Section 2.8 of the Agreement.

## ARTICLE II. MISCELLANEOUS.

*Section 2.1. Out-of-Pocket Expenses; Administration.* (a) The City shall pay to the Bank promptly upon receipt of invoice any and all reasonable fees and expenses of the Bank (including the out-of-pocket expenses of the Bank, and the reasonable fees of domestic and foreign counsel to the Bank, plus disbursements of domestic and foreign counsel to the Bank), all payable in accordance with this Fee Agreement. The reasonable fees of counsel to the Bank shall be paid directly to \_\_\_\_\_ in accordance with the instructions provided by \_\_\_\_\_.

(b) The City further agrees to pay all of the Bank's out-of-pocket expenses (including, without limitation, reasonable fees and disbursements of counsel for the Bank) arising in connection with the administration and enforcement of, preservation of rights in connection with a workout, restructuring or default under, or amendment or waiver with respect to the Agreement, the Letter of Credit and the other Related Documents.

*Section 2.2. Amendments.* No amendment to this Fee Agreement shall become effective without the prior written consent of the City and the Bank.

*Section 2.3. Governing Law.* THIS FEE AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA.

*Section 2.4. Counterparts.* This Fee Agreement may be executed in two or more counterparts, each of which shall constitute an original but both or all of which, when taken together, shall constitute but one instrument.

*Section 2.5. Severability.* Any provision of this Fee Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers as of date first set forth above.

CITY AND COUNTY OF SAN FRANCISCO

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

APPROVED AS TO FORM:

CITY ATTORNEY

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

\_\_\_\_\_

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

## Cal Gov Code § 6586.5

This document is current for urgency legislation through Chapter 3 of the 2016 Session.

Deering's California Code Annotated > GOVERNMENT CODE > Title 1. General > Division 7. Miscellaneous > Chapter 5. Joint Exercise of Powers > Article 4. Local Bond Pooling

### § 6586.5. Conditions for issuance of bonds for public capital improvement; Exception

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- (a) Notwithstanding Section 6587, an authority, or any entity acting on behalf of or for the benefit of an authority, may not authorize bonds to construct, acquire, or finance a public capital improvement except pursuant to Article 1 (commencing with Section 6500), unless all of the following conditions are satisfied with respect to each capital improvement to be constructed, acquired, or financed:
- (1) The authority reasonably expects that the public capital improvement is to be located within the geographic boundaries of one or more local agencies of the authority that is not itself an authority.
  - (2) A local agency that is not itself an authority, within whose boundaries the public capital improvement is to be located, has approved the financing of the public capital improvement and made a finding of significant public benefit in accordance with the criteria specified in Section 6586 after a public hearing held by that local agency within each county or city and county where the public capital improvement is to be located after notice of the hearing is published once at least five days prior to the hearing in a newspaper of general circulation in each affected county or city and county. If the public capital improvement to be financed will provide infrastructure, services, or a golf course to support, or in conjunction with, any development project, the local agency for purposes of this subdivision shall be the city, county, or city and county with land use jurisdiction over the development project.
  - (3) A notice is sent by certified mail at least five business days prior to the hearing held pursuant to paragraph (2) to the Attorney General and to the California Debt and Investment Advisory Commission. This notice shall contain all of the following information:
    - (A) The date, time, and exact location of the hearing.
    - (B) The name and telephone number of the contact person.
    - (C) The name of the joint powers authority.
    - (D) The names of all members of the joint powers authority.
    - (E) The name, address, and telephone number of the bond counsel.
    - (F) The name, address, and telephone number of the underwriter.
    - (G) The name, address, and telephone number of the financial adviser, if any.
    - (H) The name, address, and telephone number of the legal counsel of the authority.
    - (I) The prospective location of the public capital improvement described by its street address, including city, county, and ZIP Code, or, if none, by a general description designed to inform readers of its specific location, including both the county and the ZIP Code that covers the specific location.
    - (J) A general functional description of the type and use of the public capital improvement to be financed.
    - (K) The maximum aggregate face amount of obligations to be issued with respect to the public capital improvement.
- (b) Paragraph (3) of subdivision (a) does not apply to bonds:

## Cal Gov Code § 6586.5

- (1) Issued pursuant to the Community Redevelopment Law, Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.
  - (2) To finance transportation facilities and vehicles.
  - (3) To finance a facility that is located within the boundaries of an authority, provided that the authority that issues those bonds consists of any of the following:
    - (A) Local agencies with overlapping boundaries.
    - (B) A county and a local agency or local agencies located entirely within that county.
    - (C) A city and a local agency or local agencies located entirely within that city.
  - (4) To finance a facility for which an authority has received an allocation from the California Debt Limit Allocation Committee.
  - (5) Of an authority that consists of no less than 100 local agencies and the agreement that established that authority requires the governing body of the local agency that is a member of the authority in whose jurisdiction the facility will be located to approve the facility and the issuance of the bonds.
- (c) This section and Section 6586.7 do not apply to bonds issued for any of the following purposes:
- (1) To finance the undergrounding of utility and communication lines.
  - (2) To finance, consistent with the provisions of this chapter, facilities for the generation or transmission of electrical energy for public or private uses and all rights, properties, and improvements necessary therefor, including fuel and water facilities and resources.
  - (3) To finance facilities for the production, storage, transmission, or treatment of water, recycled water, or wastewater.
  - (4) To finance public school facilities.
  - (5) To finance public highways located within the jurisdiction of an authority that is authorized to exercise the powers specified in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code, provided that the authority conducts the noticed public hearing and makes the finding of significant public benefit in accordance with this section.
- (d) For purposes of this section, a local agency does not include a private entity.

## History

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Added Stats 1998 ch 35 § 2 (SB 147). Amended Stats 2000 ch 723 § 3 (AB 2300); Stats 2001 ch 56 § 1 (AB 457).

### Annotations

## Notes

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### Amendments:

#### 2000 Amendment:

(1) Amended the introductory clause of subd (a) by substituting (a) "Notwithstanding Section 6587, an authority, or any entity on behalf of or for the benefit of an authority, may not authorize" for "An authority may not issue"; and (b) "except pursuant to Article 1 (commencing Section 6500), unless all" for "pursuant to this article unless both"; (2) amended subd (a)(1) by substituting (a) "The authority reasonably expects" for "It reasonably on the date of



## Cal Gov Code § 6586.5

issuance of the bonds"; and (b) "local agencies" for "members"; (3) amended subd (a)(2) by (a) substituting "local agency that is not itself an authority," for "member of the authority"; and (b) adding "local agency" after "held by that"; (4) added subd (a)(3); (5) added subd (b); (6) redesignated former subd (b) to be subd (c); (7) substituted "and Section 6586.7 do" for "shall" in subd (c); and (8) added subd (d).

**2001 Amendment:**

Added the last sentence of subd (a)(2).

**Note**

Stats 2000 ch 723 provides:

SECTION 1. The Legislature hereby finds and declares that the municipal finance market in California is a matter of great public importance. Thus, it is of great public importance to ensure that the California municipal bond market remains a viable means of financing needed public improvements for all levels of government in the state. The Legislature enacts this act with the intent to protect the integrity of that market by prohibiting certain risky practices in the issuance of bonds. The Legislature further enacts this act with the intent to protect the public's interest, including protecting the public from the potential or actual confusion or deception in the issuance and purchase of those bonds.

**Opinion Notes**

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**Attorney General's Opinions:**

Two public entities and a mutual water company may enter into a joint powers agreement to form a public financing authority for the purpose of issuing bonds under the Marks-Roos Local Bond Pooling Act of 1985 to finance the construction of projects authorized by the Joint Exercise of Powers Act over which the contracting parties exercise their common power. The project funded by the bonds may be located outside the jurisdiction of either of the two public entities only if specified conditions are met. 83 Ops. Cal. Atty. Gen. 82.

**Research References & Practice Aids**

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**Hierarchy Notes:**

Tit. 1, Div. 7, Ch. 5 Note

Tit. 1, Div. 7, Ch. 5, Art. 4 Note

Deering's California Codes Annotated

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BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## NOTICE OF PUBLIC HEARING

### BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO BUDGET AND FINANCE COMMITTEE

NOTICE IS HEREBY GIVEN THAT the Budget and Finance Committee will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:


**Date:** Wednesday, April 27, 2016

**Time:** 1:00 p.m.

**Location:** Legislative Chamber, Room 250, located at City Hall  
1 Dr. Carlton B. Goodlett Place, San Francisco, CA

**Subject:** **File No. 160364.** Resolution approving and authorizing the execution and delivery of Tax Exempt and/or Taxable Lease Revenue Commercial Paper Certificates of Participation and Tax Exempt and/or Taxable Direct Placement Revolving Certificates of Participation in a combined aggregate principal of amount not to exceed \$260,000,000 to provide Interim Financing for Phase 1 of the Transbay Transit Center Project; approving and authorizing execution of one or more trust agreements, site leases, subleases, a leaseback, one or more letters of credit and reimbursement agreements and/or lines of credit, and one or more certificate purchase agreements and related documents; and Declaring the Official Intent of the City to reimburse itself from proceeds of Tax-Exempt Obligations in accordance with the Internal Revenue Code of 1986, as amended; and making certain public benefit findings for the Transbay Transit Center Project under California Government Code, Section 6586.5.

In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made part of the official public record in this matter, and shall be brought to the attention of the members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, City Hall, 1 Dr. Carlton Goodlett Place, Room 244, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board. Agenda information relating to this matter will be available for public review on Friday, April 22, 2016.

  
for Angela Calvillo  
Clerk of the Board

DATED/POSTED: April 20, 2016  
PUBLISHED: April 22, 2016



公聽會通知

三藩市市及縣市參事委員會  
預算及財政委員會

- 日期: 2016年4月27日星期三
- 時間: 下午1時
- 地點: 市政廳，立法會議廳 250 室，1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102
- 議題: 檔案號碼 160364。決議批准並授權執行及交付免稅和/或應稅租賃收入商業票據 (Commercial Paper) 參與證書與免稅和/或應稅直接配售循環 (Direct Placement Revolving) 參與證書，將為「跨灣交通中心計劃」(Transbay Transit Center Project) 第1階段工程提供臨時融資，所動用合併本金總額不應超過\$260,000,000；通過及授權執行一份或多份信托協議、工地租賃、轉租、一份售後回租、一份或多份信用證與退還協議書和/或信貸額度，以及一份或多份證書購置協議與相關文件；並聲明市府須依據1986年的「國稅法」(Internal Revenue Code)，以免稅債務所得收益償付政府支出；以及依據加州政府法規第6586.5條，作出某項有關「跨灣交通中心計劃」的公共福利裁斷。

  
for Angela Calvillo  
市參事委員會書記

BOARD of SUPERVISORS



City Hall  
1 Dr. Car. . B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No 554-5184  
Fax No. 554-5163  
TTD/TTY No. 5545227

## NOTIFICACIÓN DE AUDIENCIA PÚBLICA

JUNTA DE SUPERVISORES DE LA CIUDAD Y CONDADO DE SANFRANCISCO  
COMITÉ DE PRESUPUESTO Y FINANZAS

**Fecha:** Miércoles, 27 de abril de 2016

**Hora:** 1:00 p. m.

**Lugar:** Cámara Legislativa, Sala 250 del Ayuntamiento  
1 Dr. Carlton B. Goodlett Place, San Francisco, CA

**Asunto:** Expediente Núm. 160364. Resolución que aprueba y autoriza la ejecución y entrega de Papeles Comerciales de Certificados de Participación provenientes de Ingresos de Arrendamientos Imponibles y No Imponibles de Impuestos, y Certificados de Participación Renovables de Colocación Directa No Imponibles e Imponibles, por un monto de capital total combinado que no exceda \$260,000,000 para proveer el Financiamiento Provisional para la Fase 1 del Proyecto del Centro de Tránsito Transbay; aprueba y autoriza la ejecución de uno o más contratos fiduciarios, contratos de arrendamiento en el sitio, subarrendamientos, un arrendamiento retroactivo, una o más cartas de crédito y acuerdos de reembolso y líneas de crédito, y uno o más certificados de acuerdo de compra y otros documentos relacionados; Declara la Intención Oficial de la Ciudad de reembolsar ciertos frutos provenientes de Obligaciones Exentas de Impuestos conforme con el Código de Rentas Internas de 1986, en su forma enmendada; y realiza ciertas conclusiones de beneficio público para el Proyecto del Centro de Tránsito Transbay según la Sección 6586.5 del Código Gubernamental de California.

  
for Angela Calvillo,  
Secretaria de la Junta

# CALIFORNIA NEWSPAPER SERVICE BUREAU

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Linda Wong  
CCSF BD OF SUPERVISORS (OFFICIAL NOTICES)  
1 DR CARLTON B GOODLETT PL #244  
SAN FRANCISCO, CA 94102

### COPY OF NOTICE

Notice Type: GPN GOVT PUBLIC NOTICE  
Ad Description File No. 160364 - Transbay Phase 1

To the right is a copy of the notice you sent to us for publication in the SAN FRANCISCO CHRONICLE. Please read this notice carefully and call us with any corrections. The Proof of Publication will be filed with the Clerk of the Board. Publication date(s) for this notice is (are):

04/22/2016

The charge(s) for this order is as follows. An invoice will be sent after the last date of publication. If you prepaid this order in full, you will not receive an invoice.

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ORANGE COUNTY REPORTER, SANTA ANA	(714) 543-2027
SAN FRANCISCO DAILY JOURNAL, SAN FRANCISCO	(800) 640-4829
SAN JOSE POST-RECORD, SAN JOSE	(408) 287-4866
THE DAILY RECORDER, SACRAMENTO	(916) 444-2355
THE DAILY TRANSCRIPT, SAN DIEGO	(619) 232-3486
THE INTER-CITY EXPRESS, OAKLAND	(510) 272-4747

CNS 2871897

**NOTICE OF PUBLIC HEARING  
BOARD OF SUPERVISORS OF THE  
CITY AND COUNTY OF SAN FRAN-  
CISCO BUDGET AND FINANCE  
COMMITTEE WEDNESDAY, APRIL  
27, 2016 - 1:00 P.M. LEGISLATIVE  
CHAMBER, ROOM 250, LOCATED AT  
CITY HALL 1 DR. CARLTON B.  
GOODLETT PLACE, SAN FRAN-  
CISCO, CA**

NOTICE IS HEREBY GIVEN THAT the Budget and Finance Committee will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard: File No. 160364. Resolution approving and authorizing the execution and delivery of Tax Exempt and/or Taxable Lease Revenue Commercial Paper Certificates of Participation and Tax Exempt and/or Taxable Direct Placement Revolving Certificates of Participation in a combined aggregate principal of amount not to exceed \$260,000,000 to provide Interim Financing for Phase 1 of the Transbay Transit Center Project; approving and authorizing execution of one or more trust agreements, site leases, subleases, a leaseback, one or more letters of credit and reimbursement agreements and/or lines of credit, and one or more certificate purchase agreements and related documents; and Declaring the Official Intent of the City to reimburse itself from proceeds of Tax-Exempt Obligations in accordance with the Internal Revenue Code of 1986, as amended; and making certain public benefit findings for the Transbay Transit Center Project under California Government Code, Section 6586.5. In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made part of the official public record in this matter, and shall be brought to the attention of the members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, City Hall, 1 Dr. Carlton Goodlett Place, Room 244, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board. Agenda information relating to this matter will be available for public review on Friday, April 22, 2016. Angela Calvillo, Clerk of the Board



\* A 0 0 0 0 0 4 0 7 6 4 2 9 \*

754

# Transbay Transit Center Project

Controller's Office  
April 2016



# Request for Approval

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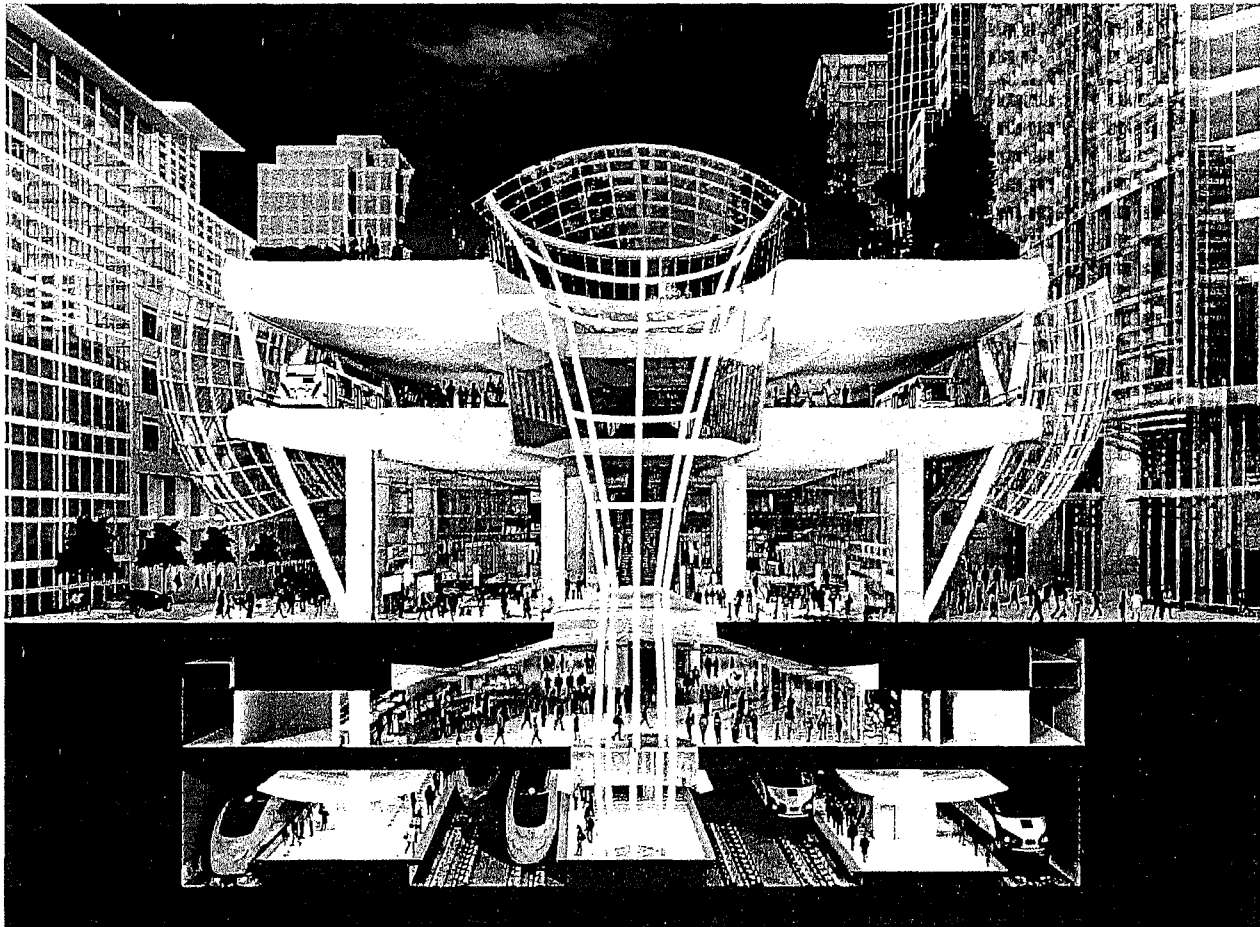
- Resolution Approving and Authorizing the Execution and Delivery of Tax Exempt and/or Taxable Short-Term Certificates of Participation in a combined aggregate principal of amount of not to exceed \$260,000,000 Relating to Phase 1 of the Transbay Transit Center Project
- Appropriation of Proceeds from Short-Term Certificates of Participation \$260,000,000 for the Transbay Transit Center Project
- Resolution Determining Annexation of Property to City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center).

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# Transbay Transit Center Phase 1

Includes: Transit Center, Temporary Terminal, Bus Storage, Train Box component of the rail extension



Six-Story

Rooftop Park

Bus Deck

Second Level

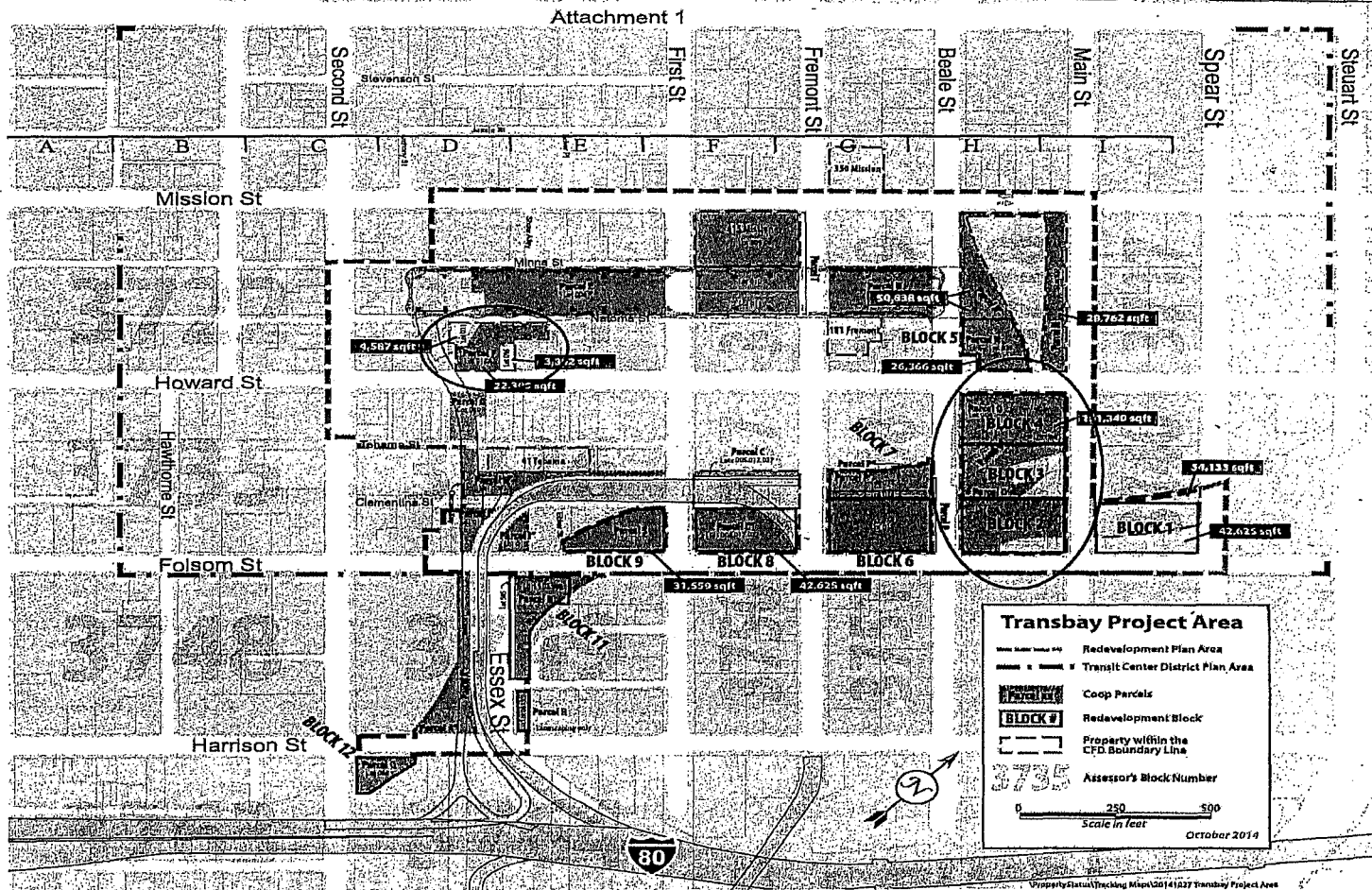
Ground Level

Lower Concourse

Train Station  
Platform

757

# Map of Transbay Project Area



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# Budget Growth in Recent Years

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## Project Budget History (\$ in millions)\*

Year	Budget Amount	Change from Prior Budget	% Change
2008	1,189.0	-	
2010	1,589.0	400.0	34%
2013	1,899.4	310.4	20%
2016	2,259.4	360.0	19%

- The 2010 increase was a result of receiving \$400 million in ARRA grant for the Train Box. In 2015, TJPA board approved an interim revised budget of \$2,064.4 million.

# MTC's Determination of Cost Increases

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- Inaccurate engineer's estimate due to low unit costs, inaccurate quantities, and missed bid items/scope
- Complex design
- Optimistic production rates & escalation cost factor
- Lack of competitive bidders
- Higher bid margins
- Design changes
- Different risk model which did not fully assess the cost of each risk item for this project (FTA risk model vs MTC risk model)

# Project Funding Sources

Funding Sources (\$ in millions)	
Bridge Loan	154.0
TIFIA Loan	171.0
SF Prop K Sales Tax	139.3
San Mateo Sales Tax	4.5
AC Transit Capital Contribution	39.6
Lease & Interest income	8.2
Other Local	4.5
Regional Measure 1	54.4
Regional Measure 2	143.0
AB 1171 (Other Bridge Tolls)	150.0
RTIP	10.2
Land Sales	515.6
FTA Section 1601	8.8
High Priority - Bus (#403 & 459)	29.1
PNRS (Projects of National Regional Significance)	24.5
ARRA	400.0
FRA Rail Relocation	2.7
OBAG	6.0
Tax Increment	0.0
CFD Special Taxes	146.6
Subtotal Funding Sources	2,011.9
City Financing	247.5
Total Funding Sources	2,259.4

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# Short-Term Cash Flow Needs

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## Short-Term Funding Required (\$ in millions)

TJPA Approved Budget (2013)	1,899.4
MTC Recommendation (2015)	2,259.4
Total Shortfall	(360.0)
Approved Parcel F Transaction Consideration	160.0
Net Shortfall	(200.0)
Plus CFD Special Tax Proceeds Shortfall <sup>1</sup>	(47.5)
Total Short-Term Certificates Required	(247.5)

<sup>1</sup> As part of the 2013 Budget, \$194.1 million in CFD special tax proceeds were projected to become available through 2017. Current projections of CFD special tax proceeds through 2017 are estimated to be \$146.6 million, \$47.5 million less than prior projections.

# Current Cash Flow Gaps by Fiscal Year

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## Project Budget Funding Required (\$ millions)

<u>Fiscal Year</u>	<u>Budget Shortfall</u>
2017	149.0
2018	98.5
	<u>247.5</u>

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# Plan of Finance

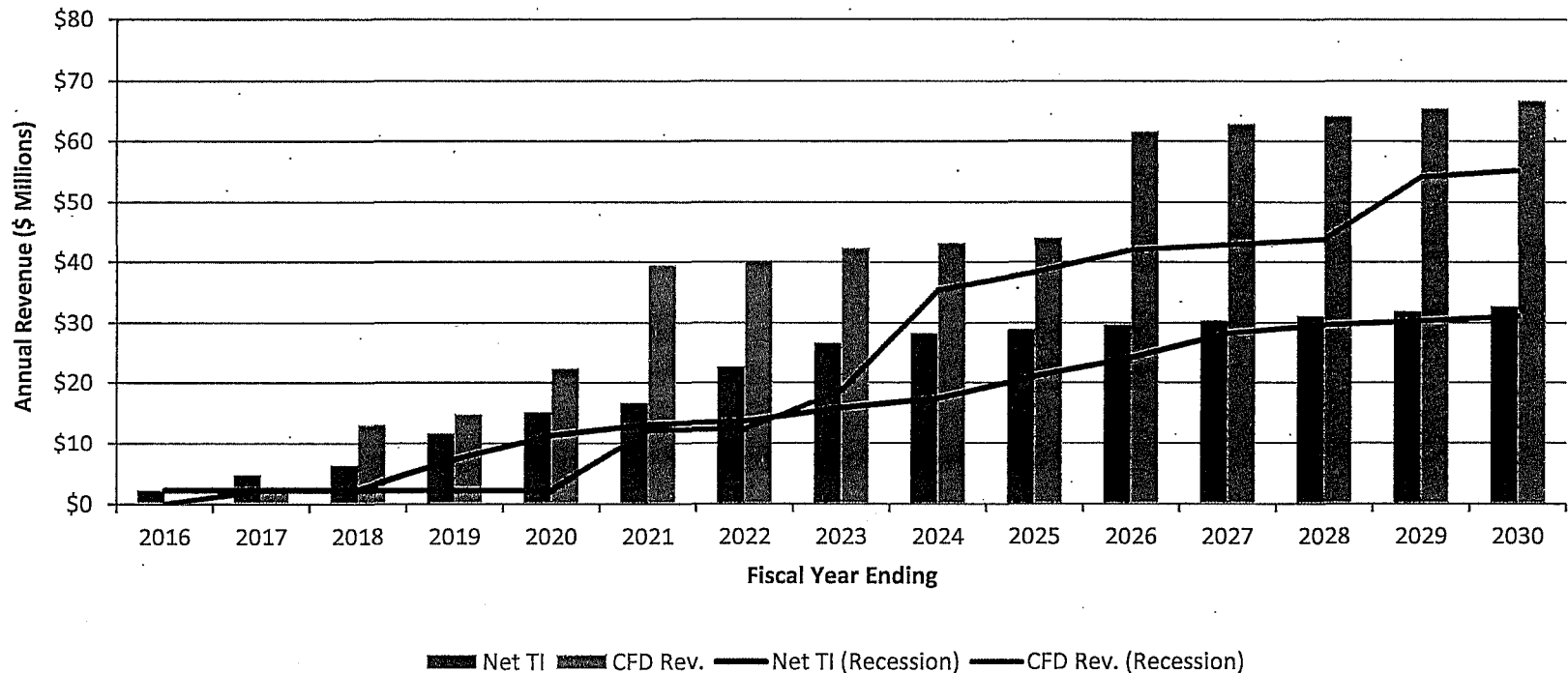
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- The City, in partnership with MTC, is proposing to provide short-term interim financing of not to exceed \$260 million to cover the funding gap of approximately \$250 million for Phase 1 of the Transbay Transit Center Project
- The City would issue short-term variable rate certificates at times and in amounts necessary to meet the project construction draws
- A portion of the short-term certificates would be purchased by MTC and a portion of which would be privately placed with Wells Fargo Bank, N.A.
- On parity with TIFIA loan, including pledge of net tax increment
- The short-term certificates will be repaid from future net tax increment from State-owned Parcels and CFD special taxes in approximately 6-10 years
- If net tax increment and/or CFD special tax proceeds insufficient City's General Fund on steps in
- Remaining outstanding principal under the short-term certificates would be taken out with long-term financing by the TJPA or the City when the net tax increment revenues matures
- As part of the interim financing, the City and MTC will establish a Cost Review Committee and Public Works will provide construction management and oversight services to the TJPA



# Transbay Revenue Analysis

- Net Tax Increment pays interest during term of the short-term certificates
  - Net Tax Increment revenues projected to cover MADS (\$14MM) by FY 2020
  - Recession delays this to FY 2023
- CFD Special Tax proceeds used to pay down outstanding short-term certificates, reducing amount of long-term take-out
  - CFD Special Tax revenues projected to cover MADS (\$31MM) by FY 2021
  - Recession delays this to FY 2024



# Estimated Sources and Uses

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## Estimated Sources and Uses from Short-Term Certificates (\$)

<b>Maximum Not to Exceed Amount</b>	<b>260,000,000</b>
<i>Reserve for Market Uncertainty</i>	1,842,451
<b>Sources:</b>	
Certificate Par Amount (Wells Fargo)	158,157,549
Certificate Par Amount (MTC)	<u>100,000,000</u>
<b>Total Sources:</b>	<b>258,157,549</b>
<b>Uses:</b>	
Project Fund	247,500,000
Cost of Issuance	800,000
Capitalized Fees and Expenses	<u>9,857,549</u>
<b>Total Uses</b>	<b>258,157,549</b>
<i>Reserve for Market Uncertainty</i>	1,842,451
<b>Maximum Not to Exceed Amount</b>	<b>260,000,000</b>

<sup>(1)</sup> Represents capitalized fees and expenses through the term of each Short-term Certificates

# Other Considerations

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- Schedule of development within the district
- Other project cost unknowns?
- Implications for Future Project Phases

# Annexation of Property to Community Facilities District No. 2014-1 (Transbay Transit Center)

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- In 2014, the Board of Supervisors approved the formation of the Community Facilities District (CFD) No. 2014-1 and the necessity to incur bonded indebtedness in an amount not to exceed \$1.4 billion
- In 2015, the Board of Supervisors approved the levy of special taxes and issuance of bonds in an amount not to exceed \$1.4 billion to finance plan infrastructure
- The Board of Supervisors also approved the future annexation of parcels to the CFD
- Parcels may annex to the CFD only with unanimous approval
- The property owner by signing the unanimous approval has voted to be annexed to the CFD
- The Board of Supervisors is acknowledging the annexation by resolution

## Questions

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**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s):	City elective office(s) held:
Members, Board of Supervisors	Members Board of Supervisors

<b>Contractor Information</b> <i>(Please print clearly.)</i>
Name of contractor: Wells Fargo Bank, N.A.
<p><i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i></p> <p>1. Board members for Wells Fargo &amp; Co.</p> <p><u>John D. Baker II</u>, Executive Chairman, FRP Holdings, Inc.</p> <p><u>Elaine L. Chao</u>, Former U.S. Secretary of Labor</p> <p><u>John S. Chen</u>, Executive Chairman and CEO, BlackBerry Limited</p> <p><u>Lloyd H. Dean</u>, President and CEO, Dignity Health</p> <p><u>Elizabeth A. Duke</u>, Former member of the Federal Reserve Board of Governors</p> <p><u>Susan E. Engel</u>, Retired CEO, Portero, Inc.</p> <p><u>Enrique Hernandez, Jr.</u>, Chairman, President and CEO, Inter-Con Security Systems, Inc.</p> <p><u>Donald M. James</u>, Retired Chairman, Vulcan Materials Company</p> <p><u>Cynthia H. Milligan</u>, Dean Emeritus, College of Business Administration, University of Nebraska – Lincoln</p> <p><u>Federico F. Peña</u>, Senior Advisor, Vestar Capital Partners, Former U.S. Secretary of Energy and Former U.S. Secretary of Transportation</p> <p><u>James H. Quigley</u>, CEO Emeritus and Retired Partner at Deloitte</p> <p><u>Judith M. Runstad</u>, Of Counsel, Foster Pepper PLLC</p> <p><u>Stephen W. Sanger</u>, Retired Chairman, General Mills, Inc.</p> <p><u>John G. Stumpf</u>, Chairman and CEO, Wells Fargo &amp; Company</p> <p><u>Susan G. Swenson</u>, Chair and CEO, Novatel Wireless, Inc.</p> <p><u>Suzanne M. Vautrinot</u>, President, Kilovolt Consulting, Inc. and Major General and Commander, United States Air Force (retired)</p> <p>Board Members for Wells Fargo Bank, N.A.</p> <p>Lloyd H. Dean*</p> <p>Enrique Hernandez, Jr.*</p>

Cynthia H. Milligan\*  
 Federico F. Peña\*  
 James H. Quigley\*  
 Stephen W. Sanger\*  
 John G. Stumpf

*\*Non-Employees*

2. Chief Executive Officer: John G. Stumpf  
 Chief Operating Officer: Timothy (Tim) J. Sloan  
 Chief Financial Officer: John R. Shrewsberry
3. No one owns 20% or more of Wells Fargo
4. There are no subcontractors
5. There is no political committee sponsored or controlled by Wells Fargo Bank, N.A.

Contractor address: 333 Market Street, 15<sup>th</sup> Floor , San Francisco, CA 94105

Date that contract was approved:

Amount of contract:

Up to 1.6 million annually

Describe the nature of the contract that was approved:  
 3-year variable rate credit facility

Comments:

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors

Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Relocation Appeals Board, and Local Workforce Investment Board) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

**Filer Information** *(Please print clearly.)*

Name of filer:  
 Angela Calvillo, Clerk of the Board

Contact telephone number:  
 415-554-5184

Address:  
 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102

E-mail:  
 Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

S:\ALL FORMS\Campaign Finance\SFEC - 126\ Form SFEC-126 Notification of Contract Approval 9.14.doc