

1 [Issuance of Special Tax Bonds - Community Facilities District No. 2014-1 - Not to Exceed
2 \$1,400,000,000]

3 **Resolution authorizing the issuance and sale of not to exceed \$1,400,000,000 Special**
4 **Tax Bonds for City and County of San Francisco Community Facilities District No.**
5 **2014-1 (Transbay Transit Center) and determining other matters in connection**
6 **therewith.**

7
8 WHEREAS, On September 23, 2009, the Board of Supervisors considered and
9 adopted "Local Goals and Policies for Community Facilities Districts and Special Tax Districts"
10 (the "Goals and Policies"), which Goals and Policies, among other things, relate to the
11 formation of community facilities districts under the Mello-Roos Community Facilities Act of
12 1982, as amended, constituting Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with
13 Section 53311) of the California Government Code (the "Mello-Roos Act"); and

14 WHEREAS, The Board of Supervisors has conducted proceedings under and pursuant
15 to the Mello-Roos Act to form "City and County of San Francisco Community Facilities District
16 No. 2014-1 (Transbay Transit Center)" (the "CFD"), to authorize the levy of special taxes upon
17 the land within the CFD and to authorize the issuance of bonds and other debt (as defined in
18 the Mello-Roos Act) secured by said special taxes for the purpose of financing certain public
19 improvements (the "Facilities"), all as described in those proceedings; and

20 WHEREAS, The rate and method of apportionment of special taxes for the CFD is in
21 compliance with the Mello-Roos Act and the Goals and Policies; and

22 WHEREAS, The Board of Supervisors now wishes to provide for the issuance of one or
23 more series of special tax bonds to finance a portion of the Facilities and related costs and
24 expenses, and there has been submitted to this Board of Supervisors a form of Fiscal Agent
25

1 Agreement (the "Fiscal Agent Agreement") providing for the issuance of the special tax bonds
2 for the CFD in one or more series and the use of the proceeds of those bonds, and this Board
3 of Supervisors with the aid of its staff has reviewed the Fiscal Agent Agreement and found it
4 to be in proper order; now, therefore, be it

5 RESOLVED, That the foregoing recitals are true and correct; and, be it

6 FURTHER RESOLVED, That pursuant to the Mello-Roos Act, this Resolution and the
7 Fiscal Agent Agreement (including one or more supplements thereto, as provided in the Fiscal
8 Agent Agreement), one or more series of special tax bonds designated the "City and County
9 of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center) Special
10 Tax Bonds," (the "Bonds") in an aggregate principal amount not to exceed One Billion Four
11 Hundred Million Dollars (\$1,400,000,000) are hereby authorized to be issued from time to
12 time. The Bonds shall be secured by a pledge of and payable from proceeds of the special
13 tax levied in the CFD. The Bonds shall be dated; be executed in the form and denominations;
14 be registered; mature; be payable at the place, on the interest payment dates and in the
15 priorities and manner; bear interest at the rates; and be subject to the terms of redemption
16 and other terms as shall be provided in the Fiscal Agent Agreement as finally executed and
17 delivered (including one or more supplements thereto); provided, however, that the Fiscal
18 Agent Agreement shall not (a) authorize an aggregate principal amount of Bonds in excess of
19 One Billion Four Hundred Million Dollars (\$1,400,000,000); (b) provide for an average interest
20 rate on the Bonds in excess of the highest rate permitted by applicable law at the time of the
21 sale of the Bonds; or (c) provide for a maturity of any series of the Bonds in excess of 30
22 years. The proceeds of the bonds and other revenues, including special tax revenues, shall
23 be invested and special tax revenues and other funds available to the CFD may be used to
24 make payment to the United States of any excess investment earnings required to be rebated
25 by federal law all as set forth in the Fiscal Agent Agreement; and, be it

1 FURTHER RESOLVED, That issuance of the Bonds shall be subject to compliance
2 with the Mello-Roos Act and this Resolution. The Bonds shall not be issued until such time as,
3 except as otherwise permitted by Section 53345.8 of the Mello-Roos Act, the value of the real
4 property subject to special taxes levied in the CFD is at least three times the principal amount
5 of the Bonds to be issued and the principal amount of all other bonds and other debt that will
6 be outstanding following issuance of the Bonds that are secured by (i) a special tax levied
7 pursuant to the Mello-Roos Act on property within the CFD or (ii) a special assessment levied
8 on property within the CFD; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors hereby approves the form of
10 the Fiscal Agent Agreement by and between the City and a fiscal agent (the "Fiscal Agent")
11 with respect to the Bonds, in substantially the form on file with the Clerk of the Board of
12 Supervisors. Each of the Mayor, the Controller and the Director of the Office of Public
13 Finance, or such other official of the City as may be designated by such officials (each, an
14 "Authorized Officer"), is hereby authorized and directed to execute and deliver, and the Clerk
15 of the Board of Supervisors is hereby authorized and directed to attest to, the Fiscal Agent
16 Agreement in substantially the form on file with the Clerk of the Board of Supervisors, together
17 with such additions or changes as are approved by such Authorized Officer upon consultation
18 with the City Attorney and the City's bond counsel, including such additions or changes as are
19 necessary or advisable to permit the timely issuance, sale and delivery of the Bonds. The
20 approval of such additions or changes shall be conclusively evidenced by the execution and
21 delivery by an Authorized Officer of the Fiscal Agent Agreement (or one or more supplements
22 thereto). The Board of Supervisors hereby directs the Authorized Officers to name a fiscal
23 agent for the Bonds. The terms and provisions of the Fiscal Agent Agreement, as executed,
24 are incorporated herein by this reference as if fully set forth herein; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors hereby directs the Authorized
2 Officers to return to the Board of Supervisors with a recommendation as to the method for
3 selling one or more series of the Bonds, whether competitive or negotiated, and for approval
4 of all related sales documentation; and, be it

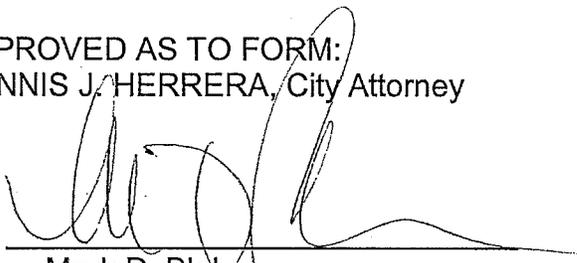
5 FURTHER RESOLVED, That all actions heretofore taken by the officers and agents of
6 the City (including, but not limited to, the Authorized Officers) with respect to the
7 establishment of the CFD, the levy of the special tax and the issuance of the Bonds are
8 hereby approved, confirmed and ratified, and the appropriate officers of the City are hereby
9 authorized and directed to do any and all things and take any and all actions and execute any
10 and all certificates, agreements and other documents, which they, or any of them, may deem
11 necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds
12 in accordance with this Resolution, and any certificate, agreement, and other document
13 described in the documents herein approved. All actions to be taken by an Authorized Officer,
14 as defined herein, may be taken by such Authorized Officer or any designee, with the same
15 force and effect as if taken by the Authorized Officer; and, be it

16 FURTHER RESOLVED, That the Director of the Office of Public Finance and the City
17 Attorney, in consultation with bond counsel, are hereby authorized and directed to initiate a
18 judicial validation action with respect to the CFD and the Bonds pursuant to Code of Civil
19 Procedure Section 860 et seq.; and, be it

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FURTHER RESOLVED, That this Resolution shall take effect upon its adoption.

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

By: 

Mark D. Blake
Deputy City Attorney
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FISCAL AGENT AGREEMENT

by and between the

CITY AND COUNTY OF SAN FRANCISCO

and

**[FISCAL AGENT]
as Fiscal Agent**

Dated as of _____, 20__

Relating to:

**\$ _____
City and County of San Francisco
Community Facilities District 2014-1
(Transbay Transit Center)
Special Tax Bonds, Series _____**

TABLE OF CONTENTS

ARTICLE I AUTHORITY AND DEFINITIONS

| | | |
|---------------|--|---|
| Section 1.01. | Authority for this Agreement | 2 |
| Section 1.02. | Agreement for Benefit of Owners of the Bonds | 2 |
| Section 1.03. | Definitions | 2 |

ARTICLE II THE BONDS

| | | |
|---------------|---|----|
| Section 2.01. | Principal Amount; Designation; Redemption and Other Terms | 11 |
| Section 2.02. | Terms of Bonds | 11 |
| Section 2.03. | Redemption | 12 |
| Section 2.04. | Form of Bonds | 15 |
| Section 2.05. | Execution and Authentication of Bonds | 15 |
| Section 2.06. | Transfer or Exchange of Bonds | 16 |
| Section 2.07. | Bond Register | 16 |
| Section 2.08. | Temporary Bonds | 16 |
| Section 2.09. | Bonds Mutilated, Lost, Destroyed or Stolen | 16 |
| Section 2.10. | Book-Entry Only System | 17 |

ARTICLE III ISSUANCE OF [Bonds]

| | | |
|---------------|---|----|
| Section 3.01. | Issuance and Delivery of [Initial Year of Issuance] Bonds | 19 |
| Section 3.02. | Pledge of Special Tax Revenues | 19 |
| Section 3.03. | Limited Obligation | 19 |
| Section 3.04. | No Acceleration | 19 |
| Section 3.05. | Validity of Bonds | 19 |
| Section 3.06. | Parity Bonds | 20 |

ARTICLE IV PROCEEDS, FUNDS AND ACCOUNTS

| | | |
|---------------|---|----|
| Section 4.01. | Application of [Initial Year of Issuance] Bond Proceeds | 22 |
| Section 4.02. | Costs of Issuance Fund | 22 |
| Section 4.03. | Reserve Fund | 23 |
| Section 4.04. | Bond Fund | 24 |
| Section 4.05. | Special Tax Fund | 26 |
| Section 4.06. | Administrative Expense Fund | 27 |
| Section 4.07. | Improvement Fund | 28 |
| Section 4.08. | Escrow Fund | 29 |

ARTICLE V COVENANTS

| | | |
|---------------|---|----|
| Section 5.01. | Collection of Special Tax Revenues | 30 |
| Section 5.02. | Covenant to Foreclose | 31 |
| Section 5.03. | Punctual Payment | 32 |
| Section 5.04. | Extension of Time for Payment | 32 |
| Section 5.05. | Against Encumbrances | 32 |
| Section 5.06. | Books and Records | 32 |
| Section 5.07. | Protection of Security and Rights of Owners | 32 |
| Section 5.08. | Further Assurances | 32 |
| Section 5.09. | Private Activity Bond Limitations | 33 |
| Section 5.10. | Federal Guarantee Prohibition | 33 |
| Section 5.11. | Rebate Requirement | 33 |
| Section 5.12. | No Arbitrage | 33 |

| | | |
|---------------|--|----|
| Section 5.13. | Yield of the [Initial Year of Issuance] Bonds | 33 |
| Section 5.14. | Maintenance of Tax-Exemption..... | 33 |
| Section 5.15. | Continuing Disclosure..... | 34 |
| Section 5.16. | Limits on Special Tax Waivers and Bond Tenders..... | 34 |
| Section 5.17. | City Bid at Foreclosure Sale | 34 |
| Section 5.18. | Limitation on Principal Amount of Parity Bonds | 34 |
| Section 5.19. | Amendment of Rate and Method | 34 |

**ARTICLE VI
INVESTMENTS; LIABILITY OF THE CITY**

| | | |
|---------------|---|----|
| Section 6.01. | Deposit and Investment of Moneys in Funds | 35 |
| Section 6.02. | Liability of City..... | 36 |
| Section 6.03. | Employment of Agents by City | 37 |

**ARTICLE VII
THE FISCAL AGENT**

| | | |
|---------------|--|----|
| Section 7.01. | The Fiscal Agent..... | 38 |
| Section 7.02. | Liability of Fiscal Agent..... | 39 |
| Section 7.03. | Information; Books and Accounts..... | 40 |
| Section 7.04. | Notice to Fiscal Agent..... | 40 |
| Section 7.05. | Compensation, Indemnification | 41 |
| Section 7.06. | Conflict of Interest..... | 41 |
| Section 7.07. | Proprietary or Confidential Information of City | 41 |
| Section 7.08. | Ownership of Results | 42 |
| Section 7.09. | Works for Hire..... | 42 |
| Section 7.10. | Audit and Inspection of Records | 42 |
| Section 7.11. | Subcontracting..... | 42 |
| Section 7.12. | Assignment..... | 42 |
| Section 7.13. | Earned Income Credit (EIC) Forms | 42 |
| Section 7.14. | Local Business Enterprise Utilization; Liquidated Damages | 43 |
| Section 7.15. | Nondiscrimination; Penalties | 44 |
| Section 7.16. | MacBride Principles—Northern Ireland | 45 |
| Section 7.17. | Tropical Hardwood Ban | 45 |
| Section 7.18. | Drug-Free Workplace Policy..... | 45 |
| Section 7.19. | Resource Conservation | 45 |
| Section 7.20. | Compliance with Americans with Disabilities Act | 45 |
| Section 7.21. | Sunshine Ordinance | 45 |
| Section 7.22. | Public Access to Meetings and Records | 46 |
| Section 7.23. | Limitations on Contributions | 46 |
| Section 7.24. | Requiring Minimum Compensation for Covered Employees | 46 |
| Section 7.25. | Requiring Health Benefits for Covered Employees | 48 |
| Section 7.26. | Prohibition on Political Activity with City Funds | 49 |
| Section 7.27. | Preservative-treated Wood Containing Arsenic | 49 |
| Section 7.28. | Protection of Private Information | 50 |
| Section 7.29. | Food Service Waste Reduction Requirements | 50 |
| Section 7.30. | Graffiti Removal..... | 51 |
| Section 7.31. | Slavery Era Disclosure | 51 |
| Section 7.32. | Qualified Personnel | 51 |
| Section 7.33. | Responsibility for Equipment..... | 52 |
| Section 7.34. | Independent Contractor, Payment of Taxes and Other Expenses..... | 52 |
| Section 7.35. | Submitting False Claims; Monetary Penalties..... | 52 |
| Section 7.36. | Repeal of Administrative Code Provisions | 53 |
| Section 7.37. | Non-Waiver of Rights | 53 |

ARTICLE VIII

MODIFICATION OR AMENDMENT

| | | |
|---------------|--|----|
| Section 8.01. | Amendments Permitted | 54 |
| Section 8.02. | Owners' Meetings | 55 |
| Section 8.03. | Procedure for Amendment with Written Consent of Owners | 55 |
| Section 8.04. | Disqualified Bonds | 55 |
| Section 8.05. | Effect of Supplemental Agreement..... | 56 |
| Section 8.06. | Endorsement or Replacement of Bonds Issued After Amendments..... | 56 |
| Section 8.07. | Amendatory Endorsement of Bonds | 56 |

**ARTICLE IX
MISCELLANEOUS**

| | | |
|---------------|---|----|
| Section 9.01. | Benefits of Agreement Limited to Parties | 57 |
| Section 9.02. | Successor and Predecessor..... | 57 |
| Section 9.03. | Discharge of Agreement..... | 57 |
| Section 9.04. | Execution of Documents and Proof of Ownership by Owners | 58 |
| Section 9.05. | Waiver of Personal Liability | 58 |
| Section 9.06. | Notices to and Demands on City and Fiscal Agent..... | 58 |
| Section 9.07. | Partial Invalidity | 59 |
| Section 9.08. | Unclaimed Moneys | 59 |
| Section 9.09. | Applicable Law | 59 |
| Section 9.10. | Conflict with Act | 59 |
| Section 9.11. | Conclusive Evidence of Regularity | 59 |
| Section 9.12. | Payment on Business Day | 59 |
| Section 9.13. | State Reporting Requirements | 60 |
| Section 9.14. | Counterparts | 61 |

- EXHIBIT A: FORM OF [INITIAL YEAR OF ISSUANCE] BOND
- EXHIBIT B: OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT FROM IMPROVEMENT FUND
- EXHIBIT C: OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT FROM COSTS OF ISSUANCE FUND
- EXHIBIT D: OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT FROM ADMINISTRATIVE EXPENSE FUND

FISCAL AGENT AGREEMENT

THIS FISCAL AGENT AGREEMENT (the "Agreement") is made and entered into as of _____, 20___, by and between the CITY AND COUNTY OF SAN FRANCISCO, a chartered city organized and existing under and by virtue of the Constitution and laws of the State of California (the "City") for and on behalf of the "City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center)" (the "CFD"), and [FISCAL AGENT], a national banking association duly organized and existing under the laws of the United States of America with a corporate trust office located in San Francisco, California, as fiscal agent (the "Fiscal Agent").

WITNESSETH:

WHEREAS, the Board of Supervisors of the City has formed the CFD under the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (section 53311 et seq. of the California Government Code) (the "Act"); and

WHEREAS, the Board of Supervisors, as the legislative body with respect to the CFD, is authorized under the Act to levy special taxes to pay for the costs of facilities within the CFD and to authorize the issuance of bonds secured by said special taxes under the Act; and

WHEREAS, on _____, 20___, the Board of Supervisors adopted Resolution No. _____ authorizing the issuance of up to \$1,400,000,000 of bonded indebtedness and other debt on behalf of the CFD; and

WHEREAS, on _____, 20___, the Board of Supervisors adopted Resolution No. _____ (the "Resolution") authorizing the issuance of special tax bonds (the "[Initial Year of Issuance] Bonds") on behalf of the CFD; and

WHEREAS, it is in the public interest and for the benefit of the City, the CFD and the persons responsible for the payment of special taxes that the City enter into this Agreement to provide for the issuance of the Bonds (as defined below) hereunder to finance the acquisition and construction of facilities for the CFD and to provide for the disbursement of proceeds of the Bonds, the disposition of the special taxes securing the Bonds and the administration and payment of the Bonds; and

WHEREAS, the City has determined that all things necessary to cause the [Initial Year of Issuance] Bonds, when authenticated by the Fiscal Agent and issued as provided in the Act, the Resolution (as defined in this Agreement) and this Agreement, to be legal, valid, binding and limited obligations in accordance with their terms, and all things necessary to cause the creation, authorization, execution and delivery of this Agreement and the creation, authorization, execution and issuance of the [Initial Year of Issuance] Bonds, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, in consideration of the covenants and provisions herein set forth and for other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE I

AUTHORITY AND DEFINITIONS

Section 1.01. Authority for this Agreement. This Agreement is entered into pursuant to the Act (as herein defined) and the Resolution.

Section 1.02. Agreement for Benefit of Owners of the Bonds. The provisions, covenants and agreements herein set forth to be performed by or on behalf of the City shall be for the equal benefit, protection and security of the Owners of the Bonds. All of the Bonds, without regard to the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided in or permitted by this Agreement.

Section 1.03. Definitions. Unless the context otherwise requires, the terms defined in this Section 1.03 shall, for all purposes of this Agreement, of any Supplemental Agreement, and of any certificate, opinion or other document herein mentioned, have the meanings herein specified. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being sections 53311 *et seq.* of the California Government Code.

"Administrative Expenses" means costs directly related to the administration of the CFD consisting of: the actual costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by a City employee or consultant or both) and the actual costs of collecting the Special Taxes (whether by the City or otherwise); the actual costs of remitting the Special Taxes to the Fiscal Agent; actual costs of the Fiscal Agent (including its legal counsel) in the discharge of its duties under this Agreement; the actual costs of the City or its designee of complying with the disclosure provisions of the Act and this Agreement, including those related to public inquiries regarding the Special Tax and disclosures to Owners of the Bonds and the Original Purchaser; the actual costs of the City or its designee related to an appeal of the Special Tax; any amounts required to be rebated to the federal government; an allocable share of the salaries of the City staff directly related to the foregoing and a proportionate amount of City general administrative overhead related thereto. Administrative Expenses shall also include amounts advanced by the City for any administrative purpose of the CFD, including costs related to prepayments of Special Taxes, recordings related to such prepayments and satisfaction of Special Taxes, amounts advanced to ensure maintenance of tax exemption, and the costs of prosecuting foreclosure of delinquent Special Taxes, which amounts advanced are subject to reimbursement from other sources, including proceeds of foreclosure.

"Administrative Expense Fund" means the fund designated the "City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center) Administrative Expense Fund" established and administered under Section 4.06.

"Agreement" means this Fiscal Agent Agreement, as it may be amended or supplemented from time to time by any Supplemental Agreement adopted pursuant to the provisions hereof.

"Allocated Bond Proceeds Account" means the account designated "Allocated Bond Proceeds Account within the Improvement Fund," established under Section 4.07.

"Annual Debt Service" means, for each Bond Year, the sum of (i) the interest due on the Outstanding Bonds in such Bond Year, assuming that the Outstanding Bonds are retired as scheduled, and (ii) the principal amount of the Outstanding Bonds due in such Bond Year (including any mandatory sinking payment due in such Bond Year).

"Auditor" means the tax collector of the City, or such other official at the City who is responsible for preparing property tax bills.

"Authorized Officer" means the Mayor, the Controller, the Director of the Office of Public Finance, the Clerk of the Board of Supervisors, or any other officer or employee authorized by the Board of Supervisors of the City or by an Authorized Officer to undertake the action referenced in this Agreement as required to be undertaken by an Authorized Officer.

"Board" means the Board of Supervisors of the City as the legislative body.

"Bond Counsel" means Jones Hall, A Professional Law Corporation or any other attorney or firm of attorneys acceptable to the City and nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

"Bond" or "Bonds" means the [Initial Year of Issuance] Bonds and, if the context requires, any Parity Bonds, at any time Outstanding under this Agreement or any Supplemental Agreement.

"Bond Fund" means the fund designated the "City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center) Special Tax Bonds Bond Fund" established and administered under Section 4.04.

"Bond Year" means the one-year period beginning on September 2nd in each year and ending on September 1 in the following year, except that the first Bond Year shall begin on the related Closing Date and shall end on September 1, 20__.

"Business Day" means any day other than (i) a Saturday or a Sunday or (ii) a day on which banking institutions in the state in which the Fiscal Agent has its principal corporate trust office are authorized or obligated by law or executive order to be closed.

"Capitalized Interest Account" means the account by that name held by the Fiscal Agent and established and administered under section 4.04(A).

"CDIAC" means the California Debt and Investment Advisory Commission of the Office of the State Treasurer, or any successor agency, board or commission.

"CFD" means the "City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center)" formed under the Resolution of Formation.

“CFD Value” means the market value, as of the date of the appraisal described below and/or the date of the most recent County real property tax roll, as applicable, of all parcels of real property in the CFD subject to the levy of the Special Taxes and not delinquent in the payment of any Special Taxes then due and owing, including with respect to such nondelinquent parcels the value of the then existing improvements and any facilities to be constructed or acquired with any amounts then on deposit in the Improvement Fund and with the proceeds of any proposed series of Parity Bonds, as determined with respect to any parcel or group of parcels by reference to (i) an appraisal performed within six (6) months of the date of issuance of any proposed Parity Bonds by an MAI appraiser (the “Appraiser”) selected by the City, or (ii), in the alternative, the assessed value of all such nondelinquent parcels and improvements thereon as shown on the then current County real property tax roll available to the Finance Director. It is expressly acknowledged that, in determining the CFD Value, the City may rely on an appraisal to determine the value of some or all of the parcels in the CFD and/or the most recent County real property tax roll as to the value of some or all of the parcels in the District. Neither the City nor the Finance Director shall be liable to the Owners, the Original Purchaser or any other person or entity in respect of any appraisal provided for purposes of this definition or by reason of any exercise of discretion made by any Appraiser pursuant to this definition.

“City” means the City and County of San Francisco, and any successor thereto.

“City Attorney” means any attorney or firm of attorneys employed by the City in the capacity of city attorney.

“Closing Date” means the date upon which there is a physical delivery of a Series of Bonds in exchange for the amount representing the purchase price.

“Continuing Disclosure Certificate” shall mean that certain Continuing Disclosure Certificate executed by the City and dated the date of issuance and delivery of a Series of Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“Costs of Issuance” means items of expense payable or reimbursable directly or indirectly by the City and related to the authorization, sale, delivery and issuance of a Series of Bonds, which items of expense shall include, but not be limited to, printing costs, costs of reproducing and binding documents, closing costs, appraisal costs, filing and recording fees, fees and expenses of counsel to the City, initial fees and charges of the Fiscal Agent including its first annual administration fees and its legal fees and charges, including the allocated costs of in-house attorneys, expenses incurred by the City in connection with the issuance of such Series of Bonds, Bond (underwriter’s) discount, legal fees and charges, including bond counsel, disclosure counsel and counsel to any financial consultant, financial consultant’s fees, charges for execution, authentication, transportation and safekeeping of such Bonds and other costs, charges and fees in connection with the foregoing.

“Costs of Issuance Fund” means the fund designated the “City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center) Special Tax Bonds, Costs of Issuance Fund” established and administered under Section 4.02.

“Dated Date” means the dated date of any Bonds issued under this Fiscal Agent Agreement.

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the [Initial Year of Issuance] Bonds under Sections 2.02 and 2.03 and the scheduled amount of interest and amortization of principal payable on any Parity Bonds during the period of computation, in each case excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

"Depository" means (a) initially, DTC, and (b) any other Securities Depository acting as Depository for book-entry under Section 2.10.

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

"Escrow Fund" means the fund designated "City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center), Special Tax Bonds, Series _____ Escrow Fund" established under Section 4.08.

"[Initial Year of Issuance] Escrow Term Bond" means the [Initial Year of Issuance] Bond maturing on September 1, _____, having a CUSIP number of _____ and designated as such in Section 2.02(D).

"Fair Market Value" means with respect to the Bonds the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security—State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City and related parties do not own more than a ten percent (10%) beneficial interest if the return paid by such fund is without regard to the source of the investment.

"Federal Securities" means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), the payment of principal of and interest on which are unconditionally and fully guaranteed by the United States of America; and (b) any obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

"Finance Director" means the Director of the Office of Public Finance, or, in the event such office is eliminated, the official of the City that is responsible for the management of municipal bonds issued by the City.

"Fiscal Agent" means [Fiscal Agent], the Fiscal Agent appointed by the City and acting as an independent fiscal agent with the duties and powers herein provided, its successors and

assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 7.01.

“Fiscal Year” means the twelve-month period extending from July 1 in a calendar year to June 30 of the succeeding year, both dates inclusive.

“Improvement Fund” means the fund designated “City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center), Special Tax Bonds, Improvement Fund,” established under Section 4.07.

“Independent Financial Consultant” means any consultant or firm of such consultants appointed by the City or the Finance Director, and who, or each of whom: (i) is judged by the Finance Director to have experience in matters relating to the issuance and/or administration of bonds under the Act; (ii) is in fact independent and not under the domination of the City; (iii) does not have any substantial interest, direct or indirect, with or in the City, or any owner of real property in the CFD, or any real property in the CFD; and (iv) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

“Interest Payment Date” means each September 1 and March 1 of every calendar year, commencing with ____ 1, 20__.

“JCFA” means the Joint Community Facilities Agreement, dated _____, by and between the City and the Transbay Joint Powers Authority, as amended from time to time.

“Maximum Annual Debt Service” means the largest Annual Debt Service for any Bond Year after the calculation is made through the final maturity date of any Outstanding Bonds.

“Moody’s” means Moody’s Investors Service, Inc., and its successors.

“Officer’s Certificate” means a written certificate of the City signed by an Authorized Officer of the City.

“Ordinance” means any ordinance of the Board of Supervisors of the City levying the Special Taxes, including but not limited to such Ordinance adopted by the Board on ____, 20__.

“Original Purchaser” means _____, the first purchaser of the [Initial Year of Issuance] Bonds from the City.

“Outstanding,” when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 8.04) all Bonds except (i) Bonds theretofore canceled by the Fiscal Agent or surrendered to the Fiscal Agent for cancellation; (ii) Bonds paid or deemed to have been paid within the meaning of Section 9.03; and (iii) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the City under this Agreement or any Supplemental Agreement.

“Owner” or “Bondowner” means any person who shall be the registered owner of any Outstanding Bond.

“Parity Bonds” means additional bonds issued and payable on a parity with the [Initial Year of Issuance] Bonds and any other Bonds under Section 3.06.

"Participating Underwriter" shall have the meaning ascribed thereto in a Continuing Disclosure Certificate.

"Permitted Investments" means the following, but only to the extent that the same are acquired at Fair Market Value:

(a) Federal Securities.

(b) any of the following direct or indirect obligations of the following agencies of the United States of America: (i) direct obligations of the Export-Import Bank; (ii) certificates of beneficial ownership issued by the Farmers Home Administration; (iii) participation certificates issued by the General Services Administration; (iv) mortgage-backed bonds or pass-through obligations issued and guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Federal Housing Administration; (v) project notes issued by the United States Department of Housing and Urban Development; and (vi) public housing notes and bonds guaranteed by the United States of America;

(c) interest-bearing demand or time deposits (including certificates of deposit) or deposit accounts in federal or state chartered savings and loan associations or in federal or State of California banks (including the Fiscal Agent, its parent, if any, and affiliates), provided that (i) the unsecured short-term obligations of such commercial bank or savings and loan association shall be rated in the highest short-term rating category by any Rating Agency, or (ii) such demand or time deposits shall be fully insured by the Federal Deposit Insurance Corporation;

(d) commercial paper rated in the highest short-term rating category by any Rating Agency, issued by corporations which are organized and operating within the United States of America, and which matures not more than 180 days following the date of investment therein;

(e) bankers acceptances, consisting of bills of exchange or time drafts drawn on and accepted by a commercial bank, including its parent (if any), affiliates and subsidiaries, whose short-term obligations are rated in the highest short-term rating category by any Rating Agency, or whose long-term obligations are rated A or better by any Rating Agency, which mature not more than 270 days following the date of investment therein;

(f) obligations the interest on which is excludable from gross income pursuant to Section 103 of the Tax Code and which are either (a) rated A or better by any Rating Agency, or (b) fully secured as to the payment of principal and interest by Federal Securities;

(g) obligations issued by any corporation organized and operating within the United States of America having assets in excess of Five Hundred Million (\$500,000,000), which obligations are rated A or better by any Rating Agency;

(h) money market funds (including money market funds for which the Fiscal Agent, its affiliates or subsidiaries provide investment advisory or other management services) which invest in Federal Securities or which are rated in the highest short-term rating category by any Rating Agency; and

(i) any investment agreement representing general unsecured obligations of a financial institution rated A or better by any Rating Agency, by the terms of which the Fiscal Agent is permitted to withdraw all amounts invested therein in the event any such rating falls below A.

(j) the Local Agency Investment Fund established pursuant to Section 16429.1 of the Government Code of the State of California, *provided, however*, that the Fiscal Agent shall be permitted to make investments and withdrawals in its own name and the Fiscal Agent may restrict investments in the such fund if necessary to keep moneys available for the purposes of this Fiscal Agent Agreement.

(i) the California Asset Management Program.

"Principal Office" means such corporate trust office of the Fiscal Agent as may be designated from time to time by written notice from the Fiscal Agent to the City, initially being at the address set forth in Section 9.06, or such other office designated by the Fiscal Agent from time to time; except that with respect to presentation of Bonds for payment or for registration of transfer and exchange such term shall mean the office or agency of the Fiscal Agent at which, at any particular time, its corporate trust agency business shall be conducted.

"Proceeds" when used with reference to a Series of Bonds, means the face amount of such Bonds, plus any accrued interest and premium, less any original issue and/or underwriter's discount.

"Project" means those items described as the "Facilities" in the Resolution of Formation.

"Rate and Method" means the rate and method of apportionment of special tax for the CFD.

"Record Date" means the fifteenth day of the calendar month next preceding the applicable Interest Payment Date, whether or not such day is a Business Day.

"Refunding Bonds" means Bonds issued by the City for the CFD, the net proceeds of which are used to refund all or a portion of the then-Outstanding Bonds; provided that the principal of and interest on the Refunding Bonds to maturity is less than the principal of and interest to maturity of the Bonds being refunded and the final maturity of the Refunding Bonds is not later than the final maturity of the Bonds being refunded.

"Reserve Fund" means the fund designated the "City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center), Special Tax Bonds, Reserve Fund" established and administered under Section 4.03.

"Reserve Requirement" means, as of the date of any calculation, an amount equal to the least of (i) Maximum Annual Debt Service on the Outstanding Bonds, (ii) 125% of average

Annual Debt Service on the Outstanding Bonds and (iii) 10% of the principal amount of the Outstanding Bonds.

“Resolution” or “Resolution of Issuance” means Resolution No. 247-14 adopted by the Board on ____, 20__, authorizing the issuance of the Bonds.

“Resolution of Formation” means Resolution No. 350-14, adopted by the Board on September 23, 2014 and signed by the Mayor on September 29, 2014, forming the CFD.

“Resolution of Intention” means Resolution No. _____, adopted by the Board on July 15, 2014 and signed by the Mayor on July 2, 2014, indicating the intention of the City to form the CFD.

“S&P” means Standard & Poor’s Ratings Service, a division of McGraw-Hill, and its successors and assigns.

“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 an Officer’s Certificate delivered to the Fiscal Agent.

“Series of Bonds” means the [Initial Year of Issuance] Bonds and any Parity Bonds or other Bonds issued pursuant to this Agreement.

“Special Tax Fund” means the special fund designated “City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center), Special Tax Fund” established and administered under Section 4.05.

“Special Tax Prepayments” means the proceeds of any Special Tax prepayments received by the City, as calculated pursuant to the Rate and Method, less any administrative fees or penalties collected as part of any such prepayment.

“Special Tax Prepayments Account” means the account by that name established within the Bond Fund by Section 4.05(A) hereof.

“Special Tax Revenues” means the proceeds of the Special Taxes received by the City, including any scheduled payments thereof and any Special Tax Prepayments, interest thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the Special Taxes to the amount of said lien and interest thereon, but shall not include any interest in excess of the interest due on the Bonds or any penalties collected in connection with any such foreclosure.

“Special Taxes” means the special taxes levied by the Board of Supervisors within the CFD under the Act, the Ordinance and this Agreement

“State” means the State of California.

“Supplemental Agreement” means an agreement the execution of which is authorized by a resolution which has been duly adopted by the City under the Act and which agreement is amendatory of or supplemental to this Agreement, but only if and to the extent that such agreement is specifically authorized hereunder.

"Tax Code" means the Internal Revenue Code of 1986 as in effect on the date of issuance of a Series of Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of such Bonds, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

"Tax Consultant" means an independent financial or tax consultant retained by the City for the purpose of computing the Special Taxes.

"Term Bonds" means the (i) [Initial Year of Issuance] Bonds maturing on September 1, _____, (ii) the [Initial Year of Issuance] Bonds maturing on September 1, _____ and (iii) the Escrow Term Bond.

"[Initial Year of Issuance] Bonds" means the Bonds so designated and authorized to be issued under Section 2.01 hereof.

ARTICLE II

THE BONDS

Section 2.01. Principal Amount; Designation; Redemption and Other Terms. The Bonds in the aggregate principal amount of One Billion Four Hundred Million Dollars (\$1,400,000,000) are hereby authorized to be issued by the City for the CFD under and subject to the terms of the Act, the Resolution, this Agreement and other applicable laws of the State of California. Redemption and other terms of the [Initial Year of Issuance] Bonds are set forth in Section 2.02 and 2.03 hereof. Certain redemption and other terms of any Parity Bonds or other Bonds issued pursuant to this Agreement shall be as set forth in the applicable Supplemental Agreement.

The [Initial Year of Issuance] Bonds shall be designated as the "City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center) Special Tax Bonds, Series _____," and shall be in the initial principal amount of \$_____.

Section 2.02. Terms of the [Initial Year of Issuance] Bonds.

(A) Form; Denominations. The [Initial Year of Issuance] Bonds shall be issued as fully registered Bonds without coupons. The [Initial Year of Issuance] Bonds shall be lettered and numbered in a customary manner as determined by the Fiscal Agent. The [Initial Year of Issuance] Bonds shall be issued in the denominations of \$5,000 or any integral multiple in excess thereof.

(B) Date of [Initial Year of Issuance] Bonds. The [Initial Year of Issuance] Bonds shall be dated the Closing Date for the [Initial Year of Issuance] Bonds.

(C) CUSIP Identification Numbers. "CUSIP" identification numbers may, at the election of the Original Purchaser of the [Initial Year of Issuance] Bonds, be imprinted on the [Initial Year of Issuance] Bonds, but such numbers shall not constitute a part of the contract evidenced by the [Initial Year of Issuance] Bonds and any error or omission with respect thereto shall not constitute cause for refusal of any purchaser to accept delivery of and pay for the [Initial Year of Issuance] Bonds. In addition, failure on the part of the City or the Fiscal Agent to use such CUSIP numbers in any notice to Owners shall not constitute an event of default or any violation of the City's contract with such Owners and shall not impair the effectiveness of any such notice.

(D) Maturities; Interest Rates. The [Initial Year of Issuance] Bonds shall mature and become payable on each September 1, and shall bear interest at the rates per annum indicated in the below table.

| <u>Maturity</u> <u>(September 1)</u> | <u>Principal</u> <u>Amount</u> | <u>Interest</u> <u>Rate</u> | <u>Maturity</u> <u>(September 1)</u> | <u>Principal</u> <u>Amount</u> | <u>Interest</u> <u>Rate</u> |
|---|-----------------------------------|--------------------------------|---|-----------------------------------|--------------------------------|
|---|-----------------------------------|--------------------------------|---|-----------------------------------|--------------------------------|

* [Initial Year of Issuance] Escrow Term Bond

(E) Interest. The [Initial Year of Issuance] Bonds shall bear interest at the rates set forth above payable on the Interest Payment Dates in each year. Interest on all [Initial Year of Issuance] Bonds shall be calculated on the basis of a 360-day year composed of twelve 30-day months. Each [Initial Year of Issuance] Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof unless (i) it is authenticated on an Interest Payment Date, in which event it shall bear interest from such date of authentication, or (ii) it is authenticated prior to an Interest Payment Date and after the close of business on the Record Date preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (iii) it is authenticated on or before the Record Date preceding the first Interest Payment Date, in which event it shall bear interest from the Dated Date for such [Initial Year of Issuance] Bond; provided, however, that if at the time of authentication of a [Initial Year of Issuance] Bond, interest is in default thereon, such [Initial Year of Issuance] Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

(F) Method of Payment. Interest on the [Initial Year of Issuance] Bonds (including the final interest payment upon maturity or earlier redemption), is payable on the applicable Interest Payment Date by check of the Fiscal Agent mailed by first class mail to the registered Owner thereof at such registered Owner's address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date, or by wire transfer made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of [Initial Year of Issuance] Bonds delivered to the Fiscal Agent prior to the applicable Record Date, which instructions shall continue in effect until revoked in writing, or until such [Initial Year of Issuance] Bonds are transferred to a new Owner. The principal of the [Initial Year of Issuance] Bonds and any premium on the [Initial Year of Issuance] Bonds are payable in lawful money of the United States of America upon surrender of the [Initial Year of Issuance] Bonds at the Principal Office of the Fiscal Agent. All [Initial Year of Issuance] Bonds paid by the Fiscal Agent pursuant this Section shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled [Initial Year of Issuance] Bonds and, upon request of the City, issue a certificate of destruction of such [Initial Year of Issuance] Bonds to the City.

Section 2.03. Redemption.

(A) Redemption Provisions.

(i) Optional Redemption. All of the [Initial Year of Issuance] Bonds are subject to redemption prior to their stated maturities, on any Interest Payment Date, in whole or in part, at a redemption price (expressed as a percentage of the principal amount of the [Initial Year of Issuance] Bonds to be redeemed) as set forth below, together with accrued interest thereon to the date fixed for redemption:

| <u>Redemption Date</u> | <u>Redemption Price</u> |
|--|-------------------------|
| On or before September 1, 20__ | ___% |
| On September 2, 20__ through September 1, 20__ | ___ |
| On September 2, 20__ and thereafter | ___ |

(ii) Mandatory Sinking Fund Redemption. The Term Bond maturing on September 1, ____ is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the

principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts all as set forth in the following table:

| <u>Sinking Fund Redemption Date (September 1)</u> | <u>Principal Amount Subject to Redemption</u> |
|---|---|
|---|---|

The Escrow Term Bond (maturing September 1, 20__) is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts all as set forth in the following table:

| <u>Sinking Fund Redemption Date (September 1)</u> | <u>Principal Amount Subject to Redemption</u> |
|---|---|
|---|---|

Provided, however, if some but not all of the Term Bonds of a given maturity have been redeemed under subsection (i) above or subsection (iii) below, the total amount of all future Sinking Fund Payments relating to such maturity shall be reduced by the aggregate principal amount of Term Bonds of such maturity so redeemed, to be allocated among such Sinking Fund Payments on a pro rata basis in integral multiples of \$5,000 as determined by the Fiscal Agent, notice of which determination (which shall consist of a revised sinking fund schedule) shall be given by the City to the Fiscal Agent.

(iii) **Redemption from Special Tax Prepayments.** Special Tax Prepayments and any corresponding transfers from the Reserve Fund pursuant to Section 4.03(F) shall be used to redeem [Initial Year of Issuance] Bonds on the next Interest Payment Date for which notice of redemption can timely be given under Section 2.03(D) and any other Series of Bonds on the next redemption date for which notice of redemption can be given, among maturities so as to maintain substantially the same debt service profile for the Bonds as in effect prior to such redemption and by lot within a maturity, and, with respect to any [Initial Year of Issuance] Bonds to be redeemed, at a redemption price (expressed as a percentage of the principal amount of the [Initial Year of Issuance] Bonds to be redeemed), as set forth below, together with accrued interest to the date fixed for redemption:

| <u>Redemption Date</u> | <u>Redemption Price</u> |
|--|-------------------------|
| On or before September 1, 20__ | ___% |
| On September 2, 20__ through September 1, 20__ | ___ |
| On September 2, 20__ and thereafter | ___ |

(iv) **Mandatory Redemption From Amounts Transferred From Escrow Fund and Reserve Fund.** The Escrow Term Bond is subject to redemption on September 1, 20__, in whole or in part, at a redemption price equal to the principal amount thereof to be redeemed, without premium, together with accrued interest thereon

to the date fixed for redemption from amounts transferred from (i) the Escrow Fund to the Bond Fund pursuant to Section 4.08(D) and (ii) from the Reserve Fund to the Bond Fund pursuant to the second paragraph of Section 4.03(C).

(B) Notice to Fiscal Agent. The City shall give the Fiscal Agent written notice of its intention to redeem [Initial Year of Issuance] Bonds under subsection (A)(i) and (A)(iii) not less than thirty (30) days prior to the applicable redemption date or such lesser number of days as shall be authorized by the Fiscal Agent.

(C) Purchase of Bonds in Lieu of Redemption. In lieu of redemption under Section 2.03(A), moneys in the Bond Fund or other funds provided by the City may be used and withdrawn by the Fiscal Agent for purchase of Outstanding [Initial Year of Issuance] Bonds, upon the filing with the Fiscal Agent of an Officer's Certificate requesting such purchase, at public or private sale as and when, and at such prices (including brokerage and other charges) as such Officer's Certificate may provide, but in no event may [Initial Year of Issuance] Bonds be purchased at a price in excess of the principal amount thereof, plus interest accrued to the date of purchase and any premium which would otherwise be due if such [Initial Year of Issuance] Bonds were to be redeemed in accordance with this Agreement. Any Bonds purchased pursuant to this Section 2.03(C) shall be treated as outstanding Bonds under this Fiscal Agent Agreement, except to the extent otherwise directed by the Finance Director.

(D) Redemption Procedure by Fiscal Agent.

(i) **Notices.** The Fiscal Agent shall cause notice of any redemption to be mailed by first class mail, postage prepaid, at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption, to the Securities Depositories, to the Municipal Securities Rulemaking Board, and to the respective registered Owners of any Bonds designated for redemption, at their addresses appearing on the Bond registration books in the Principal Office of the Fiscal Agent; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice, or any defect therein, shall not affect the validity of the proceedings for the redemption of such Bonds.

The City has the right to rescind any notice of the optional redemption of Bonds by written notice to the Fiscal Agent on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an event of default under this Agreement. The City and the Fiscal Agent have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Fiscal Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this Section.

(ii) **Contents of Notices.** Such notice shall state the redemption date and the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption shall state as to any Bond called in part the principal amount thereof to be redeemed, and shall require that such Bonds be then surrendered at the Principal Office of the Fiscal Agent for redemption at the said redemption price, and shall state that further interest on such Bonds will not accrue from and after the redemption date. The cost of mailing any such redemption notice and any expenses incurred by the Fiscal Agent in connection therewith shall be paid by the City.

(iii) **Redemption.** Whenever provision is made in this Agreement for the redemption of less than all of the Bonds of any maturity or any given portion thereof, the Fiscal Agent shall select the Bonds to be redeemed, from all Bonds or such given portion thereof not previously called for redemption, by lot in any manner which the Fiscal Agent in its sole discretion shall deem appropriate; provided, however, that if Bonds are to be redeemed as a result of Special Tax Prepayments, Bonds shall be selected for redemption on a pro-rata basis among maturities.

(iv) **New Bonds.** Upon surrender of Bonds redeemed in part only, the City shall execute and the Fiscal Agent shall authenticate and deliver to the registered Owner, at the expense of the City, a new Bond or Bonds, of the same series and maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds of such registered Owner.

(E) **Effect of Redemption.** From and after the date fixed for redemption, if funds available for the payment of the principal of, and interest and any premium on, the Bonds so called for redemption shall have been deposited in the Bond Fund, such Bonds so called shall cease to be entitled to any benefit under this Agreement other than the right to receive payment of the redemption price, and no interest shall accrue thereon on or after the redemption date specified in the notice of redemption. All Bonds redeemed and purchased by the Fiscal Agent under this Section 2.03 shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds in accordance with the Fiscal Agent's retention policy then in effect.

Section 2.04. Form of Bonds. The [Initial Year of Issuance] Bonds, the Fiscal Agent's certificate of authentication and the assignment, to appear thereon, shall be substantially in the forms, respectively, set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Agreement, the Resolution and the Act.

Section 2.05. Execution and Authentication of Bonds.

(A) **Execution.** The Bonds shall be executed on behalf of the City by the manual or facsimile signatures of its Mayor and the Clerk of the Board of Supervisors who are in office on the date of execution of this Agreement or at any time thereafter, and the seal of the City shall be impressed, imprinted or reproduced by facsimile thereon. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the Owner, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the Owner. Any Bond may be signed and attested on behalf of the City by such persons as at the actual date of the execution of such Bond shall be the proper officers of the City although at the nominal date of such Bond any such person shall not have been such officer of the City.

(B) **Authentication.** Only such Bonds as shall bear thereon a certificate of authentication in substantially the form set forth in Exhibit A, executed and dated by the Fiscal Agent, shall be valid or obligatory for any purpose or entitled to the benefits of this Agreement, and such certificate of authentication of the Fiscal Agent shall be conclusive evidence that the Bonds registered hereunder have been duly authenticated, registered and delivered hereunder and are entitled to the benefits of this Agreement.

Section 2.06. Transfer or Exchange of Bonds. Any Bond may, in accordance with its terms, be transferred, upon the books required to be kept under the provisions of Section 2.07 by the person in whose name it is registered, in person or by such person's duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a duly written instrument of transfer in a form acceptable to the Fiscal Agent. Bonds may be exchanged at the Principal Office of the Fiscal Agent solely for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such transfer or exchange shall be paid by the City. The Fiscal Agent shall collect from the Owner requesting such transfer or exchange any tax or other governmental charge required to be paid with respect to such transfer or exchange. Whenever any Bond or Bonds shall be surrendered for transfer or exchange, the City shall execute and the Fiscal Agent shall authenticate and deliver a new Bond or Bonds, for a like aggregate principal amount. No transfers or exchanges of Bonds shall be required to be made (i) fifteen days prior to the date established by the Fiscal Agent for selection of Bonds for redemption or (ii) with respect to a Bond after such Bond has been selected for redemption; or (iii) between a Record Date and the succeeding Interest Payment Date.

Section 2.07. Bond Register. The Fiscal Agent will keep, or cause to be kept, at its Principal Office sufficient books for the registration and transfer of the Bonds which books shall show the series number, date, amount, rate of interest and last known owner of each Bond and shall at all times be open to inspection by the City during regular business hours upon reasonable notice; and, upon presentation for such purpose, the Fiscal Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the ownership of the Bonds as hereinbefore provided. The City and the Fiscal Agent will treat the Owner of any Bond whose name appears on the Bond register as the absolute Owner of such Bond for any and all purposes, and the City and the Fiscal Agent shall not be affected by any notice to the contrary. The City and the Fiscal Agent may rely on the address of the Owner as it appears in the Bond register for any and all purposes.

Section 2.08. Temporary Bonds. The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such authorized denominations as may be determined by the City, and may contain such reference to any of the provisions of this Agreement as may be appropriate. Every temporary Bond shall be executed by the City upon the same conditions and in substantially the same manner as the definitive Bonds. If the City issues temporary Bonds, it will execute and furnish definitive Bonds without delay and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange for the definitive Bonds at the Principal Office of the Fiscal Agent or at such other location as the Fiscal Agent shall designate, and the Fiscal Agent shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Agreement as definitive Bonds authenticated and delivered hereunder.

Section 2.09. Bonds Mutilated, Lost, Destroyed or Stolen.

(A) Mutilated. If any Bond shall become mutilated, at the expense of the Owner of such Bond, the City shall execute and the Fiscal Agent shall authenticate and deliver a replacement Bond of like tenor and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Fiscal Agent of the Bond so mutilated. Every

mutilated Bond so surrendered to the Fiscal Agent shall be canceled by it and destroyed by the Fiscal Agent, in accordance with the Fiscal Agent's retention policy then in effect.

(B) Destroyed or Stolen. If any Bond shall be lost, destroyed or stolen, the City shall execute and the Fiscal Agent shall authenticate and deliver a replacement Bond of like tenor and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen, at the expense of the Owner, but only following provision by the Owner to the Fiscal Agent of indemnity for the City and the Fiscal Agent satisfactory to the Fiscal Agent. The City may require payment of a sum not exceeding the actual cost of preparing each a replacement Bond delivered under this Section and the City and the Fiscal Agent may require payment of the expenses which may be incurred by the City and the Fiscal Agent for the preparation, execution, authentication and delivery thereof. Any Bond delivered under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the City whether or not the Bond so alleged to be lost, destroyed or stolen is at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Agreement with all other Bonds issued under this Agreement.

(C) Additional Stock. If the Fiscal Agent has an insufficient stock of unauthenticated printed Bonds for such purpose, it shall communicate with the Finance Director with respect to the printing of an additional stock of Bonds, in such quantities and as otherwise approved in writing by the Finance Director.

Section 2.10. Book-Entry Only System. DTC shall act as the initial Depository for the Bonds. One Bond for each maturity of the Bonds shall be initially executed, authenticated, and delivered as set forth herein with a separate fully registered certificate (in print or typewritten form). Upon initial execution, authentication, and delivery, the ownership of the Bonds shall be registered in the Bond register kept by the Fiscal Agent for the Bonds in the name of Cede & Co., as nominee of DTC or such nominee as DTC shall appoint in writing.

The Authorized Officers of the City and the Fiscal Agent are hereby authorized to take any and all actions as may be necessary and not inconsistent with this Agreement to qualify the Bonds for the Depository's book-entry system, including the execution of the Depository's required representation letter.

With respect to Bonds registered in the Bond register in the name of Cede & Co., as nominee of DTC, neither the City nor the Agent shall have any responsibility or obligation to any broker-dealer, bank, or other financial institution for which DTC holds Bonds as Depository from time to time (the "DTC Participants") or to any person for which a DTC Participant acquires an interest in the Bonds (the "Beneficial Owners"). Without limiting the immediately preceding sentence, neither the City nor the Fiscal Agent shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant, any Beneficial Owner, or any other person, other than DTC, of any notice with respect to the Bonds, including any Bonds to be redeemed in the event the City elects to redeem the Bonds, in part, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed in the event the City elects to redeem the Bonds in part, (iv) the payments to any DTC Participant, any Beneficial Owner, or any person, other than DTC, of any amount with respect to the principal of or interest or premium on the Bonds, or (v) any consent given or other action taken by the Depository as Owner of the Bonds.

Except as set forth above, the City and the Fiscal Agent may treat as and deem DTC to be the absolute Owner of each Bond, for which DTC is acting as Depository for the purpose of payment of the principal of and premium and interest on such Bonds, for the purpose of giving notices of redemption and other matters with respect to such Bonds, for the purpose of registering transfers with respect to such Bonds, and for all purposes whatsoever. The Fiscal Agent on behalf of the City shall pay all principal of and premium and interest on the Bonds only to or upon the order of the Owners as shown on the Bond register, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to the principal of and premium and interest on the Bonds to the extent of the sums or sums so paid.

No person other than an Owner, as shown on the Bond register, shall receive a physical Bond. Upon delivery by DTC to the City and the Fiscal Agent of written notice to the effect the DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the transfer provisions in Section 2.06 hereof, references to "Cede & Co." in this Section 2.10 shall refer to such new nominee of DTC.

DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the City and to the Fiscal Agent during any time that the Bonds are Outstanding, and discharging its responsibilities with respect thereto under applicable law. The City may terminate the services of DTC with respect to the Bonds if it determines that DTC is unable to discharge its responsibilities with respect to the Bonds or that continuation of the system of book-entry transfer through DTC is not in the best interest of the Beneficial Owners, and the City shall mail notice of such termination to the Fiscal Agent.

Upon termination of the services of DTC as provided in the previous paragraph, and if no substitute Depository willing to undertake the functions hereunder can be found which is willing and able to undertake such functions upon reasonable or customary terms, or if the City determines that it is in the best interest of the Beneficial Owners of the Bonds that they be able to obtain certified Bonds, the Bonds shall no longer be restricted to being registered in the Bond register of the Fiscal Agent in the name of Cede & Co., as nominee of DTC, but may be registered in whatever name or names the Owners shall designate at that time, in accordance with Section 2.06.

To the extent that the Beneficial Owners are designated as the transferee by the Owners, in accordance with Section 2.06, the Bonds will be delivered to such Beneficial Owners.

ARTICLE III

ISSUANCE OF BONDS

Section 3.01. Issuance and Delivery of [Initial Year of Issuance] Bonds. At any time after the execution of this Agreement, the City may issue the [Initial Year of Issuance] Bonds for the CFD in the aggregate principal amount set forth in Section 2.01 and deliver the [Initial Year of Issuance] Bonds to the Fiscal Agent for authentication and delivery to the Original Purchaser. The Authorized Officers of the City are hereby authorized and directed to execute and deliver any and all documents and instruments necessary to cause the issuance of the [Initial Year of Issuance] Bonds in accordance with the provisions of the Act, the Resolution and this Agreement, to authorize the payment of Costs of Issuance and costs of the Project by the Fiscal Agent from the proceeds of the [Initial Year of Issuance] Bonds and to do and cause to be done any and all acts and things necessary or convenient for the timely delivery of the [Initial Year of Issuance] Bonds to the Original Purchaser. The Fiscal Agent is hereby authorized and directed to authenticate the [Initial Year of Issuance] Bonds and deliver them to the Original Purchaser, upon receipt of the purchase price for the [Initial Year of Issuance] Bonds.

Section 3.02. Pledge of Special Tax Revenues. The Bonds shall be secured by a first pledge (which pledge shall be effected in the manner and to the extent herein provided) of all of the Special Tax Revenues and all moneys deposited in the Bond Fund (including the Capitalized Interest Account and the Special Tax Prepayments Account) and the Reserve Fund, and, until disbursed as provided herein, in the Special Tax Fund. The Special Tax Revenues and all moneys deposited into such funds (except as otherwise provided herein) are hereby dedicated to the payment of the principal of, and interest and any premium on, the Bonds as provided herein and in the Act until all of the Bonds have been paid and retired or until moneys or Federal Securities have been set aside irrevocably for that purpose under Section 9.03.

Amounts in the Improvement Fund, the Administrative Expense Fund and the Costs of Issuance Fund are not pledged to the repayment of the Bonds. The Project is not pledged to the repayment of the Bonds, nor are the proceeds of any condemnation or insurance award received by the City with respect to the Project.

Section 3.03. Limited Obligation: All obligations of the City under this Agreement and the Bonds shall not be general obligations of the City, but shall be limited obligations, payable solely from the Special Tax Revenues and the funds pledged therefore hereunder. Neither the faith and credit nor the taxing power of the City (except to the limited extent set forth herein) or of the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

Section 3.04. No Acceleration. The principal of the Bonds shall not be subject to acceleration hereunder. Nothing in this Section shall in any way prohibit the redemption of Bonds under Section 2.03, or the defeasance of the Bonds and discharge of this Agreement under Section 9.03.

Section 3.05. Validity of Bonds. The validity of the authorization and issuance of the Bonds shall not be dependent upon the completion of the acquisition of the Project or upon the performance by any person of his obligation with respect to the Project.

Section 3.06. Parity Bonds. In addition to the [Initial Year of Issuance] Bonds, the City may issue Parity Bonds in such principal amount as shall be determined by the City, under a Supplemental Agreement entered into by the City and the Fiscal Agent. Any such Parity Bonds shall constitute Bonds hereunder and shall be secured by a lien on the Special Tax Revenues and funds pledged for the payment of the Bonds hereunder on a parity with all other Bonds Outstanding hereunder. The City may issue such Parity Bonds subject to the following specific conditions precedent:

(A) **Compliance.** The City shall be in compliance with all covenants set forth in this Agreement and all Supplemental Agreements, and issuance of the Parity Bonds shall not cause the City to exceed the bonded indebtedness limit of the CFD.

(B) **Same Payment Dates.** The Supplemental Agreement providing for the issuance of such Parity Bonds shall provide that interest thereon shall be payable on the Interest Payment Dates, and principal thereof shall be payable on the same date in any year in which principal is payable on the [Initial Year of Issuance] Bonds (provided that there shall be no requirement that any Parity Bonds pay interest on a current basis).

(C) **Separate Funds; Reserve Fund Deposit.** The Supplemental Agreement providing for the issuance of such Parity Bonds may provide for the establishment of separate funds and accounts, and shall provide for a deposit to the Reserve Fund (or in an account within the Reserve Fund) in an amount necessary so that the amount on deposit therein, following the issuance of such Parity Bonds, is equal to the Reserve Requirement.

(D) **Value.** The CFD Value shall be at least three (3) times the sum of: (i) the aggregate principal amount of all Bonds then Outstanding, plus (ii) the aggregate principal amount of the series of Parity Bonds proposed to be issued, plus (iii) the aggregate principal amount of any fixed assessment liens on the parcels in the CFD subject to the levy of Special Taxes, plus (iv) a portion of the aggregate principal amount of any and all other community facilities district bonds then outstanding and payable at least partially from special taxes to be levied on parcels of land within the CFD (the "Other District Bonds") equal to the aggregate principal amount of the Other District Bonds multiplied by a fraction, the numerator of which is the amount of special taxes levied for the Other District Bonds on parcels of land within the CFD, and the denominator of which is the total amount of special taxes levied for the Other District Bonds on all parcels of land against which the special taxes are levied to pay the Other District Bonds (such fraction to be determined based upon the maximum special taxes which could be levied in the year in which maximum annual debt service on the Other District Bonds occurs), based upon information from the most recent available Fiscal Year.

(E) **Coverage.** The amount of the Special Taxes levied under the Ordinance, the Agreement and any Supplemental Agreement shall be at least (i) 110% of the total Annual Debt Service of the then Outstanding Bonds and the proposed Parity Bonds and (ii) 100% of the total Annual Debt Service of the then Outstanding Bonds and the proposed Parity Bonds and the amount of the levy for Administrative Expenses in the current fiscal year, and the aggregate Special Tax Prepayments that could occur after the issuance of the Parity Bonds shall be not less than the principal amount of the Outstanding Bonds and the proposed Parity Bonds.

(F) Certificates. The City shall deliver to the Fiscal Agent an Officer's Certificate certifying that the conditions precedent to the issuance of such Parity Bonds set forth in subsections (A), (B), (C), (D), and (E) of this Section 3.06 have been satisfied.

Notwithstanding the foregoing, the City may issue Refunding Bonds as Parity Bonds without the need to satisfy the requirements of clauses (D) or (E) above, and, in connection therewith, the Officer's Certificate in clause (F) above need not make reference to said clauses (D) and (E).

Nothing in this Section 3.06 shall prohibit the City from issuing any other bonds or otherwise incurring debt secured by a pledge of the Special Tax Revenues subordinate to the pledge thereof under Section 3.02 of this Agreement.

ARTICLE IV

PROCEEDS, FUNDS AND ACCOUNTS

Section 4.01. Application of [Initial Year of Issuance] Bond Proceeds. The Proceeds of the [Initial Year of Issuance] Bonds received from the Original Purchaser in the amount of \$_____ shall be paid to the Fiscal Agent, which shall deposit the Proceeds on the Closing Date for the [Initial Year of Issuance] Bonds, as follows:

- (i) \$_____ into the Costs of Issuance Fund;
- (ii) \$_____ into the Reserve Fund equaling the initial Reserve Requirement;
- (iii) \$_____ into the Bond Fund (which shall represent capitalized interest and be deposited into the Capitalized Interest Account);
- (iv) \$_____ into the Improvement Fund and \$____ into the Allocated Bond Proceeds Account;
- (v) \$_____ into the Administrative Expense Fund; and
- (vi) \$_____ into the Escrow Fund.

The Fiscal Agent may, in its discretion, establish a temporary fund or account to facilitate the foregoing deposits.

Section 4.02. Costs of Issuance Fund.

(A) Establishment of Costs of Issuance Fund. The Costs of Issuance Fund is hereby established as a separate fund to be held by the Fiscal Agent, to the credit of which a deposit shall be made as required by Section 4.01. Moneys in the Costs of Issuance Fund shall be held by the Fiscal Agent for the benefit of the City and shall be disbursed as provided in subsection (B) of this Section for the payment or reimbursement of Costs of Issuance.

(B) Disbursement. Amounts in the Costs of Issuance Fund shall be disbursed from time to time to pay Costs of Issuance, as set forth in a requisition substantially in the form of Exhibit C hereto, executed by the Finance Director, containing respective amounts to be paid to the designated payees and delivered to the Fiscal Agent. Each such requisition shall be sufficient evidence to the Fiscal Agent of the facts stated therein and the Fiscal Agent shall have no duty to confirm the accuracy of such facts.

(C) Investment. Moneys in the Costs of Issuance Fund shall be invested and deposited by the Fiscal Agent under Section 6.01. Interest earnings and profits resulting from such investment shall be retained by the Fiscal Agent in the Costs of Issuance Fund to be used for the purposes of such fund.

(D) Closing of Fund. The Fiscal Agent shall maintain proceeds of Bonds in the Costs of Issuance Fund for a period of 90 days from the related Closing Date and then the Fiscal Agent shall transfer any moneys remaining therein, including any investment earnings thereon, to the City for deposit in the Improvement Fund and used for the purposes thereof.

The Fiscal Agent shall close the Costs of Issuance Fund upon the written direction of the City.

Section 4.03. Reserve Fund.

(A) Establishment of Fund. The Reserve Fund is hereby established as a separate fund to be held by the Fiscal Agent to the credit of which a deposit shall be made as required by Section 4.01, which deposit, as of the Closing Date for the [Initial Year of Issuance] Bonds, is equal to (or in excess of) the initial Reserve Requirement with respect to the [Initial Year of Issuance] Bonds, and deposits shall be made as provided in Sections 3.06(C) and 4.05(B). Moneys in the Reserve Fund, shall be held in trust by the Fiscal Agent for the benefit of the Owners of the Bonds as a reserve for the payment of the principal of, and interest and any premium on, the Bonds and shall be subject to a lien in favor of the Owners of the Bonds.

(B) Use of Reserve Fund. Except as otherwise provided in this Section, all amounts deposited in the Reserve Fund shall be used and withdrawn by the Fiscal Agent solely for the purpose of making transfers to the Bond Fund in the event of any deficiency at any time in the Bond Fund of the amount then required for payment of the principal of, and interest and any premium on, the Bonds or, in accordance with the provisions of this Section, for the purpose of redeeming Bonds from the Bond Fund.

In addition, on or before the redemption date specified in Section 2.03(A)(iv), the Fiscal Agent shall transfer moneys from the Reserve Fund to the Bond Fund to the extent that the proposed redemption of the Escrow Term Bond will cause the amount in the Reserve Fund to exceed the Reserve Requirement in the amount specified by the City to the Fiscal Agent.

(C) Transfer of Excess of Reserve Requirement. Whenever, on or before any Interest Payment Date, or on any other date at the request of the Finance Director, the amount in the Reserve Fund exceeds the Reserve Requirement, the Fiscal Agent shall provide written notice to the Finance Director of the amount of the excess and shall transfer an amount equal to the excess from the Reserve Fund to the Bond Fund, to be used to pay interest on the Bonds on the next Interest Payment Date. Whenever a transfer is made from the Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund, the Fiscal Agent shall provide written notice thereof to the Finance Director, specifying the amount withdrawn.

(D) Transfer for Rebate Purposes. Amounts in the Reserve Fund shall be withdrawn for purposes of making payment to the federal government to comply with Section 5.11, upon receipt by the Fiscal Agent of an Officer's Certificate specifying the amount to be withdrawn and to the effect that such

amount is needed for rebate purposes; *provided, however*, that no amounts in the Reserve Fund shall be used for rebate unless the amount in the Reserve Fund following such withdrawal equals the Reserve Requirement.

(E) Transfer When Balance Exceeds Outstanding Bonds.

Whenever the balance in the Reserve Fund exceeds the amount required to redeem or pay the Outstanding Bonds, including interest accrued to the date of payment or redemption and premium, if any, due upon redemption, the Fiscal Agent shall, upon the written request of the Finance Director, transfer any cash or Permitted Investments in the Reserve Fund to the Bond Fund to be applied, on the redemption date to the payment and redemption, in accordance with Section 4.04 or 2.03, as applicable, of all of the Outstanding Bonds. In the event that the amount so transferred from the Reserve Fund to the Bond Fund exceeds the amount required to pay and redeem the Outstanding Bonds, the balance in the Reserve Fund shall be transferred to the Finance Director to be used by the City for any lawful purpose.

Notwithstanding the provisions of the first paragraph of this Section 4.03(E), no amounts shall be transferred from the Reserve Fund under this Section 4.03(E) until after: (i) the calculation of any amounts due to the federal government under Section 5.11 or any similar provision in a Supplemental Agreement for any Series of Bonds and withdrawal of any such amount under Section 4.03(D) for purposes of making such payment to the federal government; and (ii) payment of any fees and expenses due to the Fiscal Agent.

(F) Transfer Upon Special Tax Prepayment.

Whenever Special Taxes are prepaid and Bonds are to be redeemed with the proceeds of such prepayment pursuant to Section 2.03(A)(iii), a proportionate amount in the Reserve Fund (determined on the basis of the principal of Bonds to be redeemed and the original principal of the Bonds, but in any event not in excess of the amount that will leave the balance in the Reserve Fund following the proposed redemption equal to the Reserve Requirement) shall be transferred on the Business Day prior to the redemption date by the Fiscal Agent to the Bond Fund to be applied to the redemption of the Bonds pursuant to Section 2.03(A)(iii). The Finance Director shall deliver to the Fiscal Agent an Officer's Certificate specifying any amount to be so transferred, and the Fiscal Agent may rely on any such Officer's Certificate.

(G) Investment. Moneys in the Reserve Fund shall be invested under Section 6.01.

Section 4.04. Bond Fund.

(A) Establishment of Bond Fund. The Bond Fund is hereby established as a separate fund to be held by the Fiscal Agent to the credit of which deposits shall be made as required by Section 4.01, Section 4.08 and Section 4.03 and as otherwise set forth in this Agreement. Moneys in the Bond Fund shall be held by the Fiscal Agent for the benefit of the City and the Owners of the Bonds, and shall be disbursed for the payment of the principal of, and interest and any premium on, the Bonds as provided below.

Within the Bond Fund there is hereby established a separate account designated as the "Capitalized Interest Account" to be held in trust by the Fiscal Agent for the benefit of the City and the Owners of the Bonds into which shall be deposited the amount specified in Section 4.01(iii). Amounts on deposit in the Capitalized Interest Account shall be used and withdrawn by the Fiscal Agent solely for the payment of interest on the Bonds. When the amount in the Capitalized Interest Account is fully expended for the payment of interest, the account shall be closed.

There is also hereby created in the Bond Fund a separate account to be held by the Fiscal Agent, designated the Special Tax Prepayments Account, to the credit of which deposits shall be made as provided in clause (iii) of the second paragraph of Section 4.05(A).

(B) Disbursements. At least ten (10) Business Days before each Interest Payment Date, the Fiscal Agent shall notify the Finance Director in writing as to the principal and premium, if any, and interest due on the Bonds on the next Interest Payment Date (whether as a result of scheduled principal of and interest on the Bonds, optional redemption of the Bonds or a mandatory sinking fund redemption). On each Interest Payment Date, the Fiscal Agent shall withdraw from the Bond Fund and pay to the Owners of the Bonds the principal of, and interest and any premium, due and payable on such Interest Payment Date on the Bonds.

At least five (5) Business Days prior to each Interest Payment Date, the Fiscal Agent shall determine if the amounts then on deposit in the Bond Fund are sufficient to pay the debt service due on the Bonds on the next Interest Payment Date. In the event that amounts in the Bond Fund are insufficient for such purpose, the Fiscal Agent promptly shall notify the Finance Director by telephone (and confirm in writing) of the amount of the insufficiency.

In the event that amounts in the Bond Fund are insufficient for the purpose set forth in the preceding paragraph with respect to any Interest Payment Date, the Fiscal Agent shall withdraw from the Reserve Fund, in accordance with the provisions of Section 4.03, to the extent of any funds or Permitted Investments therein, amounts to cover the amount of such Bond Fund insufficiency. Amounts so withdrawn from the Reserve Fund shall be deposited in the Bond Fund.

If, after the foregoing transfers, there are insufficient funds in the Bond Fund to make the payments provided for in the second sentence of the first paragraph of this Section 4.04(B), the Fiscal Agent shall apply the available funds first to the payment of interest on the Bonds, then to the payment of principal due on the Bonds other than by reason of sinking payments, if any, and then to payment of principal due on the bonds by reason of sinking payments.

(C) Disbursements from the Special Tax Prepayments Account. Moneys in the Special Tax Prepayments Account shall be transferred by the Fiscal Agent to the Bond Fund on the next date for which notice of redemption of Bonds can timely be given under Section 2.03(A)(iii) and shall be used (together

with any amounts transferred pursuant to Section 4.03(F)) to redeem Bonds on the redemption date selected in accordance with Section 2.03.

(D) Investment. Moneys in the Bond Fund, the Capitalized Interest Account and the Special Tax Prepayments Account shall be invested under Section 6.01. Interest earnings and profits resulting from such investment shall be retained in the Bond Fund.

(E) Deficiency. If at any time it appears to the Fiscal Agent that there is a danger of deficiency in the Bond Fund and that the Fiscal Agent may be unable to pay Debt Service on the Bonds in a timely manner, the Fiscal Agent shall report to the Finance Director such fact. The City covenants to increase the levy of the Special Taxes in the next Fiscal Year (subject to the maximum amount authorized by the Resolution of Formation) in accordance with the procedures set forth in the Act for the purpose of curing Bond Fund deficiencies.

(F) Excess. Any excess moneys remaining in the Bond Fund (excluding any moneys in the Capitalized Interest Account), following the payment of Debt Service on the Bonds on any September 1, shall be transferred to the Special Tax Fund.

Section 4.05. Special Tax Fund.

(A) Establishment of Special Tax Fund. The Special Tax Fund is hereby established as a separate fund to be held by the Fiscal Agent, to the credit of which the Fiscal Agent shall deposit amounts received from or on behalf of the City consisting of Special Tax Revenues and amounts transferred from the Administrative Expense Fund and the Bond Fund. The City shall promptly remit any Special Tax Revenues received by it to the Fiscal Agent for deposit by the Fiscal Agent to the Special Tax Fund.

Notwithstanding the foregoing,

(i) Special Tax Revenues in an amount not to exceed the amount included in the Special Tax levy for such Fiscal Year for Administrative Expenses shall be separately identified by the Finance Director and shall be deposited by the Finance Director in the Administrative Expense Fund;

(ii) any Special Tax Revenues constituting the collection of delinquencies in payment of Special Taxes shall be separately identified by the Finance Director and shall be disposed of by the Fiscal Agent first, for transfer to the Bond Fund to pay any past due debt service on the Bonds; second, for transfer to the Reserve Fund to the extent needed to increase the amount then on deposit in the Reserve Fund up to the then Reserve Requirement; and third, to be held in the Special Tax Fund for use as described in Section 4.05(B) below; and

(iii) any proceeds of Special Tax Prepayments shall be separately identified by the Finance Director and shall be deposited by the Fiscal Agent as follows (as directed in writing by the Finance Director): (a) that portion of any Special Tax Prepayment constituting a prepayment of construction costs (which

otherwise could have been included in the proceeds of Parity Bonds) shall be deposited by the Fiscal Agent to the Improvement Fund and (b) the remaining Special Tax Prepayment shall be deposited by the Fiscal Agent in the Special Tax Prepayments Account established pursuant to Section 4.04(A).

(B) Disbursements. On the third Business Day prior to each Interest Payment Date, the Fiscal Agent shall withdraw from the Special Tax Fund and transfer the following amounts in the following order of priority (i) to the Bond Fund an amount, taking into account any amounts then on deposit in the Bond Fund and any expected transfers from the Improvement Fund, the Reserve Fund, the Capitalized Interest Account and the Special Tax Prepayments Account to the Bond Fund such that the amount in the Bond Fund equals the principal (including any sinking payment), premium, if any, and interest due on the Bonds on such Interest Payment Date and any past due principal or interest on the Bonds not theretofore paid from a transfer described in clause second of subparagraph (ii) of the second paragraph of Section 4.05(A), and (ii) to the Reserve Fund an amount, taking into account amounts then on deposit in the Reserve Fund, such that the amount in the Reserve Fund is equal to the Reserve Requirement.

(C) Investment. Moneys in the Special Tax Fund shall be invested and deposited by the Fiscal Agent under Section 6.01. Interest earnings and profits resulting from such investment and deposit shall be retained in the Special Tax Fund to be used for the purposes thereof.

Section 4.06. Administrative Expense Fund.

(A) Establishment of Administrative Expense Fund. The Administrative Expense Fund is hereby established as a separate fund to be held by the Fiscal Agent, to the credit of which deposits shall be made as required by Section 4.05(B). Moneys in the Administrative Expense Fund shall be held by the Fiscal Agent for the benefit of the City, and shall be disbursed as provided below.

(B) Disbursement. Amounts in the Administrative Expense Fund shall be withdrawn by the Fiscal Agent and paid to the City or its order upon receipt by the Fiscal Agent of an Officer's Certificate, in substantially the form of Exhibit D hereto, stating the amount to be withdrawn, that such amount is to be used to pay an Administrative Expense or a Cost of Issuance and the nature of such Administrative Expense or such Cost of Issuance. Amounts deposited to the Administrative Expense Fund pursuant to Section 4.01(v) shall be separately identified at all times, and shall be expended for purposes of the Administrative Expense Fund prior to the use of amounts transferred to the Administrative Expense Fund from the Special Tax Fund pursuant to Section 4.04(A).

Annually, on the last day of each Fiscal Year, the Fiscal Agent shall withdraw from the Administrative Expense Fund and transfer to the Special Tax Fund any amount in excess of that which is needed to pay any Administrative Expenses incurred but not yet paid, and which are not otherwise encumbered, as identified by the Finance Director in an Officer's Certificate.

(C) Investment. Moneys in the Administrative Expense Fund shall be invested by the Fiscal Agent under Section 6.01. Interest earnings and profits resulting from such investment shall be retained by the Fiscal Agent in the Administrative Expense Fund to be used for the purposes of such fund.

Section 4.07. Improvement Fund.

(A) Establishment of Improvement Fund. The Improvement Fund is hereby established as a separate fund, and within the Improvement Fund there is hereby established an Allocated Bond Proceeds Account, to be held by the Fiscal Agent and to the credit of which fund deposits shall be made as required by Sections 4.01, 4.02(D), 4.05(A), and 4.08.

Moneys in the Improvement Fund shall be disbursed, except as otherwise provided in subsection (D) of this Section, for the payment or reimbursement of costs of the Project.

(B) Procedure for Disbursement. Disbursements from the Improvement Fund and the Allocated Bond Proceeds Account shall be made by the Fiscal Agent upon receipt of an Officer's Certificate substantially in the form of Exhibit B attached hereto which shall:

(i) set forth the amount required to be disbursed, the purpose for which the disbursement is to be made (which shall be for payment of a Project cost or to reimburse expenditures of the City or any other party for Project costs previously paid), and the person to which the disbursement is to be paid; and

(ii) certify that no portion of the amount then being requested to be disbursed was set forth in any Officers Certificate previously filed requesting disbursement.

In addition, all disbursements from the Allocated Bond Proceeds Account shall be in compliance with the JCFA.

Each such requisition shall be sufficient evidence to the Fiscal Agent of the facts stated therein and the Fiscal Agent shall have no duty to confirm the accuracy of such facts.

(C) Investment. Moneys in the Improvement Fund and the Allocated Bond Proceeds Account shall be invested in accordance with Section 6.01. Interest earnings and profits from such investment shall be retained in the Improvement Fund to be used for the purpose of such fund.

(D) Closing of Fund. Upon the filing of an Officer's Certificate stating that the Project has been completed and that all costs of the Project have been paid or are not required to be paid from the Improvement Fund (including the Allocated Bond Proceeds Account), the Fiscal Agent shall transfer the amount, if any, remaining in the Improvement Fund (including the Allocated Bond Proceeds Account) to the Bond Fund for application to Debt Service payments due on the

next succeeding Interest Payment Date and the Improvement Fund shall be closed.

Section 4.08. Escrow Fund.

(A) **Establishment of Escrow Fund.** There is hereby established a separate fund to be held by the Fiscal Agent, to be known as the City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center), Special Tax Bonds, Series _____ Escrow Fund, to the credit of which a deposit shall be made as required by Section 4.01 hereof. Moneys in the Escrow Fund shall be held in trust by the Fiscal Agent, and, pending, disbursement as hereinafter provided, shall be subject to a lien in favor of the Owners, and shall be administered as hereinafter provided.

(B) **Disbursements.** The Fiscal Agent shall make one disbursement from the Escrow Fund for deposit into the Improvement Fund of all or a portion of the monies on deposit in the Escrow Fund upon receipt of an Officer's Certificate stating that the fair market value, as of the date of the appraisal described below, of all parcels of real property in the CFD subject to the levy of the Special Taxes (as determined by reference to an appraisal performed within 90 days of the date of the proposed disbursement by an MAI appraiser (the "Appraiser") selected by the City and using the methodology prescribed in written policies of the City adopted pursuant to Section 53312.7(a)(5) and 53345.8 of the Act), is at least three times the sum of (1) the outstanding principal amount of the Bonds following transfer to the Improvement Fund of the amount to be released from the Escrow Fund (the "Released Amount") and any redemption of the Escrow Term Bond with amounts in the Escrow Fund to be transferred to the Bond Fund, all as described in the final sentence of this Section 4.08(B) and (2) the outstanding principal amount of all other bonds that are secured by a special tax or special assessment levied on property within the CFD (the "Release Test"). Upon receipt of such Officer's Certificate, the Fiscal Agent shall (1) deposit the Released Amount into the Improvement Fund and (2) transfer the remaining amount (if any) to the Bond Fund for redemption of the Escrow Term Bond as set forth in Section 2.03(A)(iv).

(C) **Investment.** Moneys in the Escrow Fund shall be invested and deposited in accordance with Section 6.01. Interest earnings and profits from such investment shall be deposited into the Bond Fund and used for the purposes thereof.

(D) **Disbursements for Bond Redemption; Closing of Fund.** If the Release Test has not been met for all amounts in the Escrow Fund by August 1, 2009, the Fiscal Agent shall make no further disbursements from the Escrow Fund pursuant to Section 4.08(B), and shall transfer all amounts on deposit in the Escrow Fund to the Bond Fund, to be applied to the redemption of the Escrow Term Bond, as provided in Section 2.03(A)(iv), and the Escrow Fund shall be closed.

ARTICLE V
COVENANTS

Section 5.01. Collection of Special Tax Revenues. The City shall comply with all requirements of the Act so as to assure the timely collection of Special Tax Revenues, including without limitation, the enforcement of delinquent Special Taxes.

(A) Processing. On or within five (5) Business Days of each June 1, the Fiscal Agent shall provide the Finance Director with a notice stating the amount then on deposit in the Bond Fund and the Reserve Fund, and informing the City that the Special Taxes need to be levied under the Ordinance as necessary to provide for Annual Debt Service and Administrative Expenses and replenishment (if necessary) of the Reserve Fund so that the balance therein equal the Reserve Requirement. The receipt of or failure to receive such notice by the Finance Director shall in no way affect the obligations of the Finance Director under the following two paragraphs and the Fiscal Agent shall not be liable for failure to provide such notices to the Finance Director. Upon receipt of such notice, the Finance Director shall communicate with the Auditor to ascertain the relevant parcels on which the Special Taxes are to be levied, taking into account any parcel splits or combinations during the preceding and then current year.

(B) Levy. The Finance Director shall effect the levy of the Special Taxes each Fiscal Year in accordance with the Ordinance by each August 1 that the Bonds are outstanding, or otherwise such that the computation of the levy is complete before the final date on which Auditor will accept the transmission of the Special Tax amounts for the parcels within the CFD for inclusion on the next real property tax roll. Upon the completion of the computation of the amounts of the levy, the Finance Director shall prepare or cause to be prepared, and shall transmit to the Auditor, such data as the Auditor requires to include the levy of the Special Taxes on the next real property tax roll.

(C) Computation. The Finance Director shall fix and levy the amount of Special Taxes within the CFD required for the payment of principal of and interest on any outstanding Bonds of the CFD becoming due and payable during the ensuing calendar year, including any necessary replenishment or expenditure of the Reserve Fund for the Bonds and an amount estimated to be sufficient to pay the Administrative Expenses, including amounts necessary to discharge any rebate obligation, during such year, taking into account the balances in the applicable funds established under this Agreement and in the Special Tax Fund. The Special Taxes so levied shall not exceed the authorized amounts as provided in the proceedings under the Resolution of Formation.

(D) Collection. Except as set forth in the Ordinance, Special Taxes shall be payable and be collected in the same manner and at the same time and in the same installment as the general taxes on real property are payable, and have the same priority, become delinquent at the same time and in the same

proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the ad valorem taxes on real property.

Section 5.02. Covenant to Foreclose. Under the Act, the City hereby covenants with and for the benefit of the Owners of the Bonds that it will order, and cause to be commenced as hereinafter provided, and thereafter diligently prosecute to judgment (unless such delinquency is theretofore brought current), an action in the superior court to foreclose the lien of any Special Tax or installment thereof not paid when due as provided in the following two paragraphs. The Finance Director shall notify the City Attorney of any such delinquency of which the Finance Director is aware, and the City Attorney shall commence, or cause to be commenced, such proceedings.

On or about March 30 and June 30 of each Fiscal Year, the Finance Director shall compare the amount of Special Taxes theretofore levied in the CFD to the amount of Special Tax Revenues theretofore received by the City, and:

(A) Individual Delinquencies. If the Finance Director determines that any single parcel subject to the Special Tax in the CFD is delinquent in the payment of Special Taxes in the aggregate amount of \$3,000 or more, then the Finance Director shall send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner within 45 days of such determination, and (if the delinquency remains uncured) foreclosure proceedings shall be commenced by the City within 90 days of such determination. Notwithstanding the foregoing, in its sole discretion, the Finance Director may defer such action if the amount in the Reserve Fund is at least equal to the Reserve Requirement.

(B) Aggregate Delinquencies. If the Finance Director determines that (i) the total amount of delinquent Special Tax for the prior Fiscal Year for the entire CFD, (including the total of delinquencies under subsection (A) above), exceeds 5% of the total Special Tax due and payable for the prior Fiscal Year, or (ii) there are ten (10) or fewer owners of real property within the CFD, determined by reference to the latest available secured property tax roll of the City, the Finance Director shall notify or cause to be notified property owners who are then delinquent in the payment of Special Taxes (and demand immediate payment of the delinquency) within 45 days of such determination, and shall commence foreclosure proceedings within 90 days of such determination against each parcel of land in the CFD with a Special Tax delinquency.

Notwithstanding the foregoing, the Finance Director may defer any such actions with respect to a delinquent parcel if (1) the CFD is then participating in the Alternative Method of Distribution of Tax Levies and Collections described in Revenue & Taxation Code Section 4701 et seq., or an equivalent procedure, (2) the amount in the Reserve Fund is at least equal to the Reserve Requirement and (3) the subject parcel is not delinquent with respect to more than \$5,000 of Special Taxes.

The Finance Director and the City Attorney, as applicable, are hereby authorized to employ counsel to conduct any such foreclosure proceedings. The fees and expenses of any such counsel (including a charge for City staff time) in conducting foreclosure proceedings shall be an Administrative Expense hereunder.

Section 5.03. Punctual Payment. The City will punctually pay or cause to be paid the principal of, and interest and any premium on, the Bonds when and as due in strict conformity with the terms of this Agreement and any Supplemental Agreement, and it will faithfully observe and perform all of the conditions covenants and requirements of this Agreement and all Supplemental Agreements and of the Bonds.

Section 5.04. Extension of Time for Payment. In order to prevent any accumulation of claims for interest after maturity, the City shall not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and shall not, directly or indirectly, be a party to the approval of any such arrangement by purchasing or funding said claims for interest or in any other manner. In case any such claim for interest shall be extended or funded, whether or not with the consent of the City, such claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Agreement, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have been so extended or funded.

Section 5.05. Against Encumbrances. The City will not encumber, pledge or place any charge or lien upon any of the Special Tax Revenues or other amounts pledged to the Bonds superior to or on a parity with the pledge and lien herein created for the benefit of the Bonds, or their Owners, except as permitted by this Agreement.

Section 5.06. Books and Records.

(A) **City.** The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the Special Tax Revenues. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Fiscal Agent and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

(B) **Fiscal Agent.** The Fiscal Agent will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Fiscal Agent, in which complete and correct entries shall be made of all transactions made by it relating to the expenditure of amounts disbursed from the funds, and, if any, accounts in such funds held by the Fiscal Agent hereunder. Such books of record and accounts shall at all times during business hours be subject to the inspection of the City and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing upon reasonable prior notice.

Section 5.07. Protection of Security and Rights of Owners. The City will preserve and protect the security of the Bonds and the rights of the Owners, and will warrant and defend their rights against all claims and demands of all persons. From and after the delivery of any of the Bonds by the City, the Bonds shall be incontestable by the City.

Section 5.08. Further Assurances. The City will adopt, 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 Agreement, and for the

better assuring and confirming unto the Owners of the rights and benefits provided in this Agreement.

Section 5.09. Private Activity Bond Limitations. The City shall assure that the proceeds of the [Initial Year of Issuance] Bonds are not so used as to cause the [Initial Year of Issuance] Bonds to satisfy the private business tests of section 141(b) of the Tax Code or the private loan financing test of section 141(c) of the Code.

Section 5.10. Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the [Initial Year of Issuance] Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

Section 5.11. Rebate Requirement. The City shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the [Initial Year of Issuance] Bonds. The Finance Director shall take note of any investment of monies hereunder in excess of the yield on the [Initial Year of Issuance] Bonds, and shall take such actions as are necessary to ensure compliance with this Section 5.11, such as increasing the portion of the Special Tax levy for Administration Expenses as appropriate to have funds available in the Administrative Expense Fund to satisfy any rebate liability under this Section. If necessary to satisfy its obligations under this Section 5.11, the City may use:

- (A) Earnings on the Reserve Fund if the amount on deposit in the Reserve Fund, following the proposed transfer, is equal to the Reserve Requirement;
- (B) Amounts on deposit in the Administrative Expense Fund; and
- (C) Any other funds available to the CFD, including amounts advanced by the City, in its sole discretion, to be repaid by the CFD as soon as practicable from amounts described in the preceding clauses (A) and (B).

Section 5.12. No Arbitrage. The City shall not take, or permit or suffer to be taken by the Fiscal Agent or otherwise, any action with respect to the proceeds of the [Initial Year of Issuance] Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the [Initial Year of Issuance] Bonds would have caused the [Initial Year of Issuance] Bonds to be "arbitrage bonds" within the meaning of section 148 of the Tax Code.

Section 5.13. Yield of the [Initial Year of Issuance] Bonds. In determining the yield of the [Initial Year of Issuance] Bonds to comply with Sections 5.11 and 5.12, the City will take into account redemption (including premium, if any) in advance of maturity based on the reasonable expectations of the City, as of the Closing Date for the [Initial Year of Issuance] Bonds, regarding prepayments of Special Taxes and use of prepayments for redemption of the [Initial Year of Issuance] Bonds, without regard to whether or not prepayments are received or [Initial Year of Issuance] Bonds redeemed.

Section 5.14. Maintenance of Tax-Exemption. The City shall take all actions necessary to assure the exclusion of interest on the [Initial Year of Issuance] Bonds from the gross income of the Owners of the [Initial Year of Issuance] Bonds to the same extent as such

interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the [Initial Year of Issuance] Bonds.

Section 5.15. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of each Continuing Disclosure Certificate. Notwithstanding any other provision of this Agreement, failure of the Issuer to comply with a Continuing Disclosure Certificate shall not be considered an event of default for the purposes of this Agreement. However, any Owner or Beneficial Owner of the Bonds may, take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

One or more owners of the real property in the CFD as of the Closing Date for the [Initial Year of Issuance] Bonds may also have executed a continuing disclosure agreement for the benefit of the holders and beneficial owners of the [Initial Year of Issuance] Bonds. Any Participating Underwriter or Holder or Beneficial Owner may take such actions as may be necessary and appropriate directly against any such landowner to compel performance by it of its obligations thereunder, including seeking mandate or specific performance by court order; however the City shall have no obligation whatsoever to enforce any obligations under any such agreement.

Section 5.16. Limits on Special Tax Waivers and Bond Tenders. The City covenants not to exercise its rights under the Act to waive delinquency and redemption penalties related to the Special Taxes or to declare Special Tax amnesty program if to do so would materially and adversely affect the interests of the owners of the Bonds and further covenants not to permit the tender of Bonds in payment of any Special Taxes except upon receipt of a certificate of an Independent Financial Consultant that to accept such tender will not result in the City having insufficient Special Tax Revenues to pay the principal of and interest on the Bonds and any Parity Bonds remaining Outstanding following such tender.

Section 5.17. City Bid at Foreclosure Sale. The City will not bid at a foreclosure sale of property in respect of delinquent Special Taxes, unless it expressly agrees to take the property subject to the lien for Special Taxes imposed by the District and that the Special Taxes levied on the property are payable while the City owns the property.

Section 5.18. Limitation on Principal Amount of Parity Bonds. Following issuance of the [Initial Year of Issuance] Bonds, the City will not issue more than \$_____ initial principal amount of Parity Bonds (exclusive of any Refunding Bonds).

Section 5.19. Amendment of Rate and Method. The City shall not initiate proceedings under the Act to modify the Rate and Method if such modification would adversely affect the security for the Bonds. If an initiative is adopted that purports to modify the Rate and Method in a manner that would adversely affect the security for the Bonds, the City shall, to the extent permitted by law, commence and pursue reasonable legal actions to prevent the modification of the Rate and Method in a manner that would adversely affect the security for the Bonds.

ARTICLE VI

INVESTMENTS; LIABILITY OF THE CITY

Section 6.01. Deposit and Investment of Moneys in Funds.

(A) **General.** Moneys in any fund or account created or established by this Agreement and held by the Fiscal Agent shall be invested by the Fiscal Agent in Permitted Investments, which in any event by their terms mature prior to the date on which such moneys are required to be paid out hereunder, as directed pursuant to an Officer's Certificate filed with the Fiscal Agent at least two (2) Business Days in advance of the making of such investments. In the absence of any such Officer's Certificate, the Fiscal Agent shall invest any such moneys in Permitted Investments described in Section (h) of the definition thereof which by their terms mature prior to the date on which such moneys are required to be paid out hereunder to the extent reasonably practicable, and if such investments can not be made shall hold such funds uninvested. In the event the interest on a Series of Bonds is intended to be excluded from gross income for federal tax purposes, the Finance Director shall make note of any investment of funds hereunder in excess of the yield on the applicable Series of Bonds so that appropriate actions can be taken to assure compliance with Section 5.11 or any covenants related to federal tax law set forth in a Supplemental Agreement..

(B) **Moneys in Funds.** Moneys in any fund or account created or established by this Agreement and held by the Finance Director shall be invested by the Finance Director in any Permitted Investment or in any other lawful investment for City funds, which in any event by its terms matures prior to the date on which such moneys are required to be paid out hereunder. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account, subject, however, to the requirements of this Agreement for transfer of interest earnings and profits resulting from investment of amounts in funds and accounts. Whenever in this Agreement any moneys are required to be transferred by the City to the Fiscal Agent, such transfer may be accomplished by transferring a like amount of Permitted Investments.

(C) **Actions of Officials.** The Fiscal Agent and its affiliates or the Finance Director may act as sponsor, advisor, depository, principal or agent in the acquisition or disposition of any investment. Neither the Fiscal Agent nor the Finance Director shall incur any liability for losses arising from any investments made pursuant to this Section. The Fiscal Agent shall not be required to determine the legality of any investments.

(D) **Valuation of Investments.** Except as otherwise provided in the next sentence, all investments of amounts deposited in any fund or account created by or pursuant to this Agreement, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Agreement or the Tax Code) at Fair Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under the applicable provisions of the Tax Code and (unless valuation is undertaken at least annually) investments in the subaccounts within the Reserve Fund shall be valued at their present value (within the meaning of section 148 of the Tax Code). The Fiscal Agent shall not be liable for verification of the application of such sections of the Tax Code or for any determination of Fair Market Value or present value and may conclusively rely upon an Officer's Certificate as to such valuations.

(E) Commingled Money. Investments in any and all funds and accounts may be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular funds or accounts of amounts received or held by the Fiscal Agent or the Finance Director hereunder, provided that the Fiscal Agent or the Finance Director, as applicable, shall at all times account for such investments strictly in accordance with the funds and accounts to which they are credited and otherwise as provided in this Agreement.

(F) Confirmations Waiver. The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law. The Fiscal Agent will furnish the City periodic cash transaction statements which include detail for all investment transactions made by the Fiscal Agent hereunder.

(G) Sale of Investments. The Fiscal Agent or the Finance Director, as applicable, shall sell at Fair Market Value, or present for redemption, any investment security whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund or account to which such investment security is credited and neither the Fiscal Agent nor the Finance Director shall be liable or responsible for any loss resulting from the acquisition or disposition of such investment security in accordance herewith.

Section 6.02. Liability of City.

(A) General. The City shall not incur any responsibility in respect of the Bonds or this Agreement other than in connection with the duties or obligations explicitly herein or in the Bonds assigned to or imposed upon it. The City shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful default. The City shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements of the Fiscal Agent herein or of any of the documents executed by the Fiscal Agent in connection with the Bonds, or as to the existence of a default or event of default thereunder.

(B) Reliance. In the absence of bad faith, the City, including the Finance Director, may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the City by the Fiscal Agent or an Independent Financial Consultant and conforming to the requirements of this Agreement. The City, including the Finance Director, shall not be liable for any error of judgment made in good faith unless it shall be proved that it was negligent in ascertaining the pertinent facts. The City may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The City may consult with counsel, who may be the City Attorney, 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.

(C) No General Liability. No provision of this Agreement shall require the City to expend or risk its own general funds or otherwise incur any financial liability (other than with respect to the Special Tax Revenues) in the performance of any of its obligations hereunder, or

in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(D) Owner of Bonds. The City shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto satisfactorily established, if disputed.

Section 6.03. Employment of Agents by City. In order to perform its duties and obligations hereunder, the City may employ such persons or entities as it deems necessary or advisable. The City shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations and directions of such persons or entities.

ARTICLE VII

THE FISCAL AGENT

Section 7.01. The Fiscal Agent.

(A) **Appointment.** The Fiscal Agent is hereby appointed as the fiscal, authentication, paying and transfer agent hereunder for the Bonds. The Fiscal Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Agreement, and no implied duties, covenants or obligations shall be read into this Agreement against the Fiscal Agent.

(B) **Merger.** Any company into which the Fiscal 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 Fiscal Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under the following paragraph of this Section 7.01 shall be the successor to such Fiscal Agent without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding. The Fiscal Agent shall give the Finance Director and the Finance Director written notice of any such succession hereunder.

(C) **Removal.** Upon 30 days written notice, the City may remove the Fiscal Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank, national banking association or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least fifty million dollars (\$50,000,000), and subject to supervision or examination by federal or state authority. If such bank, national banking association or trust company 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 7.01, combined capital and surplus of such bank, national banking association or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(D) **Resignation.** The Fiscal Agent may at any time resign by giving written notice to the City by certified mail return receipt requested, and by giving to the Owners notice by mail of such resignation. Upon receiving notice of such resignation, the City shall promptly appoint a successor Fiscal Agent by an instrument in writing. Any resignation or removal of the Fiscal Agent shall become effective upon acceptance of appointment by the successor Fiscal Agent.

(E) **No Successor.** If no appointment of a successor Fiscal Agent shall be made pursuant to the foregoing provisions of this Section 7.01 within forty-five (45) days after the Fiscal Agent shall have given to the City written notice or after a vacancy in the office of the Fiscal Agent shall have occurred by reason of its inability to act, the Fiscal Agent, at the expense of the City, or any Owner may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Fiscal Agent.

(F) **Court Order.** If, by reason of the judgment of any court, the Fiscal Agent is rendered unable to perform its duties hereunder, all such duties and all of the rights and powers of the Fiscal Agent hereunder shall be assumed by and vest in the Finance Director of the City in trust for the benefit of the Owners. The City covenants for the direct benefit of the Owners

that its Finance Director in such case shall be vested with all of the rights and powers of the Fiscal Agent hereunder, and shall assume all of the responsibilities and perform all of the duties of the Fiscal Agent hereunder, in trust for the benefit of the Owners of the Bonds.

Section 7.02. Liability of Fiscal Agent.

(A) General. The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the City, and the Fiscal Agent assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Agreement or of the Bonds, nor shall the Fiscal Agent incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon it. The Fiscal Agent shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Fiscal Agent assumes no responsibility or liability for any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds. All indemnifications and releases from liability granted to the Fiscal Agent hereunder shall extend to the directors, officers and employees of the Fiscal Agent.

The Fiscal Agent shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("unavoidable delay") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Fiscal Agent.

(B) Reliance. The Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, documents, written instructions or opinions furnished to the Fiscal Agent and conforming to the requirements of this Agreement; but in the case of any such certificates, documents, written instructions or opinions by which any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement. Except as provided above in this paragraph, the Fiscal Agent shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in accordance with the terms of this Agreement, upon any resolution, order, notice, request, consent or waiver, certificate, statement, affidavit, facsimile transmission, electronic mail, or other paper or document which it shall reasonably believe to be genuine and to have been adopted or signed by the proper person or to have been prepared and furnished pursuant to any provision of this Agreement, and the Fiscal 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.

(C) No Duty to Inquire. The Fiscal Agent shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements

of the City or the CFD herein or of any of the documents executed by the City or the CFD in connection with the Bonds, or as to the existence of a default or event of default thereunder.

(D) Errors in Judgment. The Fiscal Agent shall not be liable for any error of judgment made in good faith by a responsible officer of the Fiscal Agent unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts.

(E) No Expenditures. No provision of this Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(F) No Action. The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request or direction of any of the Owners under this Agreement unless such Owners shall have offered to the Fiscal Agent reasonable security or indemnity satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(G) Owner of Bonds. The Fiscal Agent may become the owner of the Bonds with the same rights it would have if it were not the Fiscal Agent.

Section 7.03. Information; Books and Accounts. The Fiscal Agent shall provide to the City such information relating to the Bonds and the funds and accounts maintained by the Fiscal Agent hereunder as the City shall reasonably request, including but not limited to monthly statements reporting funds held and transactions by the Fiscal Agent, including the value of any investments held by the Fiscal Agent. The Fiscal Agent will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Fiscal Agent, in which complete and correct entries shall be made of all transactions relating to the expenditure of amounts disbursed from the Bond Fund, the Special Tax Fund, the Reserve Fund and, the Cost of Issuance Fund. Such books of record and accounts shall, upon reasonable notice, during business hours be subject to the inspection of the City and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

Section 7.04. Notice to Fiscal Agent. The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, facsimile transmission, electronic mail, written instructions, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Fiscal Agent may consult with counsel, who may be counsel 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, suffered or omitted by it hereunder in accordance therewith.

The Fiscal Agent shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto satisfactorily established, if disputed.

Whenever in the administration of its duties under this Agreement the Fiscal 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, in the absence of willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by an Officer's Certificate of the City, and

such certificate shall be full warrant to the Fiscal Agent for any action taken or suffered under the provisions of this Agreement or any Supplemental Agreement upon the faith thereof, but in its discretion the Fiscal Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Section 7.05. Compensation, Indemnification. The City shall pay to the Fiscal Agent from time to time reasonable compensation for all services rendered as Fiscal Agent under this Agreement, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys (including the allocated costs of in-house attorneys), agents and employees, incurred in and about the performance of their powers and duties under this Agreement, but the Fiscal Agent shall not have a lien therefor on any funds at any time held by it under this Agreement. The City further agrees, to the extent permitted by applicable law, to indemnify and save the Fiscal Agent, its officers, employees, directors and agents harmless against any liabilities, costs, claims or expenses, including fees and expenses of its attorneys, which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or willful misconduct. The obligations of the City under this Section shall survive resignation or removal of the Fiscal Agent under this Agreement, and payment of the Bonds and discharge of this Agreement, but any monetary obligation of the City arising under this Section shall be limited solely to amounts on deposit in the Administrative Expense Fund.

Section 7.06. Conflict of Interest. Through its execution of this Agreement, the Fiscal Agent 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.

Section 7.07. Proprietary or Confidential Information of City. The Fiscal Agent understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, the Fiscal Agent may have access to private or confidential information which may be owned or controlled by the 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 Fiscal Agent agrees that all information disclosed by the City to the Fiscal Agent shall be held in confidence and used only in performance of the Agreement, provided that, notwithstanding anything herein to the contrary, the foregoing shall not be construed to prohibit (i) disclosure of any and all information that is or becomes publicly known, or information obtained by Fiscal Agent from sources other than the other parties hereto, (ii) disclosure of any and all information (A) if required to do so by any applicable rule or regulation, (B) to any government agency or regulatory body having or claiming authority to regulate or oversee any aspects of Fiscal Agent's business or that of its affiliates, (C) pursuant to any subpoena, civil investigative demand or similar demand or request of any court, regulatory authority, arbitrator or arbitration to which Fiscal Agent or any affiliate or an officer, director, employer or shareholder thereof is a party or (D) to any affiliate, independent or internal auditor, agent, employee or attorney of Fiscal Agent having a need to know the same, provided that Fiscal Agent advises such recipient of the confidential nature of the information being disclosed, or (iii) any other disclosure authorized by the City and this Agreement. The Fiscal Agent shall exercise the same standard of care to protect such information as a reasonably prudent Fiscal Agent would use to protect its own proprietary data.

Section 7.08. Ownership of Results. Any interest of the Fiscal Agent or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by the Fiscal Agent or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to the City. However, the Fiscal Agent may retain and use copies for reference and as documentation of its experience and capabilities.

Section 7.09. Works for Hire. If, in connection with services performed under this Agreement, the Fiscal Agent or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by the Fiscal Agent or its subcontractors under this Agreement are not works for hire under U.S. law, the Fiscal Agent hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, the Fiscal Agent may retain and use copies of such works for reference and as documentation of its experience and capabilities.

Section 7.10. Audit and Inspection of Records. The Fiscal Agent agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. The Fiscal Agent will permit the City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement provided, however, that the Fiscal Agent shall not be required to disclose confidential or proprietary information. The Fiscal Agent shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement, until after final audit has been resolved, or for such longer period as required by its document retention policies and procedures, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon the City by this Section.

Section 7.11. Subcontracting. The Fiscal Agent is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by the City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

Section 7.12. Assignment. The services to be performed by the Fiscal Agent are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Fiscal Agent unless first approved by the City (except pursuant to Section 7.01(E)) by written instrument executed and approved in the same manner as this Agreement provided, however, that no such approval is required for assignments pursuant to Section 7.01(E) hereof.

Section 7.13. Earned Income Credit (EIC) Forms. Administrative Code Section 120 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.

(a) The Fiscal Agent shall provide EIC Forms to each Eligible Employee (i.e., any employee of the Fiscal Agent who is paid at a rate that, on an annualized basis, is not greater than the EIC Limit) at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless the Fiscal Agent 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 Fiscal Agent; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by the Fiscal Agent of the terms of this Agreement. If, within thirty days after the Fiscal Agent receives written notice of such a breach, the Fiscal Agent fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, the Fiscal Agent 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 Agreement or under applicable law.

(c) Any subcontract entered into by the Fiscal Agent shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the Administrative Code.

Section 7.14. Local Business Enterprise Utilization; Liquidated Damages.

(a) The LBE Ordinance. The Fiscal Agent, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase the Fiscal Agent's obligations or liabilities, or materially diminish the Fiscal Agent's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this Section. Fiscal Agent's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of the Fiscal Agent's obligations under this Agreement and shall entitle the City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, the Fiscal Agent shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(b) Compliance and Enforcement. If the Fiscal Agent willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, the Fiscal Agent shall be liable for liquidated damages in an amount equal to the Fiscal Agent's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against the Fiscal Agent authorized in the LBE Ordinance, including declaring the Fiscal Agent to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Fiscal Agent's LBE certification. The Director of HRC will

determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code Section 14B.17.

By entering into this Agreement, the Fiscal Agent acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to the City upon demand. The Fiscal Agent further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to the Fiscal Agent on any contract with the City.

The Fiscal Agent agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

Section 7.15. Nondiscrimination; Penalties.

(a) Fiscal Agent Shall Not Discriminate. In the performance of this Agreement, the Fiscal Agent agrees not to discriminate against any employee, City employee working with such Fiscal Agent or subcontractor, applicant for employment with such Fiscal Agent or subcontractor, 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 Fiscal Agent shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. The Fiscal Agent's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Nondiscrimination in Benefits. The Fiscal Agent does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, 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 Section 12B.2(b) of the Administrative Code.

(d) Condition to Contract. As a condition to this Agreement, the Fiscal Agent 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 Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Fiscal Agent 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 Fiscal Agent understands that pursuant to Sections 12B.2(h) and 12C.3(g) of the 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 Fiscal Agent and/or deducted from any payments due Fiscal Agent.

Section 7.16. MacBride Principles—Northern Ireland. Pursuant to Administrative Code Section 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 Fiscal Agent acknowledges and agrees that he or she has read and understood this Section.

Section 7.17. Tropical Hardwood Ban. Pursuant to Section 804(b) of the San Francisco Environment Code, the City urges Fiscal Agent not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Section 7.18. Drug-Free Workplace Policy. The Fiscal Agent 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 the City premises. The Fiscal Agent agrees that any violation of this prohibition by the Fiscal Agent, its employees, agents or assigns will be deemed a material breach of this Agreement.

Section 7.19. Resource Conservation. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Fiscal Agent to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

Section 7.20. Compliance with Americans with Disabilities Act. The Fiscal Agent 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 Fiscal Agent, must be accessible to the disabled public. The Fiscal Agent shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Fiscal Agent 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 Fiscal Agent, its employees, agents or assigns will constitute a material breach of this Agreement.

Section 7.21. Sunshine Ordinance. In accordance with Administrative Code Section 67.24(e), contracts, the Fiscal Agent's 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.

Section 7.22. Public Access to Meetings and Records. Only if the Fiscal Agent receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the Administrative Code, the Fiscal Agent shall comply with and be bound by all the applicable provisions of that Chapter and this Section 11.26; otherwise it will not be required to comply with or be bound by Chapter 12L of the Administrative Code and this Section 11.26. By executing this Agreement, the Fiscal Agent agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Fiscal Agent further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Fiscal Agent acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Fiscal Agent further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

Section 7.23. Limitations on Contributions. Through execution of this Agreement, the Fiscal Agent acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code ("Section 1.126"), 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 (a) 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, (b) a candidate for the office held by such individual, or (c) 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 Fiscal Agent 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 Fiscal Agent further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Fiscal Agent's board of directors; the Fiscal Agent's chairperson, the chief executive officer, the chief financial officer and the chief operating officer; any person with an ownership interest of more than 20% in Fiscal Agent; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Fiscal Agent. Additionally, the Fiscal Agent acknowledges that the Fiscal Agent must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

Section 7.24. Requiring Minimum Compensation for Covered Employees.

(a) Unless the Fiscal Agent is exempt, the Fiscal Agent agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in 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. A partial listing of some of Fiscal Agent's obligations under the MCO is set forth in this Section. Unless the Fiscal Agent is exempt from such provisions under Section 11.28(i) hereof, the Fiscal Agent is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

(b) The MCO requires Fiscal Agent to pay Fiscal Agent'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 Fiscal Agent is obligated to keep informed of the then-current requirements. Any subcontract entered into by Fiscal Agent 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 Fiscal Agent'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, City may pursue any of the remedies set forth in this Section against Fiscal Agent.

(c) Fiscal Agent 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.

(d) Fiscal Agent shall maintain employee and payroll records as required by the MCO. If Fiscal Agent fails to do so, it shall be presumed that the Fiscal Agent paid no more than the minimum wage required under State law.

(e) The City is authorized to inspect Fiscal Agent's job sites and conduct interviews with employees and conduct audits of Fiscal Agent.

(f) Fiscal Agent's commitment to provide the Minimum Compensation 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 Fiscal Agent fails to comply with these requirements. Fiscal Agent agrees 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 Fiscal Agent's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(g) Fiscal Agent 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 liquidated damages), 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, Fiscal Agent fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Fiscal Agent 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.

(h) Fiscal Agent 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.

(i) If Fiscal Agent is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Fiscal Agent later enters into an agreement or agreements that cause Fiscal

Agent to exceed that amount in a fiscal year, Fiscal Agent 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 Fiscal Agent and this department to exceed \$25,000 in the fiscal year.

Section 7.25. Requiring Health Benefits for Covered Employees. Unless the Fiscal Agent is exempt (in which event it shall not be required to comply with Chapter 12Q or this Section 11.29), the Fiscal Agent agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in Administrative Code Chapter 12Q ("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. 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 Fiscal Agent shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Fiscal Agent 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 Fiscal Agent 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 Fiscal Agent's failure to comply with the HCAO shall constitute a material breach of this Agreement. City shall notify Fiscal Agent if such a breach has occurred. If, within thirty days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Fiscal Agent fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Fiscal Agent fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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 Fiscal Agent 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 Fiscal Agent 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. Each Fiscal Agent 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 Fiscal Agent based on the Subcontractor's failure to comply, provided that the City has first provided the Fiscal Agent with notice and an opportunity to obtain a cure of the violation.

(e) The Fiscal Agent shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the City with regard to the Fiscal Agent'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 Fiscal Agent 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 Fiscal Agent 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 Fiscal Agent shall keep itself informed of the current requirements of the HCAO.

(i) The Fiscal Agent 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 Fiscal Agent shall provide the City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

(k) The Fiscal Agent shall allow the City to inspect Fiscal Agent's job sites and have access to the Fiscal Agent's employees in order to monitor and determine compliance with HCAO.

(l) The City may conduct random audits of the Fiscal Agent to ascertain its compliance with HCAO. Fiscal Agent agrees to cooperate with City when it conducts such audits.

(m) If the Fiscal Agent is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Fiscal Agent later enters into an agreement or agreements that cause the Fiscal Agent'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 Fiscal Agent and the City to be equal to or greater than \$75,000 in the fiscal year.

Section 7.26. Prohibition on Political Activity with City Funds. In accordance with Administrative Code Chapter 12.G, the Fiscal Agent 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 Fiscal Agent Agreement. The Fiscal Agent agrees to comply with 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 Fiscal Agent 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 Fiscal Agent from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider the Fiscal Agent's use of profit as a violation of this Section.

Section 7.27. Preservative-treated Wood Containing Arsenic. The Fiscal Agent may not purchase preservative-treated wood products containing arsenic in the performance of this Fiscal Agent Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean

wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. The Fiscal Agent may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude the Fiscal Agent from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

Section 7.28. Protection of Private Information. The Fiscal Agent has read and agrees, subject to the following sentence, to the terms set forth in 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 Fiscal Agent agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract provided that, notwithstanding anything herein or in the Administrative Code to the contrary, the foregoing shall not be construed to prohibit (i) disclosure of any and all information that is or becomes publicly known, or information obtained by Fiscal Agent from sources other than the other parties hereto, (ii) disclosure of any and all information (A) if required to do so by any applicable rule or regulation, (B) to any government agency or regulatory body having or claiming authority to regulate or oversee any aspects of Fiscal Agent's business or that of its affiliates, (C) pursuant to any subpoena, civil investigative demand or similar demand or request of any court, regulatory authority, arbitrator or arbitration to which Fiscal Agent or any affiliate or an officer, director, employer or shareholder thereof is a party or (D) to any affiliate, independent or internal auditor, agent, employee or attorney of Fiscal Agent having a need to know the same, provided that Fiscal Agent advises such recipient of the confidential nature of the information being disclosed, or (iii) any other disclosure authorized by the City and this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Fiscal Agent pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Fiscal Agent.

Section 7.29. Food Service Waste Reduction Requirements. Effective June 1, 2007, the Fiscal Agent agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance applicable to contractors with the City, 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 Fiscal Agent Agreement as though fully set forth. This provision is a material term of this Fiscal Agent Agreement. By entering into this Agreement, the Fiscal Agent agrees that if it breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Fiscal Agent 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 Fiscal Agent Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by the City because of the Fiscal Agent's failure to comply with this provision.

Section 7.30. Graffiti Removal.

(A) 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 County and its residents, and to prevent the further spread of graffiti.

(B) The Fiscal Agent shall remove all graffiti from any real property owned or leased by the Fiscal Agent in the City within forty eight (48) hours of the earlier of the Fiscal Agent'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 Fiscal Agent 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 Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Section 7.31. Slavery Era Disclosure.

(A) The Fiscal Agent acknowledges that this Agreement shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

(B) In the event the Director of Administrative Services finds that the Fiscal Agent has failed to file an affidavit as required by Section 12Y.4(a) and this Agreement, or has willfully filed a false affidavit, the Fiscal Agent shall be liable for liquidated damages in an amount equal to the Fiscal Agent's net profit on the Agreement, 10% of the total amount paid to the Fiscal Agent under the Agreement, or \$1,000, whichever is greatest as determined by the Director of Administrative Services. The Fiscal Agent acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Fiscal Agent from any agreement with the City.

(C) The Fiscal Agent shall maintain records necessary for monitoring its compliance with this provision.

Section 7.32. Qualified Personnel. The Fiscal Agent's work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of the Fiscal Agent. The Fiscal Agent will comply with the City's reasonable

requests regarding assignment of personnel, but all personnel, including those assigned at the City's request, must be supervised by the Fiscal Agent.

Section 7.33. Responsibility for Equipment. The City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by the Fiscal Agent, or by any of its employees, even though such equipment be furnished, rented or loaned to the Fiscal Agent by the City.

Section 7.34. Independent Contractor, Payment of Taxes and Other Expenses.

(A) Independent Contractor. The Fiscal Agent or any agent or employee of the Fiscal Agent shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. The Fiscal Agent or any agent or employee of the Fiscal Agent shall not have employee status with the City, nor be entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any retirement, health or other benefits that the City may offer its employees. Contractor or any agent or employee of the Fiscal Agent is liable for the acts and omissions of itself, its employees and its agents. The Fiscal Agent shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to the Fiscal Agent's performing services and work, or any agent or employee of the Fiscal Agent providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the City and the Fiscal Agent or any agent or employee of the Fiscal Agent. Any terms in this Agreement referring to direction from the City shall be construed as providing for direction as to policy and the result of the Fiscal Agent's work only, and not as to the means by which such a result is obtained. The City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

(B) Payment of Taxes and Other Expenses. Should the City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that the Fiscal Agent is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by the Fiscal Agent which can be applied against this liability). The City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by the Fiscal Agent for the City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with the City to have the amount due withheld from future payments to the Fiscal Agent under this Agreement (again, offsetting any amounts already paid by the Fiscal Agent which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, the Fiscal Agent shall not be considered an employee of the City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that the Fiscal Agent is an employee for any other purpose, then the Fiscal Agent agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

Section 7.35. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits

a false claim shall be liable to the City for the statutory penalties set forth in that section. 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>.

A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, 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.

Section 7.36. Repeal of Administrative Code Provisions. To the extent that the City repeals any provision of the Administrative Code incorporated, set forth or referenced in Sections 7.06 through 7.35 hereof, other than pursuant to a restatement or amendment of any such provision, such provision, as incorporated, set forth or referenced herein, shall no longer apply to this Agreement or the Fiscal Agent.

Section 7.37. Non-Waiver of Rights. The omission by the City at any time to enforce any default or right reserved to it under this Article VII, or to require performance of any of the terms, covenants, or provisions set forth in this Article VIII, shall not be a waiver of any such default or right to which the City is entitled, nor shall it in any way affect the right of the City to enforce such provisions thereafter.

ARTICLE VIII

MODIFICATION OR AMENDMENT

Section 8.01. Amendments Permitted.

(A) **With Consent.** This Agreement and the rights and obligations of the City and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Agreement pursuant to the affirmative vote at a meeting of Owners, or with the written consent without a meeting, of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 8.04. No such modification or amendment shall (i) extend the maturity of any Bond or reduce the interest rate thereon, or otherwise alter or impair the obligation of the City to pay the principal of, and the interest and any premium on, any Bond, without the express consent of the Owner of such Bond, or (ii) permit the creation by the City of any pledge or lien upon the Special Taxes superior to or on a parity with the pledge and lien created for the benefit of the Bonds (except as otherwise permitted by the Act, the laws of the State of California or this Agreement), or reduce the percentage of Bonds required for the amendment hereof.

(B) **Without Consent.** This Agreement and the rights and obligations of the City and of the Owners may also be modified or amended at any time by a Supplemental Agreement, without the consent of any Owners, only to the extent permitted by law and only for any one or more of the following purposes:

(i) to add to the covenants and agreements of the City herein, other covenants and agreements thereafter to be observed, or (b) to limit or surrender any right or power herein reserved to or conferred upon the City;

(ii) to make modifications not adversely affecting any Outstanding Bonds in any material respect, including, but not limited to, amending the Rate and Method, so long as the amendment does not result in debt service coverage less than that set forth in Section 3.06(E);

(iii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Agreement, or in regard to questions arising under this Agreement, as the City and the Fiscal Agent may deem necessary or desirable and not inconsistent with this Agreement, and which shall not adversely affect the rights of the Owners of the Bonds;

(iv) to make such additions, deletions or modifications as may be necessary or desirable to assure exclusion from gross income for federal income tax purposes of interest on the Bonds;

(v) in connection with the issuance of any Parity Bonds under and pursuant to Section 3.06.

(C) **Fiscal Agent's Consent.** Any amendment of this Agreement may not modify any of the rights or obligations of the Fiscal Agent without its written consent. The Fiscal Agent shall be furnished an opinion of counsel that any such Supplemental Agreement entered into by the

City and the Fiscal Agent complies with the provisions of this Section 8.01 and the Fiscal Agent may conclusively rely on such opinion and shall be absolutely protected in so relying.

Section 8.02. Owners' Meetings. The City may at any time call a meeting of the Owners. In such event the City is authorized to fix the time and place of said meeting and to provide for the giving of notice thereof and to fix and adopt rules and regulations for the conduct of said meeting.

Section 8.03. Procedure for Amendment with Written Consent of Owners. The City and the Fiscal Agent may at any time adopt a Supplemental Agreement amending the provisions of the Bonds or of this Agreement or any Supplemental Agreement, to the extent that such amendment is permitted by Section 8.01(A), to take effect when and as provided in this Section 8.03. A copy of such Supplemental Agreement, together with a request to Owners for their consent thereto, shall be mailed by first class mail, by the Fiscal Agent, at the expense of the City), to each Owner of Bonds Outstanding, but failure to mail copies of such Supplemental Agreement and request shall not affect the validity of the Supplemental Agreement when assented to as in this Section 8.03 provided.

Such Supplemental Agreement shall not become effective unless there shall be filed with the Fiscal Agent the written consents of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding (exclusive of Bonds disqualified as provided in Section 8.04) and a notice shall have been mailed as hereinafter in this Section 8.03 provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 9.04. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Fiscal Agent prior to the date when the notice hereinafter in this Section 8.03 provided for has been mailed.

After the Owners of the required percentage of Bonds shall have filed their consents to the Supplemental Agreement, the City shall mail a notice to the Owners in the manner hereinbefore provided in this Section 8.03 for the mailing of the Supplemental Agreement, stating in substance that the Supplemental Agreement has been consented to by the Owners of the required percentage of Bonds and will be effective as provided in this Section 8.03 (but failure to mail copies of said notice shall not affect the validity of the Supplemental Agreement or consents thereto). Proof of the mailing of such notice shall be filed with the Fiscal Agent. A record, consisting of the papers required by this Section 8.03 to be filed with the Fiscal Agent, shall be proof of the matters therein stated until the contrary is proved. The Supplemental Agreement shall become effective upon the filing with the Fiscal Agent of the proof of mailing of such notice, and the Supplemental Agreement shall be deemed conclusively binding (except as otherwise hereinabove specifically provided in this Article) upon the City and the Owners of all Bonds at the expiration of sixty (60) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such sixty-day period.

Section 8.04. Disqualified Bonds. Bonds owned or held for the account of the City, excepting any pension or retirement fund, shall not be deemed Outstanding for the purpose of any vote, consent or other action or any calculation of Outstanding Bonds provided for in this Article VIII, and shall not be entitled to vote upon, consent to, or take any other action provided for in this Article VIII. Upon request of the Fiscal Agent, the City shall specify in a certificate to

the Fiscal Agent those Bonds disqualified pursuant to this Section and the Fiscal Agent may conclusively rely on such certificate.

Section 8.05. Effect of Supplemental Agreement. From and after the time any Supplemental Agreement becomes effective under this Article VIII, this Agreement shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations under this Agreement of the City, the Fiscal Agent and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such Supplemental Agreement shall be deemed to be part of the terms and conditions of this Agreement for any and all purposes.

Section 8.06. Endorsement or Replacement of Bonds Issued After Amendments. The City may determine that Bonds issued and delivered after the effective date of any action taken as provided in this Article VIII shall bear a notation, by endorsement or otherwise, in form approved by the City, as to such action. In that case, upon demand of the Owner of any Bond Outstanding at such effective date and upon presentation of his Bond for that purpose at the Principal Office of the Fiscal Agent or at such other office as the City may select and designate for that purpose, a suitable notation shall be made on such Bond. The City may determine that new Bonds, so modified as in the opinion of the City is necessary to conform to such Owners' action, shall be prepared, executed and delivered. In that case, upon demand of the Owner of any Bonds then Outstanding, such new Bonds shall be exchanged at the Principal Office of the Fiscal Agent without cost to any Owner, for Bonds then Outstanding, upon surrender of such Bonds.

Section 8.07. Amendatory Endorsement of Bonds. The provisions of this Article VIII shall not prevent any Owner from accepting any amendment as to the particular Bonds held by him, provided that due notation thereof is made on such Bonds.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Benefits of Agreement Limited to Parties. Nothing in this Agreement, expressed or implied, is intended to give to any person other than the City, the Fiscal Agent and the Owners, any right, remedy, claim under or by reason of this Agreement. Any covenants, stipulations, promises or agreements in this Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the Owners and the Fiscal Agent.

Section 9.02. Successor and Predecessor. Whenever in this Agreement or any Supplemental Agreement either the City or the Fiscal Agent is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Fiscal Agent shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 9.03. Discharge of Agreement. If the City shall pay and discharge the entire indebtedness on all Bonds Outstanding in any one or more of the following ways:

(A) by paying or causing to be paid the principal of, and interest and any premium on, all Bonds Outstanding, as and when the same become due and payable;

(B) by depositing with the Fiscal Agent, in trust, at or before maturity, money which, together with the amounts then on deposit in the funds and accounts provided for in the Bond Fund and the Reserve Fund hereof, is fully sufficient to pay all Bonds Outstanding, including all principal, interest and redemption premiums; or

(C) by irrevocably depositing with the Fiscal Agent, in trust, cash and/or Federal Securities in such amount as the City shall determine, as confirmed by an independent certified public accountant, will, together with the interest to accrue thereon and moneys then on deposit in the fund and accounts provided for in the Bond Fund and the Reserve Fund (to the extent invested in Federal Securities), be fully sufficient to pay and discharge the indebtedness on all Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates.

If the City shall have taken any of the actions specified in (A), (B) or (C) above, and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption shall have been given as in this Agreement provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, then, at the election of the City, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Special Taxes and other funds provided for in this Agreement and all other obligations of the City under this Agreement with respect to such Bonds Outstanding shall cease and terminate. Notice of such election shall be filed with the Fiscal Agent.

Notwithstanding the foregoing, the following obligations and pledges of the City shall continue in any event: (i) the obligation of the City to pay or cause to be paid to the Owners of the Bonds not so surrendered and paid all sums due thereon, (ii) the obligation of the City to pay amounts owing to the Fiscal Agent pursuant to Section 7.05, and (iii) the obligation of the City to assure that no action is taken or failed to be taken if such action or failure adversely affects the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Upon compliance by the City with the foregoing with respect to all Bonds Outstanding, any funds held by the Fiscal Agent after payment of all fees and expenses of the Fiscal Agent, which are not required for the purposes of the preceding paragraph, shall be paid over to the City and any Special Taxes thereafter received by the City shall not be remitted to the Fiscal Agent but shall be retained by the City to be used for any purpose permitted under the Act and the Resolution of Formation.

Section 9.04. Execution of Documents and Proof of Ownership by Owners. Any request, declaration, consent or other instrument which this Agreement may require or permit to be executed by Owners may be in one or more instruments of similar tenor, and shall be executed by Owners in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration, consent or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number and date of holding the same shall be proved by the registration books maintained by the Fiscal Agent under Section 2.07.

Any request, declaration, consent or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Fiscal Agent in good faith and in accordance therewith.

Section 9.05. Waiver of Personal Liability. No member, officer, agent or employee of the City shall be individually or personally liable for the payment of the principal of or interest or any premium on the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

Section 9.06. Notices to and Demands on City and Fiscal Agent. Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the Fiscal Agent to or on the City may be given or served by facsimile transmission receipt of which has been confirmed or by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the City with the Fiscal Agent) as follows:

City and County of San Francisco
1 Dr. Carlton B. Goodlett Place
City Hall, Room 336
San Francisco, CA 94102

Attn: Controller

Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the City to or on the Fiscal Agent may be given or served by facsimile transmission receipt of which has been confirmed or by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the Fiscal Agent with the City) as follows:

[Fiscal Agent]
Corporate Trust Department
[address to come]
Fax: [to come]

Section 9.07. Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Agreement shall for any reason be held by a court of competent jurisdiction to be illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Agreement. The City hereby declares that it would have adopted this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Agreement may be held illegal, invalid or unenforceable.

Section 9.08. Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any moneys held by the Fiscal Agent in trust for the payment and discharge of the principal of, and the interest and any premium on, the Bonds which remains unclaimed for two (2) years after the date when the payment of such principal, interest and premium have become payable, if such moneys were held by the Fiscal Agent at such date, shall be repaid by the Fiscal Agent to the City as its absolute property free from any trust, and the Fiscal Agent shall thereupon be released and discharged with respect thereto and the Owners of such Bonds shall look only to the City for the payment of the principal of, and interest and any premium on, such Bonds. Any right of any Owner to look to the City for such payment shall survive only so long as required under applicable law.

Section 9.09. Applicable Law. This Agreement shall be governed by and enforced in accordance with the laws of the State applicable to contracts made and performed in the State.

Section 9.10. Conflict with Act. In the event of a conflict between any provision of this Agreement with any provision of the Act as in effect on the Closing Date for a Series of Bonds, the provision of the Act shall prevail over the conflicting provision of this Agreement.

Section 9.11. Conclusive Evidence of Regularity. Bonds issued under this Agreement shall constitute conclusive evidence of the regularity of all proceedings under the Act relative to their issuance and the levy of the Special Taxes.

Section 9.12. Payment on Business Day. In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds, or the date fixed for redemption of any Bonds, or the date any action is to be taken under this Agreement, is other than a Business Day, the payment of interest or principal (and premium, if any) or the action shall be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period from and after such date.

Section 9.13. State Reporting Requirements. In addition to Section 5.15, the following requirements shall apply to the Bonds:

(A) Annual Reporting. Not later than October 30 of each calendar year, beginning with the October 30 first succeeding the date of the [Initial Year of Issuance] Bonds, and in each calendar year thereafter until the October 30 following the final maturity of the Bonds, the Finance Director shall cause the following information to be supplied to CDIAC: (i) the principal amount of the Bonds Outstanding; (ii) the balance in the Reserve Fund and any amounts of capitalized interest in the Bond Fund; (iii) the number of parcels in the CFD which are delinquent in the payment of Special Taxes, the amount of each delinquency, the length of time delinquent and when foreclosure was commenced for each delinquent parcel; (iv) the balance in the Refunding Fund; and (v) the assessed value of all parcels in the CFD subject to the levy of the Special Taxes as shown in most recent equalized roll. The annual reporting shall be made using such form or forms as may be prescribed by CDIAC.

(B) Other Reporting. If at any time the Fiscal Agent fails to pay principal and interest due on any scheduled payment date for the Bonds, or if funds are withdrawn from the Reserve Fund to pay principal and interest on the Bonds, the Fiscal Agent shall notify the Treasurer of such failure or withdrawal in writing. The Finance Director shall notify CDIAC and the Original Purchasers of such failure or withdrawal within 10 days of such failure or withdrawal.

(C) Special Tax Reporting. The Finance Director shall file a report with the City no later than January 1, 20__, and at least once a year thereafter, which annual report shall contain: (i) the amount of Special Taxes collected and expended with respect to the CFD, (ii) the amount of Bond proceeds collected and expended with respect to the CFD, and (iii) the status of the Project. It is acknowledged that the Special Tax Fund and the Special Tax Prepayments Account are the accounts into which Special Taxes collected on the District will be deposited for purposes of Section 50075.1(c) of the California Government Code, and the funds and accounts listed in Section 4.01 are the funds and accounts into which Bond proceeds will be deposited for purposes of Section 53410(c) of the California Government Code, and the annual report described in the preceding sentence is intended to satisfy the requirements of Sections 50075.1(d), 50075.3(d) and 53411 of the California Government Code.

(D) Amendment. The reporting requirements of this Section 9.13 shall be amended from time to time, without action by the City or the Fiscal Agent (i) with respect to subparagraphs (A) and (B) above, to reflect any amendments to Section 53359.5(b) or Section 53359.5(c) of the Act, and (ii) with respect to subparagraph (C) above, to reflect any amendments to Section 50075.1, 50075.3, 53410 or 53411 of the California Government Code. Notwithstanding the foregoing, any such amendment shall not, in itself, affect the City's obligations under the Continuing Disclosure Certificate. The City shall notify the Fiscal Agent in writing of any such amendments which affect the reporting obligations of the Fiscal Agent under this Agreement.

(E) No Liability. None of the City and its officers, agents and employees, the Finance Director or the Fiscal Agent shall be liable for any inadvertent error in reporting the information required by this Section 9.13.

The Finance Director shall provide copies of any such reports to any Bondowner upon the written request of a Bondowner and payment by the person requesting the information of the

cost of the City to photocopy and pay any postage or other delivery cost to provide the same, as determined by the Finance Director. The term "Bondowner" for purposes of this Section 9.13 shall include any beneficial owner of the Bonds as described in Section 2.13.

Section 9.14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the City and the Fiscal Agent have caused this Agreement to be executed as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO,
for and on behalf of
COMMUNITY FACILITIES DISTRICT
2014-1 (Transbay Transit Center)

By: _____
Director of the Office of Public Finance

[FISCAL AGENT],
as Fiscal Agent

By: _____
Authorized Officer

EXHIBIT A

FORM OF [INITIAL YEAR OF ISSUANCE] BOND

No. _____

\$ _____

**UNITED STATES OF AMERICA
STATE OF CALIFORNIA**

**CITY AND COUNTY OF SAN FRANCISCO
Community Facilities CFD 2014-1
(Transbay Transit Center)
Special Tax Bond, Series _____**

INTEREST RATE

MATURITY DATE

DATED DATE

_____%

September 1, _____

REGISTERED OWNER:

PRINCIPAL AMOUNT:

*****DOLLARS

The City and County of San Francisco (the "City") for and on behalf of the "City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center)" (the "CFD"), for value received, hereby promises to pay solely from the Special Tax (as hereinafter defined) to be collected in the CFD or amounts in certain funds and accounts held under the Agreement (as hereinafter defined), to the registered owner named above, or registered assigns, on the maturity date set forth above, unless redeemed prior thereto as hereinafter provided, the principal amount set forth above, and to pay interest on such principal amount from Dated Date set forth above, or from the most recent Interest Payment Date (as hereinafter defined) to which interest has been paid or duly provided for (unless this Bond is authenticated on or before an Interest Payment Date (as hereinafter defined) and after the close of business on the Record Date (as hereinafter defined) preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or prior to August 15, 20__, in which event it shall bear interest from the Dated Date identified above, payable semiannually on each September 1 and March 1, commencing ____ 1, 20__ (each an "Interest Payment Date"), at the interest rate set forth above, until the principal amount hereof is paid or made available for payment provided, however, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment.

Principal of and interest on the Bonds (including the final interest payment upon maturity or earlier redemption), is payable on the applicable Interest Payment Date by check of the Fiscal Agent (defined below) mailed by first class mail to the registered Owner thereof at such registered Owner's address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date, or by wire transfer made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of Bonds delivered to the Fiscal Agent prior to the applicable Record Date. The principal of the Bonds and any premium on the Bonds are

payable in lawful money of the United States of America upon surrender of the Bonds at the Principal Office of the Fiscal Agent or such other place as designated by the Fiscal Agent.

This Bond is one of a duly authorized issue of bonds in the aggregate principal amount of \$_____ approved by resolution of the Board of Supervisors of the City on _____, 20____ (the "Resolution"), under the Mello-Roos Community Facilities Act of 1982, as amended, sections 53311, *et seq.*, of the California Government Code (the "Act") for the purpose of funding certain facilities for the CFD, and is one of the series of bonds designated "City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center) Special Tax Bonds, Series _____" (the "Bonds"). The issuance of the Bonds and the terms and conditions thereof are provided for by a Fiscal Agent Agreement, dated as of _____, 20____ (the "Agreement"), between the City and the [Fiscal Agent] (the "Fiscal Agent") and this reference incorporates the Agreement herein, and by acceptance hereof the owner of this Bond assents to said terms and conditions. The Agreement is authorized under, this Bond is issued under and both are to be construed in accordance with, the laws of the State of California.

Pursuant to the Act, the Resolution and the Agreement, the principal of and interest on this Bond are payable solely from the annual special tax authorized under the Act to be collected within the CFD (the "Special Tax") and certain funds held under the Agreement. Any tax for the payment hereof shall be limited to the Special Tax, except to the extent that provision for payment has been made by the City, as may be permitted by law. The Bonds do not constitute obligations of the City for which the City is obligated to levy or pledge, or has levied or pledged, general or special taxation other than described hereinabove. Neither the faith and credit nor the taxing power of the City (except to the limited extent set forth in the Agreement) or the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

Optional Redemption. All of the Bonds are subject to redemption prior to their stated maturities, on any Interest Payment Date, in whole or in part, at a redemption price (expressed as a percentage of the principal amount of the Bonds to be redeemed) as set forth below, together with accrued interest thereon to the date fixed for redemption:

| <u>Redemption Date</u> | <u>Redemption Price</u> |
|--|-------------------------|
| On or before September 1, 20____ | ____% |
| On September 2, 20____ through September 1, 20____ | ____ |
| On September 2, 20____ and thereafter | ____ |

Mandatory Sinking Fund Redemption. The Term Bond maturing on September 1, _____ is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts all as set forth in the following table:

| <u>Sinking Fund Redemption Date (September 1)</u> | <u>Principal Amount Subject to Redemption</u> |
|---|---|
| | |

The Escrow Term Bond (maturing September 1, 20__) is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts all as set forth in the following table:

| <u>Sinking Fund Redemption Date (September 1)</u> | <u>Principal Amount Subject to Redemption</u> |
|---|---|
|---|---|

Provided, however, if some but not all of the Term Bonds of a given maturity have been redeemed as a result of an optional redemption or a mandatory redemption, the total amount of all future Sinking Fund Payments relating to such maturity shall be reduced by the aggregate principal amount of Term Bonds of such maturity so redeemed, to be allocated among such Sinking Fund Payments on a pro rata basis in integral multiples of \$5,000 as determined by the Fiscal Agent, notice of which determination shall be given by the Fiscal Agent to the City.

Redemption From Special Tax Prepayments. The Bonds are also subject to redemption from the proceeds of Special Tax Prepayments and any corresponding transfers from the Reserve Fund pursuant to the Agreement on any Interest Payment Date, among maturities so as to maintain substantially the same debt service profile for the Bonds as in effect prior to such redemption and by lot within a maturity, at a redemption price (expressed as a percentage of the principal amount of the Bonds to be redeemed), as set forth below, together with accrued interest to the date fixed for redemption:

| <u>Redemption Date</u> | <u>Redemption Price</u> |
|--|-------------------------|
| On or before September 1, 20__ | ___% |
| On September 2, 20__ through September 1, 20__ | ___ |
| On September 2, 20__ and thereafter | ___ |

Mandatory Redemption From Amounts Transferred From Escrow Fund and Reserve Fund. The Escrow Term Bond is subject to redemption on September 1, 20__, in whole or in part, at a redemption price equal to the principal amount thereof to be redeemed, without premium, together with accrued interest thereon to the date fixed for redemption from amounts transferred from the Escrow Fund and from the Reserve Fund for such purpose.

Notice of redemption with respect to the Bonds to be redeemed shall be given to the registered owners thereof, in the manner, to the extent and subject to the provisions of the Agreement. A notice of redemption is subject to rescission as set forth in the Agreement.

This Bond shall be registered in the name of the owner hereof, as to both principal and interest. Each registration and transfer of registration of this Bond shall be entered by the Fiscal Agent in books kept by it for this purpose and authenticated by its manual signature upon the certificate of authentication endorsed hereon.

No transfer or exchange hereof shall be valid for any purpose unless made by the registered owner, by execution of the form of assignment endorsed hereon, and authenticated

as herein provided, and the principal hereof, interest hereon and any redemption premium shall be payable only to the registered owner or to such owner's order. The Fiscal Agent shall require the registered owner requesting transfer or exchange to pay any tax or other governmental charge required to be paid with respect to such transfer or exchange. No transfer or exchange hereof shall be required to be made (i) fifteen days prior to the date established by the Fiscal Agent for selection of Bonds for redemption or (ii) with respect to a Bond after such Bond has been selected for redemption.

The Agreement and the rights and obligations of the City thereunder may be modified or amended as set forth therein. The principal of the Bonds is not subject to acceleration upon a default under the Agreement or any other document.

This Bond shall not become valid or obligatory for any purpose until the certificate of authentication and registration hereon endorsed shall have been dated and signed by the Fiscal Agent.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED by the City that all acts, conditions and things required by law to exist, happen and be performed precedent to and in the issuance of this Bond have existed, happened and been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other indebtedness of the City, does not exceed any debt limit prescribed by the laws or Constitution of the State of California.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Fiscal Agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, City and County of San Francisco has caused this Bond to be to be signed by the facsimile signature of its Mayor and countersigned by the facsimile signature of the Clerk of the Board of Supervisors with the seal of the City imprinted hereon.

[S E A L]

Clerk of the Board of Supervisors

Mayor

[FORM OF FISCAL AGENT'S CERTIFICATE OF AUTHENTICATION AND REGISTRATION]

This is one of the Bonds described in the Agreement which has been authenticated on _____, 20__.

[FISCAL AGENT],
as Fiscal Agent

By: _____
Authorized Signatory

FORM OF ASSIGNMENT

For value received, the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Bond and do(es) hereby irrevocably constitute and appoint _____
_____, attorney, to transfer the same on the registration books of the Fiscal Agent, with
full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

NOTICE: Signature guarantee shall be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Fiscal Agent.

NOTICE: The signature on this assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

EXHIBIT B

**CITY AND COUNTY OF SAN FRANCISCO
Community Facilities District 2014-1
(Transbay Transit Center)
Special Tax Bonds, Series _____**

**OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT FROM IMPROVEMENT
FUND**

REQUISITION NO. _____

The undersigned hereby states and certifies that:

(i) I am the duly appointed, qualified and acting Director of the Office of Public Finance of the City and County of San Francisco, a chartered city duly organized and existing under the Constitution and the laws of the State of California (the "City") and as such, am familiar with the facts herein certified and am authorized to certify the same;

(ii) I am an "Authorized Officer," as such term is defined in that certain Fiscal Agent Agreement, dated as of _____, 20__ (the "Fiscal Agent Agreement"), by and between the City and [Fiscal Agent], as fiscal agent (the "Fiscal Agent");

(iii) under Section 4.07(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to disburse from the [Improvement Fund][Allocated Bond Proceeds Account] established under the Fiscal Agent Agreement to each payee designated on Schedule A attached hereto and by this reference incorporated herein, the amount set forth opposite such payee, for payment or reimbursement of previous payment of a Project cost (as Project is defined in the Fiscal Agent Agreement) as described on attached Schedule A; and

(iv) no portion of the amount herein requested to be disbursed was set forth in any Officers Certificate previously filed requesting disbursement.

Dated: _____

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Director of the Office of Public Finance

SCHEDULE A

Payee Name and Address

Purpose of Obligation

Amount

EXHIBIT C

**CITY AND COUNTY OF SAN FRANCISCO
Community Facilities District 2014-1
(Transbay Transit Center)
Special Tax Bonds, Series _____**

**OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT
FROM COSTS OF ISSUANCE FUND**

REQUISITION NO. _____

The undersigned hereby states and certifies that:

(i) I am the duly appointed, qualified and acting Director of the Office of Public Finance of the City and County of San Francisco, a chartered duly organized and existing under the Constitution and the laws of the State of California (the "City") and as such, am familiar with the facts herein certified and am authorized to certify the same;

(ii) I am an "Authorized Officer," as such term is defined in that certain Fiscal Agent Agreement, dated as of _____, 20__ (the "Fiscal Agent Agreement"), by and between the City and [Fiscal Agent], as fiscal agent (the "Fiscal Agent");

(iii) under Section 4.02(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to disburse from the Costs of Issuance Fund established under the Fiscal Agent Agreement to each payee designated on Schedule A attached hereto and by this reference incorporated herein, the amount set forth opposite such payee, for payment or reimbursement of previous payment of Costs of Issuance (as that term is defined in the Fiscal Agent Agreement) as described on attached Schedule A; and

(iv) the disbursements described on the attached Schedule A constitute Costs of Issuance, and are properly chargeable to the Costs of Issuance Fund.

Dated: _____

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Director of the Office of Public Finance

SCHEDULE A

Payee Name and Address

Purpose of Obligation

Amount

EXHIBIT D

**CITY AND COUNTY OF SAN FRANCISCO
Community Facilities District 2014-1
(Transbay Transit Center)
Special Tax Bonds, Series _____**

**OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT
FROM ADMINISTRATIVE EXPENSE FUND**

REQUISITION NO. _____

The undersigned hereby states and certifies that:

(i) I am the duly appointed, qualified and acting Director of the Office of Public Finance of the City and County of San Francisco, a chartered duly organized and existing under the Constitution and the laws of the State of California (the "City") and as such, am familiar with the facts herein certified and am authorized to certify the same;

(ii) I am an "Authorized Officer," as such term is defined in that certain Fiscal Agent Agreement, dated as of _____, 20__ (the "Fiscal Agent Agreement"), by and between the City and [Fiscal Agent], as fiscal agent (the "Fiscal Agent");

(iii) under Section 4.06(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to disburse from the Administrative Expense Fund established under the Fiscal Agent Agreement to each payee designated on Schedule A attached hereto and by this reference incorporated herein, the amount set forth opposite such payee, for payment or reimbursement of previous payment of an Administrative Expense or Costs of Issuance (as those terms are defined in the Fiscal Agent Agreement) as described on attached Schedule A; and

(iv) the disbursements described on the attached Schedule A constitute Administrative Expenses or Costs of Issuance, and are properly chargeable to the Administrative Expense Fund.

Dated: _____

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Director of the Office of Public Finance

SCHEDULE A

Payee Name and Address

Purpose of Obligation

Amount



California

LEGISLATIVE INFORMATION

Code: Section: ⓘ

[Up^](#)

GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57550] (*Title 5 added by Stats. 1949, Ch. 81.*)

DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821] (*Division 2 added by Stats. 1949, Ch. 81.*)

)

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7] (*Part 1 added by Stats. 1949, Ch. 81.*)

CHAPTER 2.5. The Mello-Roos Community Facilities Act of 1982 [53311 - 53368.3] (*Chapter 2.5 added by Stats. 1982, Ch. 1451, Sec. 1.*)

ARTICLE 1. General Provisions [53311 - 53317.5] (*Article 1 added by Stats. 1982, Ch. 1451, Sec. 1.*)

53311. This chapter shall be known and may be cited as the "Mello-Roos Community Facilities Act of 1982".
(*Added by Stats. 1982, Ch. 1451, Sec. 1.*)

53311.5. This chapter provides an alternative method of financing certain public capital facilities and services, especially in developing areas and areas undergoing rehabilitation. The provisions of this chapter shall not affect or limit any other provisions of law authorizing or providing for the furnishing of governmental facilities or services or the raising of revenue for these purposes. A local government may use the provisions of this chapter instead of any other method of financing part or all of the cost of providing the authorized kinds of capital facilities and services.

(*Added by Stats. 1982, Ch. 1451, Sec. 1.*)

53312. Any provision in this chapter which conflicts with any other provision of law shall prevail over the other provision of law.

(*Repealed and added by Stats. 1986, Ch. 1102, Sec. 2. Effective September 24, 1986.*)

53312.5. The local agency may take any actions or make any determinations which it determines are necessary or convenient to carry out the purposes of this chapter and which are not otherwise prohibited by law.

(*Added by Stats. 1985, Ch. 538, Sec. 1. Effective September 9, 1985.*)

53312.7. (a) On and after January 1, 1994, a local agency may initiate proceedings to establish a district pursuant to this chapter only if it has first considered and adopted local goals and policies concerning the use of this chapter. The policies shall include at least the following:

(1) A statement of the priority that various kinds of public facilities and services shall have for financing through the use of this chapter, including public facilities to be owned and operated by other public agencies, including school districts, and services to be provided by other public agencies.

(2) A statement concerning the credit quality to be required of bond issues, including criteria to be used in evaluating the credit quality.

(3) A statement concerning steps to be taken to ensure that prospective property purchasers are fully informed about their taxpaying obligations imposed under this chapter.

(4) A statement concerning criteria for evaluating the equity of tax allocation formulas, and concerning desirable and maximum amounts of special tax to be levied against any parcel pursuant to this chapter.

(5) A statement of definitions, standards, and assumptions to be used in appraisals required by Section 53345.8.

(b) The goals and policies adopted by any school district pursuant to subdivision (a) shall include, but not be limited to, a priority access policy that gives priority attendance access to students residing in a community facilities district whose residents have paid special taxes that have, in whole or in part, financed the construction of school district facilities. The degree of priority shall reflect the proportion of each school's financing provided through the community facilities district. In developing a priority access policy for residents of a community facilities district, a school district may incorporate a school district attendance policy including criteria for student assignment such as goals to achieve ethnic, racial, or socioeconomic diversity; federal, state, or court mandates; transportation needs, safe pedestrian routes; grade levels for which facilities were designed; and ensuring students continuity of schooling within any single school year.

(Amended by Stats. 2007, Ch. 670, Sec. 54. Effective January 1, 2008.)

53312.8. (a) Territory that is dedicated or restricted to agricultural, open-space, or conservation uses may not be included within or annexed to a community facilities district that provides or would provide facilities or services related to sewers, nonagricultural water, or streets and roads, unless the landowner consents to the inclusion or annexation of that territory to the community facilities district.

(b) Notwithstanding any other provision of law, and except as provided in subdivision (c), if a landowner consents to the inclusion or annexation of territory in a community facilities district pursuant to subdivision (a), the landowner and any local agency may not terminate any easement or effect a final cancellation of any contract with respect to any portion of the land included within or annexed to the community facilities district prior to the release of land that is the subject of the proposed termination or cancellation from all liens that arise under the community facilities district for any sewers, nonagricultural water, or streets and roads that did not benefit land uses allowed under the contract or easement.

(c) Subdivision (b) shall not apply to any of the following:

(1) Land under a contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1) included in a community facilities district for which a tentative map may be filed pursuant to paragraph (3) of subdivision (d) of Section 66474.4 or for which a tentative cancellation has been approved.

(2) Land subject to a conservation easement entered into prior to January 1, 2003.

(3) Land included in a community facilities district prior to the imposition of an enforceable restriction listed in subdivision (d) or prior to January 1, 2003.

(4) Land subject to an enforceable restriction listed in subdivision (d) that expressly waives the requirement of subdivision (b).

(d) As used in this section, "territory that is dedicated or restricted to agricultural, open-space, or conservation uses" means territory that is subject to any of the following:

(1) An open-space easement entered into pursuant to Chapter 6.5 (commencing with Section 51050) of Part 1 of Division 1.

(2) An open-space easement entered into pursuant to the Open-Space Easement Act of 1974 (Chapter 6.6 (commencing with Section 51070) of Part 1 of Division 1).

(3) A contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1).

(4) A farmland security zone contract created pursuant to Article 7 (commencing with Section 51296) of Chapter 7 of Part 1 of Division 1), except as otherwise provided in Section 51296.4.

(5) A conservation easement entered into pursuant to Chapter 4 (commencing with Section 815) of Title 2 of

Part 2 of Division 2 of the Civil Code.

(6) An agricultural conservation easement entered into pursuant to Chapter 4 (commencing with Section 10260) of Division 10.2 of the Public Resources Code.

(7) An agricultural conservation easement entered into pursuant to Section 51256.

(Added by Stats. 2002, Ch. 174, Sec. 1. Effective January 1, 2003.)

53313. A community facilities district may be established under this chapter to finance any one or more of the following types of services within an area:

(a) Police protection services, including, but not limited to, criminal justice services. However, criminal justice services shall be limited to providing services for jails, detention facilities, and juvenile halls.

(b) Fire protection and suppression services, and ambulance and paramedic services.

(c) Recreation program services, library services, maintenance services for elementary and secondary schoolsites and structures, and the operation and maintenance of museums and cultural facilities. A special tax may be levied for any of the services specified in this subdivision only upon approval of the registered voters as specified in subdivision (b) of Section 53326. An election to enact a special tax for recreation program services, library services, and the operation and maintenance of museums and cultural facilities may be conducted pursuant to subdivision (c) of Section 53326.

(d) Maintenance and lighting of parks, parkways, streets, roads, and open space.

(e) Flood and storm protection services, including, but not limited to, the operation and maintenance of storm drainage systems, plowing and removal of snow, and sandstorm protection systems.

(f) Services with respect to removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. As used in this subdivision, the terms "remedial action" and "removal" shall have the meanings set forth in Sections 25322 and 25323, respectively, of the Health and Safety Code, and the term "hazardous substance" shall have the meaning set forth in Section 25281 of the Health and Safety Code. Community facilities districts shall provide the State Department of Health Services and local health and building departments with notification of any cleanup activity pursuant to this subdivision at least 30 days prior to commencement of the activity.

(g) Maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the local agency or by another local agency pursuant to an agreement entered into under Section 53316.2.

A community facilities district tax approved by vote of the landowners of the district may only finance the services authorized in this section to the extent that they are in addition to those provided in the territory of the district before the district was created. The additional services shall not supplant services already available within that territory when the district was created.

Bonds shall not be issued pursuant to this chapter to fund any of the services specified in this section, although bonds may be issued to fund capital facilities to be used in providing these services.

(Amended by Stats. 2013, Ch. 219, Sec. 2. Effective January 1, 2014.)

53313.1. To the extent that any capital facility is provided under this chapter, a duplicate levy, impact fee, or other exaction may not be required for the same purpose under Section 66477.

(Added by renumbering Section 53313.8 (as added by Stats. 1982, Ch. 1451) by Stats. 1992, Ch. 427, Sec. 64. Effective January 1, 1993.)

53313.4. Any territory within a community facilities district established for the acquisition or improvement of school facilities for a school district shall be exempt from any fee, increase in any fee other than a cost-of-living increase as authorized by law, or other requirement first levied, increased, or imposed pursuant to Chapter 6 (commencing with Section 17620) of Part 10.5 of Division 1 of Title 1 of the Education Code or under Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7, by or to benefit any other school district, except

as otherwise negotiated between the school districts. That exemption shall apply until a date 10 years following the most recent issuance of bonds by the community facilities district or, if no bonds have ever been issued by the community facilities district, a date 10 years following the formation of the community facilities district.

(Amended by Stats. 2007, Ch. 670, Sec. 56. Effective January 1, 2008.)

53313.5. A community facilities district may also finance the purchase, construction, expansion, improvement, or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer or may finance planning and design work that is directly related to the purchase, construction, expansion, or rehabilitation of any real or tangible property. The facilities need not be physically located within the district. A district may not lease out facilities that it has financed except pursuant to a lease agreement or annexation agreement entered into prior to January 1, 1988. A district may only finance the purchase of facilities whose construction has been completed, as determined by the legislative body, before the resolution of formation to establish the district is adopted pursuant to Section 53325.1, except that a district may finance the purchase of facilities completed after the adoption of the resolution of formation if the facility was constructed as if it had been constructed under the direction and supervision, or under the authority of, the local agency that will own or operate the facility. For example, a community facilities district may finance facilities, including, but not limited to, the following:

- (a) Local park, recreation, parkway, and open-space facilities.
- (b) Elementary and secondary schoolsites and structures provided that the facilities meet the building area and cost standards established by the State Allocation Board.
- (c) Libraries.
- (d) Child care facilities, including costs of insuring the facilities against loss, liability insurance in connection with the operation of the facility, and other insurance costs relating to the operation of the facilities, but excluding all other operational costs. However, the proceeds of bonds issued pursuant to this chapter shall not be used to pay these insurance costs.
- (e) The district may also finance the construction or undergrounding of water transmission and distribution facilities, natural gas pipeline facilities, telephone lines, facilities for the transmission or distribution of electrical energy, and cable television lines to provide access to those services to customers who do not have access to those services or to mitigate existing visual blight. The district may enter into an agreement with a public utility to utilize those facilities to provide a particular service and for the conveyance of those facilities to the public utility. "Public utility" shall include all utilities, whether public and regulated by the Public Utilities Commission, or municipal. If the facilities are conveyed to the public utility, the agreement shall provide that the cost or a portion of the cost of the facilities that are the responsibility of the utility shall be refunded by the public utility to the district or improvement area thereof, to the extent that refunds are applicable pursuant to (1) the Public Utilities Code or rules of the Public Utilities Commission, as to utilities regulated by the commission, or (2) other laws regulating public utilities. Any reimbursement made to the district shall be utilized to reduce or minimize the special tax levied within the district or improvement area, or to construct or acquire additional facilities within the district or improvement area, as specified in the resolution of formation.
- (f) The district may also finance the acquisition, improvement, rehabilitation, or maintenance of any real or other tangible property, whether privately or publicly owned, for flood and storm protection services, including, but not limited to, storm drainage and treatment systems and sandstorm protection systems.
- (g) The district may also pay in full all amounts necessary to eliminate any fixed special assessment liens or to pay, repay, or defease any obligation to pay or any indebtedness secured by any tax, fee, charge, or assessment levied within the area of a community facilities district or may pay debt service on that indebtedness. When the amount financed by the district is to pay a tax, fee, charge, or assessment imposed by a public agency other than the one conducting the proceedings, and if the amount provided to the other public agency will not be entirely used to pay off or prepay an assessment lien or special tax obligation pursuant to the property owner's legal right to do so, the written consent of the other public agency is required. In addition, tax revenues of a district may be used to make lease or debt service payments on any lease, lease-purchase contract, or certificate of participation used to finance facilities authorized to be financed by the

district.

(h) Any other governmental facilities that the legislative body creating the community facilities district is authorized by law to contribute revenue to, or construct, own, or operate. However, the district shall not operate or maintain or, except as otherwise provided in subdivisions (e) and (k), have any ownership interest in any facilities for the transmission or distribution of natural gas, telephone service, or electrical energy.

(i) (1) A district may also pay for the following:

(A) Work deemed necessary to bring buildings or real property, including privately owned buildings or real property, into compliance with seismic safety standards or regulations. Only work certified as necessary to comply with seismic safety standards or regulations by local building officials may be financed. No project involving the dismantling of an existing building and its replacement by a new building, nor the construction of a new or substantially new building may be financed pursuant to this subparagraph. Work on qualified historical buildings or structures shall be done in accordance with the State Historical Building Code (Part 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code).

(B) In addition, within any county or area designated by the President of the United States or by the Governor as a disaster area or for which the Governor has proclaimed the existence of a state of emergency because of earthquake damage, a district may also pay for any work deemed necessary to repair any damage to real property directly or indirectly caused by the occurrence of an earthquake cited in the President's or the Governor's designation or proclamation, or by aftershocks associated with that earthquake, including work to reconstruct, repair, shore up, or replace any building damaged or destroyed by the earthquake, and specifically including, but not limited to, work on any building damaged or destroyed in the Loma Prieta earthquake that occurred on October 17, 1989, or by its aftershocks. Work may be financed pursuant to this subparagraph only on property or buildings identified in a resolution of intention to establish a community facilities district adopted within seven years of the date on which the county or area is designated as a disaster area by the President or by the Governor or on which the Governor proclaims for the area the existence of a state of emergency.

(2) Work on privately owned property, including reconstruction or replacement of privately owned buildings pursuant to subparagraph (B) of paragraph (1), may only be financed by a tax levy if all of the votes cast on the question of levying the tax, vote in favor of levying the tax, or with the prior written consent to the tax of the owners of all property that may be subject to the tax, in that case the prior written consent shall be deemed to constitute a vote in favor of the tax and any associated bond issue. Any district created to finance seismic safety work on privately owned buildings, including repair, reconstruction, or replacement of privately owned buildings pursuant to this subdivision, shall consist only of lots or parcels that the legislative body finds have buildings that were damaged or destroyed by the earthquake cited pursuant to subparagraph (B) of paragraph (1) or by the aftershocks of that earthquake.

(j) A district may also pay for the following:

(1) Work deemed necessary to repair and abate damage caused to privately owned buildings and structures by soil deterioration. "Soil deterioration" means a chemical reaction by soils that causes structural damage or defects in construction materials including concrete, steel, and ductile or cast iron. Only work certified as necessary by local building officials may be financed. No project involving the dismantling of an existing building or structure and its replacement by a new building or structure, nor the construction of a new or substantially new building or structure may be financed pursuant to this paragraph.

(2) Work on privately owned buildings and structures pursuant to this subdivision, including reconstruction, repair, and abatement of damage caused by soil deterioration, may only be financed by a tax levy if all of the votes cast on the question of levying the tax vote in favor of levying the tax. Any district created to finance the work on privately owned buildings or structures, including reconstruction, repair, and abatement of damage caused by soil deterioration, shall consist only of lots or parcels on which the legislative body finds that the buildings or structures to be worked on pursuant to this subdivision suffer from soil deterioration.

(k) A district may also finance the acquisition, improvement, rehabilitation, or maintenance of any real or other tangible property, whether privately or publicly owned, for the purposes of removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. As used in

this subdivision, "remedial action" and "removal" shall have the meaning set forth in Sections 25322 and 25323, respectively, of the Health and Safety Code, and "hazardous substance" shall have the meaning set forth in Section 25281 of the Health and Safety Code.

(l) A district may also finance and refinance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable energy improvements that are affixed, as specified in Section 660 of the Civil Code, to or on real property and in buildings, whether the real property or buildings are privately or publicly owned. Energy efficiency, water conservation, and renewable energy improvements financed by a district may only be installed on a privately owned building and on privately owned real property with the prior written consent of the owner or owners of the building or real property. This chapter shall not be used to finance installation of energy efficiency, water conservation, and renewable energy improvements on a privately owned building or on privately owned real property in connection with the initial construction of a residential building unless the initial construction is undertaken by the intended owner or occupant.

(m) Any improvement on private property authorized to be financed by this section shall constitute a "public facility" for purposes of this chapter and a "public improvement" for purposes of Part 1 (commencing with Section 3100) and Part 2 (commencing with Section 3110) of Division 4.5 of the Streets and Highways Code, whether the improvement is owned by a private entity, if the legislative body has determined that the improvement provides a public benefit, or the improvement is owned by a public agency.

(Amended by Stats. 2011, Ch. 493, Sec. 1. Effective January 1, 2012.)

53313.51. The legislative body may enter into an agreement for the construction of discrete portions or phases of facilities to be constructed and purchased consistent with Section 53313.5. The agreement may include any provisions that the legislative body determines are necessary or convenient, but shall do all of the following:

(a) Identify the specific facilities or discrete portions or phases of facilities to be constructed and purchased. The legislative body may agree to purchase discrete portions or phases of facilities if the portions or phases are capable of serviceable use as determined by the legislative body.

(b) Notwithstanding subdivision (a), when the purchase value of a facility exceeds one million dollars (\$1,000,000), the legislative body may agree to purchase discrete portions or phases of the partially completed project.

(c) Identify procedures to ensure that the facilities are constructed pursuant to plans, standards, specifications, and other requirements as determined by the legislative body.

(d) Specify a price or a method to determine a price for each facility or discrete portion or phase of a facility. The price may include an amount reflecting the interim cost of financing cash payments that must be made during construction of the project, at the discretion of the legislative body.

(e) Specify procedures for final inspection and approval of facilities or discrete portions of facilities, for approval of payment, and for acceptance and conveyance or dedication of the facilities to the local agency.

(Added by Stats. 2003, Ch. 55, Sec. 2. Effective January 1, 2004.)

53313.6. The legislative body may provide for adjustments in ad valorem property taxes pursuant to Section 53313.7 within a community facilities district only after making both of the following findings at the conclusion of the public hearing held pursuant to Article 2 (commencing with Section 53318):

(a) That an ad valorem property tax is, or will be, levied on property within a proposed community facilities district for the exclusive purpose of making lease payments on an existing lease or paying principal or interest on outstanding bonds or other existing indebtedness, including state school building loans, incurred to finance construction of capital facilities.

(b) That capital facilities to be financed by the community facilities district will provide the same services to the territory of the community facilities district as were provided by the capital facilities mentioned in subdivision (a).

(Amended by Stats. 2007, Ch. 670, Sec. 58. Effective January 1, 2008.)

53313.7. (a) Upon making the findings pursuant to Section 53313.6, the legislative body may, with the concurrence of the legislative body which levied the property tax described in subdivision (a) of Section 53313.6, by ordinance, determine that the total annual amount of ad valorem property tax revenue due from parcels within the proposed community facilities district, for purposes of paying principal and interest on the debt identified in Section 53313.6, shall not be increased after the date on which the resolution of formation for the community facilities district is adopted, or after a later date determined by the legislative body creating the community facilities district with the concurrence of the legislative body which levied the property tax in question.

(b) The legislative body may, by ordinance, with the concurrence of the legislative body that levied the property tax described in subdivision (a) of Section 53313.6, determine to cease and eliminate the freeze on property tax revenue established pursuant to subdivision (a), upon determining that the community facilities district's special tax or portion thereof levied on the parcels in question to pay for the capital facilities specified in subdivision (b) of Section 53313.6 shall cease to be levied and collected.

(Amended by Stats. 1993, Ch. 1193, Sec. 3. Effective January 1, 1994.)

53313.9. (a) All or any part of the cost of any school facilities financed by a community facilities district may be shared by the State Allocation Board pursuant to Section 17718.5 of the Education Code.

(b) If the State Allocation Board shares in any part of the cost of the school facilities, the ownership of those facilities and the real property upon which the facilities are located shall be held as provided in the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of the Education Code).

(c) The resolutions of intention, formation, consideration, and to incur bonded indebtedness, adopted pursuant to subdivision (b) of Section 53338 or Sections 53321, 53325.1, 53334, 53339.2, 53345, and 53351 may provide for cost sharing by the State Allocation Board and for appropriate adjustment of the principal amount of any bond issue or issues and of the rate and method of apportionment of any special tax.

(Amended by Stats. 2007, Ch. 670, Sec. 60. Effective January 1, 2008.)

53314. The legislative body may from time to time transfer moneys to a community facilities district or to an improvement area within a community facilities district, for the benefit of the district or improvement area, from any funds available to the legislative body. Any moneys so transferred may be used for the payment of any currently payable expenses incurred by reason of the construction or acquisition of any facilities or provision of any authorized services within the district or improvement area prior to December 1 of the first fiscal year in which a special tax may be levied for the facilities or services within the district or improvement area. The rate of interest earned by the investment of those moneys shall be determined by the legislative body.

(Amended by Stats. 1991, Ch. 1110, Sec. 4.)

53314.3. In the first fiscal year in which a special tax or charge is levied for any facility or for any services in a community facilities district or a zone within a community facilities district, the legislative body shall include in the levy a sum sufficient to repay to the legislative body the amounts transferred to that district or zone pursuant to Section 53314. The amounts borrowed, with interest, shall be retransferred to the proper fund or funds from the first available receipts from the special levy in that district or zone.

Notwithstanding the above provisions, the legislative body may, by a resolution adopted no later than the time of the first levy, extend the repayment of the transferred funds over a period of time not to exceed three consecutive years, in which event the levy and each subsequent levy shall include a sum sufficient to repay the amount specified by the legislative body for the year of the levy.

(Amended by Stats. 1987, Ch. 1440, Sec. 2.)

53314.5. Pursuant to a resolution adopted by the legislative body, the legislative body may appropriate any of its available moneys to a revolving fund to be used for the acquisition of real or personal property, engineering

services, or the construction of structures or improvements needed in whole or in part to provide one or more of the facilities of a community facilities district. The revolving fund shall be reimbursed from tax revenues or other moneys available from the facilities district, and no sums shall be disbursed from the fund until the legislative body has, by resolution, established the method by, and term not exceeding five years within, which the community facilities district is to reimburse the fund. The district shall reimburse the fund for any amount disbursed to the area within five years after such disbursement, together with interest at the current rate per annum received on similar types of investments by the legislative body as determined by the local agency's treasurer.

(Added by Stats. 1982, Ch. 1451, Sec. 1.)

53314.6. (a) In connection with the financing of services and facilities pursuant to subdivision (f) of Section 53313 and subdivision (k) of Section 53313.5, the legislative body may establish a revolving fund to be kept in the treasury of the district. Except as provided in subdivision (b), moneys in the revolving fund shall be expended solely for the payment of costs with respect to those services and facilities. The revolving fund may be funded from time to time with moneys derived from any of the following:

(1) Proceeds of the sale of bonds issued pursuant to Article 5 (commencing with Section 53345), notwithstanding any limitation contained in Section 53345.3.

(2) Any taxes or charges authorized under this chapter.

(3) Any other lawful source.

(b) Subject to the provisions of any resolution, trust agreement or indenture providing for the issuance of district bonds for the purposes set forth in subdivision (k) of Section 53313.5, the legislative body may withdraw money from the revolving fund whenever and to the extent that it finds that the amount of money therein exceeds the amount necessary to accomplish the purposes for which the revolving fund was established. Any moneys withdrawn from the revolving fund shall be used to redeem bonds of the district issued for the purposes set forth in subdivision (k) of Section 53313.5 or shall be paid to taxpayers in the district in amounts that the legislative body determines.

(Amended by Stats. 2007, Ch. 670, Sec. 61. Effective January 1, 2008.)

53314.7. (a) Any responsible party as defined by subdivision (a) of Section 25323.5 of the Health and Safety Code shall be liable to the district for the costs incurred in the removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. The amount of the costs shall include interest on the costs accrued from the date of expenditure. The interest shall be calculated based on the average annual rate of return on the district's investment of surplus funds for the fiscal year in which the district incurred the costs. Recovery of costs by a community facilities district under this section shall be commenced before or immediately upon completion of the removal or remedial action, and payments received hereunder by the district shall be deposited in the revolving fund in accordance with Section 53314.6.

(b) To expedite cleanup, this section is intended to provide local jurisdictions an alternative method of financing the cost of removal or remedial action for the cleanup of any hazardous substance through the issuance of voter-approved limited obligation bonds. The provisions of this section shall not affect or limit the provisions of any other law establishing the liability of any person for, or otherwise regulating, the generation, transportation, storage, treatment, or disposal of hazardous substances. The scope and standard of liability for any costs recoverable pursuant to Section 53314.7 shall be the scope and standard of liability set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 6901 et seq.), or any other provision of state or federal law establishing responsibility for cleanup of hazardous waste sites.

(Added by Stats. 1990, Ch. 175, Sec. 4. Effective June 26, 1990.)

53314.8. At any time either before or after the formation of the district, the legislative body may provide, by ordinance, that for a period specified in the ordinance, the local agency may contribute, from any source of revenue not otherwise prohibited by law, any specified amount, portion, or percentage of the revenues for the

purposes set forth in the ordinance, limited to the following: the acquisition or construction of a facility, the acquisition of interest in real property, or the payment of debt service with respect to the financing of either, the provision of authorized services, and the payment of expenses incidental thereto. The contribution shall not constitute an indebtedness or liability of the local agency.

(Amended by Stats. 1991, Ch. 1110, Sec. 5.)

53314.9. (a) Notwithstanding Section 53313.5, at any time either before or after the formation of the district, the legislative body may accept advances of funds or work in-kind from any source, including, but not limited to, private persons or private entities and may provide, by resolution, for the use of those funds or that work in-kind for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in creating a district. The legislative body may enter into an agreement, by resolution, with the person or entity advancing the funds or work in-kind, to repay all or a portion of the funds advanced, or to reimburse the person or entity for the value, or cost, whichever is less, of the work in-kind, as determined by the legislative body, with or without interest, under all of the following conditions:

(1) The proposal to repay the funds or the value or cost of the work in-kind, whichever is less, is included both in the resolution of intention to establish a district adopted pursuant to Section 53321 and in the resolution of formation to establish the district adopted pursuant to Section 53325.1, or in the resolution of consideration to alter the types of public facilities and services provided within an established district adopted pursuant to Section 53334.

(2) Any proposed special tax or change in a special tax is approved by the qualified electors of the district pursuant to this chapter. Any agreement shall specify that if the qualified electors of the district do not approve the proposed special tax or change in a special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election to the person or entity advancing the funds.

(3) Any work in-kind accepted pursuant to this section shall have been performed or constructed as if the work had been performed or constructed under the direction and supervision, or under the authority of, the local agency.

(b) The agreement shall not constitute a debt or liability of the local agency.

(Amended by Stats. 1987, Ch. 1440, Sec. 2.5.)

53315. This chapter shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality, and no neglect or omission of any officer, in any procedure taken under this chapter, which does not directly affect the jurisdiction of the legislative body to order the installation of the facility or the provision of service, shall void or invalidate such proceeding or any levy for the costs of such facility or service.

(Added by Stats. 1982, Ch. 1451, Sec. 1.)

53315.3. The failure of any person to receive a notice, resolution, order, or other matter shall not affect in any way whatsoever the validity of any proceedings taken under this chapter, or prevent the legislative body from proceeding with any hearing so noticed.

(Added by Stats. 1982, Ch. 1451, Sec. 1.)

53315.6. When any proceeding is initiated under this chapter by a legislative body other than that of a city or county, a copy of the resolution of intention shall be transmitted to the legislative body of the city, where the land to be assessed lies within the corporate limits of any city, or of the county, where the land to be assessed lies within an unincorporated territory.

(Added by Stats. 1987, Ch. 1440, Sec. 3.)

53315.8. A county may not form a district within the territorial jurisdiction of a city without the consent of the legislative body of the city.

(Added by Stats. 1987, Ch. 1440, Sec. 3.1.)

53316. This chapter applies to all local agencies insofar as those entities have the power to install or contribute revenue for any of the facilities or provide or contribute revenue for any of the services authorized under this chapter. This chapter authorizes local agencies to create community facilities districts pursuant to this chapter within their territorial limits. A local agency may initiate proceedings pursuant to Section 53318 to include territory proposed for annexation to the local agency within a community facilities district if a petition or resolution of application for the annexation of the territory to the local agency has been accepted for filing and a certificate of filing has been issued by the executive officer of the local agency formation commission at the time the proceedings to create the district are initiated. Those proceedings may be completed only if the annexation of the territory to the local agency is completed. The officers of local agencies who have similar powers and duties, as determined by the legislative body of the local agency, as the municipal officers referred to in this chapter shall have the powers and duties given by this chapter to the municipal officials. Where no similar officer exists, the legislative body of the local agency shall, by resolution, appoint a person or designate an officer to perform the duties under this chapter. Any local agency that has no authority to enact an ordinance under other laws may, for purposes of this chapter, enact an ordinance in substantially the same manner as provided for the enactment of a city ordinance in Chapter 2 (commencing with Section 36900) of Part 2 of Division 3 of Title 4.

(Amended by Stats. 1988, Ch. 1365, Sec. 5.)

53316.2. (a) A community facilities district may finance facilities to be owned or operated by a public agency other than the agency that created the district, or services to be provided by a public agency other than the agency that created the district, or any combination, only pursuant to a joint community facilities agreement or a joint exercise of powers agreement adopted pursuant to this section. A joint community facilities agreement or a joint exercise of powers agreement with a state or federal agency shall not be required if the local agency that created the district is the agency that would, in the absence of the district, enter into an agreement with the state or federal agency for the provision of the facilities or services, or if the local agency that created the district enters into a joint agreement with the public agency that would, in the absence of the district, enter into an agreement with the state or federal agency for the provision of the facilities or services.

(b) At any time prior to the adoption of the resolution of formation creating a community facilities district or a resolution of change to alter a district, or a resolution or resolutions authorizing issuance of bonds pursuant to Section 53356, the legislative bodies of two or more local agencies may enter into a joint community facilities agreement pursuant to this section and Sections 53316.4 and 53316.6 or into a joint exercise of powers agreement pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1) to exercise any power authorized by this chapter with respect to the community facilities district being created or changed if the legislative body of each entity adopts a resolution declaring that the joint agreement would be beneficial to the residents of that entity. This subdivision shall not be construed to limit the ability of a joint powers authority created pursuant to the Joint Exercise of Powers Act to exercise the powers authorized by the Joint Exercise of Powers Act.

(c) Notwithstanding the Joint Exercise of Powers Act, a contracting party may use the proceeds of any special tax or charge levied pursuant to this chapter or, in the case of facilities, of any bonds or other indebtedness issued pursuant to this chapter to provide facilities or services which that contracting party is otherwise authorized by law to provide, even though another contracting party does not have the power to provide those facilities or services.

(d) Notwithstanding subdivision (b), nothing in this section shall prevent entry into or amendment of a joint community facilities agreement or a joint exercise of powers agreement at any time, if the new agreement or amendment is necessary, as determined by the legislative body, for either of the following reasons:

(1) To allow an orderly transition of governmental facilities and finances in the case of any change in governmental organization approved pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5) or other law governing the reorganization of any agency that is a party to the agreement.

(2) To allow participation in the agreement by a state or federal agency, including, but not limited to, the California Department of Transportation. Participation in an agreement by a state or federal agency is purely optional.

(e) Notwithstanding any other provision of this chapter, no local agency that is party to a joint exercise of powers agreement or joint community facilities agreement shall have primary responsibility for formation of a district, or for an extension of authorized facilities and services or a change in special taxes pursuant to Article 3 (commencing with Section 53330), unless that local agency is one or more of the following:

(1) A city, a county, or a city and county.

(2) An agency created pursuant to a joint powers agreement that is separate from the parties to the agreement, is responsible for the administration of the agreement, and is subject to the notification requirement of Section 6503.5.

(3) An agency that is reasonably expected to have responsibility for providing facilities or services to be financed by a larger share of the proceeds of special taxes and bonds of the district or districts created or changed pursuant to the joint exercise of powers agreement or the joint community facilities agreement than any other local agency.

(Amended by Stats. 2013, Ch. 219, Sec. 3. Effective January 1, 2014.)

53316.4. The agreement entered into pursuant to Section 53316.2 shall contain a description of the facilities and services to be provided under the agreement, and any real or tangible property which is to be purchased, constructed, expanded, or rehabilitated.

(Added by Stats. 1984, Ch. 269, Sec. 6. Effective July 3, 1984.)

53316.6. The agreement entered into pursuant to Section 53316.2 may provide for the division of responsibility to provide any of the facilities or services among the entities entering into the agreement. The agreement shall provide for the allocation and distribution of the proceeds of any special tax levy among the parties to the agreement.

(Added by Stats. 1984, Ch. 269, Sec. 7. Effective July 3, 1984.)

53317. Unless the context otherwise requires, the definitions contained in this article shall govern the construction of this chapter.

(a) "Clerk" means the clerk of the legislative body of a local agency.

(b) "Community facilities district" means a legally constituted governmental entity established pursuant to this chapter for the sole purpose of financing facilities and services.

(c) "Cost" means the expense of constructing or purchasing the public facility and of related land, right-of-way, easements, including incidental expenses, and the cost of providing authorized services, including incidental expenses.

(d) "Debt" means any binding obligation to pay or repay a sum of money, including obligations in the form of bonds, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals, or long-term contracts.

(e) "Incidental expense" includes all of the following:

(1) The cost of planning and designing public facilities to be financed pursuant to this chapter, including the cost of environmental evaluations of those facilities.

(2) The costs associated with the creation of the district, issuance of bonds, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the district.

(3) Any other expenses incidental to the construction, completion, and inspection of the authorized work.

(f) "Landowner" or "owner of land" means any person shown as the owner of land on the last equalized

assessment roll or otherwise known to be the owner of the land by the legislative body. The legislative body has no obligation to obtain other information as to the ownership of the land, and its determination of ownership shall be final and conclusive for the purposes of this chapter. A public agency is not a landowner or owner of land for purposes of this chapter, unless one of the following exists:

- (1) The land owned by a public agency would be subject to a special tax pursuant to Section 53340.1.
- (2) The public agency has acquired the property by purchase or negotiation in connection with foreclosure of a special tax lien and it is intended that the property will be transferred to private ownership.
- (3) The public agency states in the proceedings that its land is intended to be transferred to private ownership and provides in the proceedings that its land will be subject to the special tax on the same basis as private property within the district and affirmatively waives any defense based on the fact of public ownership, to any action to foreclose on the property in the event of nonpayment of the special tax.
- (4) The land owned by a public agency is within the territory of a military base that is closed or is being closed.
- (g) "Legislative body" means the legislative body or governing board of any local agency.
- (h) "Local agency" means any city or county, whether general law or chartered, special district, school district, joint powers entity created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, redevelopment agency, or any other municipal corporation, district, or political subdivision of the state.
- (i) "Rate" means a single rate of tax or a schedule of rates.
- (j) "Services" means the provision of categories of services identified in Section 53313. "Services" includes the performance by employees of functions, operations, maintenance, and repair activities. "Services" does not include activities or facilities identified in Section 53313.5. "Maintenance" shall include replacement, and the creation and funding of a reserve fund to pay for a replacement.

(Amended by Stats. 2013, Ch. 219, Sec. 4. Effective January 1, 2014.)

53317.3. If property not otherwise exempt from a special tax levied pursuant to this chapter is acquired by a public entity through a negotiated transaction, or by gift or devise, the special tax shall, notwithstanding Section 53340, continue to be levied on the property acquired and shall be enforceable against the public entity that acquired the property. However, even if the resolution of formation that authorized creation of the district did not specify conditions under which the obligation to pay a special tax may be prepaid and permanently satisfied, the legislative body of the local agency that created the district may specify conditions under which the public agency that acquires the property may prepay and satisfy the obligation to pay the tax. The conditions may be specified only if the local agency that created the district finds and determines that the prepayment arrangement will fully protect the interests of the owners of the district's bonds.

(Amended by Stats. 1991, Ch. 1110, Sec. 6.5.)

53317.5. If property subject to a special tax levied pursuant to this chapter is acquired by a public entity through eminent domain proceedings, the obligation to pay the special tax shall be treated, pursuant to Section 1265.250 of the Code of Civil Procedure, as if it were a special annual assessment. For this purpose, the present value of the obligation to pay a special tax to pay the principal and interest on any indebtedness incurred by the district prior to the date of apportionment determined pursuant to Section 5082 of the Revenue and Taxation Code shall be treated the same as a fixed lien special assessment.

(Added by Stats. 1986, Ch. 1102, Sec. 11. Effective September 24, 1986.)

ARTICLE 2. Proceedings to Create a Community Facilities District [53318 - 53329.6] (Article 2 added by Stats. 1982, Ch. 1451, Sec. 1.)

53318. Proceedings for the establishment of a community facilities district may be instituted by the legislative body on its own initiative and shall be instituted by the legislative body when any of the following occurs:

(a) A written request for the establishment of a district, signed by two members of the legislative body, describing the boundaries of the territory that is proposed for inclusion in the area and specifying the type or types of facilities and services to be financed by the district, is filed with the legislative body.

(b) A petition requesting the institution of the proceedings signed by the requisite number of registered voters, as specified in subdivision (d) of Section 53319, describing the boundaries of the territory that is proposed for inclusion in the area and specifying the type or types of facilities and services to be financed by the district, is filed with the clerk of the legislative body. The petition may consist of any number of separate instruments, each of which shall comply with all of the requirements of the petition, except as to the number of signatures.

(c) A petition requesting the institution of the proceedings signed by landowners owning the requisite portion of the area of the proposed district, as specified in subdivision (d) of Section 53319, describing the boundaries of the territory that is proposed for inclusion in the area and specifying the type or types of facilities and services to be financed by the district, is filed with the clerk of the legislative body.

(d) The written request filed pursuant to subdivision (a) and the petition filed pursuant to subdivision (b) are not required to be acted upon until the payment of a fee in an amount that the legislative body determines, within 45 days of receiving the request or petition, is sufficient to compensate the legislative body for all costs incurred in conducting proceedings to create a district pursuant to this chapter. A petition filed pursuant to subdivision (c) may not be acted upon until payment of a fee in an amount that the legislative body determines, within 45 days of receiving the petition, is sufficient to compensate the legislative body for all costs incurred in conducting proceedings to create a district pursuant to this chapter.

(Amended by Stats. 2007, Ch. 670, Sec. 64. Effective January 1, 2008.)

53318.5. Notwithstanding any provision of Part 1 (commencing with Section 56000) of Division 3, a local agency formation commission shall have no power or duty to review and approve or disapprove a proposal to create a community facilities district or a proposal to annex territory to, or detach territory from, such district, pursuant to this chapter.

(Amended by Stats. 1991, Ch. 1110, Sec. 7.)

53319. A petition requesting the institution of proceedings for the establishment of a community facilities district shall do all of the following:

(a) Request the legislative body to institute proceedings to establish a community facilities district pursuant to this chapter.

(b) Describe the boundaries of the territory that is proposed for inclusion in the district.

(c) State the type or types of facilities and services proposed to be financed by the district, which may include proposals for any additional information specified by Sections 53321, 53325.7, and 53345.

(d) Be signed by not less than 10 percent of the registered voters residing within the territory proposed to be included within the district or by owners of not less than 10 percent of the area of land proposed to be included within the district and not proposed to be exempt from the special tax. If the legislative body finds that the petition is signed by the requisite number of registered voters residing within the territory proposed to be included within the district or by the requisite number of owners of land proposed to be included within the district, that finding shall be final and conclusive.

(Amended by Stats. 2007, Ch. 670, Sec. 65. Effective January 1, 2008.)

53320. Within 90 days after either a written request by two members of the legislative body or a petition requesting the institution of proceedings for the establishment of a community facilities district is filed with the legislative body and the payment of any fee required under subdivision (d) of Section 53318, the legislative body shall adopt a resolution of intention to establish a community facilities district in the form specified in Section 53321.

(Amended by Stats. 2007, Ch. 670, Sec. 66. Effective January 1, 2008.)

53321. Proceedings for the establishment of a community facilities district shall be instituted by the adoption of a resolution of intention to establish the district which shall do all of the following:

(a) State that a community facilities district is proposed to be established under the terms of this chapter and describe the boundaries of the territory proposed for inclusion in the district, which may be accomplished by reference to a map on file in the office of the clerk, showing the proposed community facilities district. The boundaries of the territory proposed for inclusion in the district shall include the entirety of any parcel subject to taxation by the proposed district.

(b) State the name proposed for the district in substantially the following form: "Community Facilities District No. ____."

(c) Describe the public facilities and services proposed to be financed by the district pursuant to this chapter. The description may be general and may include alternatives and options, but it shall be sufficiently informative to allow a taxpayer within the district to understand what the funds of the district may be used to finance. If the purchase of completed public facilities or the incurring of incidental expenses is proposed, the resolution shall identify those facilities or expenses. If facilities are proposed to be financed through any financing plan, including, but not limited to, any lease, lease-purchase, or installment-purchase arrangement, the resolution shall briefly describe the proposed arrangement.

(d) State that, except where funds are otherwise available, a special tax sufficient to pay for all facilities and services, secured by recordation of a continuing lien against all nonexempt real property in the district, will be annually levied within the area. The resolution shall specify the rate, method of apportionment, and manner of collection of the special tax in sufficient detail to allow each landowner or resident within the proposed district to estimate the maximum amount that he or she will have to pay. The legislative body may specify conditions under which the obligation to pay the specified special tax may be prepaid and permanently satisfied. The legislative body may specify conditions under which the rate of the special tax may be permanently reduced in compliance with the provisions of Section 53313.9.

In the case of any special tax to pay for public facilities and to be levied against any parcel used for private residential purposes, (1) the maximum special tax shall be specified as a dollar amount which shall be calculated and thereby established not later than the date on which the parcel is first subject to the tax because of its use for private residential purposes, which amount shall not be increased over time except that it may be increased by an amount not to exceed 2 percent per year, (2) the resolution shall specify a tax year after which no further special tax subject to this sentence shall be levied or collected, except that a special tax that was lawfully levied in or before the final tax year and that remains delinquent may be collected in subsequent years, and (3) the resolution shall specify that under no circumstances will the special tax levied in any fiscal year against any parcel subject to this sentence be increased as a consequence of delinquency or default by the owner or owners of any other parcel or parcels within the district by more than 10 percent above the amount that would have been levied in that fiscal year had there never been any such delinquencies or defaults. For purposes of this paragraph, a parcel shall be considered "used for private residential purposes" not later than the date on which an occupancy permit for private residential use is issued. Nothing in this paragraph is intended to prohibit the legislative body from establishing different tax rates for different categories of residential property, or from changing the dollar amount of the special tax for the parcel if the size of the residence is increased or if the size or use of the parcel is changed.

(e) Fix a time and place for a public hearing on the establishment of the district which shall be not less than 30 or more than 60 days after the adoption of the resolution.

(f) Describe any adjustment in property taxation to pay prior indebtedness pursuant to Sections 53313.6 and 53313.7.

(g) Describe the proposed voting procedure.

The changes made to this section by Senate Bill 1464 of the 1991–92 Regular Session of the Legislature shall not apply to special taxes levied by districts for which a resolution of formation was adopted before January 1, 1993.

(Amended by Stats. 2007, Ch. 670, Sec. 66.5. Effective January 1, 2008.)

53321.5. At the time of the adoption of the resolution of intention to establish a community facilities district, the legislative body shall direct each of its officers who is or will be responsible for providing one or more of the proposed types of public facilities or services to be financed by the district, if it is established, to study the proposed district and, at or before the time of the hearing, file a report with the legislative body containing a brief description of the public facilities and services by type that will in his or her opinion be required to adequately meet the needs of the district and his or her estimate of the cost of providing those public facilities and services. If the purchase of completed public facilities or the payment of incidental expenses is proposed, the legislative body shall direct its appropriate officer to estimate the fair and reasonable cost of those facilities or incidental expenses. If removal or remedial action for the cleanup of any hazardous substance is proposed, the legislative body shall (a) direct its responsible officer to prepare or cause to be prepared, a remedial action plan based upon factors comparable to those described in subdivision (d) of Section 25356.1 of the Health and Safety Code or (b) determine, on the basis of the particular facts and circumstances, that shall be comparable to those described in subdivision (h) of Section 25356.1 of the Health and Safety Code, that the remedial action plan is not required or (c) condition financing of the removal or remedial action upon approval of a remedial action plan pursuant to Section 25356.1 of the Health and Safety Code. All of those reports shall be made a part of the record of the hearing on the resolution of intention to establish the district.

(Amended by Stats. 2007, Ch. 670, Sec. 67. Effective January 1, 2008.)

53322. (a) The clerk of the legislative body shall publish a notice of the hearing pursuant to Section 6061 in a newspaper of general circulation published in the area of the proposed district. Publication shall be complete at least seven days prior to the date of the hearing.

(b) The notice shall contain all of the following information:

(1) The text or a summary of the resolution of intention to establish the district which may refer to documents on file in the office of the clerk for detail.

(2) The time and place of the hearing on the establishment of the district.

(3) A statement that at the hearing the testimony of all interested persons or taxpayers for or against the establishment of the district, the extent of the district, or the furnishing of specified types of public facilities or services will be heard. The notice shall also describe, in summary, the effect of protests made by registered voters or landowners against the establishment of the district, the extent of the district, the furnishing of a specified type of facilities or services, or a specified special tax, as provided in Section 53324.

(4) A description of the proposed voting procedure.

(Amended by Stats. 1991, Ch. 1110, Sec. 9.)

53322.4. The clerk of the legislative body may also give notice of the hearing by first-class mail to each registered voter and to each landowner within the proposed district. This notice shall contain the same information as is required to be contained in the notice published pursuant to Section 53322.

(Amended by Stats. 2007, Ch. 670, Sec. 68. Effective January 1, 2008.)

53323. At the hearing, protests against the establishment of the district, the extent of the district, or the furnishing of specified types of public facilities or services within the district may be made orally or in writing by any interested person. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities and defects to which objection is made. Any written protest not personally presented by the author of that protest at the hearing shall be filed with the clerk of the legislative body at or before the time fixed for the hearing. The legislative body may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

(Amended by Stats. 2007, Ch. 670, Sec. 69. Effective January 1, 2008.)

53324. (a) If 50 percent or more of the registered voters, or six registered voters, whichever is more, residing

within the territory proposed to be included in the district, or the owners of one-half or more of the area of the land in the territory proposed to be included in the district and not exempt from the special tax, file written protests against the establishment of the district, and protests are not withdrawn so as to reduce the value of the protests to less than a majority, no further proceedings to create the specified community facilities district or to authorize the specified special tax shall be taken for a period of one year from the date of the decision of the legislative body.

If the majority protests of the registered voters or of the landowners are only against the furnishing of a specified type or types of facilities or services within the district, or against levying a specified special tax, those types of facilities or services or the specified special tax shall be eliminated from the resolution of formation.

(b) This section does not apply to the formation of a district pursuant to Section 53328.1.

(Amended by Stats. 2011, Ch. 493, Sec. 2. Effective January 1, 2012.)

53325. The hearing may be continued from time to time, but shall be completed within 30 days, except that if the legislative body finds that the complexity of the proposed district or the need for public participation requires additional time, the hearing may be continued from time to time for a period not to exceed six months. The legislative body may modify the resolution of intention by eliminating proposed facilities or services, or by changing the rate or method of apportionment of the proposed special tax so as to reduce the maximum special tax for all or a portion of the owners of property within the proposed district, or by removing territory from the proposed district. Any modifications shall be made by action of the legislative body at the public hearing. If the legislative body proposes to modify the resolution of intention in a way that will increase the probable special tax to be paid by the owner of any lot or parcel, it shall direct that a report be prepared that includes a brief analysis of the impact of the proposed modifications on the probable special tax to be paid by the owners of lots or parcels in the district, and shall receive and consider the report before approving the modifications or any resolution of formation that includes those modifications. The legislative body shall not modify the resolution of intention to increase the maximum special tax or to add territory to the proposed district. At the conclusion of the hearing, the legislative body may abandon the proposed establishment of the community facilities district or may, after passing upon all protests, determine to proceed with establishing the district.

(Amended by Stats. 2007, Ch. 670, Sec. 71. Effective January 1, 2008.)

53325.1. (a) If the legislative body determines to establish the district, it shall adopt a resolution of formation establishing the district. The resolution of formation shall contain all of the information required to be included in the resolution of intention to establish the district specified in Section 53321. If a special tax is proposed to be levied in the district to pay for any facilities or services and the special tax has not been eliminated by majority protest pursuant to Section 53324, the resolution shall:

(1) State that the proposed special tax to be levied within the district has not been precluded by majority protest pursuant to Section 53324.

(2) Identify any facilities or services proposed to be funded with the special tax.

(3) Set forth the name, address, and telephone number of the office, department, or bureau that will be responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and that will be responsible for estimating future special tax levies pursuant to Section 53340.2.

(4) State that upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the Streets and Highways Code, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the district and this lien shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the lien canceled in accordance with law or until collection of the tax by the legislative body ceases.

(5) Set forth the county of recordation and the book and page in the Book of Maps of Assessments and Community Facilities Districts in the county recorder's office where the boundary map of the proposed

community facilities district has been recorded pursuant to Sections 3111 and 3113 of the Streets and Highways Code.

(b) In the resolution of formation adopted pursuant to subdivision (a), the legislative body shall determine whether all proceedings were valid and in conformity with the requirements of this chapter. If the legislative body determines that all proceedings were valid and in conformity with the requirements of this chapter, it shall make a finding to that effect and that finding shall be final and conclusive.

(Amended by Stats. 2007, Ch. 670, Sec. 72. Effective January 1, 2008.)

53325.3. A tax imposed pursuant to this chapter is a special tax and not a special assessment, and there is no requirement that the tax be apportioned on the basis of benefit to any property. However, a special tax levied pursuant to this chapter may be on or based on a benefit received by parcels of real property, the cost of making facilities or authorized services available to each parcel, or some other reasonable basis as determined by the legislative body.

(Amended by Stats. 1996, Ch. 1161, Sec. 2. Effective January 1, 1997.)

53325.5. (a) A community facilities district may include areas of territory that are not contiguous.

(b) In establishing the boundaries of the district, the legislative body may alter the exterior boundaries of the district to include less territory than that described in the notice of the hearing but it may not include any territory not described in the notice of the hearing.

(Amended by Stats. 1984, Ch. 269, Sec. 16.5. Effective July 3, 1984.)

53325.6. Land devoted primarily to agricultural, timber, or livestock uses and being used for the commercial production of agricultural, timber, or livestock products may be included in a community facilities district only if such land is contiguous to other land which is included within the described exterior boundaries of the community facilities district, and only if the legislative body finds that the land will be benefited by any of the types of public facilities and services proposed to be provided within the district. The land may, however, be included in the community facilities district, if the owner requests its inclusion.

(Added by Stats. 1982, Ch. 1451, Sec. 1.)

53325.7. The legislative body may submit a proposition to establish or change the appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of a community facilities district to the qualified electors of a proposed or established district. The proposition establishing or changing the appropriations limit shall become effective if approved by the qualified electors voting on the proposition and shall be adjusted for changes in the per capita personal income in the state and changes in populations, as defined by subdivisions (b) and (c) of Section 7901, except that the change in population may be estimated by the legislative body in the absence of an estimate by the Department of Finance, and in accordance with Section 1 of Article XIII B of the California Constitution. For purposes of adjusting for changes in population, the population of the district shall be deemed to be at least one person during each calendar year.

(Amended by Stats. 2007, Ch. 670, Sec. 73. Effective January 1, 2008.)

53326. (a) The legislative body shall then submit the levy of any special taxes to the qualified electors of the proposed community facilities district or to the qualified electors of the territory to be annexed by the community facilities district in the next general election or in a special election to be held, notwithstanding any other requirement, including any requirement that elections be held on specified dates, contained in the Elections Code, at least 90 days, but not more than 180 days, following the adoption of the resolution of formation. The legislative body shall provide the resolution of formation, the resolution deeming it necessary to incur bonded indebtedness, if one is adopted, a certified map of sufficient scale and clarity to show the boundaries of the district, and a sufficient description to allow the election official to determine the boundaries of the district to the official conducting the election within three business days after the adoption of the resolution of formation. Assessor's parcel numbers for the land within the district shall be included if it is a

landowner election or the district does not conform to an existing district's boundaries and if requested by the official conducting the election. If the election is to be held less than 125 days following the adoption of the resolution of formation, the concurrence of the election official conducting the election shall be required. However, any time limit specified by this section or requirement pertaining to the conduct of the election, including any time limit or requirement applicable to any election conducted pursuant to Article 5 (commencing with Section 53345), may be waived with the unanimous consent of the qualified electors of the proposed district and the concurrence of the election official conducting the election.

(b) Except as otherwise provided in subdivision (c), if at least 12 persons, who need not necessarily be the same 12 persons, have been registered to vote within the territory of the proposed community facilities district for each of the 90 days preceding the close of the protest hearing, the vote shall be by the registered voters of the proposed district, with each voter having one vote. Otherwise, the vote shall be by the landowners of the proposed district and each person who is the owner of land at the close of the protest hearing, or the authorized representative thereof, shall have one vote for each acre or portion of an acre of land that he or she owns within the proposed community facilities district not exempt from the special tax. Ballots shall be executed by an owner of a parcel, or by a representative of an owner lawfully appointed to represent the owner for purposes of the election. Each person casting a ballot assigned to a parcel of property who is not the owner of that property must present written evidence to the local agency of that person's authority to act for the owner for the election before casting the ballot. If more than one of the record owners of an identified parcel submits or wishes to submit a ballot, the votes attributable to the parcel shall be allocated to ballots for each owner in proportion to their respective record ownership interest, rounded to the nearest one-tenth of a vote, or, if the ownership interests are not shown on the record, as established to the satisfaction of the local agency, the votes attributable to the parcel shall be allocated according to the ownership interests shown by documentation submitted by those record owners. If no document is submitted, the votes shall be allocated equally among the parcel's owners requesting ballots. If the appointment of the representative to cast the ballot was made as part of the transaction by which the current owners acquired the property, or if the appointment appoints a former owner, or anyone affiliated in any way with a former owner of the property, the written appointment must be signed by all of the owners, and include a statement signed by all of the owners substantially in the form contained in Section 53341.5. The appointment is not valid if the ballot measure seeks to authorize facilities, services, or special taxes in excess of those shown on the statement. The appointment of a representative to act for property for a single specified landowner election under this chapter shall not constitute a violation of any law prohibiting the impersonation of voters or the inducement to vote in a particular fashion. The number of votes to be voted by a particular landowner shall be specified on the ballot provided to that landowner. If the vote is by landowners pursuant to this subdivision, the legislative body shall determine that any facilities or services financed by the district are necessary to meet increased demands placed upon local agencies as the result of development or rehabilitation occurring in the district.

(c) If the proposed special tax will not be apportioned in any tax year on any portion of property in residential use in that tax year, as determined by the legislative body, the legislative body may provide that the vote shall be by the landowners of the proposed district whose property would be subject to the tax if it were levied at the time of the election. Each of these landowners shall have one vote for each acre, or portion thereof, that the landowner owns within the proposed district that would be subject to the proposed tax if it were levied at the time of the election.

(d) Ballots for the special election authorized by subdivision (a) may be distributed to qualified electors by mail with return postage prepaid or by personal service by the election official. The official conducting the election may certify the proper mailing of ballots by an affidavit, that shall constitute conclusive proof of mailing in the absence of fraud. The voted ballots shall be returned to the election officer conducting the election not later than the hour specified in the resolution calling the election. However, if all the qualified voters have voted, the election may be closed with the concurrence of the official conducting the election.

(Amended by Stats. 2007, Ch. 670, Sec. 74. Effective January 1, 2008.)

53327. (a) Except as otherwise provided in this chapter, the provisions of law regulating elections of the local agency that calls an election pursuant to this chapter, insofar as they may be applicable, shall govern all

elections conducted pursuant to this chapter. Except as provided in subdivision (b), there shall be prepared and included in the ballot material provided to each voter an impartial analysis pursuant to Section 9160, 9280, or 9500 of the Elections Code, and arguments and rebuttals, if any, pursuant to Sections 9162 to 9167, inclusive, and 9190 of the Elections Code or pursuant to Sections 9281 to 9287, inclusive, and 9295 of the Elections Code, or pursuant to Sections 9501 to 9507, inclusive, of the Elections Code, or pursuant to other provisions of law applicable to other special districts as appropriate.

(b) If the vote is to be by the landowners of the proposed district, analysis and arguments may be waived with the unanimous consent of all the landowners and shall be so stated in the order for the election. When the vote is to be by the landowners of the proposed district, the legislative body of the local agency may authorize an official of the local agency to conduct the election, including preparation of analysis and compilation of arguments.

(Amended by Stats. 2007, Ch. 670, Sec. 75. Effective January 1, 2008.)

53327.5. (a) If the election is to be conducted by mail ballot, the election official conducting the election shall provide ballots and election materials pursuant to subdivision (d) of Section 53326 and Section 53327, together with all supplies and instructions necessary for the use and return of the ballot.

(b) The identification envelope for return of mail ballots used in landowner elections shall contain the following:

(1) The name of the landowner.

(2) The address of the landowner.

(3) A declaration, under penalty of perjury, stating that the voter is the owner of record or the authorized representative of the landowner entitled to vote and is the person whose name appears on the identification envelope.

(4) The printed name and signature of the voter.

(5) The address of the voter.

(6) The date of signing and place of execution of the declaration described in paragraph (3).

(7) A notice that the envelope contains an official ballot and is to be opened only by the canvassing board.

(Amended by Stats. 1988, Ch. 1365, Sec. 8.)

53328. After the canvass of returns of any election pursuant to Section 53326, the legislative body may, pursuant to Section 53340, levy any special tax as specified in the resolution of formation adopted pursuant to subdivision (a) of Section 53325.1 within the territory of the district if two-thirds of the votes cast upon the question of levying the tax are in favor of levying that tax.

(Amended by Stats. 2007, Ch. 670, Sec. 76. Effective January 1, 2008.)

53328.1. (a) As an alternate and independent procedure for forming a community facilities district, the legislative body may form a community facilities district that initially consists solely of territory proposed for annexation to the community facilities district in the future, with the condition that a parcel or parcels within that territory may be annexed to the community facilities district and subjected to the special tax only with the unanimous approval of the owner or owners of the parcel or parcels at the time that the parcel or parcels are annexed. In that case, the legislative body shall follow the procedures set forth in this article for the formation of a community facilities district, with the following exceptions:

(1) The legislative body shall not be obligated to specify the rate or rates of special tax in the resolution of intention or the resolution of formation, provided that both of the following are met:

(A) The resolution of intention and the resolution of formation include a statement that the rate shall be established in an amount required to finance or refinance the authorized improvements and to pay the district's administrative expenses.

(B) The maximum rate of special tax applicable to a parcel or parcels shall be specified in the unanimous

approval described in this section relating to the parcel or parcels.

(2) The legislative body shall not be obligated to specify in the resolution of intention the conditions under which the obligation to pay the specified special tax may be prepaid and permanently satisfied. Instead, a prepayment provision may be included in the unanimous approval of the owner or owners of each parcel or parcels at the time that the parcel or parcels are annexed to the community facilities district.

(3) In lieu of approval pursuant to an election held in accordance with the procedures set forth in Sections 53326, 53327, 53327.5, and 53328, the appropriations limit for the community facilities district, the applicable rate of the special tax and the method of apportionment and manner of collection of that tax, and the authorization to incur bonded indebtedness for the community facilities district shall be specified and be approved by the unanimous approval of the owner or owners of each parcel or parcels at the time that the parcel or parcels are annexed to the community facilities district. No additional hearings or procedures are required, and the unanimous approval shall be deemed to constitute a unanimous vote in favor of the appropriations limit for the community facilities district, the authorization to levy the special tax on the parcel or parcels, and the authorization to incur bonded indebtedness for the community facilities district.

(4) Notwithstanding Section 53324, this paragraph establishes the applicable protest provisions in the event a local agency forms a community facilities district pursuant to the procedures set forth in this section. If 50 percent or more of the registered voters, or six registered voters, whichever is more, residing within the territory proposed to be annexed to the community facilities district in the future, or if the owners of one-half or more of the area of land proposed to be annexed in the future and not exempt from the special tax, file written protests against establishment of the community facilities district, and protests are not withdrawn so as to reduce the protests to less than a majority, no further proceedings to form the community facilities district shall be undertaken for a period of one year from the date of decision of the legislative body on the issues discussed at the hearing. If the majority protests of the registered voters or of the landowners are only against the furnishing of a specified type or types of facilities or services within the district, or against levying a specified special tax, those types of facilities or services or the specified special tax shall be eliminated from the resolution of formation.

(5) The legislative body shall not record a notice of special tax lien against any parcel or parcels in the community facilities district until the owner or owners of the parcel or parcels have given their unanimous approval of the parcel's or parcels' annexation to the community facilities district, at which time the notice of special tax lien shall be recorded against the parcel or parcels as set forth in Section 53328.3.

(b) Notwithstanding the provisions of Section 53340, after adoption of the resolution of formation for a community facilities district described in subdivision (a), the legislative body may, by ordinance, provide for the levy of the special taxes on parcels that will annex to the community facilities district at the rate or rates to be approved unanimously by the owner or owners of each parcel or parcels to be annexed to the community facilities district and for apportionment and collection of the special taxes in the manner specified in the resolution of formation. No further ordinance shall be required even though no parcels may then have annexed to the community facilities district.

(c) The local agency may bring an action to determine the validity of any special taxes levied pursuant to this chapter and authorized pursuant to the procedures set forth in this section pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. Notwithstanding Section 53359, if an action is brought by an interested person pursuant to Section 863 of the Code of Civil Procedure to determine the validity of any special taxes levied against a parcel pursuant to this chapter and authorized pursuant to the procedures set forth in this section, the action shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, but shall, notwithstanding the time limits specified in Section 860 of the Code of Civil Procedure, be commenced within 15 days after the date on which the notice of special tax lien is recorded against the parcel. Any appeal from a judgment in any action or proceeding described in this subdivision shall be commenced within 30 days after entry of judgment.

(d) A community facilities district formed pursuant to this section may only finance facilities pursuant to subdivision (l) of Section 53313.5.

(e) In connection with formation of a community facilities district and annexation of a parcel or parcels to the

community facilities district pursuant to this section, and the conduct of an election on the proposition to authorize bonded indebtedness pursuant to the alternate procedures set forth in Section 53355.5, the local agency may, without additional hearings or procedures, designate a parcel or parcels as an improvement area within the community facilities district. After the designation of a parcel or parcels as an improvement area, all proceedings for approval of the appropriations limit, the rate and method of apportionment and manner of collection of special tax and the authorization to incur bonded indebtedness for the parcel or parcels shall apply only to the improvement area.

(f) In connection with a community facilities district formed under this section, as an alternate and independent procedure for making the changes described in Section 53330.7, the changes may be made with the unanimous approval of the owner or owners of the parcel or parcels that will be affected by the change and with the written consent of the local agency. No additional hearings or procedures are required, and the unanimous approval shall be deemed to constitute a unanimous vote in favor of the proposed changes. If the proceeds of a special tax are being used to retire any debt incurred pursuant to this chapter and the unanimous approval relates to the reduction of the special tax rate, the unanimous approval shall recite that the reduction or termination of the special tax will not interfere with the timely retirement of that debt.

(Amended by Stats. 2013, Ch. 219, Sec. 5. Effective January 1, 2014.)

53328.3. Upon a determination by the legislative body that the requisite two-thirds of votes cast in an election held pursuant to Section 53326 are in favor of levying the special tax, the clerk of the legislative body shall, within 15 days of a landowner election or within 90 days of a registered voter election, record the notice of special tax lien provided for in Section 3114.5 of the Streets and Highways Code, whereupon the lien of the special tax shall attach as provided in Section 3115.5 of the Streets and Highways Code. The notice of special tax lien shall be recorded in the office of the county recorder in each county that any portion of the district is located.

(Amended by Stats. 2007, Ch. 670, Sec. 77. Effective January 1, 2008.)

53328.5. Division 4.5 (commencing with Section 3100) of the Streets and Highways Code applies with respect to any proceedings undertaken pursuant to this chapter. This chapter is a "principal act" as that term is defined in Section 3100 of the Streets and Highways Code. In all cases in which special taxes have been approved by the qualified electors pursuant to this chapter prior to January 1, 1989, the legislative body may direct the clerk of the legislative body to impose a lien for the special tax on nonexempt real property within the district by performing the filings required by Division 4.5 (commencing with Section 3100) of the Streets and Highways Code, and the county recorder shall accept those filings and may charge the clerk a fee for recording and indexing those documents pursuant to Section 3116 of the Streets and Highways Code. The failure of the clerk or recorder to perform the filings shall not subject the local agency or any of its officers or employees to civil liability.

(Amended by Stats. 1991, Ch. 1110, Sec. 12.)

53329. After the canvass of returns of any election conducted pursuant to Section 53326, the legislative body shall take no further action with respect to authorizing the specified special tax within the community facilities district for one year from the date of the election if the question of authorizing that specified special tax fails to receive approval by two-thirds of the votes cast upon the question.

(Amended by Stats. 2007, Ch. 670, Sec. 78. Effective January 1, 2008.)

53329.5. (a) The owners of three-fourths of the area of lands taxed or liable to be taxed, or their agents (who shall declare under penalty of perjury that they are such owners or agents), shall not be required to present sealed proposals or bids when the legislative body calls for bids preparatory to letting a contract or contracts to do work financed pursuant to this chapter, but may, within 10 days after the publication of the notice of the award of the contract, elect to perform the work and enter into a written contract to do the whole work at prices not exceeding the prices specified in the bid of the bidder to whom the contract was awarded, and all work done under the contract shall be subject to any regulations as may be prescribed by the legislative body.

(b) If the owners elect not to perform the work and not to enter into a written contract for that work within 10 days of publication of the notice of the award of the contract, or to commence the work within 15 days after the date of the written contract entered into between the owners and the legislative body, and to continue that work with diligence to completion, as determined by the legislative body, a contract shall be entered into by the legislative body with the original bidder to whom the contract was awarded at the prices specified in his or her bid.

(c) If, in the opinion of the legislative body, the public interest will not be served by allowing the property owners to enter into a contract in accordance with subdivision (a), the legislative body may so provide in the resolution of intention adopted pursuant to Section 53321.

(Added by Stats. 1986, Ch. 1102, Sec. 21. Effective September 24, 1986.)

53329.6. In order to reduce the procedural burdens on local agencies, this chapter establishes certain procedures by which one or more property owners may vote in favor of special taxes, bonded indebtedness, an appropriations limit, and annexation to a district by unanimous approval. The Legislature hereby finds and declares that any unanimous approval constitutes the vote of the qualified elector in favor of the matters addressed in the unanimous approval for purposes of the California Constitution, including, but not limited to, Articles XIII A and XIII C.

(Added by Stats. 2011, Ch. 493, Sec. 4. Effective January 1, 2012.)

ARTICLE 3. Extension of Authorized Facilities and Services and Changes in Special Taxes [53330 - 53338.5] (Heading of Article 3 amended by Stats. 1984, Ch. 269, Sec. 22.)

53330. Upon the establishment of a community facilities district, only the public facilities and services as described in the resolution of formation may be financed by the district under the authority of this chapter, except as provided in this article.

(Amended by Stats. 1992, Ch. 772, Sec. 5. Effective January 1, 1993.)

53330.3. Under no circumstances shall any buyer or prospective buyer of any completed structure for which a certificate of occupancy for private residential use has been issued which is located within any district formed pursuant to this chapter be asked, required, or otherwise induced to waive any right to petition or to take any other action authorized pursuant to this article. No contract, agreement, or covenant shall be binding with respect to such a waiver.

(Amended by Stats. 2007, Ch. 670, Sec. 79. Effective January 1, 2008.)

53330.5. Upon approval of a special tax pursuant to Article 2 (commencing with Section 53318), the special tax may be levied only at the rate and may be apportioned only in the manner specified in the resolution of formation, except as provided in this article, and except that the legislative body may levy the special tax at a rate lower than that specified in the resolution. In addition, the special tax may be levied only so long as it is needed to pay the principal and interest on debt incurred in order to construct facilities under authority of this chapter, or so long as it is needed to pay the costs and incidental expenses of services or of the construction of facilities authorized by this chapter.

When the legislative body determines that the special tax shall cease to be levied, the legislative body shall direct the clerk to record a Notice of Cessation of Special Tax that shall state that the obligation to pay the special tax has ceased and that the lien imposed by the Notice of Special Tax Lien recorded as recorder's serial or document number ____ in the records of the County Recorder of ____ County, State of California, is extinguished. The Notice of Cessation of Special Tax shall additionally identify the book and page of the Book of Maps of Assessment and Community Facilities Districts wherein the map of the boundaries of the district is recorded.

(Amended by Stats. 2007, Ch. 670, Sec. 80. Effective January 1, 2008.)

53330.7. Except as otherwise provided in this article, the legislative body may, at any time, after conducting a public hearing, eliminate one or more of the types of facilities and services specified in the resolution of formation of the district but may not finance any types of facilities and services that were not specified in the resolution of formation.

(Amended by Stats. 2007, Ch. 670, Sec. 81. Effective January 1, 2008.)

53331. (a) If the legislative body determines that the public convenience and necessity require any change in the types of authorized public facilities or services which should be financed by an established community facilities district, that the rate or method of apportionment of a special tax should be changed, or that a new special tax should be proposed, the legislative body may adopt a resolution of consideration to alter the types of public facilities or services to be financed by the district, to levy a new special tax or special taxes, or, except as provided in subdivision (b), to alter the rate or method of apportionment of the special tax. Those proceedings may be commenced at any time. Section 53325.6 applies to any types of facilities or services proposed to be financed by the district.

(b) The legislative body shall not adopt a resolution of consideration to reduce the rate of any special tax or terminate the levy of any special tax if the proceeds of that tax are being utilized to retire any debt incurred pursuant to this chapter unless the legislative body determines that the reduction or termination of that tax would not interfere with the timely retirement of that debt.

(c) The resolution of consideration adopted pursuant to subdivision (a) shall contain all of the information required by subdivisions (a) to (e), inclusive, of Section 53334.

(Amended by Stats. 1986, Ch. 1102, Sec. 24. Effective September 24, 1986.)

53331.5. In addition to the other changes that may be made pursuant to this article, the legislative body may use the procedures of this article to gain authorization to accept bonds tendered in payment of special taxes or at a foreclosure sale pursuant to Sections 53344.1 and 53356.8.

(Added by Stats. 1997, Ch. 946, Sec. 1. Effective January 1, 1998.)

53332. (a) If a petition signed by 25 percent or more of the registered voters residing in the district, or by the owners of 25 percent or more of the land within the district not exempt from the special tax, is filed with the legislative body requesting that proceedings be commenced to change the types of public facilities or services financed by the district or that the rate or method of apportionment of an existing special tax be changed, or that territory to be removed from the district, or that a new special tax be levied, the legislative body shall within 40 days of the payment of the fee determined under subdivision (b) adopt a resolution of consideration in the form specified in Section 53334 to make those changes within the community facilities district except that an existing special tax being used to pay off any debt incurred under this chapter shall not be reduced or terminated if doing so would interfere with the timely retirement of that debt.

(b) Upon receipt of any petition filed by landowners under this section, the legislative body shall, within 45 days, determine the amount of a fee sufficient to compensate the local agency for all costs incurred in conducting proceedings to change the district pursuant to this article. Upon receipt of any petition filed by registered voters under this section, the legislative body may determine the amount of a fee, within 45 days, sufficient to compensate the local agency for all costs incurred in conducting proceedings to change the district pursuant to this article.

(Amended by Stats. 2007, Ch. 670, Sec. 82. Effective January 1, 2008.)

53333. The petition shall request the legislative body to commence proceedings to make specified changes to a named community facilities district. The petition may consist of any number of separate instruments each of which shall comply with all the requirements of a petition except as to the number of signatures.

(Amended by Stats. 1986, Ch. 1102, Sec. 26. Effective September 24, 1986.)

53334. The resolution of consideration to alter the types of public facilities and services financed by an established community facilities district, or to levy a new special tax or special taxes, or to alter the rate or method of apportionment of an existing special tax, shall do all of the following:

- (a) State the name of the area.
- (b) Generally describe the territory included in the area.
- (c) Specify the changes in public facilities and services which it is proposed that the district finance.
- (d) Specify any new special taxes which would be levied to pay for new or existing facilities and services and any proposed alteration to the rate or method of apportionment of an existing special tax.
- (e) Fix a time and place for a hearing upon the resolution which shall not be less than 30 or more than 60 days after the adoption of the resolution of consideration.

(Amended by Stats. 1986, Ch. 1102, Sec. 27. Effective September 24, 1986.)

53335. The clerk of the legislative body shall give notice of the hearing in the same manner and within the same time as provided for the giving of notice of a hearing on a resolution of intention to establish a community facilities district.

The notice shall do all of the following:

- (a) Contain the text or a summary of the resolution.
- (b) State the time and place for hearing.
- (c) State that at the hearing the testimony of all interested persons or taxpayers for or against the proposed changes in public facilities and services and the levying of additional special taxes or of changing existing special taxes will be heard. The notice shall also describe, in summary, the effect of protests made by registered voters or landowners against the proposed changes in facilities or services and the levying of additional taxes or changes in existing taxes.
- (d) Describe the proposed voting procedure.

(Amended by Stats. 1992, Ch. 772, Sec. 6.5. Effective January 1, 1993.)

53336. At the hearing, protests against the proposals described in the resolution may be made orally, or in writing by any interested persons. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities or defects to which objection is made. All written protests not personally presented by the author thereof at the hearing shall be filed with the clerk of the legislative body at or before the time fixed for the hearing. The legislative body may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

(Amended by Stats. 2007, Ch. 670, Sec. 83. Effective January 1, 2008.)

53337. If 50 percent or more of the registered voters, or six registered voters, whichever is more, residing within the district, or the owners of one-half or more of the area of the land in the territory included in the district and not exempt from the special tax file written protests against changing the public facilities or services financed by the district, those changes in the facilities or services shall be eliminated from the resolution ordering changes in the types of public facilities or services to be financed and the changes shall not be included in a resolution for a period of one year from the date of the decision of the legislative body on the hearing.

If 50 percent or more of the registered voters, or six registered voters, whichever is more, residing within the district, or the owners of one-half or more of the area of the land in the territory included in the district and not exempt from the special tax file written protests against the levying of any additional special taxes within the district, or against a proposed alteration to an existing special tax within the district, those changes shall be eliminated from the resolution and the changes shall not be included in a resolution for a period of one year from the date of the decision of the legislative body on the hearing.

(Amended by Stats. 1988, Ch. 1365, Sec. 12.)

53338. (a) The hearing may be continued from time to time, but shall be completed within 30 days, except that if the legislative body finds that the complexity of the proposed changes or the need for public participation requires additional time, the hearing may be continued from time to time for a period not to exceed six months. At the conclusion of the hearing the legislative body may abandon the proceedings or may, after passing upon all protests, submit the question of levying a new special tax or of changing the rate or method of apportionment of an existing special tax or of changing the types of facilities and services to be financed by the district, or any combination, to the qualified electors of the district as specified in Article 2 (commencing with Section 53318).

(b) After the canvass of any election conducted pursuant to this section, the legislative body shall adopt a resolution of change determining that the proposed levy of a new special tax or of changes in the types of facilities and services to be financed by the district, or any combination, are lawfully authorized, if two-thirds of the votes cast on the proposition are in favor of the proposed levy or changes.

(c) Upon adoption of a resolution of change, the clerk of the legislative body shall record notice of the changes pursuant to Section 3117.5 of the Streets and Highways Code.

(Amended by Stats. 1993, Ch. 1193, Sec. 6. Effective January 1, 1994.)

53338.5. The legislative body may, by ordinance, dissolve any existing Mello-Roos Community Facilities District which it has created upon making all of the following determinations:

(a) That the district is not obligated to pay any outstanding debt.

(b) That the district has no authorization to levy any special tax. Upon dissolving a district, the legislative body shall cause an addendum to be recorded to the Notice of Special Tax Lien recorded pursuant to Section 3114.5 of the Streets and Highways Code which shall state that the Community Facilities District and all associated liens, if any, have been dissolved. The local agency shall be liable for any outstanding debt discovered to exist after the dissolution of a district.

(Added by Stats. 1988, Ch. 1365, Sec. 12.5.)

ARTICLE 3.5. Annexation of Territory [53339 - 53339.9] (Article 3.5 added by Stats. 1984, Ch. 269, Sec. 25.)

53339. Territory may be annexed to an existing community facilities district as provided in this article. The annexed territory need not be contiguous to territory included in the existing community facilities district. The territory proposed to be annexed to the community facilities district may be territory located outside the territorial limits of the agency that formed the community facilities district provided that the territory to be annexed to the community facilities district will be annexed to the respective agency prior to, or concurrently with, the annexation of the subject territory to the community facilities district and, if the annexation of the subject territory to the respective agency is not completed, the subject territory shall not be annexed to the community facilities district. The legislative body of the agency that created the community facilities district shall not adopt a resolution of intention pursuant to Section 53339.2 if the territory proposed to be annexed includes territory that is outside the territorial limits of that agency unless an initial action, petition, or filing for the annexation of that territory to the respective agency has been adopted or filed, as appropriate.

(Amended by Stats. 2007, Ch. 670, Sec. 84. Effective January 1, 2008.)

53339.2. If the legislative body of the local agency that created a community facilities district determines that public convenience and necessity require that territory be added to the existing community facilities district, or if the voters residing within certain territory or landowners request the legislative body to include territory within the district, the legislative body may adopt a resolution of intention to annex the territory or to provide for future annexation of the territory.

(Amended by Stats. 2007, Ch. 670, Sec. 85. Effective January 1, 2008.)

53339.3. The resolution of intention to annex the territory or to provide for future annexation of territory shall do all of the following:

- (a) State the name of the existing community facilities district.
- (b) Generally describe the territory included in the existing district and the territory proposed to be annexed. As an alternative, the resolution may identify territory proposed for annexation in the future, with the condition that parcels within that territory may be annexed only with the unanimous approval of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed.
- (c) Specify the types of public facilities and services provided pursuant to this chapter in the existing district and the types of public facilities and services to be provided in the territory proposed to be annexed or to be annexed in the future; and include a plan for sharing facilities and providing services that will be provided in common within the existing district and the territory proposed to be annexed or to be annexed in the future.
- (d) Specify any special taxes that would be levied within the territory proposed to be annexed or to be annexed in the future to pay for public facilities and services provided pursuant to this chapter within that territory. A special tax proposed to pay for services to be supplied within the territory proposed to be annexed or to be annexed in the future shall be equal to any special tax levied to pay for the same services in the existing district, except that a higher or lower tax may be levied within the territory proposed to be annexed or to be annexed in the future to the extent that the actual cost of providing the services in that territory is higher or lower than the cost of providing those services in the existing district. A special tax proposed to pay for public facilities financed with bonds that have already been issued and that are secured by the existing community facilities district shall be the same as the tax levied in the existing district for that purpose, except that a higher special tax may be levied for that purpose within the territory proposed to be annexed or to be annexed in the future to compensate for the interest and principal previously paid by the existing community facilities district, less any depreciation allocable to the public facility. This section shall not be construed to limit the levy of a special tax within the territory to be annexed or to be annexed in the future to provide new or additional services beyond those supplied within the existing territory of the district, or to pay for new or additional public facilities, with or without bond financing.
- (e) Specify any alteration in the special tax rate to be levied within the existing community facilities district as a result of the proposed annexation. The maximum tax rate in the existing community facilities district may not be increased as a result of proceedings pursuant to this article.
- (f) Fix a time and place for a hearing upon the resolution that shall not be less than 30 nor more than 60 days after the adoption by the legislative body of the resolution of intention to annex territory or to provide for future annexation of territory pursuant to Section 53339.2.

(Amended by Stats. 2007, Ch. 670, Sec. 86. Effective January 1, 2008.)

53339.4. The clerk of the legislative body shall give notice of the hearing in the same manner and within the same time as provided for the giving of notice of a hearing on a resolution of intention to establish a community facilities district, as required by Section 53322. Notice pursuant to Section 53322.4 may be mailed to the registered voters and landowners within the territory proposed to be annexed or proposed to be annexed in the future.

The notice shall do all of the following:

- (a) Contain the text or a summary of the resolution.
- (b) State the time and place for the hearing.
- (c) State that at the hearing the testimony of all interested persons for or against the annexation of territory or the future annexation of territory to the community facilities district or the levying of special taxes within the territory proposed to be annexed or proposed to be annexed in the future will be heard.

(Amended by Stats. 1991, Ch. 1110, Sec. 16.)

53339.5. At the hearing, protests against the proposals described in the resolution of intention may be made orally or in writing by any interested person. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities or defects to which objection is made. All written protests shall be filed with the clerk of the legislative body prior to the time fixed not personally presented by the author thereof at the hearing for the hearing. The legislative body may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

(Amended by Stats. 2007, Ch. 670, Sec. 87. Effective January 1, 2008.)

53339.6. If 50 percent or more of the registered voters, or six registered voters, whichever is more, residing within the existing community facilities district, or if 50 percent or more of the registered voters or six registered voters, whichever is more, residing within the territory proposed for annexation or proposed to be annexed in the future, or if the owners of one-half or more of the area of land in the territory included in the existing district and not exempt from special tax, or if the owners of one-half or more of the area of land in the territory proposed to be annexed or proposed to be annexed in the future and not exempt from the special tax, file written protests against the proposed annexation of territory to the existing community facilities district or the proposed addition of territory to the existing community facilities district in the future, and protests are not withdrawn so as to reduce the protests to less than a majority, no further proceedings to annex the same territory, or to authorize the same territory to be annexed in the future, shall be undertaken for a period of one year from the date of decision of the legislative body on the issues discussed at the hearing.

(Amended by Stats. 2007, Ch. 670, Sec. 88. Effective January 1, 2008.)

53339.7. (a) The hearing may be continued from time to time, but shall be completed within 30 days. At the conclusion of the hearing, the legislative body may abandon the proceedings, may, after passing upon all protests, submit the question of levying a special tax within the area proposed to be annexed to the existing community facilities district to the qualified electors of the area proposed to be annexed as specified in Article 2 (commencing with Section 53318), or may provide for the annexation of territory proposed for annexation in the future upon the unanimous approval of the owner or owners of each parcel or parcels at the time that the parcel or parcels are annexed, without additional hearings.

(b) Notwithstanding any other provision of law, when the question of levying a special tax within the areas proposed to be annexed into an existing community facilities district appears on the same ballot as the question of annexation of the same territory to a local agency the effectiveness of each ballot measure may be made contingent on the passage of the other ballot measure.

(Amended by Stats. 2007, Ch. 670, Sec. 89. Effective January 1, 2008.)

53339.8. (a) After the canvass of returns of any election conducted in accordance with Section 53339.7, the legislative body shall determine that the area proposed to be annexed is added to and part of the existing community facilities district with full legal effect, and the legislative body may levy any special tax within the annexed territory, as specified in the resolution of intention to annex adopted pursuant to Section 53339.2, and as specified in the ordinance adopted pursuant to Section 53340, if two-thirds of the votes cast on the proposition are in favor of levying the special tax.

(b) Upon a determination by the legislative body that the area proposed to be annexed is added to the existing community facilities district, the clerk of the legislative body shall record notice of the annexation pursuant to Section 3117.5 of the Streets and Highways Code.

(Amended by Stats. 2007, Ch. 670, Sec. 90. Effective January 1, 2008.)

53339.9. After the canvass of returns of any election conducted in accordance with Section 53339.7, the legislative body shall take no further action on annexing the territory proposed to be annexed to the community facilities district for a period of one year from the date of the election if less than two-thirds of the votes cast on the proposition are in favor of levying the special tax.

(Amended by Stats. 1987, Ch. 1440, Sec. 8.)

ARTICLE 4. Procedures for Levying [53340 - 53344.4] (Article 4 added by Stats. 1982, Ch. 1451, Sec. 1.)

53340. (a) After a community facilities district has been created and authorized to levy specified special taxes pursuant to Article 2 (commencing with Section 53318), Article 3 (commencing with Section 53330), or Article 3.5 (commencing with Section 53339), the legislative body may, by ordinance, levy the special taxes at the rate and apportion them in the manner specified in the resolution adopted pursuant to Article 2 (commencing with Section 53318), Article 3 (commencing with Section 53330), or Article 3.5 (commencing with Section 53339). After creation of a community facilities district that includes territory proposed for annexation in the future by unanimous approval as described in subdivision (b) of Section 53339.3, the legislative body may, by ordinance, provide for the levy of special taxes on parcels that will be annexed to the community facilities district at the rate or rates to be approved unanimously by the owner or owners of each parcel or parcels to be annexed to the community facilities district and for apportionment and collection of the special taxes in the manner specified in the resolution of formation.

(b) The legislative body may provide, by resolution, for the levy of the special tax in the current tax year or future tax years at the same rate or at a lower rate than the rate provided by the ordinance, if the resolution is adopted and a certified list of all parcels subject to the special tax levy including the amount of the tax to be levied on each parcel for the applicable tax year, is filed by the clerk or other official designated by the legislative body with the county auditor on or before the 10th day of August of that tax year. The clerk or other official designated by the legislative body may file the certified list after the 10th of August but not later than the 21st of August if the clerk or other official obtains prior written consent of the county auditor.

(c) Properties or entities of the state, federal, or local governments shall, except for properties that a local agency is a landowner of within the meaning of subdivision (f) of Section 53317, or except as otherwise provided in Section 53317.3, be exempt from the special tax. No other properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the resolution of formation to establish a district adopted pursuant to Section 53325.1 or in a resolution of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment of an existing special tax as provided in Section 53334.

(d) The proceeds of any special tax may only be used to pay, in whole or part, the cost of providing public facilities, services, and incidental expenses pursuant to this chapter.

(e) The special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes, unless another procedure has been authorized in the resolution of formation establishing the district and adopted by the legislative body.

(f) (1) Notwithstanding subdivision (e), the legislative body of the district may waive all or any specified portion of the delinquency penalties and redemption penalties if it makes all of the following determinations:

(A) The waivers shall apply only to parcels delinquent at the time of the determination.

(B) The waivers shall be available only with respect to parcels for which all past due and currently due special taxes and all other costs due are paid in full within a limited period of time specified in the determination.

(C) The waivers shall be available only with respect to parcels sold or otherwise transferred to new owners unrelated to the owner responsible for the delinquency.

(D) The waivers are in the best interest of the debtholders.

(2) The charges with penalties to be waived shall be removed from the tax roll pursuant to Section 53356.2 and local administrative procedures, and any distributions made to the district prior to collection pursuant to Chapter 3 (commencing with Section 4701) of Part 8 of Division 1 of the Revenue and Taxation Code shall be repaid by the district prior to granting the waiver.

(g) The tax collector may collect the special tax at intervals as specified in the resolution of formation, including intervals different from the intervals determining when the ordinary ad valorem property taxes are collected. The tax collector may deduct the reasonable administrative costs incurred in collecting the special tax.

(h) All special taxes levied by a community facilities district shall be secured by the lien imposed pursuant to Section 3115.5 of the Streets and Highways Code. This lien shall be a continuing lien and shall secure each levy of special taxes. The lien of the special tax shall continue in force and effect until the special tax obligation is prepaid, permanently satisfied, and canceled in accordance with Section 53344 or until the special tax ceases to be levied by the legislative body in the manner provided in Section 53330.5. If any portion of a parcel is encumbered by a lien pursuant to this chapter, the entirety of the parcel shall be encumbered by that lien.

(Amended by Stats. 2013, Ch. 219, Sec. 6. Effective January 1, 2014.)

53340.1. (a) If a public agency owning property, including property held in trust for any beneficiary, which is exempt from a special tax pursuant to Section 53340 grants a leasehold or other possessory interest in the property to a nonexempt person or entity, the special tax shall, notwithstanding Section 53340, be levied on the leasehold or possessory interest and shall be payable by the owner of the leasehold or possessory interest.

(b) When entering into a lease or other written contract creating a possessory interest that may be subject to taxation, pursuant to subdivision (a), the public agency shall include, or cause to be included, in the contract a statement that the property interest may be subject to special taxation pursuant to this chapter, and that the party in whom the possessory interest is vested may be subject to the payment of special taxes levied on the interest. Failure to comply with the requirements of this section shall not, however, invalidate the contract.

The requirement of this subdivision shall not apply to leases entered into prior to January 1, 1988.

(c) If the special tax on any possessory interest levied pursuant to subdivision (a) is unpaid when due, the tax collector may use those collection procedures which are available for the collection of assessments on the unsecured roll.

(Added by Stats. 1987, Ch. 1440, Sec. 9.)

53340.2. (a) The legislative body levying the special tax shall designate an office, department, or bureau of the local agency that shall be responsible for annually preparing the current roll of special tax levy obligations by assessor's parcel number on nonexempt property within the district and that will be responsible for estimating future special tax levies. The designated office, department, or bureau shall be the same office, department, or bureau that prepares the "NOTICE OF ASSESSMENT" required by Section 53754. If notice is required under both this section and Section 53754, the notices shall, to the extent feasible, be combined into a single notice document. The designated office, department, or bureau shall establish procedures to promptly respond to inquiries concerning current and future estimated tax liability. Neither the designated office, department, or bureau, nor the legislative body, shall be liable if any estimate of future tax liability is inaccurate, nor for any failure of any seller to request a Notice of Special Tax or to provide the notice to a buyer.

(b) For purposes of enabling sellers of real property subject to the levy of special taxes to satisfy the notice requirements of Section 1102.6b of the Civil Code, the designated office, department, or bureau shall furnish a Notice of Special Tax to any individual requesting the notice or any owner of property subject to a special tax levied by the local agency within five working days of receiving a request for the notice. The local agency may charge a fee for this service not to exceed fifteen dollars (\$15).

(c) The notice shall contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-point type, and shall be in substantially the following form. The form may be modified as needed to clearly and accurately describe the tax structure and other characteristics of districts created before January 1, 1993, or to clearly and accurately consolidate information about the tax structure and other characteristics of two or more districts that levy or are authorized to levy special taxes with respect to the lot, parcel, or unit, or to clearly and accurately describe a tax rate that will change with a change in use of the parcel, or to clearly and accurately describe a tax that will be levied only once. The notice shall be completed by the designated office, department, or bureau except for the signatures and date of signing:

NOTICE OF SPECIAL TAX

COMMUNITY FACILITIES DISTRICT NO. _____
COUNTY OF _____, CALIFORNIA

TO: THE PROSPECTIVE PURCHASER OF THE REAL PROPERTY KNOWN AS:

THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR PURCHASING THIS PROPERTY.

(1) This property is subject to a special tax, that is in addition to the regular property taxes and any other charges and benefit assessments on the parcel. This special tax is not necessarily imposed on all parcels within the city or county where the property is located. If you fail to pay this tax when due each year, the property may be foreclosed upon and sold. The tax is used to provide public facilities and/or services that are likely to particularly benefit the property. YOU SHOULD TAKE THIS TAX AND THE BENEFITS FROM THE PUBLIC FACILITIES AND SERVICES FOR WHICH IT PAYS INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS PROPERTY.

(2) The maximum special tax that may be levied against this parcel to pay for public facilities is ____ dollars (\$ ____) during the ____ - __ tax year. This amount will increase by __ percent per year after that (if applicable). The special tax will be levied each year until all of the authorized facilities are built and all special tax bonds are repaid, but in any case not after the ____ - __ tax year.

An additional special tax will be used to pay for ongoing services, if applicable. The maximum amount of this tax is ____ dollars (\$ ____) during the ____ - __ tax year. This amount may increase by ____, if applicable, and may be levied until the ____ - __ tax year (or forever, as applicable).

(3) The authorized facilities that are being paid for by the special taxes, and by the money received from the sale of bonds that are being repaid by the special taxes, are:

These facilities may not yet have all been constructed or acquired and it is possible that some may never be constructed or acquired.

In addition, the special taxes may be used to pay for costs of the following services:

YOU MAY OBTAIN A COPY OF THE RESOLUTION OF FORMATION THAT AUTHORIZED CREATION OF THE COMMUNITY FACILITIES DISTRICT, AND THAT SPECIFIES MORE PRECISELY HOW THE SPECIAL TAX IS APPORTIONED AND HOW THE PROCEEDS OF THE TAX WILL BE USED, FROM THE _____ (name of jurisdiction) BY CALLING _____ (telephone number). THERE MAY BE A CHARGE FOR THIS DOCUMENT NOT TO EXCEED THE ESTIMATED REASONABLE COST OF PROVIDING THE DOCUMENT.

I (WE) ACKNOWLEDGE THAT I (WE) HAVE RECEIVED A COPY OF THIS NOTICE. I (WE) UNDERSTAND THAT I (WE) MAY TERMINATE THE CONTRACT TO PURCHASE OR DEPOSIT RECEIPT AFTER RECEIVING THIS NOTICE FROM THE OWNER OR AGENT SELLING THE PROPERTY. THE CONTRACT MAY BE TERMINATED WITHIN THREE DAYS IF THE NOTICE WAS RECEIVED IN PERSON OR WITHIN FIVE DAYS AFTER IT WAS DEPOSITED IN THE MAIL BY GIVING WRITTEN NOTICE OF THAT TERMINATION TO THE OWNER OR AGENT SELLING THE PROPERTY.

DATE: _____

(Amended by Stats. 2007, Ch. 670, Sec. 92. Effective January 1, 2008.)

53340.3. At the request of the legislative body, the tax collector may set forth on the tax bill descriptive

information provided by the legislative body to identify each public entity receiving portions of the revenue from the special tax levied pursuant to this chapter.

(Added by Stats. 1987, Ch. 1440, Sec. 10.)

53340.5. If the legislative body of the local agency levying the special taxes is not the legislative body of a county and those special taxes are collected by county officials, the county auditor shall, at the close of each tax collecting period, promptly provide the auditor of the local agency levying the taxes a detailed report showing the amounts of special taxes, interest, and penalties collected for the district and from which property those revenues were collected, identifying any properties which are delinquent and the amount and length of time in arrears, and a statement of the percentage of the taxes retained by the auditor for the expenses incurred in making the collections and the report.

(Added by Stats. 1986, Ch. 1102, Sec. 34. Effective September 24, 1986.)

53340.7. If the legislative body supplies to the tax collector each year a listing of the specific amount due from each parcel within the district, and the tax collector bills for and collects the tax without reference to tax rate areas, then Sections 54900 to 54916.5, inclusive, are not applicable to the formation of, change in the boundaries of, annexation to, or existence of, community facilities districts created pursuant to this chapter and there is no requirement that the statement and map described in these sections be filed with the State Board of Equalization or the county assessor. This section shall not prevent the voluntary filing of such a statement or map. This section does not constitute a change in, but is declaratory of, the existing law.

(Added by Stats. 1987, Ch. 1440, Sec. 11.)

53341. Any action or proceeding to attack, review, set aside, void, or annul the levy of a special tax or an increase in a special tax pursuant to this chapter shall be commenced within 30 days after the special tax is approved by the voters. Any appeal from a final judgment in that action or proceeding shall be perfected within 30 days after the entry of judgment.

(Added by Stats. 1984, Ch. 269, Sec. 26.5. Effective July 3, 1984.)

53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax levied pursuant to this chapter, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five years, or permit a prospective purchaser or lessor to sign a contract of purchase or a deposit receipt or any substantially equivalent document in the event of a lease with respect to the lot, parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a written notice as provided in this section. The notice shall contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-point type, and shall be in substantially the following form. The form may be modified as needed to clearly and accurately describe the tax structure and other characteristics of districts created before January 1, 1993, or to clearly and accurately consolidate information about the tax structure and other characteristics of two or more districts that levy or are authorized to levy special taxes with respect to the lot, parcel, or unit:

NOTICE OF SPECIAL TAX
COMMUNITY FACILITIES DISTRICT NO. ____
COUNTY OF ____, CALIFORNIA

TO: THE PROSPECTIVE PURCHASER OF THE REAL PROPERTY KNOWN AS:



THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR ENTERING INTO A CONTRACT TO PURCHASE THIS PROPERTY. THE SELLER IS REQUIRED TO GIVE YOU THIS NOTICE AND TO OBTAIN A COPY SIGNED BY YOU TO INDICATE THAT YOU HAVE RECEIVED AND READ A COPY OF THIS NOTICE.

(1) This property is subject to a special tax, that is in addition to the regular property taxes and any other charges, fees, special taxes, and benefit assessments on the parcel. It is imposed on this property because it is a new development, and is not necessarily imposed generally upon property outside of this new development. If you fail to pay this tax when due each year, the property may be foreclosed upon and sold. The tax is used to provide public facilities or services that are likely to particularly benefit the property. YOU SHOULD TAKE THIS TAX AND THE BENEFITS FROM THE FACILITIES AND SERVICES FOR WHICH IT PAYS INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS PROPERTY.

(2) The maximum special tax that may be levied against this parcel to pay for public facilities is \$_____ during the ____-__ tax year. This amount will increase by __ percent per year after that (if applicable). The special tax will be levied each year until all of the authorized facilities are built and all special tax bonds are repaid, but in any case not after the ____-__ tax year. An additional special tax will be used to pay for ongoing service costs, if applicable. The maximum amount of this tax is _____ dollars (\$_____) during the ____-__ tax year. This amount may increase by _____, if applicable, and that part may be levied until the ____-__ tax year (or forever, as applicable).

(3) The authorized facilities that are being paid for by the special taxes, and by the money received from the sale of bonds that are being repaid by the special taxes, are:

These facilities may not yet have all been constructed or acquired and it is possible that some may never be constructed or acquired.

In addition, the special taxes may be used to pay for costs of the following services:

YOU MAY OBTAIN A COPY OF THE RESOLUTION OF FORMATION THAT AUTHORIZED CREATION OF THE COMMUNITY FACILITIES DISTRICT, AND THAT SPECIFIES MORE PRECISELY HOW THE SPECIAL TAX IS APPORTIONED AND HOW THE PROCEEDS OF THE TAX WILL BE USED, FROM THE _____ (name of jurisdiction) BY CALLING _____ (telephone number). THERE MAY BE A CHARGE FOR THIS DOCUMENT NOT TO EXCEED THE REASONABLE COST OF PROVIDING THE DOCUMENT.

I (WE) ACKNOWLEDGE THAT I (WE) HAVE READ THIS NOTICE AND RECEIVED A COPY OF THIS NOTICE PRIOR TO ENTERING INTO A CONTRACT TO PURCHASE OR SIGNING A DEPOSIT RECEIPT WITH RESPECT TO THE ABOVE-REFERENCED PROPERTY. I (WE) UNDERSTAND THAT I (WE) MAY TERMINATE THE CONTRACT TO PURCHASE OR DEPOSIT RECEIPT WITHIN THREE DAYS AFTER RECEIVING THIS NOTICE IN PERSON OR WITHIN FIVE DAYS AFTER IT WAS DEPOSITED IN THE MAIL BY GIVING WRITTEN NOTICE OF THAT TERMINATION TO THE OWNER, SUBDIVIDER, OR AGENT SELLING THE PROPERTY.

DATE:

(b) "Subdivision," as used in subdivision (a), means improved or unimproved land that is divided or proposed to be divided for the purpose of sale, lease, or financing, whether immediate or future, into two or more lots, parcels, or units and includes a condominium project, as defined by Section 4125 or 6542 of the Civil Code, a community apartment project, a stock cooperative, and a limited-equity housing cooperative, as defined in Sections 11004, 11003.2, and 11003.4, respectively, of the Business and Professions Code.

(c) The buyer shall have three days after delivery in person or five days after delivery by deposit in the mail of any notice required by this section, to terminate his or her agreement by delivery of written notice of that termination to the owner, subdivider, or agent.

(d) The failure to furnish the notice to the buyer or lessee, and failure of the buyer or lessee to sign the notice of a special tax, shall not invalidate any grant, conveyance, lease, or encumbrance.

(e) Any person or entity who willfully violates the provisions of this section shall be liable to the purchaser of a

lot or unit that is subject to the provisions of this section, for actual damages, and in addition thereto, shall be guilty of a public offense punishable by a fine in an amount not to exceed five hundred dollars (\$500). In an action to enforce a liability or fine, the prevailing party shall be awarded reasonable attorney's fees.

(Amended (as amended by Stats. 2012, Ch. 181, Sec. 51) by Stats. 2013, Ch. 605, Sec. 27. Effective January 1, 2014.)

53343. Any special taxes collected pursuant to this chapter may only be used for facilities and services authorized by this chapter.

(Amended by Stats. 2007, Ch. 670, Sec. 95. Effective January 1, 2008.)

53343.1. A community facilities district formed after January 1, 1992, shall prepare, if requested by a person who resides in or owns property in the district, within 120 days after the last day of each fiscal year, a separate document titled an "Annual Report." The district may charge a fee for the report not exceeding the actual costs of preparing the report. The report shall include the following information for the fiscal year:

- (a) The amount of special taxes collected for the year.
- (b) The amount of other moneys collected for the year and their source, including interest earned.
- (c) The amount of moneys expended for the year.
- (d) A summary of the amount of moneys expended for the following:
 - (1) Facilities, including property.
 - (2) Services.
 - (3) The costs of bonded indebtedness.
 - (4) The costs of collecting the special tax under Section 53340.
 - (5) Other administrative and overhead costs.
- (e) For moneys expended for facilities, including property, an identification of the categories of each type of facility funded with amounts expended in each category, including the total percentage of the cost of each type of facility that was funded with bond proceeds or special taxes.
- (f) For moneys expended for services, an identification of the categories of each type of service funded with amounts expended in each category, including the total percentage of the cost of each type of service that was funded with bond proceeds or special taxes.
- (g) For moneys expended for other administrative costs, an identification of each of these costs.
- (h) The annual report shall contain references to the relevant sections of the resolution of formation of the district so that interested persons may confirm that bond proceeds and special taxes are being used for authorized purposes. The annual report shall be made available to the public upon request.

(Amended by Stats. 2008, Ch. 179, Sec. 105. Effective January 1, 2009.)

53344. In the event that the legislative body has specified conditions pursuant to Section 53321 under which the obligation to pay the special tax identified therein may be prepaid and permanently satisfied, and if the special tax is so prepaid and permanently satisfied as to a particular parcel of land, the legislative body shall prepare and record in the office of the county recorder of the county in which the parcel of land is located, and the county recorder shall accept for recordation, a Notice of Cancellation of Special Tax Lien as to that parcel. The Notice of Cancellation of Special Tax Lien shall identify with particularity the special tax that has been prepaid and permanently satisfied, shall state the book and page number, or the document or instrument number, in the records of the county recorder where the Notice of Special Tax Lien being cancelled is recorded, shall contain the legal description and assessor's parcel number of the particular parcel of land subject to the lien, and shall contain the name of the owner of record of the parcel. The recorder shall mail the original Notice of Cancellation of Special Tax Lien to the owner of the property after recording the document. The legislative body may specify a charge for the preparation and recordation of this notice.

(Amended by Stats. 2007, Ch. 670, Sec. 97. Effective January 1, 2008.)

53344.1. (a) The legislative body may provide in the resolution of intention or the resolution of consideration, and in documents setting forth the rights of the debtholders that it shall reserve to itself, the right and authority to allow any interested owner of property within the district, subject to the provisions of this section and to those conditions as it may impose, and any applicable prepayment penalties as prescribed in the bond indenture or comparable instrument or document, to tender to the district treasurer in full payment or part payment of any installment of the special taxes or the interest or penalties thereon which may be due or delinquent, but for which a bill has been received, any bond or other obligation secured thereby, the bond or other obligation to be taken at par and credit to be given for the accrued interest shown thereby computed to the date of tender. The district treasurer shall thereupon cancel the bond debt and shall cause proper credit therefor to be entered on the records of the district and in the office of the auditor and tax collector. If the legislative body agrees to allow bond tenders pursuant to this section or to Section 53356.8, the legislative body may, at its discretion, agree to distribute or direct its trustee or other agent to distribute by any means an offer to purchase bonds or other related inquiry to the holders of the bonds of the district, at the expense of the person requesting the mailing. Neither the legislative body, nor any of its officers, agents, or trustees shall be liable in any way for that distribution.

(b) The provisions of this subdivision apply to any tender of bonds pursuant to this section by an owner of property within the district who is delinquent in paying special taxes levied by this district when due. Bonds may be tendered pursuant to this subdivision only after all of the following conditions have been satisfied:

(1) The delinquent lot or parcel has been offered for sale as a result of a foreclosure judgment and the minimum price required to be paid for the lot or parcel was not received.

(2) The bonds to be tendered to the district were obtained by the property owner only after their prior owner was presented with a tender offer or solicitation as defined in this subdivision.

(A) For purposes of this subdivision, a "tender offer" or "solicitation" is a solicitation by any person or that person's agent by offering circular, memoranda, tender, or solicitation, or any other document or written, oral, or electronic communication for the purchase of the bonds from their then current owner. A person includes a natural person, corporation, company, partnership, limited liability company, limited liability partnership, association, or any other entity and a "tendering party" includes any person making a tender offer for bonds.

(B) Any tender offer or solicitation shall include all material information as required under federal and state securities laws and shall also include the following information, to the extent applicable:

(i) The name of the tendering party.

(ii) An individual who can be contacted to provide further information with respect to the tender.

(iii) The current holdings of bonds of the district by the tendering party and its affiliates.

(iv) The total face amount of the bonds being solicited.

(v) The price or method of determining the price per one thousand dollars (\$1,000) in bonds being offered by the tendering party.

(vi) Whether the tendering party or any person affiliated with or related to the tendering party, or any employee, agent, or representative of the tendering party, is a property owner within the district that issued the bonds.

(vii) Whether the present intentions of the tendering party are to use the bonds for payment of special taxes or the purchase of property at a foreclosure sale pursuant to this section or Section 53356.8. This statement of present intentions shall not be construed to be binding on the tendering party.

(viii) The status of the bond redemption fund, construction fund, reserve fund, and any other funds of the district, and the special tax delinquency rate of the district, all of which data shall be the most recent available from the district and, in any event, shall apply to the state of the funds after the most recent payment of principal and interest on the bonds. The district shall provide the necessary data to the property owner within 10 days of receiving a written request and may charge a reasonable fee not to exceed its actual costs of providing the data. The district shall simultaneously release the same information to the general public. The property shall also provide the percentage of the delinquency attributable to the tendering party or any person

affiliated with or related to the tendering party, or any employee, agent, or representative of the tendering party, for each of the three most recent fiscal years.

(ix) If the tendering party owns or leases property in the district that issued the bonds, the development plans for that property and an update on the current status of development of that property and of any zoning, planning, or other permits or approvals needed for development of the property to proceed.

(x) Any other material information available to the tendering party and not generally available to the public that would significantly affect the market value of the bonds of the district.

(C) The tendering party shall notify the legislative body of his or her intent to make a tender offer or solicitation at least simultaneously with making any offer or solicitation.

(D) The tendering party shall provide a copy of the solicitation to the Department of Corporations prior to five working days after notifying the legislative body pursuant to subparagraph (C).

(3) The tendering property owner provides the legislative body with a negative assurance from counsel representing the property owner that no misleading or other information has come to the opining party's attention after reasonable investigation, that would lead the party providing the negative assurance to believe that the tender was in violation of federal or state securities laws.

(4) The tendering property owner delivers to the legislative body of the district that issued the bonds subject to the tender, a certificate to the effect that the tender information is accurate in all material respects and does not omit to state a material fact necessary in order to make the statements included in the tender information not misleading, except that the certificate need not provide any assurances as to the accuracy of the information as to the bond fund balances and tax payment information provided by the district.

(c) The provisions of this subdivision apply to any tender of bonds pursuant to this section by any owner of property within the district who is not delinquent in paying special taxes on any property within the district. A person subject to this subdivision shall be deemed to be a person whose relationship to the issuer may give him or her access, directly or indirectly, to material information about the issuer not generally available to the public, and the provisions of Section 25402 of the Corporations Code apply to any purchase or sale of securities by that person in connection with the tender transaction. For purposes of this subdivision, the "issuer" includes the district, the local agency that created the district, and any owner of property within the district. At any time prior to tendering bonds to the district pursuant to this section, any person subject to this subdivision shall deliver to the legislative body of the district a certificate that he or she has complied with this subdivision and applicable federal and state securities laws.

(Added by Stats. 1997, Ch. 946, Sec. 3. Effective January 1, 1998.)

53344.4. Any district preparing a report pursuant to Section 53343.1 shall not be required to comply with Section 50075.3.

(Added by Stats. 2002, Ch. 960, Sec. 2. Effective January 1, 2003.)

ARTICLE 5. Bonds [53345 - 53365.7] (Article 5 added by Stats. 1982, Ch. 1451, Sec. 1.)

53345. Whenever the legislative body deems it necessary for the community facilities district to incur a bonded indebtedness, it shall, by resolution, set forth all of the following:

(a) A declaration of the necessity for the indebtedness.

(b) The purpose for which the proposed debt is to be incurred.

(c) The amount of the proposed debt. The legislative body may provide for a reduction in the amount of proposed debt in compliance with the provisions of Section 53313.9.

(d) The time and place for a hearing by the legislative body on the proposed debt authorization.

(Amended by Stats. 2007, Ch. 670, Sec. 99. Effective January 1, 2008.)

53345.3. The amount of the proposed bonded indebtedness may include all costs and estimated costs incidental to, or connected with, the accomplishment of the purpose for which the proposed debt is to be incurred, including, but not limited to, the estimated costs of construction or acquisition of buildings, or both; acquisition of land, rights-of-way, water, sewer, or other capacity or connection fees; lease payments for school facilities, satisfaction of contractual obligations relating to expenses or the advancement of funds for expenses existing at the time the bonds are issued pursuant to this chapter; architectural, engineering, inspection, legal, fiscal, and financial consultant fees; bond and other reserve funds; discount fees; interest on any bonds of the district estimated to be due and payable within two years of issuance of the bonds; election costs; and all costs of issuance of the bonds, including, but not limited to, fees for bond counsel, costs of obtaining credit ratings, bond insurance premiums, fees for letters of credit, and other credit enhancement costs, and printing costs. Bonds may not be issued pursuant to this chapter to fund any of the services specified in Section 53313; however, bonds may be issued to fund capital facilities to be used in providing these services.

(Amended by Stats. 2007, Ch. 670, Sec. 100. Effective January 1, 2008.)

53345.8. (a) The legislative body may sell bonds pursuant to this chapter only if it determines prior to the award of sale of bonds that the value of the real property that would be subject to the special tax to pay debt service on the bonds will be at least three times the principal amount of the sum of the following:

(1) The principal amount of the bonds to be sold.

(2) The principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to this chapter on property within the community facilities district or a special assessment levied on property within the community facilities district. The legislative body shall estimate the principal amount of these other bonds that are secured by property within the district by assuming that the maximum allowable tax or assessment applicable to each parcel of property within the district will be levied until the date of maximum maturity of the bonds. Any determination made pursuant to this subdivision shall be based upon the full cash value as shown on the ad valorem assessment roll or upon an appraisal of the subject property made in a manner consistent with the policies adopted pursuant to paragraph (5) of subdivision (a) of Section 53312.7 by a state certified real estate appraiser, as defined in subdivision (c) of Section 11340 of the Business and Professions Code. The Treasurer may recommend definitions, standards, and assumptions to be used for these appraisals. These definitions, standards, and assumptions are advisory only, and the definitions, standards, and assumptions to be applied to appraisals will be those adopted by the local agency pursuant to paragraph (5) of subdivision (a) of Section 53312.7.

(b) Notwithstanding the provisions of subdivision (a), if the legislative body selling the bonds finds and determines that the proposed bonds do not present any unusual credit risk due to the availability of credit enhancements, or because a sufficient portion of the principal amount of a bond issue has been deposited in a self-financing and self-liquidating escrow account under conditions such that it cannot be withdrawn until the value of real property subject to special taxes has increased sufficiently so that the requirements of subdivision (a) will be met or for other reasons specified by the legislative body, the provisions of subdivision (a) may be disregarded.

(c) Notwithstanding the provisions of subdivision (a), if the legislative body selling the bonds finds and determines by a vote of not less than four-fifths of all of its members that the proposed bond issue should proceed for specified public policy reasons, the provisions of subdivision (a) may be disregarded.

A finding and determination by the legislative body pursuant to this subdivision shall be final and conclusive upon all persons in the absence of actual fraud, and neither the legislative body nor the district shall have any liability of any kind whatsoever out of, or in connection with, any finding and determination.

(Amended by Stats. 2003, Ch. 55, Sec. 4. Effective January 1, 2004.)

53346. The clerk of the legislative body shall publish a notice of the hearing pursuant to Section 6061 in a newspaper of general circulation circulated within the district. The notice shall contain all of the following information:

(a) The text or a summary of the resolution adopted pursuant to Section 53345 which may refer to documents

on file in the office of the clerk for detail.

(b) The time and place of the hearing on the proposal to issue debt.

(c) A statement that at the hearing the testimony of all interested persons, including all persons owning property in the area, for or against the proposed debt issuance, will be heard.

(Amended by Stats. 1992, Ch. 772, Sec. 7.7. Effective January 1, 1993.)

53348. At the time and place fixed for the hearing on the resolution declaring the necessity for incurring the bonded indebtedness or at any time and place to which the hearing is adjourned, the legislative body shall proceed with the hearing.

(Added by Stats. 1982, Ch. 1451, Sec. 1.)

53349. At the hearing any person interested, including persons owning property within the area, may appear and present any matters material to the questions set forth in the resolution declaring the necessity for incurring the bonded indebtedness.

(Added by Stats. 1982, Ch. 1451, Sec. 1.)

53350. (a) For purposes of financing of, or contributing to the financing of, specified public facilities, the legislative body may by resolution designate a portion or portions of the district as one or more improvement areas. An area shall be known as "Improvement Area No. ____" of "Community Facilities District ____." After the designation of an improvement area, all proceedings for purposes of a bond election and for the purpose of levying special taxes for payment of the bonds, or for any other change pursuant to Article 3 (commencing with Section 53330), shall apply only to the improvement area for those specified facilities.

(b) In connection with the annexation by unanimous approval to a community facilities district of a parcel that was included in territory proposed for annexation in the future to the community facilities district, as described in Section 53329.6, the local agency may designate a parcel or parcels as an improvement area within the community facilities district. The designation of a parcel or parcels as an improvement area shall be specified and approved by the unanimous approval of the owner or owners of each parcel or parcels at the time that the parcel or parcels are annexed to the community facilities district. No additional hearings or procedures are required. After the designation of a parcel or parcels as an improvement area, all proceedings for approval of the appropriations limit, the rate and method of apportionment and manner of collection of special taxes, and the authorization to incur bonded indebtedness for the parcel or parcels shall apply only to the improvement area.

(Amended by Stats. 2013, Ch. 219, Sec. 7. Effective January 1, 2014.)

53351. After the legislative body has made its determination pursuant to Section 53350, if it deems it necessary to incur the bonded indebtedness, it shall by resolution state all of the following:

(a) That it deems it necessary to incur the bonded indebtedness.

(b) The purpose for which the bonded indebtedness will be incurred.

(c) Either of the following in accordance with its previous determination:

(1) That the whole of the district will pay for the bonded indebtedness.

(2) That a portion of the district will pay for the bonded indebtedness, which portion shall be described in the resolution of the board made pursuant to Section 53350.

(d) The amount of debt to be incurred.

(e) The maximum term the bonds to be issued shall run before maturity, which term shall not exceed 40 years.

(f) The maximum annual rate of interest to be paid, payable annually or semiannually, or in part annually and in part semiannually.

(g) That the proposition will be submitted to the voters.

(h) The date of the special community facilities district election (which may be consolidated with a general or special district election including an election to levy a special tax) at which time the proposition shall be submitted to the voters.

(i) If the election is not conducted by mail ballot, the hours between which the polls shall be open.

(j) If the election is conducted by mail ballot, the hour when the mailed ballots are required to be received in the office of the election officer conducting the election, and that if all qualified electors have voted, the election shall be closed.

(Amended by Stats. 1987, Ch. 1440, Sec. 13.)

53352. The resolution provided for in Section 53351 shall constitute the notice of such special bond election and such resolution shall be published in a newspaper of general circulation circulating within the area.

(Added by Stats. 1982, Ch. 1451, Sec. 1.)

53353.5. (a) Propositions relating to the levy of a special tax, the incurring of bonded indebtedness, or to establish or change an appropriations limit, or any combination thereof, under this chapter, may be combined into one ballot proposition as determined by the legislative body. The qualified electors for all of these purposes shall be determined and the election shall be conducted in the same manner as for a special tax election pursuant to Section 53326.

(b) The amendments of this section enacted by the Statutes of 1984 and 1991 do not constitute a change in, but are declaratory of and a clarification of, the existing law.

(Amended by Stats. 1991, Ch. 1110, Sec. 25.)

53354. If the area designated in the resolution adopted pursuant to Section 53351 does not include the entire community facilities district, a separate ballot shall be prepared for the vote upon the proposition to authorize bonds and to levy a special tax for payment of the bonds and only the voters entitled thereto shall be given the ballots.

(Amended by Stats. 2007, Ch. 670, Sec. 101. Effective January 1, 2008.)

53355. A two-thirds vote shall be required for the issuance of bonds under authority of this chapter.

(Amended by Stats. 2007, Ch. 670, Sec. 102. Effective January 1, 2008.)

53355.5. (a) As an alternate and independent procedure for conducting an election on the proposition to authorize bonded indebtedness for a community facilities district formed pursuant to Section 53328.1, and in lieu of the procedure set forth in Sections 53353.5, 53354, and 53355, the proposition to authorize bonded indebtedness may be approved by the owner or owners of a parcel or parcels of property at the time that the parcel or parcels are annexed to the community facilities district pursuant to the unanimous approval described in Section 53328.1. In that event, no additional hearings or procedures shall be required, and unanimous approval shall be deemed to constitute a unanimous vote in favor of the proposition.

(b) The local agency may bring an action, pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, to determine the validity of any bonds issued pursuant to this chapter and authorized pursuant to the procedures set forth in this section. Notwithstanding the provisions of Section 53359, if an action is brought by an interested person pursuant to Section 863 of the Code of Civil Procedure to determine the validity of any bonds issued pursuant to this chapter and authorized pursuant to the procedures set forth in this section, the action shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure but shall, notwithstanding the time limits specified in Section 860 of the Code of Civil Procedure, be commenced within 30 days after the effective date of the resolution described in Section 53351. Any appeal from a judgment in any action or proceeding described in this subdivision shall be commenced within 30 days after entry of judgment.

(Added by Stats. 2011, Ch. 493, Sec. 5. Effective January 1, 2012.)

53355.7. The refusal by a person to undertake or cause to be undertaken an act relating to Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5, including formation of, or annexation to, a community facilities district, voting to levy a special tax, or authorizing another to vote to levy a special tax, shall not be a factor when considering the approval of a legislative or adjudicative act, or both, including, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization, as defined by Section 56021 or 56037, if the purpose of the community facilities district is to finance energy efficiency, water conservation, and renewable energy improvements.

(Added by Stats. 2011, Ch. 493, Sec. 6. Effective January 1, 2012.)

53356. If more than two-thirds of the votes cast at the election are in favor of incurring the indebtedness, the legislative body may, by resolution, at the time or times it deems proper, provide for the following:

- (a) The form of the bonds.
- (b) The execution of the bonds.
- (c) The issuance of any part of the bonds.
- (d) The appointment of one or more banks or trust companies within or without the state having the necessary trust powers as trustee, fiscal agent, paying agent, or bond registrar.
- (e) The execution of a trust agreement, indenture, or other instrument securing the bonds.
- (f) The pledge or assignment of any revenues of the community facilities district to the repayment of the bonds.
- (g) The investment of any bond proceeds and other revenues, including special tax revenues, by the trustee or fiscal agent in any securities or obligations described in the resolution, indenture, trust agreement, or other instrument providing for the issuance of the bonds. Investment subject to this subdivision shall comply with Section 53356.03. The resolution may provide for payment to the United States from any available revenues of a community facilities district of any excess investment earnings required to be rebated by federal law.
- (h) The date or dates to be borne by the bonds and the time or times of maturity of the bonds and the place or places and time or times that the bonds shall be payable.
- (i) The interest, fixed or variable, to be borne by the bonds.
- (j) The denominations, form, and registration privileges of the bonds.
- (k) Any other terms and conditions determined to be necessary by the legislative body.

(Amended by Stats. 2007, Ch. 670, Sec. 103. Effective January 1, 2008.)

53356.03. The proceeds of any bond, note, or other security issued pursuant to this chapter, or the proceeds of any bond, note, or other security issued pursuant to any other authority where revenue collected pursuant to this chapter is pledged or otherwise committed to pay or repay principal, interest, or both, shall be deposited or invested only in one or more of the instruments, securities, or obligations that are eligible legal investments of the local agency.

(Amended by Stats. 1997, Ch. 204, Sec. 1. Effective January 1, 1998.)

53356.05. The bond indenture or other bond documents may provide that the legislative body agrees to notify one or more parties, including the underwriter or other first purchaser of the bonds, an appropriate national repository for bond information approved by the Securities and Exchange Commission, or the California Debt and Investment Advisory Commission, if specified events occur that may affect the market value of outstanding bonds. These events may include, but are not limited to, the following, for example:

- (a) Withdrawal of funds from any reserve fund for the bonds, such that the balance in the fund falls below a specified percentage of the amount required by bond documents.
- (b) Draw upon a letter of credit or other credit enhancement for the bonds.
- (c) Filing for bankruptcy by a developer or other owner of more than a specified percentage of the area or

property value within the district.

(d) Unforeseen discovery of toxic materials or rare and endangered plant or animal species within areas of the district proposed for development.

(Amended by Stats. 2002, Ch. 454, Sec. 18. Effective January 1, 2003.)

53356.1. (a) As a cumulative remedy, if debt is outstanding, the legislative body may, not later than four years after the due date of the last installment of principal thereof, order that any delinquent special taxes levied in whole or in part for payment of the debt, together with any penalties, interest, and costs, be collected by an action brought in the superior court to foreclose the lien of special tax.

(b) The legislative body may, by resolution, adopted prior to the issuance of debt under this chapter, covenant for the benefit of debtholders to commence and diligently pursue any foreclosure action regarding delinquent installments of any amount levied as a special tax, in whole or in part, for the payment of interest or principal of any debt that is incurred, and, at any time may assign the causes of action arising from the foreclosure to a trustee or joint powers authority to do so on behalf of the debtholders. The resolution may specify a deadline for commencement of the foreclosure action and any other terms and conditions the legislative body determines reasonable regarding the foreclosure action.

(c) Except as provided in Section 53356.6, all special taxes, interest, penalties, costs, fees, and other charges that are delinquent at the time of the ordering of a foreclosure action shall be collected in the action. In the event that a lot or parcel of property has not been sold pursuant to judgment in the foreclosure action at the time that subsequent special taxes become delinquent, the court may include the subsequent special taxes, interest, penalties, costs, fees, and other charges in the judgment or modified judgment.

(d) For purposes of financing delinquent special taxes pursuant to Section 26220 of the Government Code, the legislative body may act as if it were a board of supervisors.

(e) Notwithstanding any other provision of this chapter, no trustee or joint powers authority shall be obligated to accept the tender of bonds in satisfaction of any obligation arising from a delinquent special tax, although either may do so if authorized to do so by the legislative body.

(f) An action to determine the validity of any bonds issued, any joint powers agreement entered into, and any related agreements entered into, by a joint powers agency acting pursuant to this section may be brought by the joint powers agency pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. Any appeal from a judgment in the action shall be commenced within 30 days after entry of judgment.

(Amended by Stats. 2007, Ch. 670, Sec. 104. Effective January 1, 2008.)

53356.1.5. (a) This section applies if delinquent special taxes, together with any penalties, interest, and costs, are collected through the sale of the property by the tax collector pursuant to Chapter 7 (commencing with Section 3691) of Part 6 of Division 1 of the Revenue and Taxation Code.

(b) If the property is sold for at least the total amount necessary to redeem plus costs, as defined in Section 3698.5 of the Revenue and Taxation Code, the sale of the property shall extinguish the delinquent special taxes, interest, penalties, and costs included in the sale price.

(c) If the property is sold for less than the total amount necessary to redeem plus costs, as defined in Section 3698.5 of the Revenue and Taxation Code, all of the following apply:

(1) The portion of the sales price paid by the tax collector to the local agency on account of the delinquent special taxes shall be credited by the local agency first to the delinquent interest and redemption penalties, and then to the delinquent principal.

(2) The remainder of the delinquent special taxes and redemption penalties, if any, shall remain due and owing.

(3) Redemption penalties shall continue to accrue on the remaining unpaid delinquent special taxes.

(4) The remaining unpaid amount, with penalties, may be added as postjudgment delinquencies to any existing

unsatisfied foreclosure judgment against the property, or may be collected in a new foreclosure action filed pursuant to this chapter.

(Added by Stats. 2007, Ch. 670, Sec. 105. Effective January 1, 2008.)

53356.2. (a) When any foreclosure actions are ordered by the local agency or legislative body, or when subsequent installments and interest that are also to be made the subject of a foreclosure action thereafter become delinquent, and the foreclosure action is not commenced and a notice of pendency of action is not concurrently recorded, prior to the actual removal of the delinquent installment from the tax roll, the local agency or legislative body responsible for the foreclosure action on the delinquent installment shall do one of the following:

(1) Prior to the actual removal of the delinquent installment from the tax roll, the local agency or legislative body shall record or cause to have recorded in the county recorder's office in the county in which the real property is located, a Notice of Intent to Remove Delinquent Special Tax Installment from the Tax Roll, which contains the information set forth in subdivision (b). If action is taken under this paragraph, all of the following apply:

(A) Upon presentation of written proof of the recordation and a request for removal by the local agency or legislative body, the county auditor shall remove the delinquent installments from the tax roll. "Proof of recordation" includes, but is not limited to, a certified copy of the notice set forth in subdivision (b), or a copy of the recorded notice containing the county recorder's assigned document number, or a copy of the recorded notice containing a copy stamp from the office of the county recorder.

(B) From the date of the recordation, the county tax collector shall be credited upon the current tax roll with the amount charged against him or her on account of the delinquent special tax installment. If any person pays the delinquent installment referred to in the Notice of Intent to Remove Delinquent Special Tax Installment from the Tax Roll to the county tax collector prior to or subsequent to the actual removal of that delinquent installment from the tax roll, the county auditor shall forward that payment to the local agency or legislative body responsible for the foreclosure action.

(C) From the date of recordation pursuant to this section, the special tax installment, and interest thereon, and penalties, costs, fees, and other charges accrued under applicable statutes, that are to be collected in a foreclosure action, shall no longer be collectible by the county tax collector.

(D) The county tax collector, in addition to the costs recovered in foreclosure, may charge the actual costs incurred in removing these sums from the tax roll or the performance of any other related duties as set forth in this section.

(E) Installments, interest, penalties, costs, fees, and other charges that do not become the subject of a foreclosure action shall remain collectible by the county tax collector as otherwise provided by applicable law.

(2) As an alternative to the notice requirement set forth in paragraph (1), the Counties of San Bernardino and Riverside may, simultaneously with the removal of the delinquent special tax installment from the secured tax roll, provide notification on the secured tax roll that the installment has been removed from the roll for each parcel for which the delinquent special tax installment was removed. The notice shall be displayed in a manner which conveys that the removal has occurred, and shall include the name and telephone number of the person or entity to be contacted to receive further information.

(b) The Notice of Intent to Remove Delinquent Special Tax Installment from the Tax Roll shall be completed and recorded by or caused to be recorded by the local agency or legislative body responsible for the foreclosure action, and shall contain all of the following:

(1) The name of the local agency or legislative body, city, or other assessment district responsible for the foreclosure action.

(2) The legal description or assessor's parcel number of the property affected by the notice.

(3) The specific tax year and installment intended to be removed from the tax roll.

(4) The title, address, and telephone number of the employee, city official, or other authorized official who

should be contacted regarding the delinquent assessment installment amount.

(5) The name of the owner shown on the last equalized assessment roll.

(c) Any local agency or legislative body that removed or caused to be removed a delinquent special tax installment from the ad valorem tax roll prior to January 1, 1997, shall record, by July 1, 1997, a Notice of Intent to Remove Delinquent Special Tax Installment from the Tax Roll or shall request the tax collector to retain the notice of delinquent special tax installment on the tax roll as set forth in paragraph (2) of subdivision (a). If the foreclosure action has been filed and a notice of pendency of action has been recorded in the county recorder's office prior to July 1, 1997, this requirement does not apply.

(d) All costs associated with the county tax collector's and local agency's or legislative body's responsibilities as set forth in this section shall be recoverable by the local agency or legislative body through the foreclosure action.

(e) The recording of a notice of pendency of action in the county recorder's office in the county in which the real property is located, concurrent with the commencement of a foreclosure action ordered by the local agency or legislative body and commenced prior to the actual removal from the tax roll of the delinquent installment which is the subject of the foreclosure action, constitutes compliance with the notice requirements of this section.

(Amended by Stats. 1998, Ch. 497, Sec. 1. Effective January 1, 1999.)

53356.3. At any time after the tax collector has been relieved of his or her duty to collect sums under Section 53356.2 and before judgment in a foreclosure action, the local agency or trustee shall dismiss the action upon payment of all of the following:

(a) The amount of any delinquent special taxes together with any penalties, interest, and costs accrued thereon to date of complete payment hereunder.

(b) Costs of suit, including, but not limited to, litigation guarantees provided by title companies with respect to all claims of ownership or interest in the subject property.

(c) Attorneys' fees authorized by the local agency.

(d) The tax collector's costs authorized by subdivision (d) of Section 53356.2.

(Amended by Stats. 2007, Ch. 670, Sec. 106. Effective January 1, 2008.)

53356.4. The foreclosure action shall be brought in the name of the local agency or trustee on behalf of the bondholders pursuant to Section 53356.1, and may be brought within the time specified in Section 53356.1. The complaint may be brief and need only include the following allegations:

(a) That on a stated date, a certain sum of special taxes, levied against the subject property (describing it) pursuant to this chapter, became delinquent.

(b) On that date, bonds issued pursuant to this chapter, payable in whole or in part by the subject special taxes, were outstanding.

(c) That the legislative body or trustee has ordered the foreclosure.

(Amended by Stats. 1991, Ch. 1110, Sec. 30.)

53356.5. (a) Any judgment shall decree the amount of the continuing lien against each parcel to be foreclosed, and shall order the parcel to be sold on execution as in other cases of the sale of real property by process of the court except:

(1) Notwithstanding Section 701.545 of the Code of Civil Procedure, notice of sale of any lot or parcel included in the judgment may be given pursuant to Section 701.540 of the Code of Civil Procedure any time after the expiration of 20 days after the date notice of levy on the interest in real property was served on the judgment debtor or debtors, provided that the lot or parcel to be sold is not a dwelling for not more than four families and provided that all parties whose liens are extinguished by the foreclosure judgment were either defendants

in the foreclosure action or, for those parties who acquired an interest in a lien on the parcel after the recording of notice of the pending foreclosure action, received constructive notice of the action.

(2) Whenever notice of sale may be given after the expiration of 20 days after the date notice of levy was served as provided in paragraph (1), the 30-day time period contained in subdivision (h) of Section 701.540 of the Code of Civil Procedure shall be reduced to 10 days.

(3) Upon proof that the lot or parcel to be sold is not a dwelling for not more than four families, and upon determining that all parties whose liens are extinguished by the foreclosure judgment were either defendants in the foreclosure action or, for those parties who acquired an interest in a lien on the parcel after the recording of notice of the pending foreclosure action, received constructive notice of the action, pursuant to Section 716.020 of the Code of Civil Procedure, the court shall order that paragraphs (1) and (2) apply to any judgment previously entered.

(4) The minimum bid amount provided in Section 53356.6 shall apply instead of subdivision (a) of Section 701.620 of the Code of Civil Procedure.

(5) The local agency may bid at the price provided in Section 53356.6 by giving the levying officer a written receipt crediting all or part of the amount required to satisfy the judgment. If the local agency becomes the purchaser pursuant to bid, the local agency shall pay the amount of its credit bid into the redemption fund within 24 months of the date of the foreclosure sale.

(6) Notwithstanding subdivision (c) of Section 701.620 of the Code of Civil Procedure, if the minimum price required to be paid for a lot or parcel pursuant to Section 53356.6 is not obtained at a foreclosure sale, upon written request of the local agency, the levying officer shall retain the writ of sale and, provided that the writ of sale has not been returned to the court pursuant to paragraph (1) of subdivision (a) of Section 699.560 of the Code of Civil Procedure, give notice of sale pursuant to Section 701.540 of the Code of Civil Procedure without relieving on the property.

(7) As provided elsewhere in this chapter.

(b) The judgment amount shall include reasonable attorneys' fees to be fixed by the court, together with interest, penalties, and other authorized charges and costs (all calculated up to date of judgment).

(c) The foreclosure action shall be governed and regulated by the provisions of this chapter, and also where not in conflict with this chapter, by other provisions of law generally applicable to foreclosure actions.

(Amended by Stats. 1997, Ch. 946, Sec. 5. Effective January 1, 1998.)

53356.6. Property sold hereunder may not be sold for less than the amount of the judgment plus postjudgment interest and authorized costs without the consent of the owners of 75 percent by value of the outstanding bonds.

(Added by Stats. 1988, Ch. 1365, Sec. 23.)

53356.7. No special tax installment, interest or penalties thereon, or deed shall be held invalid for any error in computation if the error is found to be comparatively negligible, or is found to be in favor of the owner of the real property affected thereby.

(Added by Stats. 1988, Ch. 1365, Sec. 24.)

53356.8. Provided the legislative body permits bonds or debt to be tendered for special taxes and the penalties and interest thereon pursuant to Section 53344.1, if the highest bid for a lot or parcel sold pursuant to a judgment of foreclosure and order of sale exceeds five thousand dollars (\$5,000) and the highest bidder elects to treat the sale as a credit transaction pursuant to subdivision (c) of Section 701.590 of the Code of Civil Procedure, the balance due as provided in that section may be paid in full or in part by tender of bonds or debt, provided, however, that bonds or debt may not be tendered for costs of foreclosure, including attorney's fees, and administrative charges incurred by the local agency with respect to removing the special taxes from the rolls of the treasurer or tax collector, or other administrative charges.

(a) Tender of bonds or debt shall be made to the local agency within seven days of the date of the sale. The local agency shall be charged with authenticating the tender and shall, within 10 days of the date of the sale, submit a written receipt to the levying officer who conducted the sale for the amount of the bond or debt tender accepted by it.

(b) Tender of cash or certified check or cashier's check shall be made to the levying officer within 10 days of the date of the sale.

(c) The levying officer shall total the cash, certified checks and cashier's checks, and any agency written receipts for bonds or debt to determine if the amount of the bid, plus accruing costs and interests, has been paid. In no event shall the tendering party be entitled to receive cash or other compensation in return for all or any part of the value of a tendered bond or bonds, except for recognition of their value in satisfying the amount bid.

(d) The tendering party shall comply with the provisions of Section 53344.1, as applicable as if they were fully set out in this section.

(Added by Stats. 1997, Ch. 946, Sec. 6. Effective January 1, 1998.)

53356.9. (a) Notwithstanding any other provision of this chapter or any other provision of law applicable to foreclosure action, the judgment of foreclosure and sale of a lot or parcel pursuant to this chapter shall not terminate or otherwise affect the rights of the holder of an easement in that lot or parcel.

(b) No provision of this section shall be interpreted as limiting any rights otherwise agreed to under existing contract.

(Added by Stats. 1998, Ch. 113, Sec. 1. Effective January 1, 1999.)

53357. The bonds shall be signed by the chairperson of the legislative body and countersigned by the clerk of the legislative body or his or her deputy. All signatures on the bonds may be printed, lithographed, or engraved. If any officer whose signature appears on the bonds ceases to be that officer before the delivery of the bonds, his or her signature is as effective as if he or she had remained in office. All bonds shall be payable at the office of the treasurer of the local agency or at the office of any agent designated by the local agency.

(Amended by Stats. 1986, Ch. 1102, Sec. 35. Effective September 24, 1986.)

53357.1. (a) In connection with the issuance of bonds in which a property owner agrees, by written consent, to disclose certain information on a continuous basis through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access, or successor information depository, the local agency may execute and record in the office of the county recorder, in which the community facilities district is located, a notice of the owner's disclosure agreement for the purpose of providing notice to a subsequent transferee. The owner's written consent shall be attached to the notice.

(b) A subsequent transferee of the property shall be subject to the disclosure obligation. Upon the termination of the disclosure obligation, the local agency may cause a notice of termination to be recorded with the office of the county recorder in which the original notice was recorded.

(c) Notwithstanding Sections 6103 and 27383, the county recorder may charge an appropriate fee for the expense incurred in recording the notices provided for in this section.

(Added by Stats. 2013, Ch. 219, Sec. 8. Effective January 1, 2014.)

53358. When the legislative body provides for the fixing and levying of special taxes and charges for the community facilities district it shall also provide for the fixing and levying of that amount of special taxes and charges within the community facilities district which is required for the payment of the principal of and interest on any outstanding bonded debt of the community facilities district, including any necessary replenishment or expenditure of bond reserve funds or accumulation of funds for future bond payments, including any amount required by federal law to be rebated to the United States on that bonded debt. The special tax or charge shall be levied and collected by the same officers and at the same time and in the same manner that all other

special taxes and charges are levied and collected for the community facilities district or in any other manner specified by the legislative body. The special taxes and charges shall not exceed the authority granted by Article 2 (commencing with Section 53318) and Article 3 (commencing with Section 53330). All of the collections for payment of principal and interest on bonds shall be paid into the community facilities district bond fund and reserve or other fund for the particular community facilities district and shall be used solely for the payment of the principal of and interest on the outstanding bonds of the community facilities district.

(Amended by Stats. 1991, Ch. 1110, Sec. 31.)

53359. An action to determine the validity of bonds issued pursuant to this chapter or the validity of any special taxes levied pursuant to this chapter may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure but shall, notwithstanding the time limits specified in Section 860 of the Code of Civil Procedure, be commenced within 30 days after the voters approve the issuance of the bonds or the special tax if the action is brought by an interested person pursuant to Section 863 of the Code of Civil Procedure. Any appeal from a judgment in that action or proceeding shall be commenced within 30 days after entry of judgment.

(Amended by Stats. 1986, Ch. 1102, Sec. 37. Effective September 24, 1986.)

53359.5. (a) The legislative body shall, no later than 30 days prior to the sale of any bonds pursuant to this article, give written notice of the proposed sale to the California Debt and Investment Advisory Commission by mail, postage prepaid, or by any other method approved by the California Debt and Investment Advisory Commission, as required by Chapter 11.5 (commencing with Section 8855) of Division 1 of Title 2.

(b) On and after January 1, 1993, each year after the sale of any bonds, including refunding bonds, pursuant to this article, and until the final maturity of the bonds, the legislative body shall, not later than October 30 of each year, supply the following information to the California Debt and Investment Advisory Commission by mail, postage prepaid, or by any other method approved by the California Debt and Investment Advisory Commission:

- (1) Issuer name.
- (2) Community facilities district number or name.
- (3) Name, title, and series of the bond issue.
- (4) Credit rating and name of the rating agency.
- (5) Date of the bond issue and the original principal amount.
- (6) Reserve fund minimum balance required.
- (7) The principal amount of bonds outstanding.
- (8) The balance in the bond reserve fund.
- (9) The balance in the capitalized interest fund, if any.
- (10) The number of parcels that are delinquent with respect to their special tax payments, the amount that each parcel is delinquent, the total amount of special taxes due on the delinquent parcels, the length of time that each has been delinquent, when foreclosure was commenced for each delinquent parcel, the total number of foreclosure parcels for each date specified, and the total amount of tax due on the foreclosure parcels for each date specified.
- (11) The balance in any construction funds.
- (12) The assessed value of all parcels subject to special tax to repay the bonds as shown on the most recent equalized roll, the date of assessed value reported, and the source of the information.
- (13) The total amount of special taxes due, the total amount of unpaid special taxes, and whether or not the special taxes are paid under the county's Teeter Plan (Chapter 6.6 (commencing with Section 54773)).
- (14) The reason and the date, if applicable, that the issue was retired.

(15) Contact information for the party providing the information.

(c) In addition, with respect to any bonds sold pursuant to this article, regardless when sold, and until the final maturity of the bonds, the legislative body shall notify the California Debt and Investment Advisory Commission by mail, postage prepaid, or by any other method approved by the California Debt and Investment Advisory Commission, within 10 days if any of the following events occur:

(1) The local agency or its trustee fails to pay principal and interest due on any scheduled payment date.

(2) Funds are withdrawn from a reserve fund to pay principal and interest on the bonds that reduce the reserve fund to less than the reserve requirement.

(d) Neither the legislative body nor the California Debt and Investment Advisory Commission shall be liable for any inadvertent error in reporting the information required by this section.

(Amended by Stats. 2007, Ch. 670, Sec. 107. Effective January 1, 2008.)

53359.7. Current information on the items listed in Section 53359.5 is a matter of public record, within the meaning of the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1, even if the information is physically held by an agent or trustee of the public agency. Neither the legislative body, nor any of its officers, agents, or trustees shall be liable in any way for making that financial information available to anyone requesting it or for otherwise making it available to the public.

(Added by Stats. 1993, Ch. 1193, Sec. 11. Effective January 1, 1994.)

53360. The community facilities district may sell the bonds so issued at the times or in the manner the legislative body deems to be to the public interest. However, except as otherwise provided in Section 53360.4, all bonds shall be sold on sealed proposals or through generally accepted electronic means to the highest bidder, after advertising for bids by publication of notice of sale pursuant to Section 53692. If no bids are received or if the legislative body determines that the bids received are not satisfactory as to price or responsibility of the bidders, the legislative body may reject all bids received, if any, and either readvertise or sell the bonds at private sale.

(Amended by Stats. 2007, Ch. 670, Sec. 108. Effective January 1, 2008.)

53360.4. Notwithstanding Section 53360, the legislative body may sell bonds at private sale, without advertising for bids, if the legislative body determines that the action would result in a lower overall cost.

(Amended by Stats. 1985, Ch. 1035, Sec. 2.)

53360.7. The legislative body may provide that bonds shall bear a variable interest rate, and for the manner and intervals in which the rate shall vary. The variable rate shall not exceed the maximum rate permitted by Section 53531 or any other applicable provision of law limiting the maximum interest rate on bonds.

(Added by Stats. 1984, Ch. 1406, Sec. 4. Effective September 26, 1984.)

53361. Any bonds issued by a district organized under the provisions of this chapter are hereby given the same force, value and use as bonds issued by any municipality and shall be exempt from all taxation within the state.

(Added by Stats. 1982, Ch. 1451, Sec. 1.)

53361.1. All bonds issued by any district payable from taxes or charges are legal investments for all trust funds, for the trust funds of all insurance companies, the state school funds, and any funds which may be invested in bonds of cities, counties, cities and counties, school districts, or municipalities in the state.

(Added by Stats. 1982, Ch. 1451, Sec. 1.)

53362. The legislative body may, by resolution, issue new bonds to refund any or all of the district bonds

outstanding or improvement area bonds outstanding that have been issued pursuant to this article.

(Repealed and added by Stats. 1984, Ch. 269, Sec. 29. Effective July 3, 1984.)

53362.5. Refunding bonds shall not be issued if the total interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds exceeds the total interest cost to maturity on the bonds to be refunded plus the principal amount of the bonds to be refunded. Subject to these limitations, the principal amount of the refunding bonds may be more than, less than, or the same as the principal amount of the bonds to be refunded.

(Amended by Stats. 2007, Ch. 670, Sec. 109. Effective January 1, 2008.)

53362.7. The total authorized amount of the bonded indebtedness of a district or an improvement area therein, as approved by the qualified voter thereof, shall not be reduced by the principal amount of any refunding bonds issued to refund any or all outstanding bonds of the district or improvement area. This section does not constitute a change in, but is declaratory of, the existing law.

(Added by Stats. 1987, Ch. 1440, Sec. 14.)

53363. Except as otherwise provided in this article, the legislative body may issue refunding bonds without repeating any of the procedures required for the approval of the original bond issue, if the legislative body determines that it would be prudent in the management of its fiscal affairs to issue the refunding bonds.

(Repealed and added by Stats. 1984, Ch. 269, Sec. 32. Effective July 3, 1984.)

53363.2. If the legislative body determines to issue refunding bonds pursuant to this article it shall adopt a resolution providing for their issuance. The resolution shall:

(a) Describe the bonds being refunded and state the date on which it is anticipated that the exchange or purchase necessary to effect the refunding will occur.

(b) Fix the date of the refunding bonds.

(c) Designate the denomination or denominations of the refunding bonds.

(d) Fix the minimum rate or rates of interest to be paid on the refunding bonds.

(e) Fix the maturity dates of the refunding bonds, which shall not exceed the latest maturity date of the bonds being refunded.

(f) Designate the place or places of payment of principal and interest on the refunding bonds and on the bonds to be refunded.

(g) Describe the form of the refunding bonds.

(h) State the designated costs of issuing the refunded bonds, as defined by Section 53363.8.

(Added by Stats. 1984, Ch. 269, Sec. 33. Effective July 3, 1984.)

53363.5. Any refunding bonds issued pursuant to this article may be exchanged for the bonds to be refunded on such basis as the legislative body determines is for the benefit of the district, but shall be issued in compliance with Section 53362.5. As an alternative to exchanging the refunding bonds for the bonds to be refunded, the legislative body may sell the refunding bonds at public or private sale. The proceeds of any sale of refunding bonds for cash shall be placed in the treasury of the local agency to the credit of a fund to be established for the purpose of refunding the bonds to be refunded, which fund shall be designated the "refunding fund," and the proceeds of the sale shall be applied only as permitted by this article. The funds shall be secured and may be invested in accordance with any other laws applicable to the funds of the local agency.

(Amended by Stats. 1986, Ch. 1102, Sec. 38.5. Effective September 24, 1986.)

53363.7. The designated costs of issuing the refunding bonds, as defined by Section 53363.8, may be paid by

the purchaser of the refunding bonds or may be paid from any other legally available source, including any available revenues of the legislative body, the proceeds of sale of the refunding bonds, the interest or other gain derived from the investment of any of the proceeds of sale of the refunding bonds, or any combination thereof, as determined by the legislative body. However, any amounts paid by the local agency other than from the proceeds of sale of the refunding bonds or from interest or other gains derived from the investment of the proceeds of sale shall be added to the total interest cost to maturity on the refunding bonds in determining whether the issuance of the refunding bonds complies with Section 53362.5.

(Amended by Stats. 2007, Ch. 670, Sec. 110. Effective January 1, 2008.)

53363.8. For purposes of this article, the term "designated costs of issuing the refunding bonds" means any of the following costs and expenses designated by the legislative body in the resolution providing for the issuance of the refunding bonds:

(a) All expenses incident to the calling, retiring, or paying of the bonds to be refunded and incident to the issuance of refunding bonds, including the charges of any agent in connection with the issuance of the refunding bonds or in connection with the redemption or retirement of the bonds to be refunded.

(b) Either of the following:

(1) The interest upon the refunding bonds from the date of sale of the refunding bonds to the date of payment of the bonds to be refunded out of the proceeds of the sale of the refunding bonds or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(2) The interest upon the bonds to be refunded from the date of sale of the refunding bonds to the date of payment of the bonds to be refunded or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(c) Any premium necessary in the calling or retiring of the bonds to be refunded.

(Added by Stats. 1984, Ch. 269, Sec. 37. Effective July 3, 1984.)

53363.9. (a) The proceeds and investments in the "refunding fund" shall be in an amount sufficient to meet either the requirements of paragraph (1) or paragraph (2) at the time of issuance of the refunding bonds, as certified by a certified public accountant licensed to practice in this state.

(1) The proceeds and investments, together with any interest or other gain to be derived from any such investment, shall be in an amount sufficient to pay the principal, interest, and redemption premiums, if any, on the refunded bonds as they become due or at designated dates prior to maturity and the designated costs of issuance of the refunding bonds.

(2) The proceeds and investments, together with any interest or other gain to be derived from any such investment, shall be in an amount sufficient to pay the principal, interest, and redemption premiums, if any, on the refunding bonds prior to the maturity of the bonds to be refunded or prior to a designated date or dates before the maturity of the bonds to be refunded, the principal and any redemption premiums due on the refunded bonds at maturity or upon that designated date or dates, and the designated costs of issuance of the refunding bonds.

(b) The proceeds and any other cash in the "refunding fund" shall be held uninvested or shall be invested in noncallable obligations of, or obligations guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof, when those obligations are backed by the full faith and credit of the United States of America, and shall be in an amount sufficient to pay the principal, interest, and redemption premiums, if any, on the refunded bonds as they become due or at designated dates prior to maturity, in which case certification of a certified public accountant licensed to practice in this state shall not be required.

(Amended by Stats. 2013, Ch. 219, Sec. 9. Effective January 1, 2014.)

53364. Following the issuance of any refunding bonds pursuant to this article, the treasurer of the local agency shall provide for the payment of principal and interest on the refunding bonds in the same manner as for the

bonds being refunded. Payments on the refunding bonds may be made from the "refunding fund" or from the redemption fund established for the bonds being refunded. However, the bonds being refunded shall have a priority claim on funds in the redemption fund.

(Repealed and added by Stats. 1984, Ch. 269, Sec. 40. Effective July 3, 1984.)

53364.2. (a) If further facilities or services are authorized to be financed by the district, savings achieved through the issuance of refunding bonds may be used by the legislative body for those purposes.

(b) If no further facilities or services are authorized to be financed by the district, any savings achieved through the issuance of refunding bonds shall be used by the legislative body to reduce the special taxes levied to retire outstanding bonds.

(c) Savings achieved through the issuance of refunding bonds may be used pursuant to both subdivisions (a) and (b) in proportions determined by the legislative body.

(d) For purposes of this section, the terms "savings achieved through the issuance of refunding bonds" means the difference between the principal and interest to maturity of the refunded bonds and the principal and interest to maturity of the refunding bonds.

(e) If savings are to be used for authorized facilities, bonds may be issued that are secured by that savings.

(Amended by Stats. 2007, Ch. 670, Sec. 111. Effective January 1, 2008.)

53364.5. Any bonds issued by the district may be made callable by resolution of the legislative body adopted at or prior to the time of issuing the bonds. When bonds are made callable a statement to that effect shall be set forth on the face of the bonds. Callable bonds may be redeemed on any date prior to their fixed maturity in the amounts, manner, and prices prescribed by the legislative body.

(Amended by Stats. 2007, Ch. 670, Sec. 112. Effective January 1, 2008.)

53365. Notice designating the bonds called for redemption shall be mailed to the underwriter or other first purchaser and to the registered owners of the bonds to be called by first-class mail. The notice shall be mailed not less than 30 nor more than 90 days prior to the date fixed for redemption.

(Repealed and added by Stats. 1991, Ch. 1110, Sec. 33.5.)

53365.5. If on the date fixed for redemption, the area has provided funds available for payment of the principal and interest of the bonds called, interest on the bonds shall cease.

(Added by Stats. 1982, Ch. 1451, Sec. 1.)

53365.7. (a) The legislative body may, by resolution and without the necessity of calling and holding an election, borrow money in anticipation of the sale of bonds which have been authorized pursuant to this article, but which have not been sold and delivered, issue negotiable bond anticipation notes therefor, and renew the notes from time to time. The maximum maturity of any such notes, including the renewals thereof, shall not exceed five years from the date of delivery of the original notes.

(b) The principal and interest on the notes may be paid from any money available for their payment. Any portion of the principal or interest which is due and payable shall be paid from the proceeds of the next sale of bonds in anticipation of which the notes were issued.

(c) The proceeds of notes issued pursuant to this section may be used for any purpose for which the bonds in anticipation of which the notes were issued may be used.

(d) The notes shall not be issued in any amount in excess of the aggregate amount of bonds which the legislative body has been authorized to issue, less the amount of any bonds of such authorized issue which have been previously sold and less the amount of other bond anticipation notes issued previously and outstanding at that time.

(e) The legislative body may, in its resolution authorizing the issuance of notes, provide that the note shall be

subject to call and redemption prior to maturity, at the option of the district, at such price or prices as may be fixed in the resolution, but not to exceed a premium of 6 percent of the par value of the note so subject to redemption. The resolution shall fix the method of giving notice of redemption to the holders of notes to be redeemed and the price or prices at which the note shall be subject to redemption. Any notes that are subject to call and redemption prior to maturity shall contain a recital to that effect on their face and no note shall be subject to call or redemption prior to its fixed maturity date unless it contains that recital.

(f) The notes shall be issued and sold in the same manner as the bonds.

(g) The notes and the resolution or resolutions authorizing the same may contain any provisions, conditions, or limitations which a resolution of the legislative body authorizing the issuance of bonds may contain.

(h) The legislative body shall, in its resolution authorizing the issuance of notes, provide a remedy if the anticipated bonds cannot be sold at the time or in the amount specified in the resolution, or if any default occurs with respect to the notes. Any remedy which is so provided shall limit the obligations of property owners within the community facilities district to the special tax authorized and levied pursuant to this chapter, except that the legislative body may enter into an agreement with any of the property owners within the district pledging some or all of the real property of those property owners who are a party to the agreement as additional security for the notes. The legislative body may authorize the levy of a supplemental special tax in an amount sufficient to secure a note issued pursuant to this section, if that special tax is fully described as to the rate, method of apportionment, and conditions under which it may be levied in the resolution of intention prepared pursuant to Section 53321. This special tax shall be subject to the procedures and voting requirements for any special tax levied under the authority of this chapter.

(Added by Stats. 1984, Ch. 269, Sec. 42. Effective July 3, 1984.)

ARTICLE 6. Transfer of Community Facilities Districts [53368 - 53368.3] *(Article 6 added by Stats. 1994, Ch. 165, Sec. 1.)*

53368. Unless the context otherwise requires, the definitions contained in this section shall govern the construction of this article.

(a) "City" means any city, including a chartered city.

(b) "County" means any county of the state.

(c) "Districts" means community facilities districts created pursuant to this chapter.

(d) "Governing boards" means, in the case of the county, the board of supervisors of the county and, in the case of the city, the city council of the city.

(Added by Stats. 1994, Ch. 165, Sec. 1. Effective January 1, 1995.)

53368.1. Notwithstanding any other provision of law, the authority for the governance of one or more districts may be transferred from the jurisdiction of a county to the jurisdiction of a city upon written agreement entered into between the governing boards of the county and the city and satisfaction of any conditions contained in the agreement and the conditions to transfer contained in Section 53368.2.

(a) The legislative body empowered pursuant to this chapter to exercise all authority over the district shall be the governing board of the city.

(b) The legal name of the district shall be changed so that the words "County of ____" are deleted therefrom and replaced by the words "City of ____."

(c) Neither a county nor any of its officers, members, employees, or agents shall bear any liability for any action taken with regard to the district on or after the effective date of the transfer of jurisdiction.

(Added by Stats. 1994, Ch. 165, Sec. 1. Effective January 1, 1995.)

53368.2. The transfer of jurisdiction of a district from the governing board of the county to the governing board of the city shall be effective only if the following shall have occurred:

(a) An amended boundary map shall have been recorded with respect to the district with the county recorder in conformity with this subdivision. The amended map shall comply with the requirements of Section 3110 of the Streets and Highways Code, except that the word "proposed" shall not appear on the face of the map and the date and number of the resolution referred to in paragraph (2) of subdivision (b) of Section 3110 shall be the date and number of the resolution adopted by the governing board of the city authorizing the transfer. The amended boundary map shall include on its face the new name of the district and a statement to the effect that it amends the boundary map for (here insert original name or number of district or both the name and number of district, together with county), State of California, prior recorded at book ____ of maps of assessment and community facilities districts at page ____ in the office of the county recorder for the County of ____, State of California. The county recorder shall endorse, file, and cross-index the amended boundary map in accordance with Section 3113 of the Streets and Highways Code.

(b) An amended notice of special tax lien shall be recorded with the county recorder in the form required by Section 3114.5 of the Streets and Highways Code which shall reference the original notice which it is amending; provided, however, that the notice shall state the amended name of the district, reference the amended boundary map filed in accordance with subdivision (a) and the names of the owners and the list of assessor's parcel numbers to be appended to the amended notice shall be the list that was attached to the original notice of special tax lien that was filed with respect to the district. The county recorder shall record the amended notice of special tax lien, endorse it, and index it, as further provided in Section 3114.5 of the Streets and Highways Code. The provisions of Section 3115.5 of the Streets and Highways Code shall apply to the amended notice of special tax lien as if it were a notice of special tax lien recorded pursuant to Section 3114.5 of the Streets and Highways Code.

(c) The clerk of the governing board of the city shall have mailed notice to each property owner within the district as set forth on the latest secured assessment roll of the county, which notice shall state the amended name of the district, the effective date of the transfer of jurisdiction, the name and telephone number of the person or office at the city that will be responsible for annually preparing the current roll of special tax levy, as required by subdivision (a) of Section 53340.2, and from whom the notice specified in subdivision (b) of Section 53340.2 and other information regarding the district may be obtained.

(d) The city shall have adopted policies as required by Section 53312.7.

(e) For a district with outstanding bonded indebtedness, replacement bonds stating that the transfer of jurisdiction is being made in accordance with this article shall have been executed and delivered by the governing board of the city and delivered to the fiscal agent for the bonds.

(f) The governing board of the county shall have adopted a resolution granting its final consent to the transfer of jurisdiction for the district.

(Added by Stats. 1994, Ch. 165, Sec. 1. Effective January 1, 1995.)

53368.3. Neither the enactment of this article nor any action taken pursuant hereto with respect to the transfer of jurisdiction of a district, nor the failure of any property owner to receive notice as provided in subdivision (c) of Section 53368.2, shall in any way impair any existing special tax lien, the priority thereof, any pledge of special taxes or other revenues to the repayment of any bonds or the validity of any bonds of a district.

(Added by Stats. 1994, Ch. 165, Sec. 1. Effective January 1, 1995.)

OFFICE OF THE MAYOR
SAN FRANCISCO



EDWIN M. LEE
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: *for* Mayor Edwin M. Lee *NE*
RE: Resolution Authorizing Issuance of Special Tax Bonds – City and County
of San Francisco Community Facilities District No. 2014-1 (Transbay
Transit Center) ---Not to Exceed \$1,400,000,000
DATE: November 25, 2014

Attached for introduction to the Board of Supervisors is a resolution authorizing the issuance and sale of not to exceed \$1,400,000 Special Tax Bonds for City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center) and determining other matters in connection therewith.

Please note this item is cosponsored by Supervisor Kim.

I respectfully request that this item be calendared in Budget and Finance Committee on December 10th, 2014.

Should you have any questions, please contact Nicole Wheaton (415) 554-7940.