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# **FISCAL AGENT AGREEMENT**

**by and between the**

**CITY AND COUNTY OF SAN FRANCISCO**

**and**

**[FISCAL AGENT]  
as Fiscal Agent**

**Dated as of July 1, 2017**

**Relating to:**

**\$ \_\_\_\_\_  
City and County of San Francisco  
Community Facilities District 2014-1  
(Transbay Transit Center)  
Special Tax Bonds, Series 2017A**

**\$ \_\_\_\_\_  
City and County of San Francisco  
Community Facilities District 2014-1  
(Transbay Transit Center)  
Special Tax Bonds, Series 2017B  
(Federally Taxable)**

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## FISCAL AGENT AGREEMENT

**THIS FISCAL AGENT AGREEMENT** (the "Agreement") is made and entered into as of July 1 2017, by and between the CITY AND COUNTY OF SAN FRANCISCO, a chartered city organized and existing under and by virtue of the Constitution and laws of the State of California (the "City") for and on behalf of the "City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center)" (the "CFD"), and [FISCAL AGENT], a national banking association duly organized and existing under the laws of the United States of America with a corporate trust office located in San Francisco, California, as fiscal agent (the "Fiscal Agent").

### WITNESSETH:

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

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

**WHEREAS**, pursuant to Resolution No. 2-15, which was approved by the Board of Supervisors on January 13, 2015 and signed by the Mayor on January 20, 2015 (the "Original Resolution of Issuance"), the Board of Supervisors authorized the issuance of up to \$1,400,000,000 of bonded indebtedness and other debt on behalf of the CFD; and

**WHEREAS**, pursuant to Resolution No. \_\_\_\_\_ (the "Supplemental Resolution of Issuance"; together with the Original Resolution of Issuance, the "Resolution of Issuance"), which was approved by the Board of Supervisors on April 25, 2017 and signed by the Mayor on \_\_\_\_ 2017, the Board of Supervisors authorized the issuance of the following special tax bonds on behalf of the CFD:

- (i) \$\_\_\_\_\_ City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center) Special Tax Bonds, Series 2017A (the "2017A Bonds"), and
- (ii) \$\_\_\_\_\_ City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center) Special Tax Bonds, Series 2017B (Federally Taxable) (the "2017B Bonds"); and

**WHEREAS**, proceeds of the 2017A Bonds are expected to be used to finance street and sidewalk improvements in the vicinity of the Transit Center; and

**WHEREAS**, proceeds of the 2017B Bonds are expected to be used to finance the following improvements (the "Transbay Facilities"): (i) the planning, design, engineering and construction of an extension of the Caltrain rail tracks to the Transbay Transit Center to accommodate Caltrain and California High Speed Rail, including the train components of the Transit Center building and associated systems and (ii) the planning, design, engineering and construction of open space on the roof of the Transbay Transit Center; and

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

**WHEREAS**, the City has determined that all things necessary to cause the 2017 Bonds, when authenticated by the Fiscal Agent and issued as provided in the Act, the Resolution (as defined in this Agreement) and this Agreement, to be legal, valid, binding and limited obligations in accordance with their terms, and all things necessary to cause the creation, authorization, execution and delivery of this Agreement and the creation, authorization, execution and issuance of the 2017 Bonds, subject to the terms hereof, have in all respects been duly authorized.

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

## ARTICLE I

### AUTHORITY AND DEFINITIONS

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

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

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

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

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

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

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

“Allocated Bond Proceeds Account” means the account designated “Allocated Bond Proceeds Account” within the Improvement Fund established under Section 4.07. The Allocated Bond Proceeds Account was required to be established by the City pursuant to the JCFA.

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

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

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

“Board” means the Board of Supervisors of the City as the legislative body.

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

“Bond” or “Bonds” means the 2017 Bonds and, if the context requires, any Parity Bonds, at any time Outstanding under this Agreement or any Supplemental Agreement.

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

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

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

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

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

“CFD Value” means the market value, as of the date of the appraisal described below and/or the date of the most recent County real property tax roll, as applicable, of all parcels of

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

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

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

"Closing Date" means the date upon which there is a physical delivery of the 2017 Bonds in exchange for the amount representing the purchase price of the 2017 Bonds by the Original Purchaser.

"Continuing Disclosure Certificate" shall mean that certain Continuing Disclosure Agreement executed by the City and the dissemination agent identified therein, dated as of \_\_\_\_ 1, 20\_\_, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

"Costs of Issuance" means items of expense payable or reimbursable directly or indirectly by the City and related to the authorization, sale, delivery and issuance of the 2017 Bonds, which items of expense shall include, but not be limited to, printing costs, costs of reproducing and binding documents, closing costs, appraisal costs, filing and recording fees, fees and expenses of counsel to the City, initial fees and charges of the Fiscal Agent including its first annual administration fees and its legal fees and charges, including the allocated costs of in-house attorneys, expenses incurred by the City in connection with the issuance of the Bonds, Bond (underwriter's) discount, legal fees and charges, including bond counsel and disclosure counsel, financial consultant's fees, charges for execution, authentication, transportation and safekeeping of the 2017 Bonds and other costs, charges and fees in connection with the foregoing.

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

"Dated Date" means the dated date of the 2017 Bonds, which is the Closing Date.

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the 2017 Bonds under Sections 2.02 and 2.03 and the scheduled amount of interest

and amortization of principal payable on any Parity Bonds during the period of computation, in each case excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

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

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

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

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

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

“Fiscal Agent” means [Fiscal Agent], the Fiscal Agent appointed by the City and acting as an independent fiscal agent with the duties and powers herein provided, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 7.01.

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

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

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

“Information Services” means (i) the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access website and (ii) in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such services providing information with respect to called bonds as the City may designate in an Officer’s Certificate delivered to the Fiscal Agent.

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

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

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

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

“Ordinance” means any ordinance of the Board of Supervisors of the City levying the Special Taxes, including but not limited to Ordinance No. 1-15 passed by the Board on January 13, 2015.

“Original Resolution of Issuance” means Resolution No. 2-15, which was approved by the Board of Supervisors on January 13, 2015 and signed by the Mayor on January 20, 2015, authorizing the issuance of the Bonds.

“Original Purchaser” means Stifel, Nicolaus & Company, Incorporated, the first purchaser of the 2017 Bonds from the City.

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

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

“Parity Bonds” means additional bonds issued by the City for the CFD and payable on a parity basis with any then Outstanding Bonds pursuant to Section 3.06.

“Participating Underwriter” shall have the meaning ascribed thereto in the Continuing Disclosure Certificate.

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

(a) Federal Securities;

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

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

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

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

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

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

(h) money market funds (including money market funds for which the Fiscal Agent, its affiliates or subsidiaries provide investment advisory or other

management services) which invest in Federal Securities or which are rated in the highest short-term rating category by any Rating Agency;

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

(j) the Local Agency Investment Fund established pursuant to Section 16429.1 of the Government Code of the State of California;

(k) the California Asset Management Program; and

(l) any other investment in which the City may invest its funds under California law.

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

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

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

"Qualified Reserve Fund Credit Instrument" means an irrevocable standby or direct-pay letter of credit, insurance policy, or surety bond issued by a commercial bank or insurance company and deposited with the Fiscal Agent, provided that all of the following requirements are met at the time of acceptance thereof by the Fiscal Agent: (a) in the case of a commercial bank, the long-term credit rating of such bank at the time of delivery of the irrevocable standby or direct-pay letter of credit is at least "A" from S&P or "A" from Moody's and, in the case of an insurance company, the claims paying ability of such insurance company at the time of delivery of the insurance policy or surety bond is at least "A" from S&P or "A" from Moody's or, if not rated by S&P or Moody's but is rated by A.M. Best & Company, is rated at the time of delivery in the highest rating category by A.M. Best & Company; (b) such letter of credit, insurance policy or surety bond has a stated term that extends at least to the final maturity date of the 2017 Bonds and any Related Parity Bonds; (c) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released; and (d) the Fiscal Agent is authorized pursuant to the terms of such letter of credit, insurance policy or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Bond Fund for the purpose of making payments with respect to all or a portion of the 2017 Bonds and any Related Parity Bonds.

“Rate and Method” means the amended and restated rate and method of apportionment of Special Tax for the CFD, adopted by the Board of Supervisors pursuant to the Resolution of Formation, and as it subsequently may be amended in compliance with the provisions of this Agreement and the Act.

“Rating Agency” means any nationally recognized rating agency.

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

“Refunding Bonds” means bonds issued by the City for the CFD, the net proceeds of which are used to refund all or a portion of the then-Outstanding Bonds; provided that (i) the total interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds is less than the total interest cost to maturity on the Bonds to be refunded plus the principal amount of the Bonds to be refunded and (ii) the final maturity of the Refunding Bonds is not later than the final maturity of the Bonds being refunded.

“Related Parity Bonds” means any series of Parity Bonds for which (i) the Proceeds are deposited into the Reserve Fund so that the balance therein is equal to the Reserve Requirement following issuance of such Parity Bonds and (ii) the related Supplemental Agreement specifies that the Reserve Fund shall act as a reserve for the payment of the principal of, and interest and any premium on, such series of Parity Bonds.

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

“Reserve Requirement” means, as of the date of calculation, which shall be (A) the date of issuance of the 2017 Bonds and any Related Parity Bonds and (B) the date of defeasance or redemption of any of the 2017 Bonds or Related Parity Bonds, an amount equal to the lesser of (i) Maximum Annual Debt Service on the 2017 Bonds and any Related Parity Bonds between the date of such calculation and the final maturity of such Bonds or (ii) one hundred twenty-five percent (125%) of average Annual Debt Service on the 2017 Bonds and any Related Parity Bonds between the date of such calculation and the final maturity of such Bonds and (iii) 10% of the original principal amount of the 2017 Bonds and any Related Parity Bonds (or, if the 2017 Bonds and any Related Parity Bonds have more than a de minimis amount of original issue discount or premium, 10% of the issue price of the 2017 Bonds and any Related Parity Bonds); provided that, with respect to the issuance of any Related Parity Bonds, if the Reserve Fund would have to be increased by an amount greater than ten percent (10%) of the stated principal amount of the Related Parity Bonds (or, if the Related Parity Bonds have more than a de minimis amount of original issue discount or premium, of the issue price of such Related Parity Bonds), then the Reserve Requirement shall be such lesser amount as is determined by a deposit of such ten percent (10%); and provided that accrued interest on any Related Parity Bonds deposited with the Fiscal Agent upon delivery of such Related Parity Bonds shall be excluded for purposes of the calculation of the Reserve Requirement.

“Resolution” or “Resolution of Issuance” means the Original Resolution of Issuance as supplemented by the Supplemental Resolution of Issuance.

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

“Securities Depositories” means DTC and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the City may designate in an Officer’s Certificate delivered to the Fiscal Agent.

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

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

“Special Tax Prepayments Account” means the account by that name established within the Bond Fund by Section 4.04(A) hereof.

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

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

“State” means the State of California.

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

“Supplemental Resolution of Issuance” means Resolution No. \_\_\_\_, which was approved by the Board of Supervisors on \_\_\_\_ and signed by the Mayor on \_\_\_\_, supplementing the Original Resolution of Issuance and authorizing the issuance of the 2017 Bonds.

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

“Term Bonds” means (i) the 2017A Bonds maturing on September 1, \_\_\_\_\_ and (ii) the 2017B Bonds maturing on September 1, \_\_\_\_\_.

“2017 Bonds” means the 2017A Bonds and the 2017B Bonds.

“2017A Bonds” means the Bonds so designated and authorized to be issued under Section 2.01 hereof.

“2017A Capitalized Interest Account” means the account of that name held by the Fiscal Agent in the Bond Fund.

“2017A Costs of Issuance Account” means the account of that name held by the Fiscal Agent in the Costs of Issuance Fund.

“2017A Improvement Account” means the account of that name held by the Fiscal Agent in the Improvement Fund.

“2017B Bonds” means the Bonds so designated and authorized to be issued under Section 2.01 hereof.

“2017B Capitalized Interest Account” means the account of that name held by the Fiscal Agent in the Bond Fund.

“2017B Costs of Issuance Account” means the account of that name held by the Fiscal Agent in the Costs of Issuance Fund.

**ARTICLE II**  
**THE BONDS**

**Section 2.01. Principal Amount; Designation.** The 2017 Bonds in the aggregate principal amount of One Billion Four Hundred Million Dollars (\$1,400,000,000) are hereby authorized to be issued by the City for the CFD under and subject to the terms of the Act, the Resolution, this Agreement and other applicable laws of the State of California.

The 2017A Bonds shall be designated as the “City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center) Special Tax Bonds, Series 2017A,” and shall be in the initial principal amount of \$\_\_\_\_\_.

The 2017B Bonds shall be designated as the “City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center) Special Tax Bonds, Series 2017B (Federally Taxable),” and shall be in the initial principal amount of \$\_\_\_\_\_.

**Section 2.02. Terms of the 2017 Bonds.**

**(A) Form; Denominations.** The 2017 Bonds shall be issued as fully registered Bonds without coupons. The 2017 Bonds shall be lettered and numbered in a customary manner as determined by the Fiscal Agent. The 2017 Bonds shall be issued in the denominations of \$5,000 or any integral multiple in excess thereof.

**(B) Date of 2017 Bonds.** The 2017 Bonds shall be dated the Closing Date.

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

**(D) Maturities; Interest Rates.** The 2017 Bonds shall mature and become payable on each September 1 in the principal amounts, and shall bear interest at the rates per annum, indicated in the below tables.

2017A Bonds

<u>Maturity</u> <u>(September 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
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\* Term Bond

2017B Bonds

<u>Maturity</u> <u>(September 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
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\* Term Bond

**(E) Interest.** The 2017 Bonds shall bear interest at the rates set forth above payable on the Interest Payment Dates in each year. Interest on all Bonds shall be calculated on the basis of a 360-day year composed of twelve 30-day months. Each 2017 Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof unless (i) it is authenticated on an Interest Payment Date, in which event it shall bear interest from such date of authentication, or (ii) it is authenticated prior to an Interest Payment Date and after the close of business on the Record Date preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (iii) it is authenticated on or before the Record Date preceding the first Interest Payment Date, in which event it shall bear interest from the Dated Date; provided, however, that if at the time of authentication of a 2017 Bond, interest is in default thereon, such 2017 Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

**(F) Method of Payment.** Interest on the Bonds (including the final interest payment upon maturity or earlier redemption), is payable on the applicable Interest Payment Date by check of the Fiscal Agent mailed by first class mail to the registered Owner thereof at such registered Owner's address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date, or by wire transfer made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of Bonds delivered to the Fiscal Agent prior to the applicable Record Date, which instructions shall continue in effect until revoked in writing, or until such Bonds are transferred to a new Owner. The interest, principal of and any premium on the Bonds are payable in lawful money of the United States of America, with principal and

any premium payable upon surrender of the Bonds at the Principal Office of the Fiscal Agent. All Bonds paid by the Fiscal Agent pursuant this Section shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds and issue a certificate of destruction of such Bonds to the City.

**Section 2.03. Redemption.**

**(A) Redemption Provisions.**

(i) **Optional Redemption.** The 2017A Bonds maturing on or after September 1, \_\_\_\_ are subject to redemption prior to their stated maturities, on any date on and after September 1, \_\_\_\_\_, in whole or in part, at a redemption price equal to the principal amount of the 2017A Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.

The 2017B Bonds maturing on or after September 1, \_\_\_\_ are subject to redemption prior to their stated maturities, on any date on and after September 1, \_\_\_\_\_, in whole or in part, at a redemption price equal to the principal amount of the 2017B Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium

(ii) **Mandatory Sinking Fund Redemption.** The Term Bonds are subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the redemption date, without premium, in the aggregate respective principal amounts all as set forth in the following table:

<u>2017A Bonds</u>	
Sinking Fund Redemption Date ( <u>September 1</u> )	Principal Amount <u>Subject to Redemption</u>

2017B Bonds

Sinking Fund  
Redemption Date  
(September 1)

Principal Amount  
Subject to Redemption

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

(iii) **Redemption from Special Tax Prepayments.** Special Tax Prepayments and any corresponding transfers from the Reserve Fund pursuant to Section 4.03(F) shall be used to redeem 2017 Bonds on the next Interest Payment Date for which notice of redemption can timely be given under Section 2.03(D), among series and maturities so as to maintain substantially the same debt service profile for the Bonds as in effect prior to such redemption and by lot within a maturity, at a redemption price (expressed as a percentage of the principal amount of the 2017 Bonds to be redeemed), as set forth below, together with accrued interest to the date fixed for redemption:

<u>Redemption Date</u>	<u>Redemption Price</u>
Any Interest Payment Date on or before March 1, 20__	103%
On September 1, 20__ and March 1, 20__	102
On September 1, 20__ and March 1, 20__	101
On September 1, 20__ and any Interest Payment Date thereafter	100

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

**(C) Purchase of Bonds in Lieu of Redemption.** In lieu of redemption under Section 2.03(A), moneys in the Bond Fund or other funds provided by the City may be used and withdrawn by the Fiscal Agent for purchase of Outstanding 2017 Bonds, upon the filing with the Fiscal Agent of an Officer's Certificate requesting such purchase, at public or private sale as and when, and at such prices (including brokerage and other charges) as such Officer's Certificate may provide, but in no event may 2017 Bonds be purchased at a price in excess of the principal amount thereof, plus interest accrued to the date of purchase and any premium

which would otherwise be due if such 2017 Bonds were to be redeemed in accordance with this Agreement. Any 2017 Bonds purchased pursuant to this Section 2.03(C) shall be treated as outstanding 2017 Bonds under this Fiscal Agent Agreement, except to the extent otherwise directed by the Finance Director.

**(D) Redemption Procedure by Fiscal Agent.**

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

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

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

(iii) **Partial Redemption.** Whenever provision is made in this Agreement for the redemption of less than all of the Bonds, the Fiscal Agent shall select the Bonds to be redeemed, from all Bonds or such given portion thereof not previously called for redemption, among maturities so as to maintain substantially the same debt service profile for the Bonds as in effect prior to such redemption, and by lot within a maturity.

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

**(E) Effect of Redemption.** From and after the date fixed for redemption, if funds available for the payment of the principal of, and interest and any premium on, the Bonds so

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

**Section 2.04. Form of Bonds.** The 2017 Bonds, the Fiscal Agent's certificate of authentication and the assignment, to appear thereon, shall be substantially in the forms, respectively, set forth in Exhibits A-1 and A-2 attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Agreement, the Resolution and the Act.

**Section 2.05. Execution and Authentication of Bonds.**

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

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

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

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

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

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

**(A) Mutilated.** If any Bond shall become mutilated, at the expense of the Owner of such Bond, the City shall execute and the Fiscal Agent shall authenticate and deliver a replacement Bond of like tenor and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Fiscal Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Fiscal Agent shall be canceled by it and destroyed by the Fiscal Agent, in accordance with the Fiscal Agent's retention policy then in effect.

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

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

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

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

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

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

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

DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the City and to the Fiscal Agent during any time that the

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

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

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

## ARTICLE III

### ISSUANCE OF 2017 BONDS

**Section 3.01. Issuance and Delivery of 2017 Bonds.** At any time after the execution of this Agreement, the City may issue the 2017 Bonds for the CFD in the aggregate principal amount set forth in Section 2.01 and deliver the 2017 Bonds to the Fiscal Agent for authentication and delivery to the Original Purchaser.

The Authorized Officers of the City are hereby authorized and directed to execute and deliver any and all documents and instruments necessary to cause the issuance of the 2017 Bonds in accordance with the provisions of the Act, the Resolution and this Agreement, to authorize the payment of Costs of Issuance and costs of the Project by the Fiscal Agent from the proceeds of the 2017 Bonds and to do and cause to be done any and all acts and things necessary or convenient for the timely delivery of the 2017 Bonds to the Original Purchaser.

The Fiscal Agent is hereby authorized and directed to authenticate the 2017 Bonds and deliver them to the Original Purchaser, upon receipt of the purchase price for the 2017 Bonds.

**Section 3.02. Pledge of Special Tax Revenues.** The Bonds shall be secured by a first pledge (which pledge shall be effected in the manner and to the extent herein provided) of all of the Special Tax Revenues and all moneys deposited in the Bond Fund (including the 2017A Capitalized Interest Account, the 2017B Capitalized Interest Account and the Special Tax Prepayments Account) and, until disbursed as provided herein, in the Special Tax Fund. The Special Tax Revenues and all moneys deposited into such funds (except as otherwise provided herein) are hereby dedicated to the payment of the principal of, and interest and any premium on, the Bonds as provided herein and in the Act until all of the Bonds have been paid and retired or until moneys or Federal Securities have been set aside irrevocably for that purpose under Section 9.03.

The 2017 Bonds and all Related Parity Bonds shall be secured by a first pledge (which pledge shall be effected in the manner and to the extent herein provided) of all moneys deposited in the Reserve Fund. The moneys in the Reserve Fund (except as otherwise provided herein) are hereby dedicated to the payment of the principal of, and interest and any premium on, the 2017 Bonds and all Related Parity Bonds as provided herein and in the Act until all of the 2017 Bonds and all related Parity Bonds have been paid and retired or until moneys or Federal Securities have been set aside irrevocably for that purpose under Section 9.03.

Amounts in the 2017A Improvement Account, the Allocated Bonds Account, the Administrative Expense Fund, the 2017A Costs of Issuance Account and the 2017B Costs of Issuance Account are not pledged to the repayment of the Bonds. The Project is not pledged to the repayment of the Bonds, nor are the proceeds of any condemnation or insurance award received by the City with respect to the Project.

**Section 3.03. Limited Obligation.** All obligations of the City under this Agreement and the Bonds shall not be general obligations of the City, but shall be limited obligations, payable solely from the Special Tax Revenues and the funds pledged therefor hereunder. Neither the faith and credit nor the taxing power of the City (except to the limited extent set forth herein) or

of the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

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

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

**Section 3.06. Parity Bonds.** In addition to the 2017 Bonds, the City may issue Parity Bonds in such principal amount as shall be determined by the City, under a Supplemental Agreement entered into by the City and the Fiscal Agent. Any such Parity Bonds shall constitute Bonds hereunder and shall be secured by a lien on the Special Tax Revenues)) and funds pledged for the payment of the Bonds hereunder on a parity with all other Bonds Outstanding hereunder. The City may issue such Parity Bonds subject to the following specific conditions precedent:

**(A) Compliance.** The City shall be in compliance with all covenants set forth in this Agreement and all Supplemental Agreements, and issuance of the Parity Bonds shall not cause the City to exceed the CFD's limitation on debt (as defined in the Act).

**(B) Same Payment Dates.** The Supplemental Agreement providing for the issuance of such Parity Bonds shall provide that interest thereon shall be payable on Interest Payment Dates, and principal thereof shall be payable on September 1 in any year in which principal is payable on the Parity Bonds (provided that there shall be no requirement that any Parity Bonds pay interest on a current basis).

**(C) Separate Funds; Reserve Fund or Reserve Account.** The Supplemental Agreement providing for the issuance of such Parity Bonds may provide for the establishment of separate funds and accounts.

The Supplemental Agreement providing for issuance of the Parity Bonds shall provide for (i) a deposit to the Reserve Fund in an amount necessary such that the amount deposited therein shall equal the Reserve Requirement following issuance of the Parity Bonds, (ii) a deposit to a reserve account for the Parity Bonds (and such other series of Parity Bonds identified by the City) in an amount defined in such Supplemental Agreement, as long as such Supplemental Agreement expressly declares that the Owners of such Parity Bonds will have no interest in or claim to the Reserve Fund and that the Owners of the Bonds covered by the Reserve Fund will have no interest in or claim to such other reserve account or (iii) no deposit to either the Reserve Fund or another reserve account as long as such Supplemental Agreement expressly declares that the Owners of such Parity Bonds will have no interest in or claim to the Reserve Fund or any other reserve account. The Supplemental Agreement may provide that the City may satisfy the reserve requirement for a series of Parity Bonds by the deposit into the reserve account established pursuant to such Supplemental Agreement an irrevocable standby or direct-pay letter of credit, insurance policy, or surety bond issued by a commercial bank or insurance company as described in the Supplemental Agreement.

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

**(E) Coverage.** For each Fiscal Year after issuance of the Parity Bonds, the maximum amount of the Special Taxes that, based on Taxable Parcels as of the date of issuance of such Parity Bonds, may be levied for such Fiscal Year under the Ordinance, the Agreement and any Supplemental Agreement for each respective Fiscal Year, shall be at least 110% of the total Annual Debt Service of the then Outstanding Bonds and the proposed Parity Bonds for each Bond Year that commences in each such Fiscal Year, and the aggregate Special Tax Prepayments that could occur after the issuance of the Parity Bonds shall be not less than the principal amount of the Outstanding Bonds and the proposed Parity Bonds.

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

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

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

**ARTICLE IV**

**PROCEEDS, FUNDS AND ACCOUNTS**

**Section 4.01. Application of 2017 Bond Proceeds.**

**(A) 2017A Bonds.** The Proceeds of the 2017A Bonds received from the Original Purchaser in the amount of \$\_\_\_\_\_ shall be paid to the Fiscal Agent, which shall deposit the Proceeds on the Closing Date, as follows:

- (i) \$\_\_\_\_\_ into the 2017A Costs of Issuance Account;
- (ii) \$\_\_\_\_\_ into the Reserve Fund;
- (iii) \$\_\_\_\_\_ into the Bond Fund (which shall represent capitalized interest and be deposited into the 2017A Capitalized Interest Account);
- (iv) \$\_\_\_\_\_ into the 2017A Improvement Account; and
- (v) \$\_\_\_\_\_ into the Administrative Expense Fund.

**(B) 2017B Bonds.** The Proceeds of the 2017B Bonds received from the Original Purchaser in the amount of \$\_\_\_\_\_ shall be paid to the Fiscal Agent, which shall deposit the Proceeds on the Closing Date, as follows:

- (i) \$\_\_\_\_\_ into the 2017B Costs of Issuance Account;
- (ii) \$\_\_\_\_\_ into the Reserve Fund;
- (iii) \$\_\_\_\_\_ into the Bond Fund (which shall represent capitalized interest and be deposited into the 2017B Capitalized Interest Account);
- (iv) \$\_\_\_\_\_ into the Allocated Bond Proceeds Account; and
- (v) \$\_\_\_\_\_ into the Administrative Expense Fund.

(c) Temporary Funds and Accounts. The Fiscal Agent may, in its discretion, establish a temporary fund or account to facilitate the foregoing deposits.

**Section 4.02. Costs of Issuance Fund and Related Accounts.**

**(A) Establishment of Costs of Issuance Fund.** The Costs of Issuance Fund is hereby established as a separate fund to be held by the Fiscal Agent, and within the Costs of Issuance Fund there are hereby established a 2017A Costs of Issuance Account and a 2017B Costs of Issuance Account, to the credit of which deposit shall be made as required by Section 4.01. Moneys in the Costs of Issuance Fund shall be held by the Fiscal Agent for the benefit of

the City and shall be disbursed as provided in subsection (B) of this Section for the payment or reimbursement of Costs of Issuance.

**(B) Disbursement.** (i) Amounts in the 2017A Costs of Issuance Account shall be disbursed from time to time to pay Costs of Issuance attributable to the issuance of the 2017A Bonds, as set forth in a requisition substantially in the form of Exhibit C hereto, executed by the Finance Director, containing respective amounts to be paid to the designated payees and delivered to the Fiscal Agent. Each such requisition shall be sufficient evidence to the Fiscal Agent of the facts stated therein and the Fiscal Agent shall have no duty to confirm the accuracy of such facts.

(ii) Amounts in the 2017B Costs of Issuance Account shall be disbursed from time to time to pay Costs of Issuance attributable to the issuance of the 2017B Bonds, as set forth in a requisition substantially in the form of Exhibit C hereto, executed by the Finance Director, containing respective amounts to be paid to the designated payees and delivered to the Fiscal Agent. Each such requisition shall be sufficient evidence to the Fiscal Agent of the facts stated therein and the Fiscal Agent shall have no duty to confirm the accuracy of such facts.

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

**(D) Closing of Fund.** The Fiscal Agent shall maintain the 2017A Costs of Issuance Account for a period of 90 days from the Closing Date and then the Fiscal Agent shall deposit any moneys remaining therein, including any investment earnings thereon, into the 2017A Improvement Account.

The Fiscal Agent shall maintain the 2017B Costs of Issuance Account for a period of 90 days from the Closing Date and then the Fiscal Agent shall deposit any moneys remaining therein, including any investment earnings thereon, into the Allocated Bond Proceeds Account.

#### **Section 4.03. Reserve Fund.**

**(A) Establishment of Fund.** The Reserve Fund is hereby established as a separate fund to be held by the Fiscal Agent to the credit of which a deposit shall be made as required by Section 4.01, which deposit, as of the Closing Date, is equal to the initial Reserve Requirement with respect to the 2017 Bonds, and deposits shall be made as provided in Sections 3.06(C) and 4.05(A) and (B). Moneys in the Reserve Fund shall be held by the Fiscal Agent for the benefit of the Owners of the 2017 Bonds and any Related Parity Bonds as a reserve for the payment of the principal of, and interest and any premium on, the 2017 Bonds and any Related Parity Bonds and shall be subject to a lien in favor of the Owners of the 2017 Bonds and any Related Parity Bonds.

**(B) Use of Reserve Fund.** Except as otherwise provided in this Section, all amounts deposited in the Reserve Fund shall be used and withdrawn

by the Fiscal Agent solely for the purpose of making transfers to the Bond Fund in the event of any deficiency at any time in the Bond Fund of the amount then required for payment of the principal of, and interest and any premium on, the 2017 Bonds and any Related Parity Bonds or, in accordance with the provisions of this Section, for the purpose of redeeming 2017 Bonds and any Related Parity Bonds from the Bond Fund. Whenever a transfer is made from the Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund for payment of the principal of, and interest and any premium on, the 2017 Bonds and any Related Parity Bonds, the Fiscal Agent shall provide written notice thereof to the Finance Director, specifying the amount withdrawn.

**(C) Transfer of Excess of Reserve Requirement.** Whenever, on or before any Interest Payment Date, or on any other date at the request of the Finance Director, the amount in the Reserve Fund exceeds the Reserve Requirement, the Fiscal Agent shall transfer an amount equal to the excess from the Reserve Fund to the Bond Fund, to be used to pay interest on the 2017 Bonds and any Related Parity Bonds on the next Interest Payment Date.

**(D) Transfer for Rebate Purposes.** Amounts in the Reserve Fund shall be withdrawn for purposes of making payment to the federal government to comply with Section 5.11, upon receipt by the Fiscal Agent of an Officer's Certificate specifying the amount to be withdrawn and to the effect that such amount is needed for rebate purposes; *provided, however*, that no amounts in the Reserve Fund shall be used for rebate unless the amount in the Reserve Fund following such withdrawal equals the Reserve Requirement.

**(E) Transfer When Balance Exceeds Outstanding Bonds.** Whenever the balance in the Reserve Fund exceeds the amount required to redeem or pay the Outstanding 2017 Bonds and all Outstanding Related Parity Bonds, including interest accrued to the date of payment or redemption and premium, if any, due upon redemption, the Fiscal Agent shall, upon the written request of the Finance Director, transfer any cash or Permitted Investments in the Reserve Fund to the Bond Fund to be applied, on the redemption date to the payment and redemption, in accordance with Section 4.04 or 2.03 and the provisions of the Supplemental Agreement related to the Related Parity Bonds, as applicable, of all of the Outstanding 2017 Bonds and Outstanding Related Parity Bonds. In the event that the amount so transferred from the Reserve Fund to the Bond Fund exceeds the amount required to pay and redeem the Outstanding 2017 Bonds and Outstanding Related Parity Bonds, the balance in the Reserve Fund shall be transferred to the Finance Director to be used by the City for any lawful purpose.

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

**(F) Transfer Upon Special Tax Prepayment.** Whenever Special Taxes are prepaid and 2017 Bonds or any Related Parity Bonds are to be

redeemed with the proceeds of such prepayment pursuant to Section 2.03(A)(iii) or a Supplemental Agreement related to any Related Parity Bonds, a proportionate amount in the Reserve Fund (determined on the basis of the principal of 2017 Bonds and Related Parity Bonds to be redeemed and the then-Outstanding principal of the 2017 Bonds and Related Parity Bonds, but in any event not in excess of the amount that will leave the balance in the Reserve Fund following the proposed redemption equal to the Reserve Requirement) shall be transferred on the Business Day prior to the redemption date by the Fiscal Agent to the Bond Fund to be applied to the redemption of the 2017 Bonds pursuant to Section 2.03(A)(iii) or a Supplemental Agreement related to any Related Parity Bonds. The Finance Director shall deliver to the Fiscal Agent an Officer's Certificate specifying any amount to be so transferred, and the Fiscal Agent may rely on any such Officer's Certificate.

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

**(H) Qualified Reserve Fund Credit Instruments.** The City shall have the right at any time to direct the Fiscal Agent to release funds from the Reserve Fund, in whole or in part, by tendering to the Fiscal Agent: (i) a Qualified Reserve Fund Credit Instrument, and (ii) an opinion of Bond Counsel stating that neither the release of such funds nor the acceptance of such Qualified Reserve Fund Credit Instrument will cause interest on the 2017 Bonds or any Related Parity Bonds the interest on which is excluded from gross income of the owners thereof for federal income tax purposes to become includable in gross income for purposes of federal income taxation. Upon tender of such items to the Fiscal Agent, and upon delivery by the City to the Fiscal Agent of written calculation of the amount permitted to be released from the Reserve Fund (upon which calculation the Fiscal Agent may conclusively rely), the Fiscal Agent shall transfer such funds from the Reserve Fund to the City to be deposited in the Improvement Fund and used for the purposes thereof. The Fiscal Agent shall comply with all documentation relating to a Qualified Reserve Fund Credit Instrument as shall be required to maintain such Qualified Reserve Fund Credit Instrument in full force and effect and as shall be required to receive payments thereunder in the event and to the extent required to make any payment when and as required under this Section 4.03. If the Reserve Requirement is being maintained partially in cash and partially with a Qualified Reserve Fund Credit Instrument, the cash shall be first used to meet any deficiency which may exist from time to time in the Bond Fund with respect to the 2017 Bonds and any Related Parity Bonds. If the Reserve Requirement is being maintained with two or more Qualified Reserve Fund Credit Instruments, any draw to meet a deficiency which may exist from time to time in the Bond Fund with respect to the 2017 Bonds and any Related Parity Bonds shall be pro-rata with respect to each such instrument.

In the event that a Qualified Reserve Fund Credit Instrument is available to be drawn upon for only one or more particular series of Bonds, a separate subaccount in the Reserve Fund may be established for such series, and the calculation of the Reserve Requirement with respect to all other Bonds payable from the Reserve Fund shall exclude the debt service on such issue of Bonds.

The City shall have no obligation to replace the Qualified Reserve Fund Credit Instrument or to fund the Reserve Fund with cash if, at any time that the 2017 Bonds and any Related Parity Bonds are Outstanding, amounts are not available under the Qualified Reserve Fund Credit Instrument or if the rating of the claims-paying ability of the provider of the Qualified Reserve Fund Credit Instrument is downgraded.

**Section 4.04. Bond Fund.**

**(A) Establishment of Bond Fund.** The Bond Fund is hereby established as a separate fund to be held by the Fiscal Agent to the credit of which deposits shall be made as required by Section 4.03, Section 4.05 and 4.07 (D) as otherwise set forth in this Agreement. Moneys in the Bond Fund shall be held by the Fiscal Agent for the benefit of the Owners of the Bonds, and shall be disbursed for the payment of the principal of, and interest and any premium on, the Bonds as provided below.

Within the Bond Fund there is hereby established a separate account designated as the "2017A Capitalized Interest Account" to be held by the Fiscal Agent for the benefit of the City and the Owners of the 2017A Bonds into which shall be deposited the amount specified in Section 4.01. Amounts on deposit in the 2017A Capitalized Interest Account shall be used and withdrawn by the Fiscal Agent solely for the payment of interest on the 2017A Bonds as follows: \$\_\_\_\_\_ shall be used on March 1, \_\_\_\_, and the remainder shall be used on September 1, \_\_\_\_. When the amount in the Capitalized Interest Account is fully expended for the payment of interest, the account shall be closed.

Within the Bond Fund there is hereby established a separate account designated as the "2017B Capitalized Interest Account" to be held by the Fiscal Agent for the benefit of the City and the Owners of the 2017B Bonds into which shall be deposited the amount specified in Section 4.01. Amounts on deposit in the 2017B Capitalized Interest Account shall be used and withdrawn by the Fiscal Agent solely for the payment of interest on the 2017B Bonds as follows: \$\_\_\_\_\_ shall be used on March 1, \_\_\_\_, and the remainder shall be used on September 1, \_\_\_\_. When the amount in the Capitalized Interest Account is fully expended for the payment of interest, the account shall be closed.

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

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

a result of a transfer pursuant to clause (ii) of the second paragraph of Section 4.05(A) shall be immediately disbursed by the Fiscal Agent to pay past due amounts owing on the Bonds.

At least three (3) Business Days prior to each Interest Payment Date, the Fiscal Agent shall determine if the amounts then on deposit in the Bond Fund are sufficient to pay the debt service due on the Bonds on the next Interest Payment Date. In the event that amounts in the Bond Fund are insufficient for such purpose, the Fiscal Agent promptly shall notify the Finance Director by telephone (and confirm in writing) of the amount of the insufficiency.

In the event that amounts in the Bond Fund are insufficient for the purpose set forth in the preceding paragraph with respect to any Interest Payment Date, the Fiscal Agent shall do the following:

(i) Withdraw from the Reserve Fund, in accordance with the provisions of Section 4.03, to the extent of any funds or Permitted Investments therein, amounts to cover the amount of such Bond Fund insufficiency related to the 2017 Bonds and any Related Parity Bonds. Amounts so withdrawn from the Reserve Fund shall be deposited in the Bond Fund.

(ii) Withdraw from the reserve funds, if any, established under a Supplemental Agreement related to Parity Bonds that are not Related Parity Bonds, to the extent of any funds or Permitted Investments therein, amounts to cover the amount of such Bond Fund insufficiency related to such Parity Bonds. Amounts so withdrawn from the Reserve Fund shall be deposited in the Bond Fund.

If, after the foregoing transfers and application of such funds for their intended purposes, there are insufficient funds in the Bond Fund to make the payments provided for in the second sentence of the first paragraph of this Section 4.04(B), the Fiscal Agent shall apply the available funds first to the payment of interest on the Bonds, then to the payment of principal due on the Bonds other than by reason of sinking payments, if any, and then to payment of principal due on the Bonds by reason of sinking payments. Each such payment shall be made ratably to the Owners of the Bonds based on the then Outstanding principal amount of the Bonds, if there are insufficient funds to make the corresponding payment for all of the then Outstanding bonds. Any sinking payment not made as scheduled shall be added to the sinking payment to be made on the next sinking payment date.

Any failure by the Fiscal Agent to provide the notices required by this Section 4.04(B) shall not alter the obligation of the City to make the scheduled payments from amounts in the Bond Fund.

**(C) Disbursements from the Special Tax Prepayments Account.** Moneys in the Special Tax Prepayments Account shall be transferred by the Fiscal Agent to the Bond Fund on the next date for which notice of redemption of Bonds can timely be given under Section 2.03(A)(iii) and shall be used (together with any amounts transferred pursuant to Section 4.03(F)) to redeem Bonds on the redemption date selected in accordance with Section 2.03.

**(D) Investment.** Moneys in the Bond Fund, the 2017A Capitalized Interest Account, the 2017B Capitalized Interest Account and the Special Tax Prepayments Account shall be invested under Section 6.01. Interest earnings and profits resulting from such investment shall be retained in the Bond Fund.

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

**(F) Excess.** Any excess moneys remaining in the Bond Fund (not including moneys in the Capitalized Interest Account) following the payment of Debt Service on the Bonds on any September 1, shall be transferred to the Special Tax Fund.

#### **Section 4.05. Special Tax Fund.**

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

Notwithstanding the foregoing,

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

(ii) any proceeds of Special Tax Prepayments shall be separately identified by the Finance Director and shall be deposited by the Fiscal Agent as follows (as directed in writing by the Finance Director): (a) that portion of any Special Tax Prepayment constituting a prepayment of costs of the Project shall be deposited by the Fiscal Agent to the Improvement Fund and (b) the remaining Special Tax Prepayment shall be deposited by the Fiscal Agent in the Special Tax Prepayments Account established pursuant to Section 4.04(A).

Moneys in the Special Tax Fund shall be held by the Fiscal Agent for the benefit of the City and Owners of the Bonds, shall be disbursed as provided

below and, pending disbursement, shall be subject to a lien in favor of the Owners of the Bonds.

**(B) Disbursements.** On the third Business Day prior to each Interest Payment Date, the Fiscal Agent shall withdraw from the Special Tax Fund and transfer the following amounts in the following order of priority:

(i) to the Bond Fund an amount, taking into account any amounts then on deposit in the Bond Fund and any expected transfers from the Improvement Fund, the Reserve Fund and any reserve account for Parity Bonds that are not Related Parity Bonds, the 2017A Capitalized Interest Account, the 2017B Capitalized Interest Account and the Special Tax Prepayments Account to the Bond Fund such that the amount in the Bond Fund equals the principal (including any sinking payment), premium, if any, and interest due on the Bonds on such Interest Payment Date and any past due principal or interest on the Bonds not theretofore paid from a transfer described in clause second of subparagraph (ii) of the second paragraph of Section 4.05(A), and

(ii) without preference or priority (a) to the Reserve Fund an amount, taking into account amounts then on deposit in the Reserve Fund, such that the amount in the Reserve Fund is equal to the Reserve Requirement, and (b) to the reserve account for any Parity Bonds that are not Related Parity Bonds, taking into account amounts then on deposit in the such reserve account, such that the amount in such reserve account is equal to the amount required to be on deposit therein (and in the event that amounts in the Special Tax Fund are not sufficient for the purposes of this paragraph, such amounts shall be applied to the Reserve Fund and any other reserve accounts ratably based on the then Outstanding principal amount of the Bonds).

Each calendar year, following the transfers pursuant to the preceding paragraph for the March 1 Interest Payment Date occurring in such calendar year, when amounts (including investment earnings) have been accumulated in the Special Tax Fund sufficient to make the transfers pursuant to the preceding paragraph for the September 1 Interest Payment Date occurring in such calendar year, the Finance Director, during the period up to but not including December 10 of such calendar year, may in his or her sole discretion direct the disposition of moneys in the Special Tax Fund in excess of the amounts needed for such September 1 Interest Payment Date as follows: (i) direct the Fiscal Agent to transfer money to the Improvement Fund (or the accounts therein) for payment or reimbursement of the costs of the Project, (ii) direct the Fiscal Agent to transfer money to the Administrative Expense Fund, in an amount not to exceed the amount included in the Special Tax levy for Administrative Expenses for such Fiscal Year and (iii) direct the Fiscal Agent to transfer money for any other lawful purpose.

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

#### **Section 4.06. Administrative Expense Fund.**

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

**(B) Disbursement.** Amounts in the Administrative Expense Fund shall be withdrawn by the Fiscal Agent and paid to the City or its order upon receipt by the Fiscal Agent of an Officer's Certificate, in substantially the form of Exhibit D hereto, stating the amount to be withdrawn, that such amount is to be used to pay an Administrative Expense or a Cost of Issuance and the nature of such Administrative Expense or such Cost of Issuance. Amounts deposited to the Administrative Expense Fund pursuant to Section 4.01 shall be separately identified at all times, and shall be expended for purposes of the Administrative Expense Fund prior to the use of amounts transferred to the Administrative Expense Fund from the Special Tax Fund pursuant to Section 4.05.

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

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

#### **Section 4.07. Improvement Fund.**

**(A) Establishment of Improvement Fund.** The Improvement Fund is hereby established as a separate fund, and within the Improvement Fund there is hereby established a 2017A Improvement Account and an Allocated Bond Proceeds Account, to be held by the Fiscal Agent and to the credit of which fund and accounts deposits shall be made as required herein. Moneys in the Improvement Fund shall be disbursed, except as otherwise provided in subsection (D) of this Section, for the payment or reimbursement of the costs of the Project.

**(B) Procedure for Disbursement.** Disbursements from the 2017A Improvement Account and the Allocated Bond Proceeds Account shall be made by the Fiscal Agent upon receipt of an Officer's Certificate substantially in the form of Exhibit B attached hereto which shall:

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

Project costs previously paid), and the person to which the disbursement is to be paid;

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

(iii) certify that all disbursements from the Improvement Fund are in compliance with the JCFA.

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

**(C) Investment.** Moneys in the Improvement Fund, 2017 Improvement Account and the Allocated Bond Proceeds Account shall be invested in accordance with Section 6.01. Interest earnings and profits from such investment shall be retained in the related fund or accounts to be used for the purpose of such fund or accounts.

**(D) Closing of Fund.** Upon the filing of an Officer's Certificate stating that the Project has been completed and that all costs of the Project have been paid or are not required to be paid from the Improvement Fund (including the 2017A Improvement Account and the Allocated Bond Proceeds Account), the Fiscal Agent shall transfer the amount, if any, remaining in the 2017A Improvement Account and the Allocated Bond Proceeds Account to the Bond Fund for application to Debt Service payments on the Bonds specified in the Officer's Certificate.

**ARTICLE V**  
**COVENANTS**

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

**(A) Processing.** On or within five (5) Business Days of each June 1, the Fiscal Agent shall provide the Finance Director with a notice stating (i) the amount then on deposit in the Bond Fund, the Reserve Fund and any reserve account for Parity Bonds that are not Related Parity Bonds that is held by the Fiscal Agent, and (ii) if the amount in the Reserve Fund is less than the Reserve Requirement or the amount in such other reserve account held by the Fiscal Agent is less than its required amount, informing the City that replenishment of the Reserve Fund or reserve account is necessary. The receipt of or failure to receive such notice by the Finance Director shall in no way affect the obligations of the Finance Director under the following two paragraphs and the Fiscal Agent shall not be liable for failure to provide such notices to the Finance Director. Upon receipt of such notice, the Finance Director shall communicate with the Auditor to ascertain the relevant parcels on which the Special Taxes are to be levied, taking into account any parcel splits or combinations during the preceding and then current year.

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

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

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

after delinquency as do the ad valorem taxes on real property. The Finance Director is hereby authorized to employ consultants to assist in computing the levy of the Special Taxes hereunder and any reconciliation of amounts levied to amounts received. The fees and expenses of such consultants and the costs and expenses of the Finance Director (including a charge for City staff time) in conducting its duties hereunder shall be an Administrative Expense hereunder.

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

On or September 1 of each Fiscal Year, the Finance Director shall compare the amount of Special Taxes theretofore levied in the CFD to the amount of Special Tax Revenues theretofore received by the City, and:

**(A) Individual Delinquencies.** If the Finance Director determines that (i) any single parcel subject to the Special Tax in the CFD is delinquent in the payment of Special Taxes in the aggregate amount of \$40,000 or more or (ii) any single parcel subject to the Special Tax in the CFD is delinquent in the payment of three or more installments of Special Taxes, then the Finance Director shall send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner within 45 days of such determination, and (if the delinquency remains uncured) foreclosure proceedings shall be commenced by the City within 90 days of such determination.

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

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

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

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

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

**Section 5.06. Books and Records.** The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the Special Tax Revenues. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Fiscal Agent and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

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

**Section 5.08. Further Assurances.** The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement, and for the better assuring and confirming unto the Owners of the rights and benefits provided in this Agreement.

**Section 5.09. Private Activity Bond Limitations.** The City shall assure that the proceeds of the 2017A Bonds are not so used as to cause the 2017A Bonds to satisfy the private business tests of section 141(b) of the Tax Code or the private loan financing test of section 141(c) of the Tax Code.

**Section 5.10. Federal Guarantee Prohibition.** The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the 2017A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

**Section 5.11. Rebate Requirement.** The City shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the 2017A Bonds. The Finance Director shall take note of any investment of monies hereunder in excess of the yield on the 2017A Bonds, and shall take such actions as are necessary to ensure compliance with this Section 5.11, such as increasing the portion of the Special Tax levy for Administration Expenses as appropriate to have funds available in the

Administrative Expense Fund to satisfy any rebate liability under this Section. If necessary to satisfy its obligations under this Section 5.11, the City may use:

- (A) Amounts in the Reserve Fund if the amount on deposit in the Reserve Fund, following the proposed transfer, is at least equal to the Reserve Requirement, and amounts in any other reserve account for Parity Bonds that are not Related Parity Bonds to the extent permitted by the Supplemental Agreement;
- (B) Amounts on deposit in the Administrative Expense Fund; and
- (C) Any other funds available to the CFD, including amounts advanced by the City, in its sole discretion, to be repaid by the CFD as soon as practicable from amounts described in the preceding clauses (A) and (B).

**Section 5.12. No Arbitrage.** The City shall not take, or permit or suffer to be taken by the Fiscal Agent or otherwise, any action with respect to the proceeds of the 2017A Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the 2017A Bonds would have caused the 2017A Bonds to be “arbitrage bonds” within the meaning of section 148 of the Tax Code.

**Section 5.13. Yield of the 2017A Bonds.** In determining the yield of the 2017A Bonds to comply with Sections 5.11 and 5.12, the City will take into account redemption (including premium, if any) in advance of maturity based on the reasonable expectations of the City, as of the Closing Date, regarding prepayments of Special Taxes and use of prepayments for redemption of the 2017A Bonds, without regard to whether or not prepayments are received or 2017A Bonds redeemed.

**Section 5.14. Maintenance of Tax-Exemption.** The City shall take all actions necessary to assure the exclusion of interest on the 2017A Bonds from the gross income of the Owners of the 2017A Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the 2017A Bonds.

**Section 5.15. Continuing Disclosure.** The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Agreement, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an event of default for the purposes of this Agreement. However, any Owner or Beneficial Owner of the 2017A Bonds may take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

One or more owners of the real property in the CFD as of the Closing Date may also have executed a continuing disclosure agreement for the benefit of the holders and Beneficial Owners of the 2017A Bonds. Any Participating Underwriter or Holder or Beneficial Owner may take such actions as may be necessary and appropriate directly against any such landowner to compel performance by it of its obligations thereunder, including seeking mandate or specific performance by court order; however the City shall have no obligation whatsoever to enforce any obligations under any such agreement.

**Section 5.16. Limits on Special Tax Waivers and Bond Tenders.** The City covenants not to exercise its rights under the Act to waive delinquency and redemption penalties related to the Special Taxes or to declare Special Tax amnesty program if to do so would materially and adversely affect the interests of the owners of the Bonds.

The City covenants not to permit the tender of Bonds in payment of any Special Taxes except upon receipt of a certificate of an Independent Financial Consultant that to accept such tender will not result in the City having insufficient Special Tax Revenues, assuming the Special Taxes are levied and collected in the maximum amount permitted by the Rate and Method, to pay the principal of and interest when due on the Bonds remaining Outstanding following such tender. Subject to the foregoing, in the event Bonds are tendered to the Fiscal Agent, such Bonds shall be cancelled by the Fiscal Agent and shall cease to accrue interest from the date such Bonds are tendered. Upon surrender of a Bond to be tendered in part only, the City shall execute and the Fiscal Agent shall authenticate and deliver to the tendering party a new Bond or Bonds the principal amount of which is equal to the untendered portion of the Bonds and the interest rate and maturity date of which shall be the same as the interest rate and maturity date of the tendered bond. To the extent applicable, the City shall deliver to the Fiscal Agent an Officer's Certificate setting forth any adjustments to the mandatory sinking fund schedule as a result of the tender, which Officer's Certificate must be accompanied by a certificate of an Independent Financial Consultant to the effect that it has reviewed the proposed adjustments in the mandatory sinking fund schedule and that the remaining Special Tax Revenues, if the Special Taxes are levied and collected in the maximum amount permitted by the Rate and Method, will be sufficient to pay principal of and interest on the Bonds when due following such adjustment.

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

**Section 5.18. Limitation on Principal Amount of Parity Bonds.** Following issuance of the 2017 Bonds, the City will not issue more than \$\_\_\_\_\_ initial principal amount of Parity Bonds (exclusive of any Refunding Bonds).

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

## ARTICLE VI

### INVESTMENTS; LIABILITY OF THE CITY

#### Section 6.01. Deposit and Investment of Moneys in Funds.

**(A) General.** Moneys in any fund or account created or established by this Agreement and held by the Fiscal Agent shall be invested by the Fiscal Agent in Permitted Investments, which in any event by their terms mature prior to the date on which such moneys are required to be paid out hereunder, as directed pursuant to an Officer's Certificate filed with the Fiscal Agent at least two (2) Business Days in advance of the making of such investments. In the absence of any such Officer's Certificate, the Fiscal Agent hold such funds uninvested. The Finance Director shall make note of any investment of funds hereunder in excess of the yield on the Bonds so that appropriate actions can be taken to assure compliance with Section 5.11.

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

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

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

**(E) Commingled Money.** Investments in any and all funds and accounts may be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular funds or accounts of amounts received or held by the Fiscal Agent or the Finance

Director hereunder, provided that the Fiscal Agent or the Finance Director, as applicable, shall at all times account for such investments strictly in accordance with the funds and accounts to which they are credited and otherwise as provided in this Agreement.

**(F) Confirmations Waiver.** The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law. The City understands that trade confirmations for securities transactions effected by the Fiscal Agent will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker. The Fiscal Agent will furnish the City periodic cash transaction statements which include detail for all investment transactions made by the Fiscal Agent hereunder. Upon the City's election, such statements will be delivered via the Fiscal Agent's online service and upon electing such service, paper statements will be provided only upon request.

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

#### **Section 6.02. Liability of City.**

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

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

**(C) No General Liability.** No provision of this Agreement shall require the City to expend or risk its own general funds or otherwise incur any financial liability (other than with respect to the Special Tax Revenues) in the performance of any of its obligations hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing

that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

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

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

## ARTICLE VII

### THE FISCAL AGENT

#### Section 7.01. The Fiscal Agent.

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

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

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

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

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

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

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

#### **Section 7.02. Liability of Fiscal Agent.**

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

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

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

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

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

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

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

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

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

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

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

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

Whenever in the administration of its duties under this Agreement the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the Fiscal Agent,

be deemed to be conclusively proved and established by an Officer's Certificate of the City, and such certificate shall be full warrant to the Fiscal Agent for any action taken or suffered under the provisions of this Agreement or any Supplemental Agreement upon the faith thereof, but in its discretion the Fiscal Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

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

**Section 7.06. Conflict of Interest.** Through its execution of this Agreement, the Fiscal Agent acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

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

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

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

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

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

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

**Section 7.13. Earned Income Credit (EIC) Forms.** Administrative Code Section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can

locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

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

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

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

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the Administrative Code.

#### **Section 7.14. Local Business Enterprise Utilization; Liquidated Damages.**

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

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

the Fiscal Agent to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Fiscal Agent's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code Section 14B.17.

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

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

#### **Section 7.15. Nondiscrimination; Penalties.**

(a) Fiscal Agent Shall Not Discriminate. In the performance of this Agreement, the Fiscal Agent agrees not to discriminate against any employee, City employee working with such Fiscal Agent or subcontractor, applicant for employment with such Fiscal Agent or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Subcontracts. The Fiscal Agent shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. The Fiscal Agent's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Nondiscrimination in Benefits. The Fiscal Agent does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the Administrative Code.

(d) Condition to Contract. As a condition to this Agreement, the Fiscal Agent shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Fiscal Agent shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Fiscal Agent understands that pursuant to Sections 12B.2(h) and 12C.3(g) of the Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Fiscal Agent and/or deducted from any payments due Fiscal Agent.

**Section 7.16. MacBride Principles—Northern Ireland.** Pursuant to Administrative Code Section 12F.5, the City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this Agreement on behalf of Fiscal Agent acknowledges and agrees that he or she has read and understood this Section.

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

**Section 7.18. Drug-Free Workplace Policy.** The Fiscal Agent acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on the City premises. The Fiscal Agent agrees that any violation of this prohibition by the Fiscal Agent, its employees, agents or assigns will be deemed a material breach of this Agreement.

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

**Section 7.20. Compliance with Americans with Disabilities Act.** The Fiscal Agent acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a Fiscal Agent, must be accessible to the disabled public. The Fiscal Agent shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Fiscal Agent agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Fiscal Agent, its employees, agents or assigns will constitute a material breach of this Agreement.

**Section 7.21. Sunshine Ordinance.** In accordance with Administrative Code Section 67.24(e), contracts, the Fiscal Agent’s bids, responses to solicitations and all other records of communications between the City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data

submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

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

**Section 7.23. Limitations on Contributions.** Through execution of this Agreement, the Fiscal Agent acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code ("Section 1.126"), which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (a) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Fiscal Agent acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Fiscal Agent further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Fiscal Agent's board of directors; the Fiscal Agent's chairperson, the chief executive officer, the chief financial officer and the chief operating officer; any person with an ownership interest of more than 20% in Fiscal Agent; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Fiscal Agent. Additionally, the Fiscal Agent acknowledges that the Fiscal Agent must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

**Section 7.24. Requiring Minimum Compensation for Covered Employees.**

(a) Unless the Fiscal Agent is exempt, the Fiscal Agent agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Fiscal Agent's obligations under the MCO is set forth in this Section. Unless the Fiscal Agent is exempt from

such provisions under Section 11.28(i) hereof, the Fiscal Agent is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

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

(c) Fiscal Agent shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

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

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

(f) Fiscal Agent's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Fiscal Agent fails to comply with these requirements. Fiscal Agent agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Fiscal Agent's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(g) Fiscal Agent understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Fiscal Agent fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Fiscal Agent fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(h) Fiscal Agent represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

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

**Section 7.25. Requiring Health Benefits for Covered Employees.** Unless the Fiscal Agent is exempt (in which event it shall not be required to comply with Chapter 12Q or this Section 11.29), the Fiscal Agent agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (“HCAO”), as set forth in Administrative Code Chapter 12Q (“Chapter 12Q”), including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, the Fiscal Agent shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Fiscal Agent chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Fiscal Agent is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) The Fiscal Agent’s failure to comply with the HCAO shall constitute a material breach of this Agreement. City shall notify Fiscal Agent if such a breach has occurred. If, within thirty days after receiving City’s written notice of a breach of this Agreement for violating the HCAO, Fiscal Agent fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Fiscal Agent fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Subcontract entered into by the Fiscal Agent shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Fiscal Agent shall notify City’s Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Fiscal Agent shall be responsible for its Subcontractors’ compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against the Fiscal Agent based on the Subcontractor’s failure to comply, provided that the City has first provided the Fiscal Agent with notice and an opportunity to obtain a cure of the violation.

(e) The Fiscal Agent shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the City with regard to the Fiscal Agent’s noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing

any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) The Fiscal Agent represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) The Fiscal Agent shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

(h) The Fiscal Agent shall keep itself informed of the current requirements of the HCAO.

(i) The Fiscal Agent shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

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

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

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

(m) If the Fiscal Agent is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Fiscal Agent later enters into an agreement or agreements that cause the Fiscal Agent's aggregate amount of all agreements with the City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Fiscal Agent and the City to be equal to or greater than \$75,000 in the fiscal year.

**Section 7.26. Prohibition on Political Activity with City Funds.** In accordance with Administrative Code Chapter 12.G, the Fiscal Agent may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Fiscal Agent Agreement. The Fiscal Agent agrees to comply with Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event The Fiscal Agent violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the Fiscal Agent from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider the Fiscal Agent's use of profit as a violation of this Section.

**Section 7.27. Preservative-treated Wood Containing Arsenic.** The Fiscal Agent may not purchase preservative-treated wood products containing arsenic in the performance of

this Fiscal Agent Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. The Fiscal Agent may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude the Fiscal Agent from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**Section 7.28. Protection of Private Information.** The Fiscal Agent has read and agrees, subject to the following sentence, to the terms set forth in Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. The Fiscal Agent agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract provided that, notwithstanding anything herein or in the Administrative Code to the contrary, the foregoing shall not be construed to prohibit (i) disclosure of any and all information that is or becomes publicly known, or information obtained by Fiscal Agent from sources other than the other parties hereto, (ii) disclosure of any and all information (A) if required to do so by any applicable rule or regulation, (B) to any government agency or regulatory body having or claiming authority to regulate or oversee any aspects of Fiscal Agent’s business or that of its affiliates, (C) pursuant to any subpoena, civil investigative demand or similar demand or request of any court, regulatory authority, arbitrator or arbitration to which Fiscal Agent or any affiliate or an officer, director, employer or shareholder thereof is a party or (D) to any affiliate, independent or internal auditor, agent, employee or attorney of Fiscal Agent having a need to know the same, provided that Fiscal Agent advises such recipient of the confidential nature of the information being disclosed, or (iii) any other disclosure authorized by the City and this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Fiscal Agent pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Fiscal Agent.

**Section 7.29. Food Service Waste Reduction Requirements.** Effective June 1, 2007, the Fiscal Agent agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance applicable to contractors with the City, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Fiscal Agent Agreement as though fully set forth. This provision is a material term of this Fiscal Agent Agreement. By entering into this Agreement, the Fiscal Agent agrees that if it breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Fiscal Agent agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that the City will incur based on the violation, established in light of the circumstances existing at the time this Fiscal Agent Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by the City because of the Fiscal Agent’s failure to comply with this provision.

### **Section 7.30. Graffiti Removal.**

(A) Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

(B) The Fiscal Agent shall remove all graffiti from any real property owned or leased by the Fiscal Agent in the City within forty eight (48) hours of the earlier of the Fiscal Agent's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require the Fiscal Agent to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

### **Section 7.31. Slavery Era Disclosure.**

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

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

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

**Section 7.32. Qualified Personnel.** The Fiscal Agent's work under this Agreement shall be performed only by competent personnel under the supervision of and in the

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

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

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

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

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

**Section 7.35. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>.

A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

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

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

## ARTICLE VIII

### MODIFICATION OR AMENDMENT

#### Section 8.01. Amendments Permitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE IX

### MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 9.12. Payment on Business Day.** In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds, or the date fixed for redemption of

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

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

**(A) Annual Reporting.** Not later than October 30 of each calendar year, beginning with the October 30 first succeeding the date of the 2017 Bonds, and in each calendar year thereafter until the October 30 following the final maturity of the Bonds, the Finance Director shall cause the information required by Government Code Section 53359.5(b) to be supplied to CDIAC. The annual reporting shall be made using such form or forms as may be prescribed by CDIAC.

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

**(C) Special Tax Reporting.** The Finance Director shall file a report with the City no later than January 1, 2018, and at least once a year thereafter, which annual report shall contain: (i) the amount of Special Taxes collected and expended with respect to the CFD, (ii) the amount of Bond proceeds collected and expended with respect to the CFD, and (iii) the status of the Project. It is acknowledged that the Special Tax Fund and the Special Tax Prepayments Account are the accounts into which Special Taxes collected on the City will be deposited for purposes of Section 50075.1(c) of the California Government Code, and the funds and accounts listed in Section 4.01 are the funds and accounts into which Bond proceeds will be deposited for purposes of Section 53410(c) of the California Government Code, and the annual report described in the preceding sentence is intended to satisfy the requirements of Sections 50075.1(d), 50075.3(d) and 53411 of the California Government Code.

**(D) Compliance with Section 53343.2.** The City shall comply with the provisions of Section 53343.2, which require the City, within seven months after the last day of each fiscal year of the CFD, to display prominently on its Internet Web site all of the following information:

(a) A copy of an annual report for that fiscal year if requested pursuant to Section 53343.1.

(b) A copy of the report provided to the California Debt and Investment Advisory Commission pursuant to Section 53359.5.

(c) A copy of the report provided to the Controller's office pursuant to Section 12463.2.

**(E) Amendment.** The reporting requirements of this Section 9.13 shall be amended from time to time, without action by the City or the Fiscal Agent (i) with respect to subparagraphs (A) and (B) above, to reflect any amendments to Section 53359.5(b) or Section

53359.5(c) of the Act, (ii) with respect to subparagraph (C) above, to reflect any amendments to Section 50075.1, 50075.3, 53410 or 53411 of the California Government Code and (iii) with respect to subparagraph (D) above, to reflect any amendments to Section 53343.2. Notwithstanding the foregoing, any such amendment shall not, in itself, affect the City's obligations under the Continuing Disclosure Certificate. The City shall notify the Fiscal Agent in writing of any such amendments which affect the reporting obligations of the Fiscal Agent under this Agreement.

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

The Finance Director shall provide copies of any such reports to any Bondowner upon the written request of a Bondowner and payment by the person requesting the information of the cost of the City to photocopy and pay any postage or other delivery cost to provide the same, as determined by the Finance Director. The term "Bondowner" for purposes of this Section 9.13 shall include any Beneficial Owner of the Bonds as described in Section 2.13.

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

\* \* \* \* \*

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

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

By: \_\_\_\_\_  
Director of the Office of Public Finance

[FISCAL AGENT],  
*as Fiscal Agent*

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

**EXHIBIT A-1**

**FORM OF 2017A BOND**

No. \_\_\_\_

\*\*\*\$\_\_\_\_\_\*\*\*

**UNITED STATES OF AMERICA  
STATE OF CALIFORNIA**

**CITY AND COUNTY OF SAN FRANCISCO  
Community Facilities CFD 2014-1  
(Transbay Transit Center)  
Special Tax Bond, Series 2017A**

**INTEREST RATE**

**MATURITY DATE**

**DATED DATE**

\_\_\_\_\_%

September 1, \_\_\_\_\_

\_\_\_\_\_

REGISTERED OWNER:

PRINCIPAL AMOUNT:

\*\*\*\*\*DOLLARS

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

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

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

This Bond is one of a duly authorized issue of bonds in the aggregate principal amount of \$\_\_\_\_\_ approved by Resolution No. 2-15 of the Board of Supervisors of the City, as supplemented by Resolution No. \_\_\_ of the Board of Supervisors of the City (together, the "Resolution"), under the Mello-Roos Community Facilities Act of 1982, as amended, sections 53311, *et seq.*, of the California Government Code (the "Act") for the purpose of funding certain facilities for the CFD, and is one of the series of bonds designated "City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center) Special Tax Bonds, Series 2017A" (the "Bonds"). The issuance of the Bonds and the terms and conditions thereof are provided for by a Fiscal Agent Agreement, dated as of \_\_\_\_\_, 20\_\_ (the "Agreement"), between the City and the [Fiscal Agent] (the "Fiscal Agent") and this reference incorporates the Agreement herein, and by acceptance hereof the owner of this Bond assents to said terms and conditions. The Agreement is authorized under, this Bond is issued under and both are to be construed in accordance with, the laws of the State of California.

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

Optional Redemption. The Bonds maturing on or after September 1, \_\_\_\_\_ are subject to redemption prior to their stated maturities, on any date on and after September 1, \_\_\_\_\_, in whole or in part, at a redemption price equal to the principal amount of the Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.

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

Sinking Fund Redemption Date (September 1)	Principal Amount Subject to Redemption
--	---

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

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

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

Under the terms of the Agreement, in the event the City pays and discharges the entire indebtedness on all or any portion on the Bonds Outstanding (as such term is defined therein) in one or more of the ways specified therein, the pledge of the Special Taxes and other funds provided for in the Agreement and all other obligations of the City under the Agreement with respect to such Bonds shall cease and terminate.

Notice of redemption with respect to the Bonds to be redeemed shall be given to the registered owners thereof, in the manner, to the extent and subject to the provisions of the Agreement. The City has the right to rescind any notice of the optional redemption of Bonds by written notice to the Fiscal Agent on or prior to the date fixed for redemption as further described in the Agreement.

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

No transfer or exchange hereof shall be valid for any purpose unless made by the registered owner, by execution of the form of assignment endorsed hereon, and authenticated as herein provided, and the principal hereof, interest hereon and any redemption premium shall be payable only to the registered owner or to such owner's order. The Fiscal Agent shall require the registered owner requesting transfer or exchange to pay any tax or other governmental charge required to be paid with respect to such transfer or exchange. No transfer or exchange hereof shall be required to be made in the circumstances set forth in the Fiscal Agent Agreement.

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

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

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

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

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

[S E A L]

\_\_\_\_\_  
Clerk of the Board of Supervisors

\_\_\_\_\_  
Mayor

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

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

[FISCAL AGENT],  
*as Fiscal Agent*

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

FORM OF ASSIGNMENT

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

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

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

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

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

Signature Guaranteed:

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

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

**EXHIBIT A-2**

**FORM OF 2017B BOND**

No. \_\_\_\_

\*\*\*\$\_\_\_\_\_\*\*\*

**UNITED STATES OF AMERICA  
STATE OF CALIFORNIA**

**CITY AND COUNTY OF SAN FRANCISCO  
Community Facilities CFD 2014-1  
(Transbay Transit Center)  
Special Tax Bond, Series 2017B (Federally Taxable)**

**INTEREST RATE**

**MATURITY DATE**

**DATED DATE**

\_\_\_\_%

September 1, \_\_\_\_\_

\_\_\_\_\_

REGISTERED OWNER:

PRINCIPAL AMOUNT:

\*\*\*\*\*DOLLARS

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

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

to the applicable Record Date. The principal of the Bonds and any premium on the Bonds are payable in lawful money of the United States of America upon surrender of the Bonds at the Principal Office of the Fiscal Agent or such other place as designated by the Fiscal Agent.

This Bond is one of a duly authorized issue of bonds in the aggregate principal amount of \$\_\_\_\_\_ approved by Resolution No. 2-15 of the Board of Supervisors of the City, as supplemented by Resolution No. \_\_\_ of the Board of Supervisors of the City (together, the "Resolution"), under the Mello-Roos Community Facilities Act of 1982, as amended, sections 53311, *et seq.*, of the California Government Code (the "Act") for the purpose of funding certain facilities for the CFD, and is one of the series of bonds designated "City and County of San Francisco Community Facilities District 2014-1 (Transbay Transit Center) Special Tax Bonds, Series 2017B (Federally Taxable)" (the "Bonds"). The issuance of the Bonds and the terms and conditions thereof are provided for by a Fiscal Agent Agreement, dated as of \_\_\_\_\_, 20\_\_ (the "Agreement"), between the City and the [Fiscal Agent] (the "Fiscal Agent") and this reference incorporates the Agreement herein, and by acceptance hereof the owner of this Bond assents to said terms and conditions. The Agreement is authorized under, this Bond is issued under and both are to be construed in accordance with, the laws of the State of California.

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

Optional Redemption. The Bonds maturing on or after September 1, \_\_\_\_\_ are subject to redemption prior to their stated maturities, on any date on and after September 1, \_\_\_\_\_, in whole or in part, at a redemption price equal to the principal amount of the Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.

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

Sinking Fund Redemption Date (September 1)	Principal Amount Subject to Redemption
--	---

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

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

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

Under the terms of the Agreement, in the event the City pays and discharges the entire indebtedness on all or any portion on the Bonds Outstanding (as such term is defined therein) in one or more of the ways specified therein, the pledge of the Special Taxes and other funds provided for in the Agreement and all other obligations of the City under the Agreement with respect to such Bonds shall cease and terminate.

Notice of redemption with respect to the Bonds to be redeemed shall be given to the registered owners thereof, in the manner, to the extent and subject to the provisions of the Agreement. The City has the right to rescind any notice of the optional redemption of Bonds by written notice to the Fiscal Agent on or prior to the date fixed for redemption as further described in the Agreement.

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

No transfer or exchange hereof shall be valid for any purpose unless made by the registered owner, by execution of the form of assignment endorsed hereon, and authenticated as herein provided, and the principal hereof, interest hereon and any redemption premium shall be payable only to the registered owner or to such owner's order. The Fiscal Agent shall require the registered owner requesting transfer or exchange to pay any tax or other governmental charge required to be paid with respect to such transfer or exchange. No transfer or exchange hereof shall be required to be made in the circumstances set forth in the Fiscal Agent Agreement.

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

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

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

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

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

[S E A L]

\_\_\_\_\_  
Clerk of the Board of Supervisors

\_\_\_\_\_  
Mayor

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

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

[FISCAL AGENT],  
*as Fiscal Agent*

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

FORM OF ASSIGNMENT

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

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

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

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

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

Signature Guaranteed:

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

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



**EXHIBIT B**

\$ \_\_\_\_\_  
City and County of San Francisco  
Community Facilities District 2014-1  
(Transbay Transit Center)  
Special Tax Bonds, Series 2017A

\$ \_\_\_\_\_  
City and County of San Francisco  
Community Facilities District 2014-1  
(Transbay Transit Center)  
Special Tax Bonds, Series 2017B  
(Federally Taxable)

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

**REQUISITION NO. \_\_\_\_\_**

The undersigned hereby states and certifies that:

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

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

(iii) Under Section 4.07(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to disburse from the Improvement Fund established under the Fiscal Agent Agreement to each payee designated on Schedule A attached hereto and by this reference incorporated herein, the amount set forth opposite such payee, for payment or reimbursement of previous payment of a Project cost (as Project is defined in the Fiscal Agent Agreement) as described on attached Schedule A. Payments shall be made by check or wire transfer in accordance with the payment instructions set forth on Schedule A (or the invoice attached thereto) and the Fiscal Agent shall rely on such payment instructions as though given by the City with no duty to investigate or inquire as to the authenticity of the invoice or the payment instructions contained therein or the authority under which they were given.

(iv) The proposed requisition from the Improvement Fund and expenditure of such moneys complies with the JCFA (as defined in the Fiscal Agent Agreement).

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

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

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Director of the Office of Public Finance

**SCHEDULE A**

<b>Payee Name and Address</b>	<b>Purpose of Obligation</b>	<b>Amount from 2017A Improvement Account</b>	<b>Amount from Allocated Bond Proceeds Account</b>

**EXHIBIT C**

\$ \_\_\_\_\_  
City and County of San Francisco  
Community Facilities District 2014-1  
(Transbay Transit Center)  
Special Tax Bonds, Series 2017A

\$ \_\_\_\_\_  
City and County of San Francisco  
Community Facilities District 2014-1  
(Transbay Transit Center)  
Special Tax Bonds, Series 2017B  
(Federally Taxable)

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

**REQUISITION NO. \_\_\_\_\_**

The undersigned hereby states and certifies that:

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

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

(iii) Under Section 4.02 of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to disburse from the 2017A Costs of Issuance Account and/or the 2017B Costs of Issuance Account established under the Fiscal Agent Agreement to each payee designated on Schedule A attached hereto and by this reference incorporated herein, the amount set forth in an invoice submitted by each such payee but no more than the amount set forth opposite such payee, for payment or reimbursement of previous payment of Costs of Issuance (as that term is defined in the Fiscal Agent Agreement) as described on attached Schedule A. Payments shall be made by check or wire transfer in accordance with the payment instructions set forth on Schedule A (or the invoice attached thereto) and the Fiscal Agent shall rely on such payment instructions as though given by the City with no duty to investigate or inquire as to the authenticity of the invoice or the payment instructions contained therein or the authority under which they were given.

(iv) The disbursements described on the attached Schedule A constitute Costs of Issuance, and are properly chargeable to the 2017A Costs of Issuance Account and/or the 2017B Costs of Issuance Account.

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

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Director of the Office of Public Finance

## SCHEDULE A

<b>Payee Name and Address</b>	<b>Purpose of Obligation</b>	<b>Amount – 2017A Costs of Issuance Account</b>	<b>Amount – 2017B Costs of Issuance Account</b>

**EXHIBIT D**

\$ \_\_\_\_\_  
**City and County of San Francisco  
Community Facilities District 2014-1  
(Transbay Transit Center)  
Special Tax Bonds, Series 2017A**

\$ \_\_\_\_\_  
**City and County of San Francisco  
Community Facilities District 2014-1  
(Transbay Transit Center)  
Special Tax Bonds, Series 2017B  
(Federally Taxable)**

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

**REQUISITION NO. \_\_\_\_\_**

The undersigned hereby states and certifies that:

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

(ii) I am an “Authorized Officer,” as such term is defined in that certain Fiscal Agent Agreement, dated as of \_\_\_\_\_, 20\_\_ (the “Fiscal Agent Agreement”), by and between the City and [Fiscal Agent], as fiscal agent (the “Fiscal Agent”).

(iii) Under Section 4.06(B) of the Fiscal Agent Agreement, the undersigned hereby requests and authorizes the Fiscal Agent to disburse from the Administrative Expense Fund established under the Fiscal Agent Agreement to each payee designated on Schedule A attached hereto and by this reference incorporated herein, the amount set forth opposite such payee, for payment or reimbursement of previous payment of an Administrative Expense or Costs of Issuance (as those terms are defined in the Fiscal Agent Agreement) as described on attached Schedule A. Payments shall be made by check or wire transfer in accordance with the payment instructions set forth on Schedule A (or the invoice attached thereto).

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

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

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Director of the Office of Public Finance

## SCHEDULE A

Payee Name and Address	Purpose of Obligation	Amount