

**PORT COMMISSION OF THE  
CITY AND COUNTY OF SAN FRANCISCO**

\$ \_\_\_\_\_  
**REVENUE BONDS  
SERIES 2014A  
(AMT – Tax-Exempt)**

\$ \_\_\_\_\_  
**REVENUE BONDS  
SERIES 2014B  
(Federally Taxable)**

**BOND PURCHASE CONTRACT**

April \_\_, 2014

Port Commission of the  
City and County of San Francisco  
Port of San Francisco  
Pier 1  
San Francisco, CA 94111

Ladies and Gentlemen:

The undersigned, Siebert Brandford Shank & Co., L.L.C., as representative (the “Representative”) of itself and Stifel, Nicolaus & Company, Incorporated (together, the “Underwriters”) offers to enter into this bond purchase contract (this “Purchase Contract”) with the Port Commission of the City and County of San Francisco (the “Commission”), which will be binding upon the Commission and the Underwriters upon acceptance hereof by the Commission. This offer is made subject to the acceptance by the Commission by the execution of this Purchase Contract and its delivery to the Representative on or before 11:59 p.m., California time, on the date hereof and, if not so accepted, will be subject to withdrawal by the Representative upon written notice delivered to the Commission at any time prior to the acceptance of this Purchase Contract by the Commission. If the Representative withdraws this offer, or the Underwriters’ obligation to purchase the Bonds (as hereinafter defined) is otherwise terminated pursuant to Section 8(d) hereof, then and in such case, the Commission shall be without any further obligation to the Underwriters, including the payment of any costs set forth under Section 10(a) hereof, and the Commission shall be free to sell the Bonds to any other party. The Representative represents that it has been duly authorized by the other Underwriter to act hereunder on its behalf and has full authority to take such action as it may deem advisable in respect of all matters pertaining to this Purchase Contract and that the Representative has been duly authorized to execute this Purchase Contract. Any action taken under this Purchase Contract by the Representative will be binding upon all the Underwriters.

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture of Trust dated as of February 1, 2010 (the “Master Indenture”), between the Commission and U.S. Bank National Association (the “Trustee”), as successor trustee, as amended and supplemented by the First Supplement to Indenture of Trust dated as of February 1, 2010 (the “First Supplement to Indenture”) and the Second Supplement to Indenture of Trust

dated as of March 1, 2014 (the “*Second Supplement to Indenture*”), each between the Commission and the Trustee (the Master Indenture, as so amended and supplemented, the “*Indenture*”).

*Section 1. Purchase and Sale.* Upon the terms and conditions and upon the basis of the representations set forth herein, the Underwriters agree, jointly and severally, to purchase from the Commission, and the Commission hereby agrees to sell and deliver to, or for the account of, the Underwriters, all (but not less than all) of the Port Commission of the City and County of San Francisco, Revenue Bonds, Series 2014, consisting of \$\_\_\_\_\_ aggregate principal amount of Series 2014A (AMT – Tax-Exempt) (the “*Series 2014A Bonds*”) and \$\_\_\_\_\_ aggregate principal amount of Series 2014B (Federally Taxable) (the “*Series 2014B Bonds*,” and together with the Series 2014A Bonds, the “*Bonds*”). The Bonds shall be dated their date of delivery and shall have the maturities and bear interest at the rates per annum and have the yields all as set forth on Schedule I attached hereto.

The purchase price for the Series 2014A Bonds shall be \$\_\_\_\_\_ (comprised of the principal amount of the Series 2014A Bonds, [plus/less a [net] original issue premium/discount on the Series 2014A Bonds of \$\_\_\_\_\_,] less an Underwriters’ discount in the amount of \$\_\_\_\_\_). The purchase price for the Series 2014B Bonds shall be \$\_\_\_\_\_ (comprised of the principal amount of the Series 2014B Bonds, less an Underwriters’ discount in the amount of \$\_\_\_\_\_). The Bonds shall be substantially in the form described in, and shall be issued and secured under and pursuant to, the Indenture. The Bonds shall mature and shall be as otherwise described in the Official Statement (defined herein).

*Section 2. Authorization for the Bonds; Purpose of Issue.* Under Section 9.107 of the Charter (the “*City Charter*”) of the City and County of San Francisco (the “*City*”) and Chapter 43, Article XII of the City and County of San Francisco Administrative Code (the “*Port Bond Ordinance*”), the Commission has the authority to issue port revenue bonds for the purpose of acquiring, constructing, improving or developing ports or port facilities under its jurisdiction and port revenue refunding bonds under such terms and conditions as the Commission may authorize by resolution. The issuance of the Bonds was approved by the Commission pursuant to a resolution of the Commission adopted on December 12, 2013 and a resolution of the Commission adopted on \_\_\_\_\_, 2014 (together, the “*Commission Resolutions*”) and by the Board pursuant to a resolution of the Board of Supervisors of the City adopted on \_\_\_\_\_, 2014 and signed by the Mayor of the City on \_\_\_\_\_, 2014 (the “*City Resolution*,” and together with the Commission Resolutions, the “*Resolutions*”), each authorizing the issuance and sale of the Bonds.

The Bonds are being issued to: (i) finance or refinance the planning, acquisition, design, construction, reconstruction, rehabilitation and/or improvements to various facilities of the Port of San Francisco (the “*Port*”); (ii) refinance certain outstanding commercial paper of the City issued to finance certain Port projects and related commercial paper costs; (iii) fund the Reserve Accounts for the Bonds in the amount of the Series 2014 Reserve Requirement; and (iv) pay certain costs associated with the issuance of the Bonds.

*Section 3. Public Offering.* It shall be a condition to the obligations of the Underwriters to purchase, accept delivery of and pay for the Bonds that the entire principal amount of the Bonds be sold and delivered by the Commission to the Underwriters. Subsequent to the initial public offering, the public offering prices of the Bonds may change as determined by the Underwriters as deemed necessary in connection with the marketing of the Bonds.

*Section 4. Delivery of Official Statement.* Prior to the date hereof, the Commission has provided to the Underwriters for review a form of the preliminary official statement relating to the Bonds dated \_\_\_\_\_, 2014 (including the cover page and appendices thereto, the “*Preliminary Official Statement*”), which as of its date, a representative of the Commission on behalf of the Commission “deemed final” for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (“*Rule 15c2-12*”), except for certain information permitted to be omitted therefrom by Rule 15c2-12. By its acceptance of this offer, the Commission hereby ratifies and consents to the use and distribution by the Underwriters of the Preliminary Official Statement and the Commission has authorized the delivery of a final official statement relating to the Bonds dated the date hereof (both in print or electronic format) which will consist of the Preliminary Official Statement and all information previously permitted to have been omitted by Rule 15c2-12. The Commission will deliver a continuing disclosure certificate substantially in the form set forth as an Appendix to the Preliminary Official Statement (the “*Continuing Disclosure Certificate*”) on the Closing Date (as defined herein). A form of the Continuing Disclosure Certificate will attached as an appendix to the Official Statement.

The Commission hereby acknowledges that the Preliminary Official Statement has been made available to investors on the Internet at [MuniOS.com]. The Commission hereby agrees to deliver or cause to be delivered to the Underwriters within seven Business Days of the date hereof and at least in sufficient time to accompany any orders or confirmations that request payment from any customers, not more than [100] copies of the final official statement (including all information permitted to be omitted by Rule 15c2-12 and any amendments or supplements to such official statement as have been approved by the Commission and the Representative) (the “*Official Statement*”) to enable the Underwriters to comply with the rules of the Securities and Exchange Commission (the “*SEC*”) and the Municipal Securities Rulemaking Board (the “*MSRB*”). The Commission hereby approves of the use and distribution by the Underwriters of the Official Statement in connection with the offer and sale of the Bonds. At the time of or prior to the Closing Date, the Representative shall file a copy of the Official Statement with the MSRB or its designee (including the MSRB’s Electronic Municipal Market Access (“*EMMA*”) system).

*Section 5. The Closing.* At 8:00 a.m., California time, on \_\_\_\_\_, 2014, or at such other time or on such other date as the Commission and the Representative may agree (the “*Closing Date*”), the Commission shall deliver, or cause to be delivered, the Bonds to or for the account of the Underwriters through the facilities of The Depository Trust Company (“*DTC*”) in fully registered, book-entry eligible form, duly executed and authenticated, and registered in the name of Cede & Co., as nominee of DTC. Concurrently with the delivery of the Bonds to the Underwriters, the Commission will deliver the documents hereinafter mentioned at the offices of [JH or SH], in San Francisco, California, or another place to be mutually agreed upon by the Commission and the Underwriters. The Underwriters shall accept such delivery and pay the

purchase price for the Bonds set forth in Section 1 by federal funds wire or certified or bank check(s) in federal funds, immediately available, to the order of the Trustee for the account of the Commission. This payment for and delivery of the Bonds, together with the delivery of the aforementioned documents, is herein called the “*Closing*.” The Commission with the assistance of the Underwriters shall cause CUSIP identification numbers to be printed on the Bonds; *provided* that neither the failure to print such number on any Bond nor any error with respect thereto shall constitute cause for a failure or refusal by the Underwriters to accept the Bonds. The Underwriters represents that the CUSIP numbers set forth on Schedule I hereof are the correct CUSIP numbers for the Bonds.

*Section 6. Representations, Warranties and Covenants of the Commission.* The Commission represents, warrants and covenants to the Underwriters as follows:

(a) *Due Organization, Existence and Authority.* The Commission is a duly constituted public commission of the City and County of San Francisco duly organized and validly existing pursuant to its Charter and the Constitution and laws of the State, with full authority to: (i) adopt the Commission Resolutions; (ii) execute and deliver the Second Supplement to the Indenture, the Continuing Disclosure Certificate and this Purchase Contract; (iii) approve the Official Statement and authorize its distribution by the Underwriters; (iv) sell and deliver the Bonds to the Underwriters as provided herein and (v) carry out and consummate the other transactions contemplated by such documents.

(b) *Accuracy and Completeness of the Official Statement.* The information with respect to the Commission, its activities and the Port as described in the Preliminary Official Statement was, as of its date and the Official Statement is, and at all times subsequent to the date of the Official Statement up to and including the date of the Closing will be, true and correct in all material respects, and the Preliminary Official Statement contained and the Official Statement contains and will contain no misstatement of any material fact and did not and will not omit any statement and information that is necessary to make the statements and information with respect to the Commission contained therein, in the light of the circumstances under which such statements were made, not misleading in any material respect, excluding in each case any information contained in the Preliminary Official Statement and Official Statement relating to DTC and the book-entry only system and the information under the caption “UNDERWRITING.”

(c) *Official Statement.* If, at any time prior to the date twenty-five (25) days following the later of (a) the Closing or (b) the date the Underwriters no longer retains, directly or as member of an underwriting syndicate, an unsold balance of the Bonds for sale to the public (the later of (a) or (b) being the “*End of the Underwriting Period*”), an event occurs or facts or conditions become known of which the Commission has knowledge, which in the reasonable opinion of Jones Hall, A Professional Law Corporation and Schiff Hardin LLP (“*Co-Bond Counsel*”) or the General Counsel to the Commission or the City Attorney might or would cause the information in the Official Statement, as then supplemented or amended, to contain an untrue statement of a material

fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Commission will notify the Representative, and, if in the reasonable opinion of the Representative and the Commission such event, fact or condition requires the preparation and publication of a supplement or amendment to the Official Statement, the Commission will amend or supplement the Official Statement in a form and in a manner reasonably approved by the Underwriters and the Commission, provided all expenses incurred in connection with preparing an amendment or supplement to the Official Statement will be paid by the Commission. As used herein and for the purposes of the foregoing, the term “*End of the Underwriting Period*” for the Bonds shall refer to the Closing, unless the Commission shall have been notified in writing to the contrary by the Representative on or prior to the Closing. For the purposes of this subsection, the Commission will furnish such information as the Representative may from time to time reasonably request in writing prior to the End of the Underwriting Period.

(d) *No Breach or Default.* As of the time of acceptance hereof and as of the Closing Date and except as otherwise disclosed in the Official Statement, neither the execution nor the delivery by the Commission of the Second Supplement to the Indenture, the Continuing Disclosure Certificate or this Purchase Contract, the adoption of the Commission Resolutions, or the compliance by the Commission with such documents or authorizations, or the consummation of the transactions contemplated by such documents or by the Indenture or the Official Statement: conflicts with or constitutes a material breach of or default under any applicable law or administrative regulation of the State or the United States, or any other statute or administrative rule or regulation, judgment, decree, order, license, permit, agreement or instrument to which the Commission is subject which breach, default or conflict would have a material adverse effect on the ability of the Commission to repay the Bonds or have a material adverse effect on the ability of the Commission to perform its obligations under the Indenture, the Continuing Disclosure Certificate or this Purchase Contract.

(e) *No Other Bond Issues or Debt.* Between the time of acceptance hereof and the Closing Date, the Commission will not, without prior written notice to the Representative, issue any bonds or securities or incur any other indebtedness secured by the Net Revenue of the Commission.

(f) *No Litigation.* The Commission shall certify that, as of the date hereof and as of the Closing Date, and except as disclosed in the Official Statement, there is no action, suit, proceedings, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body, pending or, to the best knowledge of the Commission, threatened against the Commission: (i) affecting the existence of the Commission or the titles of its officers to their respective offices or (ii) seeking to restrain or to enjoin the sale or delivery of the Bonds, the application of the proceeds thereof in accordance with the Indenture, or (iii) in any way contesting or affecting the validity or enforceability of the Bonds, the Indenture or any action of the Commission contemplated by any of said documents, or (iv) in any way contesting the completeness or accuracy of the Official Statement or any amendment or supplement thereto, or (v) contesting the

powers of the Commission with respect to the Bonds or any action of the Commission contemplated by any of said documents, nor to the knowledge of the members of the Commission, as evidenced by the representative of the Commission signing this Purchase Contract, is there any basis therefor. The Commission shall further certify that, as of the date hereof and as of the Closing Date, and except as disclosed in the Official Statement, there is no action, suit, proceedings, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body, pending or, to the best knowledge of the Commission, threatened against the Commission in which a final adverse decision would materially and adversely affect the operations of the Port, Net Revenue or the consummation of the transactions contemplated by this Purchase Contract; or contesting in any way the completeness, accuracy or fairness of the Official Statement.

(g) *Further Cooperation; Blue Sky.* The Commission will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Representative may reasonably request in order to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Representative may designate; *provided, however,* that the Commission will not be required to execute a special or general consent to service of process or qualify as a foreign corporation in connection with any such qualification in any jurisdiction.

*Section 7. Representations, Covenants and Agreements of the Underwriters.* The Underwriters represent, covenant and agree with the Commission that:

(a) The Underwriters have been duly authorized to enter into this Purchase Contract.

(b) The Underwriters shall comply with the San Francisco Business Tax Ordinance and shall, if not otherwise exempt from such ordinance, provide to the Commission a Business Tax Registration Certificate on or prior to the date hereof.

(c) The Underwriters shall comply with Chapter 12B of the San Francisco Administrative Code, entitled "Nondiscrimination in Contracts," which is incorporated herein by this reference.

*Section 8. Closing Conditions.* The Underwriters have entered into this Purchase Contract in reliance upon the representations, warranties and covenants herein and the performance by the Commission of its obligations hereunder, both as of the date hereof and as of the Closing Date. The obligations of the Underwriters under this Purchase Contract are and shall be subject to the following conditions:

(a) *Bring-Down Representation.* The representations and warranties of the Commission contained herein shall be true, accurate and correct in all material respects at the date hereof and on the Closing Date, as if made on the Closing Date.

(b) *Executed Documents and Performance Thereunder.* At the time of the Closing (i) the Indenture, this Purchase Contract and the Official Statement shall be in full force and effect, and shall not have been amended, modified or supplemented except with the consent of the Representative (which consent will not be unreasonably withheld); and (ii) the Commission shall perform or have performed all of its obligations required under or specified in this Purchase Contract, the Official Statement and the Indenture to be performed prior to the Closing.

(c) *No Default.* At the time of the Closing, no default shall have occurred or be existing under the Indenture or this Purchase Contract.

(d) *Termination Events.* The Representative may terminate this Purchase Contract by notification in writing to the Commission, but only after consultation with the Commission in the manner set forth in the paragraphs immediately below, if, at any time on or prior to the Closing, any of the following occurs and, as a result of the occurrence of such an event, the marketability of the Bonds or the market price thereof, in the reasonable opinion of the Underwriter after consultation with the Commission, would be materially adversely affected, *provided, however,* that, in the event the Commission and the Representative disagree as to the effect of the occurrence of such event on the ability of the Representative to market the Bonds, this Purchase Contract may only be terminated by the Representative after the Underwriters and the Commission shall have negotiated in good faith to determine if there is an alternate time, place and manner which would permit the Underwriters to successfully market the Bonds:

(i) any event shall occur which makes untrue any statement or results in an omission to state a material fact necessary to make the statements in the Official Statement, in the light of the circumstances under which they were made, not misleading and the Commission fails to amend or supplement the Official Statement pursuant to Section 6(c) hereof; or

(ii) an amendment to the Constitution of the United States or the Constitution of the State or legislation in or by the Congress of the United States or the legislature of the State, or the amendment of legislation pending as of the date of this Purchase Contract in the Congress of the United States, or the favorable reporting for passage of legislation to either House of the Congress of the United States by a Committee of such House to which such legislation has been referred for consideration, or any decision of any federal or State court or any ruling or regulation (final, temporary or proposed) or official statement on behalf of the United States Treasury Department, the Internal Revenue Service or other federal or State authority or the occurrence of any other comparable legislative or regulatory event affecting the federal or State tax status of the interest on bonds or obligations of the general character of the Series 2014A Bonds; or

(iii) any legislation, ordinance, rule or regulation shall be introduced in, or be enacted by any governmental body, department or agency of the State, or a

decision by any court of competent jurisdiction within the State shall be rendered which, in the reasonable opinion of the Representative and upon consultation with the Commission, materially adversely affects the market price or marketability of the Bonds or the ability to enforce contracts for the sale of the Bonds at the contemplated offering price; or

(iv) a stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including all underlying obligations, as contemplated hereby or by the Official Statement, is in violation or would be in violation of any provision of the federal securities laws, including the Securities Act of 1933, as amended and as then in effect, or that the Indenture need be qualified under the Trust Indenture Act of 1939, as amended and as then in effect; or

(v) legislation shall be enacted by the Congress of the United States, or a decision by a court of the United States shall be rendered, to the effect that obligations of the general character of the Bonds, or the Bonds, are not exempt from registration under the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and as then in effect, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended and as then in effect; or

(vi) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in the United States in securities generally by any governmental authority or by any national securities exchange; or

(vii) a general banking moratorium shall have been declared by federal, State or State of New York authorities or a disruption in securities settlement, payment or clearance services materially affecting the Bonds shall have occurred; or

(viii) the ratings on the Bonds shall have been downgraded or withdrawn subsequent to the date of this Purchase Contract by one of the three rating agencies rating the Bonds; or

(ix) a decision by a federal or State court or legislative action which causes, or in the reasonable opinion of the Representative and the Commission, would cause a material reduction in the Net Revenue which would materially adversely affect the Commission's ability to repay the Bonds; or

(x) the marketability of the Bonds or the market prices thereof, in the opinion of the Representative, have been materially affected by the declaration of war or engagement in or escalation of military hostilities by the United States or



the occurrence of any other calamity or crisis (including any act of terrorism) the effect of any of which has caused a material disruption to the municipal bond market and as such, in the opinion of the Representative, makes it impracticable (or inadvisable, as agreed to by the Commission and the Representative) for the Underwriters to market the Bonds or to enforce contracts for the sale of the Bonds; or

(xi) there shall be (a) any change in or addition to applicable federal or state law, whether statutory or as interpreted by the courts or by federal or state agencies, including any changes in or new rules, regulations or other pronouncements or interpretations by federal or state agencies, (b) any legislation enacted by the Congress of the United States or recommended for passage by the President of the United States (if such enacted, introduced or recommended legislation has a proposed effective date which is on or before the Closing Date), (c) any law, rule or regulation proposed or enacted by any governmental body, department or agency (if such proposed or enacted law, rule or regulation has a proposed effective date which is on or before the Closing Date) or (d) any judgment, ruling or order issued by any court or administrative body, which in any such case would, prohibit (or have the retroactive effect of prohibiting, if enacted, adopted, passed or finalized) the Underwriters from underwriting the Bonds as provided herein or selling the Bonds to the public.

The termination of this Purchase Contract pursuant to this Section 8(d) by the Representative with respect to the Bonds shall not prohibit the Commission from selling such Bonds to any other underwriters.

(e) *Closing Documents.* At or prior to the Closing, the Underwriters shall receive with respect to the Bonds (unless the context otherwise indicates) the following documents, in each case satisfactory in form and substance to the Representative:

(1) *Approving Authorizations.* Certified copies of the Resolutions, the Port Bond Ordinance and Section 9.107 of the City Charter.

(2) *Bond Documents.* Executed originals of the Master Indenture, the First Supplement to Indenture, the Second Supplement to Indenture, the Continuing Disclosure Certificate and this Purchase Contract.

(3) *Final Opinion.* An approving opinion or opinions of Co-Bond Counsel, dated the Closing Date, and substantially in the form attached to the Official Statement, and a letter of such counsel addressed to the Underwriters to the effect that such opinion may be relied upon by the Underwriters to the same extent as if it had been addressed to each of them.

(4) *Supplemental Opinion.* A supplemental opinion or opinions of Co-Bond Counsel addressed to the Commission and the Underwriters, dated the Closing Date, to the following effect:

(i) The statements contained in the Official Statement under the captions “TERMS OF THE SERIES 2014 BONDS,” “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2014 BONDS,” “TAX MATTERS,” Appendix A – “SUMMARY OF THE LEGAL DOCUMENTS,” Appendix B – “SUMMARY OF THE BURTON ACT, TRANSFER AGREEMENT AND RELATED STATE REGULATIONS,” and Appendix F – “PROPOSED FORM OF LEGAL OPINIONS OF CO-BOND COUNSEL,” insofar as such statements purport to summarize certain provisions of the Port Bond Ordinance, Section 9.107 of the City Charter, the Bonds, the Indenture, and the opinion of Co-Bond Counsel with respect to the exclusion from gross income of interest on the Senior 2014A Bonds for federal income tax purposes are accurate in all material respects.

(ii) The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended.

(iii) This Purchase Contract, the Second Supplement to the Indenture and the Continuing Disclosure Certificate have each been duly authorized, executed and delivered by the Commission and constitute the valid, legal and binding agreements of the Commission, each enforceable in accordance with its respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws affecting enforcement of creditors’ rights, by the application of equitable principles if equitable remedies are sought and limitations on the enforcement of legal remedies against public agencies in the State.

(5) *Disclosure Counsel Opinion as to Official Statement.* An opinion or opinions of Hawkins, Delafield & Wood LLP, as Disclosure Counsel to the Commission, addressed to the Commission and the Underwriters, dated the Closing Date, in form and substance satisfactory to the Commission and the Underwriters.

(6) *Certificate of the Commission.* A certificate of the Commission dated the Closing Date, signed on behalf of the Commission by an authorized officer of the Commission, to the effect that:

(i) The representations and warranties of the Commission contained herein are true and correct in all material respects on and as of the Closing Date as if made on the Closing Date.

(ii) No event affecting the Commission has occurred since the date of the Official Statement which has not been disclosed therein or in any supplement or amendment thereto which event should be disclosed in

the Official Statement in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(7) *Certificate of the Trustee.* A certificate of the Trustee, dated the Closing Date, to the effect that:

(i) The Trustee is a national banking association organized and existing under the laws of the United States of America and has full power and is qualified to accept and comply with the terms of the Indenture and to perform its obligations thereunder.

(ii) The Trustee has accepted the duties and obligations imposed on it by the Indenture.

(iii) No consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the Trustee that has not been obtained is or will be required for the consummation by the Trustee of the transactions contemplated by the Indenture to be undertaken by the Trustee.

(iv) Compliance with the terms of the Indenture will not conflict with, or result in a violation or breach of, or constitute a default under, any loan agreement, indenture, bond, note, resolution or any other agreement or instrument to which the Trustee is a party or by which it is bound, or, to the best knowledge of the Trustee, after reasonable investigation, any law, rule, regulation, order or decree of any court or governmental agency or body having jurisdiction over the Trustee or any of its activities or properties (except that no representation, warranty or agreement is made by the Trustee with respect to any federal or state securities or Blue Sky laws or regulations).

(v) To the knowledge of the Trustee after due inquiry, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court or governmental agency, public board or body served on or threatened against or affecting the existence of the Trustee, or in any way contesting or affecting the validity or enforceability of the Indenture or the Bonds, or contesting the powers of the Trustee or its authority to enter into and perform its obligations under the Indenture or the Bonds, wherein an unfavorable decision, ruling or finding would adversely affect the validity of the Bonds or the Indenture.

(8) *Trustee's Counsel Opinion.* An opinion of counsel to the Trustee addressed to the Commission and the Underwriters, dated the Closing Date, in substantially the form attached hereto as Exhibit A.

(9) *Tax Certificates.* A No-Arbitrage Certificate of the Commission and Certificate as to Use of Proceeds of the Commission, each dated the Closing Date, in form satisfactory to Co-Bond Counsel and the Representative.

(10) *California Debt and Investment Advisory Commission Filings.* Copies of the Report of Proposed Debt Issuance and Report of Final Sale required to be delivered to the California Debt and Investment Advisory Commission pursuant to Section 53583 of the Government Code and Section 8855(g) of the Government Code.

(11) *Continuing Disclosure Certificate.* An executed copy of the Continuing Disclosure Certificate in substantially the form attached to the Official Statement as Appendix D.

(12) *Rating Letters for the Bonds.* Rating Letters of Moody's Investors Service, Inc. ("*Moody's*") Standard & Poor's Ratings Services ("*S&P*"), and Fitch Ratings ("*Fitch*"), evidencing that such rating agencies have assigned their municipal bond ratings of "\_\_\_\_," "\_\_\_\_" and "\_\_\_\_," respectively.

(13) *Opinion of the City Attorney.* An opinion of the City Attorney addressed to the Underwriters, dated the Closing Date, in form satisfactory to the Representative.

(14) *Additional Documents.* Such additional certificates, instruments and other documents as Co-Bond Counsel, the Representative or the City Attorney may reasonably deem necessary to evidence the truth and accuracy as of the time of the Closing of the representations of the Commission and the due performance or satisfaction by the Commission at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Commission.

If the Commission shall be unable to satisfy the conditions contained in this Purchase Contract, or if the obligations of the Underwriters shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and the Underwriters and the Commission shall not be under further obligation hereunder, except as further set forth in Section 10 hereof.

*Section 9. Good Faith Deposit.* To secure the Commission from any loss resulting from the failure of the Underwriters to accept delivery of and pay the purchase price for the Bonds pursuant to the terms of this Purchase Contract, the Underwriters agree to deliver to the Commission, concurrently with the execution and delivery of this Purchase Contract, either an official bank check (which may be deposited by the Commission upon receipt) or a federal funds wire transfer in the amount of \$\_\_\_\_\_ (representing \_\_\_ percent (\_\_\_%) of the principal amount of the Bonds) (the "*Good Faith Deposit*"). At the Closing, the Good Faith Deposit will be applied towards and deducted from the aggregate net purchase price for the Bonds as provided in Section 1 of this Purchase Contract. If the Underwriters fail to pay the purchase

price in full upon tender of the Bonds (other than for a reason permitted under Section 8 hereof), the Commission may retain such Good Faith Deposit as and for liquidated damages for such failure by the Underwriters. In such circumstance, the Underwriters will have no right to recover the Good Faith Deposit or to any allowance or credit therefor. Retaining the Good Faith Deposit shall constitute the Commission's sole and exclusive remedy and full liquidated damages for the Underwriters' failure (other than for a reason expressly set forth herein) to purchase and accept delivery of the Bonds pursuant to the terms of this Purchase Contract and the Underwriters shall be released and discharged from any and all claims for damages by the Commission against the Underwriters related to such failure and any other defaults by Underwriters hereunder. The Underwriters and the Commission hereby acknowledge and agree that the amount fixed pursuant to this Section for liquidated damages does not constitute a penalty and is a reasonable estimate of the damages that the Commission would sustain in the event of the Underwriters' failure to purchase and to accept delivery of the Bonds on the Closing Date pursuant to the terms of this Purchase Contract. The amount is agreed upon and fixed as liquidated damages because of the difficulty of ascertaining as of the date hereof the actual amount of damages that would be sustained in such event. If the Commission fails to deliver the Bonds on the Closing Date pursuant to this Purchase Contract, or if the conditions to the obligations of the Underwriters to purchase, accept delivery of and pay for the Bonds as set forth in this Purchase Contract shall not be satisfied (unless waived in writing by the Underwriters pursuant to this Purchase Contract), or if this Purchase Contract is terminated for a reason set forth in Section 8 hereof, the Commission shall promptly return the Good Faith Deposit to the Underwriters, plus interest (which shall accrue at the interest rate at which private depository institutions lend balances at the Federal Reserve to other depository institutions). Upon such return of the Good Faith Deposit to the Underwriters, this Purchase Contract shall terminate, and neither party shall have any further obligations hereunder.

*Section 10. Expenses.*

(a) *Commission.* The Commission shall pay or cause to be paid (but solely from the proceeds of the Bonds and not otherwise) the expenses incident to the performance of the obligations of the Commission hereunder, including but not limited to: (1) the cost of printing of the Preliminary Official Statement and the final Official Statement in reasonable quantities and all other documents prepared in connection with the transactions contemplated hereby; (2) the fees and disbursements of the Trustee and counsel to the Trustee in connection with the issuance of the Bonds; (3) the fees and disbursements of Co-Bond Counsel and of Public Financial Management, Inc. and Backstrom McCarley Berry & Co., LLC, as Co-Financial Advisors to the Commission, and any other experts or consultants retained by the Commission in connection with the transactions contemplated hereby; (4) California Debt and Investment Advisory Board fees payable by the Underwriters in connection with the Bonds; (5) the costs related to obtaining ratings; and (5) all other costs connected to the issuance of the Bonds except those costs specifically described below.

(b) *Underwriters.* The Underwriters shall pay: (1) the cost of preparation and printing of the Blue Sky Memorandum, if any, to be used by it; (2) all advertising expenses in connection with the public offering of the Bonds; (3) California Debt and Investment Advisory Commission fees (subject to reimbursement as described above); and (4) all other expenses

incurred by the Underwriters in connection with their public offering and distribution of the Bonds, including, without limitation, any experts or other consultants hired or retained by the Underwriters, including Underwriter's counsel, the fees and charges of the [CUSIP Global Services, DTC] and the MSRB.

*Section 11. City Contracting Requirements.* The Representative hereby represents to the Commission that the Underwriters have reviewed and will comply with the following City contracting requirements:

(a) *Conflict of Interest.* By the execution of this Purchase Contract, the Underwriters each acknowledge 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 constitute 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 Purchase Contract.

(b) *Proprietary or Confidential Information of City.* The Underwriters understand and agree that, in the performance of the work or services under this Purchase Contract or in contemplation thereof, Underwriters may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. The Underwriters agree that all information disclosed by City to the Underwriters shall be held in confidence and used only in performance of the Purchase Contract. The Underwriters shall exercise the same standard of care to protect such information as a reasonably prudent underwriter would use to protect its own proprietary data.

(c) *Ownership of Results.* Any interest of the Underwriters Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by the Underwriters or its Subcontractors in connection with services to be performed under this Purchase Contract, shall become the property of and will be transmitted to City. However, the Underwriters may retain and use copies for reference and as documentation of their experience and capabilities.

(d) *Works for Hire.* If, in connection with services performed under this Purchase Contract, the Underwriters 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 Underwriters or its Subcontractors under this Purchase Contract are not works for hire under U.S. law, the Underwriters hereby assign 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 Underwriters may retain and use copies of such works for reference and as documentation of its experience and capabilities.

(e) *Audit and Inspection of Records.* The Underwriters agree to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Purchase Contract. The Underwriters will permit 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 Purchase Contract, whether funded in whole or in part under this Purchase Contract. The Underwriters 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 Purchase Contract or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Purchase Contract shall have the same rights conferred upon City by this Section.

(f) *Subcontracting.* The Underwriters are prohibited from subcontracting this Purchase Contract or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Purchase Contract, 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.

(g) *Assignment.* The services to be performed by the Underwriters are personal in character and neither this Purchase Contract nor any duties or obligations hereunder may be assigned or delegated by the Underwriters unless first approved by City by written instrument executed and approved in the same manner as this Purchase Contract.

(h) *Non-Waiver of Rights.* The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

(i) *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. Each Underwriter shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Purchase Contract becomes effective (unless the Underwriter 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 Underwriter; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Purchase Contract. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Underwriter of the terms of this Purchase Contract. If, within thirty days after the Representative receives written notice of such a breach, said Underwriter fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, said Underwriter 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 Purchase Contract or under applicable law. Any Subcontract entered into by the Underwriters shall require the

Subcontractor to comply, as to the Subcontractor's Eligible Employees, with each of the terms of this Section. Capitalized terms used in this Section and not defined in this Purchase Contract shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

(j) *Local Business Enterprise Utilization; Liquidated Damages*

i. **The LBE Ordinance.** Each Underwriter, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco 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 Underwriter's obligations or liabilities, or materially diminish the Underwriter's rights, under this Purchase Contract. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Purchase Contract as though fully set forth in this Section. Any Underwriter's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of the Underwriter's obligations under this Purchase Contract and shall entitle City, subject to any applicable notice and cure provisions set forth in this Purchase Contract, to exercise any of the remedies provided for under this Purchase Contract, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Purchase Contract expressly provides that any remedy is exclusive. In addition, the Underwriters shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

ii. **Compliance and Enforcement.** If any Underwriter 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 Purchase Contract pertaining to LBE participation, the Underwriter shall be liable for liquidated damages in an amount equal to the Underwriter's net profit on this Purchase Contract, or 10% of the total amount of this Purchase Contract, 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 Underwriter authorized in the LBE Ordinance, including declaring the Underwriter to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Underwriter'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 §14B.17. By entering into this Purchase Contract, any Underwriter acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Each Underwriter further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to the Underwriter on any contract with City. Each Underwriter 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 Purchase Contract, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.



(k) *Nondiscrimination; Penalties*

*i.* **The Underwriters Shall Not Discriminate.** In the performance of this Purchase Contract, the Underwriters agree not to discriminate against any employee, City and County employee working with such Underwriter or Subcontractor, applicant for employment with such Underwriter 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.

*ii.* **Subcontracts.** The Underwriters shall incorporate by reference in all of its respective subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) entered into in connection with the services provided hereunder by the Underwriters and shall require all Subcontractors to comply with such provisions. The Underwriters' failure to comply with the obligations in this subsection shall constitute a material breach of this Purchase Contract.

*iii.* **Nondiscrimination in Benefits.** The Underwriters do not as of the date of this Purchase Contract and will not during the term of this Purchase Contract, in any of their respective 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 §12B.2(b) of the San Francisco Administrative Code.

*iv.* **Condition to Contract.** As a condition to this Purchase Contract, each Underwriter 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.

*v.* **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Purchase Contract as though fully set forth herein. The Underwriters shall comply fully with and be bound by all of the provisions that apply to this Purchase Contract under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Underwriters understand that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in

violation of the provisions of this Purchase Contract may be assessed against the offending Underwriter and/or deducted from any payments due to the Underwriter.

(l) *MacBride Principles—Northern Ireland.* Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco 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 and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the Representative on behalf of the Underwriters acknowledges and agrees that he or she has read and understood this Section.

(m) *Tropical Hardwood and Virgin Redwood Ban.* Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges the Underwriters not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

(n) *Drug-Free Workplace Policy.* The Underwriters acknowledge that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. The Underwriters agree that any violation of this prohibition by the Underwriters, or their respective employees, agents or assigns will be deemed a material breach of this Purchase Contract.

(o) *Resource Conservation.* Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by the Underwriters to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of the Purchase Contract.

(p) *Compliance with Americans with Disabilities Act.* The Underwriters acknowledge 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 an Underwriter, must be accessible to the disabled public. The Underwriters shall provide the services specified in this Purchase Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Underwriters agree not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Purchase Contract and further agree that any violation of this prohibition on the part of the Underwriters, or their respective employees, agents or assigns will constitute a material breach of this Purchase Contract.

(q) *Sunshine Ordinance.* In accordance with San Francisco Administrative Code §67.24(e), contracts, Underwriters’ bids, responses to solicitations and all other records of communications between 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.

(r) *Public Access to Meetings and Records.* If an Underwriter 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 San Francisco Administrative Code, the Underwriter shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Purchase Contract, the Underwriters agree to open their meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. The Underwriters further agree to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Underwriters acknowledge that their material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Purchase Contract. The Underwriters further acknowledge that such material breach of the Purchase Contract shall be grounds for the City to terminate and/or not renew the Purchase Contract, partially or in its entirety.

(s) *Limitations on Contributions.* Through execution of this Purchase Contract, the Underwriters acknowledge that they are familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Underwriters acknowledge that the foregoing restriction applies only if the Purchase 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. Each Underwriter further acknowledges that the prohibition on contributions applies to each prospective party to the Purchase Contract; each member of the Underwriter's board of directors; the Underwriter's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Underwriter; any Subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Underwriter. Additionally, the Underwriters acknowledge that the Underwriters must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. The Underwriters further agree to provide to City, upon request, the names of each person, entity or committee described above.

(t) *Requiring Minimum Compensation for Covered Employees*

i. The Underwriters agree to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by

reference and made a part of this Purchase Contract as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of the Underwriters' obligations under the MCO is set forth in this Section. The Underwriters are required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

*ii.* The MCO requires the Underwriters to pay the Underwriters' employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and the Underwriters are obligated to keep informed of the then-current requirements. Any subcontract entered into by the Underwriters shall require the Subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is the Underwriters' obligation to ensure that any Subcontractors of any tier under this Purchase Contract comply with the requirements of the MCO. If any Subcontractor under this Purchase Contract fails to comply, City may pursue any of the remedies set forth in this Section against the Underwriters.

*iii.* The Underwriters 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.

*iv.* The Underwriters shall maintain employee and payroll records as required by the MCO. If the Underwriters fail to do so, it shall be presumed that the Underwriters paid no more than the minimum wage required under State law.

*v.* The City is authorized to inspect the Underwriters' job sites and conduct interviews with employees and conduct audits of the Underwriters.

*vi.* The Underwriters' commitment to provide the Minimum Compensation is a material element of the City's consideration for this Purchase Contract. 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 Underwriters fail to comply with these requirements. The Underwriters agree that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for the Underwriters' noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

*vii.* The Underwriters understand and agree that if they fail 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 Purchase Contract for violating the MCO, the breaching Underwriter fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the breaching Underwriter 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.

*viii.* Each Underwriter 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.

*ix.* If an Underwriter is exempt from the MCO when this Purchase Contract is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but the Underwriter later enters into an agreement or agreements that cause the Underwriter to exceed that amount in a fiscal year, the Underwriter shall thereafter be required to comply with the MCO under this Purchase Contract. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Underwriter and this department to exceed \$25,000 in the fiscal year.

*(u) Requiring Health Benefits for Covered Employees*

The Underwriters agree to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Purchase Contract as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Purchase Contract shall have the meanings assigned to such terms in Chapter 12Q.

*i.* For each of their respective Covered Employees, the Underwriters shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Underwriters choose to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

*ii.* Notwithstanding the above, if the Underwriter 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.

*iii.* An Underwriter's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify the Representative if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Purchase Contract for violating the HCAO, the breaching Underwriter fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the breaching Underwriter 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 City.

*iv.* Any Subcontract entered into by the Underwriters 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 Underwriters 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 Underwriter 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 Underwriters based on the Subcontractor's failure to comply, provided that City has first provided the Underwriters with notice and an opportunity to obtain a cure of the violation.

*v.* No Underwriter shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to the Underwriter'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.

*vi.* Each Underwriter 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.

*vii.* Each Underwriter 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.

*viii.* The Underwriters shall keep themselves informed of the current requirements of the HCAO.

*ix.* The Underwriters 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.

*x.* Each Underwriter shall provide 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.

*xi.* Each Underwriter shall allow City to inspect the Underwriter's job sites and have access to the Underwriter's employees in order to monitor and determine compliance with HCAO.

*xii.* City may conduct random audits of the Underwriters to ascertain its compliance with HCAO. The Underwriters agree to cooperate with City when it conducts such audits.

*xiii.* If an Underwriter is exempt from the HCAO when this Purchase Contract is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Underwriter

later enters into an agreement or agreements that cause the Underwriter's aggregate amount of all agreements with 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 Underwriter and the City to be equal to or greater than \$75,000 in the fiscal year.

(v) *Prohibition on Political Activity with City Funds.* In accordance with San Francisco Administrative Code Chapter 12.G, the Underwriters 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 Purchase Contract. Each Underwriter agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event an Underwriter violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Purchase Contract or the Underwriters' participation hereunder, and (ii) prohibit the Underwriter from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider an Underwriter's use of profit as a violation of this Section.

(w) *Preservative-treated Wood Containing Arsenic.* The Underwriters may not purchase preservative-treated wood products containing arsenic in the performance of this Purchase Contract 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 Underwriters 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 Underwriters 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.

(x) *Compliance with Laws.* The Underwriters shall keep themselves fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Purchase Contract, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

(y) *Protection of Private Information.* The Underwriters have read and agree to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. The Underwriters agree that any failure of the Underwriters to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Purchase Contract. In such an

event, in addition to any other remedies available to it under equity or law, the City may terminate the Purchase Contract, bring a false claim action against the Underwriters pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Underwriters.

(z) *Graffiti Removal.* Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Each Underwriter shall remove all graffiti from any real property owned or leased by the Underwriter in the City and County of San Francisco within forty eight (48) hours of the earlier of the Underwriter'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 a Underwriter 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.).

Any failure of the Underwriters to comply with this Section of this Purchase Contract shall constitute a material breach of this Purchase Contract.

(aa) *Food Service Waste Reduction Requirements.* Effective June 1, 2007, the Underwriters agree to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Purchase Contract as though fully set forth. This provision is a material term of this Purchase Contract. By entering into this Purchase Contract, the Underwriters agree that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Underwriters agree 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 City will incur based on the violation, established in light



of the circumstances existing at the time this Purchase Contract was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of the Underwriters' failure to comply with this provision.

(bb) *Cooperative Drafting.* This Purchase Contract has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Purchase Contract reviewed and revised by legal counsel. No party shall be considered the drafter of this Purchase Contract, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Purchase Contract.

*Section 12. Notices.* Any notice or other communication to be given under this Purchase Contract to the Commission or the Underwriters may be given by delivering the same in writing at the addresses set forth below:

If to the Commission:

Port Commission of the City and  
County of San Francisco  
Port of San Francisco, Pier 1  
San Francisco, California 94111  
Attention: Executive Director  
Telephone: (415) 274-0400  
Fax: (415) 274-0412

With a copy to:

City and County of San Francisco  
Office of Public Finance  
City Hall, Room 336  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102  
Telephone: (415) 554-5956  
Fax: (415) 554-4864

If to the Underwriters:

Siebert Brandford Shank & Co., L.L.C.  
1999 Harrison Street, Suite 2720,  
Oakland, California 94612  
Attention: Gary Hall  
Telephone: (510) 645-2245  
Fax: (510) 645-2255

*Section 13. Entire Agreement.* This Purchase Contract, when accepted by the Commission, shall constitute the entire agreement between the Commission and the Underwriters and is made solely for the benefit of the Commission and the Underwriter (including the successors or assigns of the Underwriters with the consent of the Commission) and no other person shall acquire or have any right hereunder by virtue hereof. All of the Commission's representations, warranties and agreements in this Purchase Contract shall remain operative and in full force and effect, regardless of (a) any investigation made by or on behalf of the Underwriters, (b) delivery of and payment for the Bonds hereunder, and (c) any termination of this Purchase Contract. This Purchase Contract may be amended, supplemented or modified in a writing, signed by the Commission and the Representative.

*Section 14. Counterparts.* This Purchase Contract may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. This Purchase Contract may be signed in counterparts, and upon delivery to the other party of such signed Purchase Contract, which delivery may be by facsimile transmission or electronic mail, shall constitute the binding agreement of each party to this Purchase Contract.

*Section 15. Mutual Reliance on Representations and Warranties.* The Commission hereby acknowledges that the Underwriters, in executing this Purchase Contract and in paying for the Bonds as provided herein, are relying upon the representations and warranties of the Commission set forth herein. The Underwriters hereby acknowledge that the Commission, in executing this Purchase Contract and issuing the Bonds described herein, is relying upon the representations and warranties of the Underwriters set forth herein.

*Section 16. Severability.* In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity; illegality or unenforceability shall not affect any other provision hereof, but this Purchase Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

*Section 17. State of California Law Governs.* The validity, interpretation and performance of this Purchase Contract shall be governed by the laws of the State of California. This Purchase Contract shall be enforceable in the State of California, and any action arising out of this Purchase Contract shall be filed with and maintained in City and County of San Francisco Superior Court, San Francisco, California; provided, that the Commission may waive the requirement of venue.

*Section 18. Limited Liability.* The obligations and liabilities of the Commission hereunder are limited obligations of the Commission payable solely from Revenues as defined and set forth in the Indenture. None of the Commissioners, the officers or employees of the Commission, or any person executing this Purchase Contract shall be liable personally for the obligations of the Commission hereunder or be subject to any personal liability or accountability by reason of the execution hereof. Neither of the faith and credit nor the taxing power of the State or any political subdivision thereof, including the City, is pledged to the obligations of the Commission hereunder.

*Section 19. No Fiduciary or Advisory Role; Arm's Length Transaction.* The Underwriters and the Commission acknowledge and agree that (i) the purchase and sale of the Bonds pursuant to this Purchase Contract is an arm's-length commercial transaction between Commission, on the one hand, and the Underwriters, on the other hand, (ii) in connection with such transaction, each Underwriter is acting solely as a principal and not as a municipal advisor, a financial advisor, or a fiduciary of the Commission, and may have financial and other interests that differ from those of the Commission, (iii) the Underwriters have not assumed (individually or collectively) a fiduciary responsibility in favor of the Commission with respect to the offering of the Bonds or the discussions, undertakings and procedures leading thereto (whether or not any Underwriter, or any affiliate of an Underwriter, has provided or is currently providing services or advice to Commission on other matters), (iv) the only obligations the Underwriters have to the Commission with respect to the transactions contemplated hereby are expressly set forth in this Purchase Contract, and (v) the Commission and the Underwriters have consulted with their respective legal, financial and other advisors to the extent they deemed appropriate in connection with the offering of the Bonds. None of the Underwriters is acting as a Municipal Advisor (as defined in Section 15B of the Exchange Act of 1934, as amended) in connection with the matters contemplated by this Purchase Contract.

Very truly yours,

THE UNDERWRITERS:  
SIEBERT BRANDFORD SHANK & CO., L.L.C.  
STIFEL, NICOLAUS & COMPANY, INCORPORATED

By: SIEBERT BRANDFORD SHANK & CO.,  
L.L.C., as Representative of the Underwriters

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

Accepted as of the date first stated above:

PORT COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Executive Director

Approved as to Form:  
DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Mark D. Blake, Deputy City Attorney

**SCHEDULE I**  
**TO THE PURCHASE CONTRACT**

**MATURITY SCHEDULE**

\$ \_\_\_\_\_  
 Series 2014A  
 (AMT – Tax-Exempt)

<u>MATURITY</u> <u>(MARCH 1)</u>	<u>PRINCIPAL</u> <u>AMOUNT</u>	<u>INTEREST</u> <u>RATE</u>	<u>YIELD</u>	<u>PRICE</u>	<u>CUSIP</u> <u>(BASE NO. 797679)</u>
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\$ \_\_\_\_\_  
 Series 2014B  
 (Federally Taxable)

<u>MATURITY</u> <u>(MARCH 1)</u>	<u>PRINCIPAL</u> <u>AMOUNT</u>	<u>INTEREST</u> <u>RATE</u>	<u>YIELD</u>	<u>PRICE</u>	<u>CUSIP</u> <u>(BASE NO. 797679)</u>
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EXHIBIT A

FORM OF TRUSTEE'S COUNSEL OPINION

Siebert Brandford Shank & Co., L.L.C.  
Oakland, California  
Stifel, Nicolaus & Company, Incorporated  
San Francisco, California

Port Commission of the City and County of San Francisco  
San Francisco, California

\$ \_\_\_\_\_  
Port Commission of the City and County of  
San Francisco  
Revenue Bonds  
Series 2014A  
(AMT – Tax-Exempt)

\$ \_\_\_\_\_  
Port Commission of the City and County of  
San Francisco  
Revenue Bonds  
Series 2014B  
(Federally Taxable)

Ladies and Gentlemen:

We are counsel to U.S. Bank National Association, as trustee (the “Trustee”), in connection with the execution and delivery of \$\_\_\_\_\_ aggregate principal amount of Port Commission of the City and County of San Francisco Revenue Bonds Series 2014A (AMT – Tax-Exempt) and of \$\_\_\_\_\_ aggregate principal amount of Port Commission of the City and County of San Francisco Revenue Bonds Series 2014B (Federally Taxable) (together, the “Bonds”), issued pursuant to the Indenture dated as of February 1, 2010, by and between the Port Commission of the City and County of San Francisco (the “Commission”) and the Trustee, as successor trustee, as amended and supplemented by the First Supplement to Indenture of Trust dated as of February 1, 2010, and by the Second Supplement to Indenture of Trust dated as of March 1, 2014, each by and between the Commission and the Trustee (collectively, the “Indenture”). This opinion is delivered to you pursuant to Section 8(e)(8) of the Bond Purchase Contract dated \_\_\_\_\_, 2014, by and among the Commission and Siebert Brandford Shank & Co., L.L.C., as Representative of itself and Stifel, Nicolaus & Company, Incorporated (together, the “Underwriters”).

As such counsel, we have examined among other things, the Indenture, the Articles of Association and Bylaws of the Trustee, and such matters of fact and questions of law as we have considered appropriate for purposes of this opinion letter.

As to facts material to the opinions, statements and assumptions expressed herein, we have, with your consent, relied upon oral or written statements and representations of officers and other representatives of the Trustee and others and other sources believed by us to be

reliable, and have not undertaken to independently verify the accuracy of factual matters represented or certified in such documents and statements. In rendering our opinions, we have assumed the genuineness of all signatures on original or certified copies, the authenticity of documents, certificates and records submitted to us as originals, the conformity to original or certified copies of all copies submitted to us as certified or reproduction copies, the legal capacity of all natural persons executing documents, certificates and records, and the completeness and accuracy as of the date of this opinion letter of the information contained in such documents, certificates and records.

We are opining herein as to the effect on the subject transaction only of the federal laws of the United States and the internal laws of the State of California, and we express no opinion with respect to the applicability thereto, or the effect thereon, of the laws of any other jurisdiction or as to any matters of municipal law or the laws of any local agencies within any state.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

(1) The Trustee is a national banking association duly organized, validly existing and in good standing under the laws of the United States of America and is authorized to exercise trust powers.

(2) The Bank has all requisite corporate power, authority and legal right to execute and deliver the Trust Indenture, as Trustee, to authenticate the Bonds, and to perform its obligations under the Trust Indenture, and has taken all necessary corporate action to authorize the execution and delivery of the Trust Indenture and the performance of its obligations under the Trust Indenture, including the authentication and delivery of the Bonds in its capacity as Trustee and the Trust Indenture.

(3) The Trustee has duly authorized, executed and delivered the Indenture and, assuming due authorization, execution and delivery by the other parties thereto, the Indenture constitutes the legal, valid and binding obligation of the Trustee, enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance, and other similar laws affecting the rights and remedies of creditors generally, and by the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, whether considered in a proceeding at law or in equity.

(4) The Bonds have been duly authenticated by the Trustee.

(5) To our knowledge, other than routine filings required to be made with governmental agencies in order to preserve the Trustee's authority to perform trust services (all of which routine filings have to our knowledge been made), no consent, approval, authorization or other action by any governmental agency or regulatory authority having jurisdiction over the Trustee is or will be required for the execution and delivery by the Trustee of the Indenture or the authentication and delivery of the Bonds by Trustee in accordance with the Indenture.

This letter is issued to and for the sole benefit of the above addressees and is issued for the sole purpose of the transaction specifically referred to herein. No parties other than the above addressees may rely upon this letter without our express prior written consent. This letter may not be utilized by you for any other purpose whatsoever and may not be quoted by you without our express prior written consent. We assume no obligation to review or supplement this letter subsequent to its date, whether by reason of a change in the current laws, by legislative or regulatory action, by judicial decision or for any other reason.

Very truly yours,