

City of Seal Beach



CITY HALL 211 EIGHTH STREET
SEAL BEACH, CALIFORNIA 90740
(562) 431-2527 • www.sealbeachca.gov

September 28, 2015

Hon. Glenda Sanders, Presiding Judge
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Re: Response of City of Seal Beach and Seal Beach Public Financing Authority to Orange County Grand Jury Report, entitled "*Joint Powers Authorities: Issues of Viability, Control, Transparency and Solvency*," released on June 29, 2015

Dear Judge Sanders:

The City of Seal Beach (the "City") has reviewed the above-referenced Grand Jury Report and dutifully submits its responses to the Grand Jury's findings and recommendations pursuant to Penal Code Sections 933(c) and 933.05.

The City is also a member to each of the West Cities Communication Center Joint Powers Authority ("West-Comm"), the Independent Law and Justice Agency for Orange County ("ILJAOC") and the Orange County Fire Authority ("OCFA"). Responses by West-Comm, ILJAOC and OCFA are being submitted separately and are not part in this letter.

By way of background, the Authority is a joint powers authority, formed pursuant to the Joint Exercise of Powers Act, set forth in the California Government Code commencing with Section 6500 (the "Act") and a Joint Exercise of Powers Agreement, dated as of May 8, 2000 (the "Joint Powers Agreement"), by and between the City and the former Redevelopment Agency of the City of Seal Beach (the "Former RDA"). Pursuant to the Joint Powers Agreement, the members of the City Council also serve as the members of the Authority's Board of Directors. The Authority has, over the years, issued bonds pursuant to the provisions of the Act, including those set forth in Article 4 of the Act commencing with Government Code Section 6584, known as the Marks-Roos Local Bond Pooling Act of 1985 (the "Marks-Roos Act"). Proceeds of the Authority bonds have been used to finance (or refund bonds previously issued to finance) public infrastructure and improvements serving and benefiting the residents of the City. There are Authority bonds still outstanding as of the date of this letter.

Refutation of Grand Report General Findings About Vertical JPAs Can be Found in 1998 State Report

Using the terminologies of the Grand Jury Report, the Authority is a “vertical JPA,” with the City being the “parent organization.” The Grand Jury Report contrasted the vertical JPAs against the “horizontal JPAs.” The Grand Jury used the term “horizontal JPA” to refer to a joint powers authority that is formed by multiple, similar local agencies, where the joint powers authority provide insurance pools or other shared services. The Grand Jury determined that, unlike horizontal JPAs, vertical JPAs “do not appear to comply with the spirit of the law.” Citing a case involving the City of Bell, the Grand Jury concluded that vertical JPAs are devices that breed “temptation to acquire...debt without a ceiling limit like that imposed on city governments” and give “the government the ability to obfuscate financial transaction within the parent organization and hence from the taxpayers.”

The City and the Authority disagree with these conclusions drawn by the Grand Jury, with respect to their applicability to the Authority. Many key questions raised by the Grand Jury regarding vertical JPAs have been explored and answered in a 70-plus page report issued by the California Debt and Investment Advisory Commission (“CDIAC”), entitled “*A Review of the Mark-Roos Local Bond Pooling Act of 1985*,” dated September 1998 (the “1998 CDIAC Report”). An electronic copy of the 1998 CDIAC Report is posted on the State Treasurer’s website: <http://www.treasurer.ca.gov/cdiac/reports/M-Roos/marks-roos.pdf>. As discussed in the 1998 CDIAC Report, vertical JPAs are the intentional creations of the State Legislatures through the enactment of the Marks-Roos Act.

The 1998 CDIAC Report recounted that, by the early 1980s, “it had become clear that the combined effects of Proposition 13 and sharp cuts in federal aid to state and local governments were resulting in structural shortfalls in spending for public infrastructure” and the State Legislature “held hearings and issued studies outlining the scope of California’s infrastructure deficiencies and identifying policy options.” See the 1998 CDIAC Report, p. 3. The enactment of the Marks-Roos Act in 1985 was “the culmination of a series of proposals...to afford local agencies greater flexibility in financing public infrastructure” *Ibid.*, p. 19. The powers conferred by the Marks-Roos Act are not limited to bond pooling *per se*. The Marks-Roos Act confers a variety of financing powers – including the power to finance public infrastructure and improvements by a vertical JPA (or a “captive JPA” as used in the 1998 CDIAC Report). The 1998 CDIAC Report noted that most joint powers authorities which issue Marks-Roos bonds were established to finance projects for a single local agency. *Ibid.*, pp. 13, 27-39 and 57. The 1998 CDIAC Report stated that the “flexibility in issuance afforded by the Mark-Roos Act may be justified on the grounds that many restrictions on public indebtedness have become anachronistic or that they have only very limited applicability given the financing structures in use today.” *Ibid.*, p. 56. The Marks-Roos Act provides an alternative method of borrowing. *Ibid.*, p. 57.

Joint powers authority bonds issued under the Marks-Roos Act often involve a lease-lease back or a sale-sale back of assets between the joint powers authority and the local agency. These are not novel financing structures arising from the Mark-Roos Act for devious purposes as the Grand Jury had suspected (see Findings F.4 and F.5 of the Grand Jury Report, which are discussed more specifically below). To the contrary, these financing structures have existed and

been recognized long before the enactment of the Marks-Roos Act, frequently appearing in the form of certificates of participation (“COPS”). COPS, as a financing device, arose from the development of case law. A report entitled, “*COPS in California: Current Issues in Municipal Leasing*,” prepared by the staff of the California Debt Advisory Commission (the predecessor to CDIAC) for a public hearing held on June 18, 1992, noted: “Public agencies in California have utilized lease-back financing for decades. California case law on municipal leasing dates back to 1933, and a series of cases during the 1940s and 1950s....” With the Marks-Roos Act, the State Legislature intentionally gave local agencies a tool to issue bonds with same structures as COPS, but under explicit statutory authorization. See 1998 CDIAC Report, p. 11. Bonds issued under the Marks-Roos Act are looked at more favorably by the investors and provide local agencies the flexibility to finance projects at potentially lower costs in comparison to COPS. *Ibid.*, pp. iii, 11 and 12.

While the Marks-Roos Act provides flexibility in terms of procedures and structure, it does not give local agencies the ability to access new sources of revenues. *Ibid.*, p. 57. The underlying financial pledge that secures the Marks-Roos bonds must comply with the Constitutional and statutory limits applicable to the local agencies.

For example, a joint powers agency issues lease revenue bonds to finance a city’s public improvements. The joint powers authority and the city enter into a lease-lease back arrangement, whereby the city leases an asset to the joint powers authority, and then the joint powers authority subleases the asset back to the city. The joint powers authority, as the nominal sublessor, receives lease payments from the city under the sublease. Such lease payments received by the joint powers authority are then pledged and used to make principal and interest payments on the Authority lease revenue bonds. Under this arrangement, the joint powers authority serves as a conduit and gains no profit. *Ibid.*, p. 13. The making of lease payments by the city under sublease must comply with the restrictions prescribed by law, including the State Constitutional debt limitation applicable to all cities.

The arrangement is similar for a joint powers authority bond issue involving a sale-sale back arrangement – which is often used for special fund enterprise projects, such as water or sewer system projects. Under such an arrangement, an installment purchase contract (or an installment sale contract, by another name) is used instead of a lease. The asset is sold and sold back between the joint powers authority and the city. The joint powers authority receives installment payments, rather than lease payments. *Ibid.* For water revenue bonds, for example, the installment payments are secured by the city’s water enterprise revenues. Generally, a city’s water enterprise revenues consist mostly of fees paid by the city’s water customers. The amount of fees that a city can charge its water customers is subject restrictions imposed by law, including provisions added to the State Constitution pursuant to Proposition 218. Proposition 218, which was approved by the State’s voters in 1996, imposes substantive and procedural requirements that protect the ratepayers with respect to water fees. The issuance of Marks-Roos water revenue bonds does not mean that a city can circumvent the Proposition 218 requirements. Instead, the sizing of the bond issues (with respect to principal and interest payment amounts) is constrained by the fees that a city can reasonably expect to establish and collect *subject* to the Proposition 218 requirements. As an alternative to the issuance of Marks-Roos water revenue bonds, a city can issue bonds to finance water enterprise projects under the Revenue Bond Law in 1941. However, the Revenue Bond Law of 1941 requires potentially expensive and cumbersome

election procedures. The election requirement under the Revenue Bond Law of 1941 was originally intended to protect ratepayers from uncontrolled rate increases resulting from the issuance of bonds, where such protection is no longer meaningful in light of Proposition 218.

In sum, the Marks-Roos Act deliberately allows local agencies to create vertical JPAs to finance needed public infrastructure and improvements, to provide flexibility in light of outdated alternative financing methods and procedures otherwise available under the law. As noted in the 1998 CDIAC Report, unfortunately, the “semantics of the joint powers law...can obscure the fact that most Marks-Roos bond issues are undertaken on behalf of a single agency, often for a single capital project.” *Ibid.*, p. 13. Contrary to the Grand Jury’s findings, the creation of vertical JPAs not only complies with the spirit of the law, they are the intentional result of the law.

Grand Jury Findings F.4 and F.5 Are Not Applicable to Seal Beach Public Financing Authority

The City and the Authority wholly disagree with the Grand Jury’s Findings F.4 and F.5, as applied to the Authority. Specifically, in Finding F.4, the Grand Jury found that a vertical JPA with “a single controlling entity, such as a city council, [has] the potential to use this organizational structure as a shell company to avoid other legal constraints on the controlling entity and to obfuscate taxpayer visibility.” In Finding F.5, the Grand Jury found that a vertical JPA “in which the controlling entity transfers assets from itself to [the vertical JPA] for purpose of obtaining additional funding or signs a long term lease to [the vertical JPA] to obtain assets are avoiding transparency and are not acting in the best financial interest of the taxpayers.”

These findings are premised on a lack of consideration that the Marks-Roos Act intentionally allows vertical JPAs to serve as conduits for local agency financings. The lease-lease back or sale-sale back arrangements – which have been used in Authority bond issuances – are not abusive asset transfer devices, but are part of financing structures for legitimate public finance purposes, long used and recognized in this State. The City and the Authority cannot speak to “potential abuses” by other agencies. The City and the Authority can state that they have acted in a manner that is consistent with law and that fulfills the intent of the Marks-Roos Act.

Through the years, the Authority has assisted the City with the financing of various public infrastructure and improvement projects. Currently outstanding Authority bonds include: (i) an issue involving a lease-lease back structure that provided funds to construct a fire station and (ii) an issue involving a sale-sale-back structure that provided funds to refund prior bonds which financed sewer system improvements. These financings are not abusive devices intended to obfuscate taxpayer visibility or avoid transparency. For the lease-lease back financing, the lease and sublease have been specifically structured to comply with the applicable State Constitutional debt limitation. Furthermore, pursuant to the Marks-Roos Act, a public hearing was held in connection with the issuance of such lease revenue bonds before the bonds were issued. For the sale-sale back financing, the payments on the bonds are secured by the City’s sewer system revenues. The establishment of sewer system fees that the City charges its customers must comply with Proposition 218, including requirements for public hearings and showings that the sewer system fees are not in excess of the costs of the sewer enterprise.

By serving as a conduit bond-issuing entity as contemplated by the Marks-Roos Act, the Authority assisted in the financing and refinancing of needed public infrastructure and improvement projects, likely at a cost savings relative to alternative financing methods, and in service of the best interests of taxpayers and ratepayers.

Grand Jury Finding F.6 and Recommendation R.4 Are Incorrect with Respect to Seal Beach Public Financing Authority

The City and the Authority wholly disagree with the categorization of the Authority as a non-compliant entity under the Grand Jury's Finding F.6 and Recommendation R.4. In Finding F.6, the Grand Jury found that many joint powers authorities are not complying with the State's reporting requirement in Government Code Section 6500 and SB 282 (enacted in 2001), according to the latest information available from year 2013. Therefore, in Recommendation R.4, the Grand Jury recommended that the non-compliant joint powers authorities should become compliant by submitting (i) their 2014 report by December 31, 2015, and (ii) the required reports thereafter.

The Authority is included as a "blended component unit" in the City's annual audited financial reports. The City and the Authority note that Government Code Section 6500 (referenced in Finding F.6) does not set forth any specific reporting requirement. Elsewhere in the Grand Jury Report, references are made to the accounting and auditing requirements under Government Code Section 6505. In light of the fact that the Authority's current sole active role is a conduit assisting in the City's financings, the City and the Authority believe that the inclusion of the Authority as a "blended component unit" in the City's annual audited financial reports is sufficient to comply with Government Code Section 6505.

Finding F.6 also references SB 282, which was enacted in 2001. SB 282 amended Government Code Section 12461. Government Code Section 12461 pertains to annual reports by the State Controller. Such State Controller report is based on information gathered from reports submitted by local agencies pursuant to other statutes. For reference, attached in Exhibit A is a copy of the Authority's report to the State Controller for fiscal year 2013-14, in the form prescribed by the State Controller's office and submitted pursuant to Government Code Section 53891. The deadline for the fiscal year 2014-15 report has not passed. The Authority plans to submit such report on or before the applicable deadline. In addition, pursuant to Government Code Section 26909, copies of the City's audited financial statements (which, as stated above, include the Authority as a blended component unit) have been submitted to the County Auditor-Controller and the State Controller within 12 months of the end of each of fiscal years 2008-09 to 2013-14. The City and the Authority intend to submit the City's audited financial statements for fiscal year 2014-15 within 12 months of the end of the fiscal year.

In sum, the Authority is compliant with its reporting requirements under Government Code Sections 6505, 53891 and 26909. In that sense, Recommendation R.4 has already been implemented despite the mischaracterization that the Authority as a non-compliant entity. The City and the Authority has no control over the State Controller's reports prepared pursuant to Government Code Section 12461, and provides no comment on the content or timeliness of such State Controller reports.

Grand Jury Recommendation R.3 Will Result in Unnecessary Costs and Burden on City

In Recommendation R.3, the Grand Jury recommended that every joint powers authority take the following actions to insure transparency: (1) has an annual outside audit, (2) post the complete audit on their city website as a separate joint powers entity, (3) send the audit to the County Controller and State Auditor, and (4) ensure the required reports are filed annually to the County and the State.

As the Authority has been already complying the reporting requirements for submissions to the State Controller and County Auditor-Controller as noted above, the implementation of additional actions pursuant to Recommendation R.3 is not warranted.

As discussed above, the Authority's current sole active role is being a conduit for the City's financings. The Authority does not engage in any other independent activity. The inclusion of the Authority as a "blended component unit" in the City's audited financial statements provides sufficient transparency to account for the financial activities undertaken by the Authority. A separate outside audit arguably is an unnecessary waste of City resources, including money, time and effort.

Grand Jury Finding F.3 and R.2 are Contrary to Intent of Existing Law and Would Cause Disruption with Respect to Outstanding Bond Issues

The City and the Authority wholly disagree with the Grand Jury's Finding F.3 and Recommendation R.2 regarding joint powers authorities for which former redevelopment agencies were members. In Finding F.3, the Grand Jury determined that joint powers authorities which are formed by a city and its redevelopment agency serve no benefit to the public or the taxpayers and have the potential for misuse or obfuscation of public funds. Accordingly, in Recommendation R.2, the Grand Jury recommended that all such joint powers authorities submit the necessary paper work to terminate their existence.

Pursuant to the AB X1 26 enacted in 2011, all redevelopment agencies in the State were dissolved as of February 1, 2012. AB X1 26 provides for the creation of successor agencies to be successor entities to the former redevelopment agencies. As the result, the Successor Agency to the Seal Beach Redevelopment Agency was established and currently functions as the successor entity to the Former RDA. AB X1 26 (specifically Health and Safety Code Section 34178(c)) expressly provides that a joint exercise of powers agreement between a city and a former redevelopment agency is not invalidated as the result of the former redevelopment agency's dissolution. Such an agreement continues to be binding on the successor agency and the city. The State Legislature intended that there would be no disruption with respect to any outstanding bonds on the account of whether a joint powers authority formed by a city and a former redevelopment agency continues to exist in light of AB X1 26.

The Authority has issued bonds that currently remain outstanding. These bonds were issued to fund public infrastructure and improvement projects, benefiting the City's constituents. A termination of the Authority's existence would require major amendments to the bond documents and cause a disruption with respect to the outstanding bonds, contrary to the intent of

the State Legislature reflected in Health and Safety Code Section 34178(c). The implementation of Recommendation R.2 is not reasonable and is not warranted.

* * *

The City hopes that this response is helpful and takes this opportunity to thank the Grand Jury for its services and efforts.

Respectfully submitted,



Jill R. Ingram
City Manager

Cc: Paul S. Borzcik, Foreman
2014-15 Orange County Grand Jury
700 Civic Center Drive West
Santa Ana, CA 92701

EXHIBIT A

**Seal Beach Public Financing Authority's Report
to the State Controller for fiscal year 2013-14**

(see attached)

FISCAL AGENT AGREEMENT

by and between the

CITY OF SEAL BEACH, CALIFORNIA

and

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Fiscal Agent**

dated as of July 1, 2015

**relating to:
\$3,480,000
City of Seal Beach
Community Facilities District No. 2002-01
(Heron Pointe)
2015 Special Tax Refunding Bonds**

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EXHIBIT A – FORM OF BOND

FISCAL AGENT AGREEMENT

THIS FISCAL AGENT AGREEMENT (the "Agreement"), dated as of July 1, 2015, is by and between the City of Seal Beach, California, a municipal corporation and political subdivision of the State of California (the "City"), for and on behalf of the City of Seal Beach Community Facilities District No. 2002-01 (Heron Pointe) (the "District"), and The Bank of New York Mellon Trust Company, N.A., a national banking association, duly organized and existing under the laws of the United States of America, as fiscal agent (the "Fiscal Agent").

RECITALS:

WHEREAS, the City Council has formed the District 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 Resolution No. 5063 of the City Council adopted on September 23, 2002;

WHEREAS, the City Council, as the legislative body with respect to the District, is authorized under the Act to levy special taxes to pay for the costs of facilities eligible to be financed by the District and to authorize the issuance of bonds, including bonds to refund any bonds of the City for the District, secured by said special taxes under the Act;

WHEREAS, under the provisions of the Act, on August 4, 2005, the City, for and on behalf of the District, issued \$3,985,000 initial principal amount of its City of Seal Beach Community Facilities District No. 2002-01 (Heron Pointe) Special Tax Bonds, Series 2005 (the "Prior Bonds"), the net proceeds of which were used to finance facilities authorized to be funded by the District;

WHEREAS, due to favorable interest rates in the financial markets, the City Council now has determined to refund the Prior Bonds in full;

WHEREAS, under the provisions of the Act and Article 11, commencing with Section 53580, of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (the "Refunding Law"), on May 26, 2015, the City Council adopted its Resolution No. 6562 (the "Resolution"), which resolution, among other matters, authorized the issuance of the City of Seal Beach Community Facilities District No. 2002-01 (Heron Pointe) 2015 Special Tax Refunding Bonds (the "2015 Bonds") to provide moneys to defease and currently refund the Prior Bonds and provided that said issuance would be in accordance with this Agreement, and authorized the execution hereof;

WHEREAS, it is in the public interest and for the benefit of the City, the District, the persons responsible for the payment of special taxes to be levied in the District and the owners of the 2015 Bonds that the City enter into this Agreement to provide for the issuance of the 2015 Bonds, the disbursement of proceeds of the 2015 Bonds, the disposition of the special taxes securing the 2015 Bonds and the administration and payment of the 2015 Bonds; and

WHEREAS, the City has determined that all things necessary to cause the 2015 Bonds, when authenticated by the City for the District and issued as in the Act, the Refunding Law, the Resolution and this Agreement provided, to be legal, valid and binding and special obligations of the City for the District 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 2015 Bonds, subject to the terms hereof, have in all respects been duly authorized.

AGREEMENT:

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

ARTICLE I
STATUTORY AUTHORITY AND DEFINITIONS

Section 1.01. Authority for this Agreement. This Agreement is entered into pursuant to the provisions of the Act, the Refunding Law and the Resolution.

Section 1.02. Agreement for Benefit of Bondowners. 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. 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. Any action by any Owner to enforce the provisions of this Agreement shall be for the equal benefit and protection of all Owners of the Bonds.

The Fiscal Agent may become the owner of any of the Bonds in its own or any other capacity with the same rights it would have if it were not Fiscal Agent.

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 any or all of the following: the fees and expenses of the Fiscal Agent (including any fees or expenses of its counsel), the expenses of the City in carrying out its duties hereunder (including, but not limited to, the levying and collection of the Special Taxes, and the foreclosure of the lien in respect of any delinquent Special Taxes) including the fees and expenses of its counsel, an allocable share of the salaries of City staff related thereto and a proportionate amount of City general administrative overhead related thereto, any amounts paid by the City from its general funds pursuant to Section 6.02, any amounts paid or payable to any persons or entities employed by the City in connection with the discharge of any of the City's obligations hereunder (including, but not limited to, the calculation of the levy of the Special Taxes, foreclosures with respect to delinquent taxes, and the calculation of amounts subject to rebate to the United States), any fees or expenses of the Escrow Bank and any costs incurred by the City under or in connection with the Escrow Agreement, and all other costs and expenses of the City or the Fiscal Agent incurred in connection with the discharge of their respective duties hereunder or in connection with the 2015 Bonds or the refunding of the Prior Bonds and, in the case of the City, in any way related to the administration of the Bonds or the District (including, but not limited to, administrative costs and expenses of the City. Administrative Expenses shall include any such expenses incurred in prior years but not yet paid.

"Administrative Expense Fund" means the fund by that name established by Section 3.05(A) hereof.

"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.

"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.

"Auditor" means the auditor/controller of the County, or such other official at the County who is responsible for preparing property tax bills.

"Authorized Officer" means the City Manager, the Director of Finance/City Treasurer, the City Clerk, or any other officer or employee authorized by the City Council or by an Authorized Officer to undertake the action referenced in this Agreement as required to be undertaken by an Authorized Officer.

"Bond Counsel" means (i) Quint & Thimmig LLP, or (ii) any attorney or other 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 Fund" means the fund by that name established by Section 4.02(A) hereof.

"Bond Register" means the books for the registration and transfer of Bonds maintained by the Fiscal Agent under Section 2.08 hereof.

"Bond Year" means the one-year period beginning on September 2 in each year and ending on September 1st in the following year, both dates inclusive, except that the first Bond Year shall begin on the Closing Date and end on September 1, 2015.

"Bonds" means, collectively, the 2015 Bonds, and, if the context requires, any Parity Bonds, at any time Outstanding under this Agreement or any Supplemental Agreement.

"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 corporate trust office are authorized or obligated by law or executive order to be closed.

"City" means the City of Seal Beach, California.

"Closing Date" means July 1, 2015, being the date upon which there is a physical delivery of the 2015 Bonds in exchange for the amount representing the purchase price of the 2015 Bonds by the Original Purchaser.

"Code" means the Internal Revenue Code of 1986 as in effect on the date of issuance of the 2015 Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the 2015 Bonds, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

"Continuing Disclosure Agreement" means the Continuing Disclosure Agreement, executed by the City and Willdan Financial Services as the initial Dissemination Agent thereunder, dated as of July 1, 2015, as originally executed and as it may be amended from time to time in accordance with its terms.

"Costs of Issuance" means items of expense payable or reimbursable directly or indirectly by the City and related to the authorization, sale and issuance of the 2015 Bonds and the refunding and defeasance of the Prior Bonds, which items of expense shall include, but not be limited to, printing costs, costs of reproducing and binding documents, closing costs, filing and recording fees, initial fees and charges of the Fiscal Agent including its first annual administration fee, fees and expenses of Fiscal Agent's counsel, expenses incurred by the City in connection with the issuance of the 2015 Bonds and the defeasance and redemption of the Prior Bonds (including, but not limited to, administrative costs and expenses of the City and the City Attorney), Escrow Bank fees and expenses, special tax consultant fees and expenses, Bond (underwriter's) discount, legal fees and charges, including bond counsel and disclosure counsel, financial consultants' fees, charges for execution, transportation and safekeeping of the 2015 Bonds and other costs, charges and fees in connection with the foregoing.

"Cost of Issuance Fund" means the fund by that name established by Section 3.06(A) hereof.

"County" means Orange County, California.

"Current Tax Component" means the portion of a Special Tax Prepayment received by the City consisting of the amount described in paragraph 9 of Section H of the Rate and Method of Apportionment.

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

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

"Depository" means (i) initially, DTC, and (ii) any other Securities Depository acting as Depository pursuant to Section 2.13.

"Director of Finance/City Treasurer" means the Director of Finance/City Treasurer of the City, or such other person who performs the duties of the chief financial officer of the City.

"District" means the City of Seal Beach Community Facilities District No. 2002-01 (Heron Pointe), formed pursuant to the Act and the Resolution of Formation.

"Escrow Agreement" means the Escrow Agreement, dated as of July 1, 2015, by and between the City and the Escrow Bank.

"Escrow Bank" means The Bank of New York Mellon Trust Company, N.A., in its capacity as escrow bank under the Escrow Agreement.

"Fair Market Value" means 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 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 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 Code, or (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.

"Federal Securities" means any of the following which are non-callable and which at the time of investment are legal investments under the laws of the State of California for funds held by the Fiscal Agent:

(i) direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the United States Department of the Treasury) and obligations, the payment of principal of and interest on which are directly or indirectly guaranteed by the United States of America, including, without limitation, such of the foregoing which are commonly referred to as "stripped" obligations and coupons; or

(ii) any of the following obligations of the following agencies of the United States of America: (a) direct obligations of the Export-Import Bank, (b) certificates of beneficial ownership issued by the Farmers Home Administration, (c) participation certificates issued by the General Services Administration, (d) mortgage-backed bonds or pass-through obligations issued and guaranteed by the Government National Mortgage Association, (e) project notes issued by the United States Department of Housing and Urban Development, and (f) public housing notes and bonds guaranteed by the United States of America.

"Fiscal Agent" means 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.

"Independent Financial Consultant" means any consultant or firm of such consultants appointed by the City, and who, or each of whom: (i) is judged by the Director of Finance/City Treasurer 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 District, or any real property in the District; 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 the Electronic Municipal Market Access System (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board, (at <http://emma.msrb.org>); and, 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 Dates" means March 1 and September 1 of each year, commencing March 1, 2016.

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

"Minimum Administrative Expense Requirement" means \$25,000.00 per Fiscal Year.

"Officer's Certificate" means a written certificate of the City signed by an Authorized Officer of the City.

"Ordinance" means Ordinance No. 1513, adopted by the City Council on January 26, 2004, and any other ordinance of the City amending or supplementing said Ordinance.

"Original Purchaser" means the first purchaser of the 2015 Bonds from the City, being Stifel, Nicolaus & Company, Incorporated.

"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 pursuant to this Agreement or any Supplemental Agreement.

"Owner" or "Bondowner" means any person who is the registered owner of any Outstanding Bond.

"Parity Bonds" means bonds issued by the City for the District payable and secured on a parity with any then Outstanding Bonds, pursuant to Section 2.14 hereof.

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

"Permitted Investments" means the following, but only to the extent that the same are acquired at Fair Market Value and are otherwise legal investments for funds of the City:

(a) Federal Securities.

(b) Registered state warrants or treasury notes or bonds of the State of California (the "State"), including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the State or by a department, board, agency, or authority of the State, which are rated in one of the two highest short-term or long-term rating categories by either Moody's Investors Service or Standard and Poor's Ratings Group, and which have a maximum term to maturity not to exceed three years.

(c) Time certificates of deposit or negotiable certificates of deposit issued by a state or nationally chartered bank or trust company, or a state or federal savings and loan association which may include the Fiscal Agent and its affiliates; provided, that the certificates of deposit shall be one or more of the following: continuously and fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, and/or continuously and fully secured by securities described in subdivision (a) or (b) of this definition of Permitted Investments which shall have a market value, as determined on a marked-to-market basis calculated at least weekly,

and exclusive of accrued interest, or not less than 102 percent of the principal amount of the certificates on deposit.

(d) Commercial paper which at the time of purchase is of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided by either Moody's Investors Service or Standard and Poor's Ratings Group, which commercial paper is limited to issuing corporations that are organized and operating within the United States of America and that have total assets in excess of five hundred million dollars (\$500,000,000) and that have an "A" or higher rating for the issuer's debentures, other than commercial paper, by either Moody's Investors Service or Standard and Poor's Ratings Group, provided that purchases of eligible commercial paper may not exceed 180 days' maturity nor represent more than 10 percent of the outstanding commercial paper of an issuing corporation. Purchases of commercial paper may not exceed 20 percent of the total amount invested pursuant to this definition of Permitted Investments.

(e) A repurchase agreement with a state or nationally chartered bank or trust company or a national banking association or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, provided that all of the following conditions are satisfied: (1) the agreement is secured by any one or more of the securities described in subdivision (a) of this definition of Permitted Investments, (2) the underlying securities are required by the repurchase agreement to be held by a bank, trust company, or primary dealer having a combined capital and surplus of at least one hundred million dollars (\$100,000,000) and which is independent of the issuer of the repurchase agreement, and (3) the underlying securities are maintained at a market value, as determined on a marked-to-market basis calculated at least weekly, of not less than 103 percent of the amount so invested.

(f) An investment agreement or guaranteed investment contract with, or guaranteed by, a financial institution the long-term unsecured obligations of which are rated Aa2 and "AA" or better, respectively, by Moody's Investors Service and Standard and Poor's Ratings Group at the time of initial investment. The investment agreement shall be subject to a downgrade provision with at least the following requirements: (1) the agreement shall provide that within five business days after the financial institution's long-term unsecured credit rating has been withdrawn, suspended, other than because of general withdrawal or suspension by Moody's Investors Service or Standard and Poor's Ratings Group from the practice of rating that debt, or reduced below "AA-" by Standard and Poor's Ratings Group or below "Aa3" by Moody's Investors Service (these events are called "rating downgrades") the financial institution shall give notice to the City and, within the five-day period, and for as long as the rating downgrade is in effect, shall deliver in the name of the City or the Fiscal Agent to the City or the Fiscal Agent Federal Securities allowed as investments under subdivision (a) of this definition of Permitted Investments with aggregate current market value equal to at least 105 percent of the principal amount of the investment agreement invested with the financial institution at that time, and shall deliver additional allowed federal securities as needed to maintain an aggregate current market value equal to at least 105 percent of the principal amount of the investment agreement within three days after each evaluation date, which shall be at least weekly, (2) the agreement shall provide that, if the financial institution's long-term unsecured credit rating is reduced below "A3" by Moody's Investors Service or below "A-" by Standard and Poor's Ratings Group, the Fiscal Agent or the City may, upon not more than five business days' written notice to the financial institution, withdraw all funds invested under the investment

agreement, with accrued but unpaid interest thereon to the date, and terminate the agreement.

(g) The Local Agency Investment Fund of the State of California.

(h) Investments in a money market fund rated in the highest rating category (without regard to plus (+) or minus (-) designations) by Moody's Investors Service or Standard and Poor's Ratings Group, including such funds for which the Fiscal Agent, its affiliates or subsidiaries provide investment advisory or other management services or for which the Fiscal Agent or an affiliate of the Fiscal Agent serves as investment administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Fiscal Agent or an affiliate of the Fiscal Agent receives fees from funds for services rendered, (ii) the Fiscal Agent collects fees for services rendered pursuant to this Agreement, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Agreement may at times duplicate those provided to such funds by the Fiscal Agent or an affiliate of the Fiscal Agent.

(i) Any other lawful investment for City funds.

"Principal Office" means the corporate trust office of the Fiscal Agent as identified pursuant to Section 9.06 hereof; provided, however, for the purpose of maintenance of the Registration Books and surrender of Bonds for payment, transfer or exchange such term means the office at which the Fiscal Agent conducts its corporate agency business, or such other or additional offices as may be designated by the Fiscal Agent.

"Prior Bonds" means the City of Seal Beach Community Facilities District No. 2002-01 (Heron Pointe) Special Tax Bonds, Series 2005.

"Project" means the facilities eligible to be funded by the District, as specified by the Resolution of Formation.

"Rate and Method of Apportionment" means the Rate and Method of Apportionment of Special Tax for the District, as approved by proceedings conducted pursuant to the Resolution of Formation, and as altered by proceedings conducted pursuant to the Resolution of Consideration, and as it may be further altered or amended from time to time in accordance with the provisions of the Act.

"Rating Category" means one of the two highest rating categories then in effect under the rating systems of Moody's Investors Service or Standard and Poor's Ratings Group, a division of McGraw-Hill, without regard to plus or minus sign or numerical or other qualifying designation.

"Record Date" means the fifteenth day of the month next preceding the month of the applicable Interest Payment Date, whether or not such fifteenth (15th) day is a Business Day.

"Refunding Bonds" means bonds issued by the City for the District the net proceeds of which are used to refund all or a portion of the then Outstanding Bonds; provided that the debt service on the Refunding Bonds in any Bond Year is not in excess of the debt service on the Bonds being refunded, and the final maturity of the Refunding Bonds is not later than the final maturity of the Bonds being refunded.

"Refunding Fund" means the fund by that name created by and held by the Escrow Bank pursuant to the Escrow Agreement.

"Refunding Law" means Article 11, commencing with Section 53580, of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code.

"Registration Books" means the records maintained by the Fiscal Agent pursuant to Section 2.08 for the registration and transfer of ownership of the Bonds.

"Regulations" means temporary and permanent regulations promulgated under the Code.

"Reserve Fund" means the fund by that name established pursuant to Section 4.03(A) hereof.

"Reserve Requirement" means, as of any date of calculation, an amount equal to the lesser of (i) Maximum Annual Debt Service, (ii) one hundred twenty-five percent (125%) of average Annual Debt Service, or (iii) ten percent (10%) of the initial principal amount of the Bonds issued hereunder. The Reserve Requirement as of the Closing Date is \$254,306.26.

"Resolution" means Resolution No. 6562, adopted by the City Council on May 26, 2015, authorizing the issuance of the 2015 Bonds.

"Resolution of Consideration" means Resolution No. 5191, adopted by the City Council on December 8, 2003.

"Resolution of Formation" means Resolution No. 5063, adopted by the City Council of the City on September 23, 2002.

"Securities Depositories" means The Depository Trust Company, 55 Water Street, 15L, New York, New York 10041-0099 Attention: Call Notification Department, Fax (212) 855-3274; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the City may designate in an Officer's Certificate delivered to the Fiscal Agent.

"Special Tax Fund" means the fund by that name established by Section 3.04(A) hereof.

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

"Special Tax Prepayments Account" means the account by that name within the Bond Fund established by Section 4.02(A) hereof.

"Special Tax Revenues" means the proceeds of the Special Taxes received by the City, including any scheduled payments and any prepayments thereof, interest and penalties 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, but shall not include interest and penalties, if any, collected with the Special Taxes that are in excess of the rate of interest payable on the Bonds.

"Special Taxes" means the special taxes levied within the District pursuant to the Act, the Ordinance and this Agreement.

"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.

"2015 Bonds" means the City of Seal Beach Community Facilities District No. 2002-01 (Heron Pointe) 2015 Special Tax Refunding Bonds at any time Outstanding under this Agreement.

ARTICLE II

THE BONDS

Section 2.01. Principal Amount; Designation. 2015 Bonds in the aggregate principal amount of Three Million Four Hundred Eighty Thousand Dollars (\$3,480,000) are hereby authorized to be issued by the City for the District under and subject to the terms of the Resolution, this Agreement, the Act, the Refunding Law and other applicable laws of the State of California. The 2015 Bonds are hereby designated the "City of Seal Beach Community Facilities District No. 2002-01 (Heron Pointe) 2015 Special Tax Refunding Bonds."

Section 2.02. Terms of 2015 Bonds. The 2015 Bonds shall be issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple in excess thereof. The 2015 Bonds shall be dated the Closing Date, shall be in the principal amounts, shall mature on September 1 in the years and shall bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rates per annum as follows:

<u>Maturity Date</u> <u>(September 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest Rate</u>
2016	\$115,000	2.000%
2017	135,000	2.500
2018	135,000	2.000
2019	140,000	2.000
2020	140,000	2.250
2021	150,000	2.750
2022	150,000	2.875
2023	155,000	3.000
2024	160,000	3.250
2025	165,000	3.250
2026	175,000	3.500
2027	175,000	3.500
2028	185,000	3.625
2029	190,000	3.875
2030	200,000	4.000
2031	205,000	4.000
2032	215,000	4.000
2033	220,000	4.000
2034	230,000	4.125
2035	240,000	4.125

Interest on the 2015 Bonds shall be payable on each Interest Payment Date to the person whose name appears on the registration books maintained by the Fiscal Agent as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check of the Fiscal Agent mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owner at the address of such Owner as it appears on the registration books maintained by the Fiscal Agent as of the preceding Record Date. Principal of and premium (if any) on any 2015 Bond shall be paid by check upon presentation and surrender thereof, at maturity or the prior redemption thereof, at the Principal Office of the Fiscal Agent. The principal of and interest and premium (if any) on the 2015 Bonds shall be payable in lawful money of the United States of America.

Each 2015 Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before

the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (b) it is authenticated on or before February 15, 2016, in which event it shall bear interest from the Closing Date; *provided, however*, that if, as of the date of authentication of any 2015 Bond, interest thereon is in default, such 2015 Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

“CUSIP” identification numbers shall be imprinted on the 2015 Bonds, but such numbers shall not constitute a part of the contract evidenced by the 2015 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 2015 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 any violation of the City’s contract with such Owners and shall not impair the effectiveness of any such notice. If the City or the Fiscal Agent include CUSIP numbers in any notice to the Owners, such notice may state that no representation is made as to the accuracy or correctness of the CUSIP numbers printed therein or on the Bonds.

All 2015 Bonds paid by the Fiscal Agent pursuant to this Article shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled 2015 Bonds and, upon written request of the City, issue a certificate of destruction thereof to the City.

Section 2.03. Redemption.

(A) Redemption Dates for the 2015 Bonds.

(i) *Optional Redemption.* The 2015 Bonds are subject to optional redemption prior to their stated maturities on any Interest Payment Date, as a whole or in part, upon payment from any source of funds available for that purpose, at a redemption price (expressed as a percentage of the principal amount of the 2015 Bonds to be redeemed), as set forth below, together with accrued interest thereon to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Prices</u>
any Interest Payment Date from March 1, 2016 to and including March 1, 2023	103%
September 1, 2023 and March 1, 2024	102
September 1, 2024 and March 1, 2025	101
September 1, 2025 and any Interest Payment Date thereafter	100

(ii) *Mandatory Redemption From Special Tax Prepayments.* The 2015 Bonds are subject to mandatory redemption prior to their stated maturity on any Interest Payment Date, from the proceeds of Special Tax Prepayments and corresponding transfers of funds from the Reserve Fund pursuant to clause (iii) of the second paragraph of Section 3.04(A) and Section 4.03(F), as a whole or in part, at a redemption price (expressed as a percentage of the principal amount of the 2015 Bonds to be redeemed), as set forth below, together with accrued interest thereon to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Prices</u>
any Interest Payment Date from March 1, 2016 to and including March 1, 2023	103%
September 1, 2023 and March 1, 2024	102
September 1, 2024 and March 1, 2025	101
September 1, 2025 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 2015 Bonds pursuant to subsection (A)(i) or (ii) above not less than forty-five (45) days prior to the applicable redemption date, or such lesser number of days as the Fiscal Agent shall allow.

(C) Priority of Redemption. Whenever provision is made in this Agreement for the redemption of less than all of the 2015 Bonds or any given portion thereof, the Fiscal Agent shall select the 2015 Bonds to be redeemed, from all 2015 Bonds or such given portion thereof not previously called for redemption among maturities so as to maintain substantially level debt service on the Bonds as directed in writing by the City, and within a maturity by lot in any manner which the Fiscal Agent in its sole discretion shall deem appropriate and fair. For purposes of such selection, all Bonds shall be deemed to be comprised of separate \$5,000 portions and such portions shall be treated as separate Bonds which may be separately redeemed.

(D) Purchase of Bonds in lieu of Redemption. In lieu of redemption under Section 2.03(A) above, moneys in the Bond Fund may be used and withdrawn by the Fiscal Agent for purchase of Outstanding 2015 Bonds, upon the filing with the Fiscal Agent of an Officer's Certificate requesting such purchase prior to the selection of 2015 Bonds for redemption, 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 2015 Bonds be purchased at a price in excess of the principal amount thereof, plus interest accrued to the date of purchase.

(E) Redemption Procedure by Fiscal Agent. The Fiscal Agent shall cause notice of any redemption to be sent by first class mail, postage prepaid, or sent by such other means as is acceptable to the recipient thereof, at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption, to the Securities Depositories and to one or more Information Services (or by such other means as permitted by such services), and to the respective registered Owners of any 2015 Bonds designated for redemption, at their addresses appearing on the 2015 Bond registration books in the Principal Office of the Fiscal Agent; but such sending of the notice of redemption 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.

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 designate the CUSIP numbers and Bond numbers of the 2015 Bonds to be redeemed by giving the individual CUSIP number and Bond number of each Bond to be redeemed or shall state that all Bonds between two stated Bond numbers, both inclusive, are to be redeemed or that all of the 2015 Bonds of one or more maturities have been called for redemption, shall state as to any 2015 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.

Notwithstanding the foregoing, in the case of any redemption of the 2015 Bonds under Section 2.03(A)(i) or (ii) above, the notice of redemption may state that the redemption is conditioned upon receipt by the Fiscal Agent of sufficient moneys to redeem the 2015 Bonds on the anticipated redemption date, and that the redemption shall not occur if by no later than the scheduled redemption date sufficient moneys to redeem the 2015 Bonds have not been deposited with the Fiscal Agent. In the event that the Fiscal Agent does not receive sufficient funds by the scheduled redemption date to so redeem the 2015 Bonds to be redeemed, the Fiscal Agent shall send written notice to the owners of the 2015 Bonds, to the Securities Depositories and to one or more of the Information Services to the effect that the redemption did not occur as anticipated, and the 2015 Bonds for which notice of redemption was given shall remain Outstanding for all purposes of this Agreement.

Upon the payment of the redemption price of 2015 Bonds being redeemed, each check or other transfer of funds issued for such purpose shall, to the extent practicable, bear the CUSIP number identifying, by issue and maturity, the 2015 Bonds being redeemed with the proceeds of such check or other transfer.

Upon surrender of 2015 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 2015 Bond or 2015 Bonds, of the same maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the 2015 Bond or 2015 Bonds.

(F) 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 2015 Bonds so called for redemption shall have been deposited in the 2015 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 such notice.

All Bonds redeemed and purchased by the Fiscal Agent pursuant to this Section shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds and, upon written request of the City, issue a certificate of destruction thereof to the City.

(G) Redemption of Parity Bonds. Redemption provisions, if any, pertaining to any Parity Bonds shall be set forth in the Supplemental Agreement providing for such Parity Bonds.

Section 2.04. Form of 2015 Bonds. The 2015 Bonds, the form of Fiscal Agent's certificate of authentication and the form of assignment, to appear thereon, shall be substantially in the forms, respectively, set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Agreement, the Resolution and the Act.

Section 2.05. Execution of Bonds. The Bonds shall be executed on behalf of the City by the facsimile signatures of the Mayor of the City and City Clerk who are in office on the date of adoption of this Agreement or at any time thereafter, and the seal of the City shall be impressed, imprinted or reproduced by facsimile signature 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.

Only such Bonds as shall bear thereon a certificate of authentication in substantially the form set forth in Exhibit A executed manually 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 of Bonds. Any Bond may, in accordance with its terms, be transferred, upon the books required to be kept pursuant to the provisions of Section 2.08 by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a duly written instrument of transfer in a form approved by the Fiscal Agent. The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such transfer shall be paid by the City from any lawfully available funds of the District, including but not limited to amounts in the Administrative Expense Fund. The Fiscal Agent shall collect from the Owner requesting such transfer any tax or other governmental charge required to be paid with respect to such transfer.

Whenever any Bond or Bonds shall be surrendered for transfer, the City shall execute and the Fiscal Agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount.

No transfers 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.

Section 2.07. Exchange of Bonds. Bonds may be exchanged at the Principal Office of the Fiscal Agent for a like aggregate principal amount of Bonds of authorized denominations of the same series and of the same maturity. The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such exchange shall be paid by the City. The Fiscal Agent shall collect from the Owner requesting such exchange any tax or other governmental charge required to be paid with respect to such exchange.

No 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.

Section 2.08. 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 Bondowner as it appears in the Bond register for any and all purposes.

Section 2.09. 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 2.10. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the City, at the expense of the Owner of said Bond, shall execute, and the Fiscal Agent shall authenticate and deliver, a new 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.

If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Fiscal Agent and, if such evidence be satisfactory to it and indemnity for the City and the Fiscal Agent satisfactory to the Fiscal Agent shall be given, the City, at the expense of the Owner, shall execute, and the Fiscal Agent shall authenticate and deliver, a new Bond of like tenor and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen. The City may require payment of a sum not exceeding the actual cost of preparing each new Bond delivered under this Section and of the expenses which may be incurred by the City and the Fiscal Agent for the preparation, execution, authentication and delivery. 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 pursuant to this Agreement.

Section 2.11. Limited Obligation. All obligations of the City under this Agreement and the Bonds shall be limited obligations of the City, payable solely from the Special Tax Revenues and the funds pledged therefore hereunder. Neither the faith and credit nor the taxing power of the City (except with respect to the levy of Special Taxes in the District, to the limited extent set forth herein) or the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

Section 2.12. No Acceleration. The principal of the Bonds shall not be subject to acceleration hereunder. Nothing in this Section shall in any way prohibit the prepayment or redemption of Bonds under Section 2.03 hereof, or the defeasance of the Bonds and discharge of this Agreement under Section 9.03 hereof.

Section 2.13. Book-Entry Only System. DTC shall act as the initial Depository for the 2015 Bonds. One 2015 Bond for each maturity of the 2015 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 2015 Bonds shall be registered in the Registration Books kept by the Fiscal Agent for the Bonds in the name of Cede & Co., as nominee of DTC or such nominee as DTC shall appoint in writing.

The representatives 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 2015 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 Registration Books 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 notice of redemption, (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 payment to any DTC Participant, any Beneficial Owner, or any other person, other than DTC, of any amount with respect to the principal of or interest on the Bonds, or (v) any consent given or other action taken by the Depository as Owner of the Bonds; except that so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, any Beneficial Owner of \$1,000,000 or more in aggregate principal amount of any series of Bonds who has filed a written request to receive notices, containing such Beneficial Owner's name and address, with the Fiscal Agent shall be provided with all notices relating to such Bonds by the Fiscal Agent.

Except as set forth above, 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 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 shall pay all principal of and interest on the Bonds only to or upon the order of the Owners as shown on the Registration Books, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to the principal of and interest on the Bonds to the extent of the amounts so paid.

No person other than an Owner, as shown on the Registration Books, shall receive a physical Bond. Upon delivery by DTC to the Fiscal Agent of written notice to the effect that 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 2.13 shall refer to such new nominee of DTC.

DTC may determine to discontinue providing its services with respect to the 2015 Bonds at any time by giving written notice to the Fiscal Agent during any time that the 2015 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 2015 Bonds if it determines that DTC is unable to discharge its responsibilities with respect to the 2015 Bonds or that continuation of the system of book-entry transfers 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 the 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 2015 Bonds that they be

able to obtain certificated Bonds, the 2015 Bonds shall no longer be restricted to being registered in the Registration Books 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 2015 Bonds will be delivered to such Beneficial Owners as soon as practicable.

Section 2.14. Issuance of Parity Bonds. The City may issue one or more series of Parity Bonds, in addition to the 2015 Bonds authorized under Section 2.01 hereof, by means of a Supplemental Agreement and without the consent of any Bondowners, upon compliance with the provisions of this Section 2.14. Only Refunding Bonds that comply with the requirements of this Section 2.14 shall be Parity Bonds, and 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 the Parity Bonds subject to the following specific conditions precedent:

(A) Current Compliance; Refunding Bonds. The City shall be in compliance on the date of issuance of the Parity Bonds with all covenants set forth in this Agreement and all Supplemental Agreements, and the principal amount of the Parity Bonds shall not cause the City to exceed the maximum authorized indebtedness of the District under the provisions of the Act. The Parity Bonds must in any event be Refunding Bonds.

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

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

(D) Officer's Certificate. The City shall deliver to the Fiscal Agent an Officer's Certificate certifying that the proposed issue of Parity Bonds constitute Refunding Bonds, and that the conditions precedent to the issuance of such Parity Bonds set forth in subsections (A), (B) and (C) of this Section 2.14 have been satisfied. In delivering such Officer's Certificate, the Authorized Officer that executes the same may conclusively rely upon such certificates of the Fiscal Agent and others selected with due care, without the need for independent inquiry or certification.

Nothing in this Section 2.14 shall prohibit the City from issuing bonds or otherwise incurring debt secured by a pledge of Special Tax Revenues subordinate to the pledge thereof under Section 4.01 of this Agreement.

ARTICLE III

ISSUANCE OF 2015 BONDS

Section 3.01. Issuance and Delivery of 2015 Bonds. At any time after the execution of this Agreement, the City may issue the 2015 Bonds for the District in the aggregate principal amount set forth in Section 2.01 and deliver the 2015 Bonds to the Original Purchaser. The Authorized Officers of the City are hereby authorized and directed to deliver any and all documents and instruments necessary to cause the issuance of the 2015 Bonds in accordance with the provisions of the Act, the Refunding Law, the Resolution and this Agreement, to authorize the payment of Costs of Issuance and costs of the refunding of the Prior Bonds from the proceeds of the 2015 Bonds and to do and cause to be done any and all acts and things necessary or convenient for delivery of the 2015 Bonds to the Original Purchaser.

Section 3.02. Application of Proceeds of Sale of 2015 Bonds. (A) The proceeds of the purchase of the 2015 Bonds by the Original Purchaser (being \$3,414,736.25) shall be paid to the Fiscal Agent, who shall forthwith set aside, pay over and deposit such proceeds on the Closing Date as follows:

(i) Deposit in the Reserve Fund \$254,306.26 (being an amount equal to the initial Reserve Requirement).

(ii) Deposit in the Costs of Issuance Fund \$100,766.26.

(iii) Transfer to the Escrow Bank for deposit by the Escrow Bank in the Refunding Fund \$3,059,663.73.

(B) In addition to the foregoing, on the Closing Date the Director of Finance/City Treasurer shall transfer or cause to be transferred certain moneys held with respect to the Prior Bonds as follows:

(i) Transfer from the administrative expense fund held with respect to the Prior Bonds to the Director of Finance/City Treasurer for deposit by the Director of Finance/City Treasurer in the Administrative Expense Fund, any amounts on deposit in such administrative expense fund.

(ii) Transfer from the special tax fund held with respect to the Prior Bonds (a) to the Escrow Bank for deposit by the Escrow Bank in the Refunding Fund \$179,628.74; and (b) to the Director of Finance/City Treasurer for deposit by the Director of Finance/City Treasurer in the Special Tax Fund, any remaining amounts on deposit in such special tax fund.

(iii) Transfer from the reserve fund held with respect to the Prior Bonds to the Escrow Bank for deposit by the Escrow Bank in the Refunding Fund \$270,700.66, being all of the funds on deposit in such reserve fund.

(iv) Transfer from the bond fund and the redemption fund held with respect to the Prior Bonds to the Director of Finance/City Treasurer for deposit by the Director of Finance/City Treasurer in the Special Tax Fund, any amount on deposit in such funds.

(C) The Fiscal Agent may establish a temporary fund or account in its records to facilitate any of the deposits or transfers referred to in this Section 3.02.

Section 3.03. Validity of Bonds. The validity of the authorization and issuance of the Bonds shall not be dependent upon the performance by any person of his obligation with respect to the Project.

Section 3.04. Special Tax Fund.

(A) Establishment of Special Tax Fund. There is hereby established as a separate fund to be held by the Director of Finance/City Treasurer, the Community Facilities District No. 2002-01 (Heron Pointe) 2015 Special Tax Refunding Bonds Special Tax Fund, to the credit of which the City shall deposit, as soon as practicable following receipt, all Special Tax Revenues received by the City and any amounts required by Section 3.02(B)(ii)(b), Section 3.02(B)(iv), and Section 3.05(B) hereof to be deposited therein.

Notwithstanding the foregoing,

(i) the first Special Tax Revenues collected by the City in any Fiscal Year, in an amount equal to the portion of such Fiscal Year's Special Tax levy for Administrative Expenses (but not to exceed, in any Fiscal Year, the Minimum Administrative Expense Requirement), shall be deposited by the Director of Finance/City Treasurer in the Administrative Expense Fund;

(ii) any Special Tax Revenues constituting the collection of delinquencies in payment of Special Taxes shall be separately identified by the Director of Finance/City Treasurer and shall be disposed of by the Director of Finance/City Treasurer first, for transfer to the Fiscal Agent for deposit by the Fiscal Agent in the Bond Fund to pay any past due debt service on the Bonds; second for transfer to the Fiscal Agent for deposit by the Fiscal Agent in 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 3.04(B) below; and

(iii) any proceeds of Special Tax Prepayments shall be separately identified by the Director of Finance/City Treasurer and shall be remitted by the Director of Finance/City Treasurer to the Fiscal Agent for deposit by the Fiscal Agent in the Special Tax Prepayments Account, except that the Current Tax Component of the Special Tax Prepayment shall be retained by the Director of Finance/City Treasurer in the Special Tax Fund for use as described in Section 3.04(B) below.

Moneys in the Special Tax Fund shall be held by the Director of Finance/City Treasurer for the benefit of the City and the 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. From time to time as needed to pay the obligations of the District, but no later than the Business Day before each Interest Payment Date, the Director of Finance/City Treasurer shall withdraw from the Special Tax Fund and transfer the following amounts in the following order of priority (i) to the Fiscal Agent for deposit by the Fiscal Agent in the Bond Fund an amount, taking into account any amounts then on deposit in the Bond Fund and any expected transfers from the Special Tax Fund and the Reserve Fund to the Bond Fund pursuant to clause (iii) of the second paragraph of Section 3.04(A), and Sections 4.03(C), (E) and (F), such that the amount in the Bond Fund equals the principal, premium, if any, and interest due on the Bonds on the next Interest Payment Date (including the redemption price of

any Bonds to be redeemed on such Interest Payment Date pursuant to Section 2.03(A)(i) or (ii)), and (ii) to the Reserve Fund an amount, taking into account amounts then on deposit in the Reserve Fund, such that the amount in the Reserve Fund is equal to the Reserve Requirement; provided that no such transfers shall exceed the amount then available to be transferred from the Special Tax Fund.

In addition to the foregoing, if in any Fiscal Year there are sufficient funds in the Special Tax Fund to make the foregoing transfers to the Bond Fund and the Reserve Fund in respect of the Interest Payment Dates occurring in the Bond Year that commences in such Fiscal Year, the Director of Finance/City Treasurer may transfer to the Administrative Expense Fund, from time to time, any amount in the Special Tax Fund in excess of the amount needed to make such transfers to the Bond Fund and the Reserve Fund, if monies are needed to pay Administrative Expenses in excess of the amount then on deposit in the Administrative Expense Fund.

(C) Investment. Moneys in the Special Tax Fund shall be invested in accordance with Section 6.01. Interest earnings and profits resulting from investment of amounts in the Special Tax Fund shall be retained in the Special Tax Fund to be used for the purposes thereof.

Section 3.05. Administrative Expense Fund.

(A) Establishment of Administrative Expense Fund. There is hereby established as a separate fund to be held by the Director of Finance/City Treasurer, the Community Facilities District No. 2002-01 (Heron Pointe) 2015 Special Tax Refunding Bonds Administrative Expense Fund, to the credit of which deposits shall be made as required by Section 3.02(B)(i), clause (i) of the second paragraph of Section 3.04(A), the second paragraph of Section 3.04(B) and Section 3.06(B). Moneys in the Administrative Expense Fund shall be held by the Director of Finance/City Treasurer 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 Director of Finance/City Treasurer and paid to the City or its order upon receipt by the Director of Finance/City Treasurer of an Officer's Certificate stating the amount to be withdrawn, that such amount is to be used to pay an Administrative Expense, and the nature of such Administrative Expense. Amounts transferred to the Administrative Expense Fund pursuant to Section 3.06(B) shall be used for purposes of such fund prior to using other available amounts therein.

Annually, on the last day of each Fiscal Year, the Director of Finance/City Treasurer shall withdraw any amounts then remaining in the Administrative Expense Fund in excess of \$25,000 that have not been allocated to pay Administrative Expenses incurred but not yet paid, and which are not otherwise encumbered, and transfer such amounts to the Special Tax Fund.

(C) Investment. Moneys in the Administrative Expense Fund shall be invested in accordance with Section 6.01. Interest earnings and profits resulting from said investment shall be retained by the Director of Finance/City Treasurer in the Administrative Expense Fund to be used for the purposes of such fund.

Section 3.06. Costs of Issuance Fund.

(A) Establishment of Costs of Issuance Fund. There is hereby established as a separate fund to be held by the Fiscal Agent, the Community Facilities District No. 2002-01 (Heron Pointe) 2015 Special Tax Refunding Bonds, Costs of Issuance Fund, to the credit of which a deposit shall be made as required by clause (ii) of Section 3.02(A). Moneys in the Costs of

Issuance Fund shall be held by the Fiscal Agent and shall be disbursed as provided in subsection (B) of this Section.

(B) Disbursement. Amounts in the Costs of Issuance Fund shall be disbursed from time to time to pay Costs of Issuance, as set forth in a requisition containing respective amounts to be paid to the designated payees, signed by an Authorized Officer and delivered to the Fiscal Agent concurrently with the delivery of the 2015 Bonds. The Fiscal Agent shall pay all Costs of Issuance upon receipt of an invoice from any such payee which requests payment in an amount which is less than or equal to the amount set forth with respect to such payee in such requisition, or upon receipt of an Officer's Certificate requesting payment of a Cost of Issuance not listed on the initial requisition delivered to the Fiscal Agent on the Closing Date. Each such Officer's Certificate 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. The Fiscal Agent shall maintain the Cost of Issuance Fund for a period of 120 days from the Closing Date and then shall transfer any moneys remaining therein, including any investment earnings thereon, to the Director of Finance/City Treasurer for deposit by the Director of Finance/City Treasurer in the Administrative Expense Fund.

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

ARTICLE IV

SPECIAL TAX REVENUES; BOND FUND AND RESERVE FUND

Section 4.01. Pledge of Special Tax Revenues. The Bonds shall be secured by a first pledge of all of the Special Tax Revenues (other than the Special Tax Revenues to be deposited to the Administrative Expense Fund pursuant to clause (i) of the second paragraph of Section 3.04(A)) and all moneys deposited in the Bond Fund, the Special Tax Prepayments Account, the Reserve Fund and, until disbursed as provided herein, in the Special Tax Fund. Such Special Tax Revenues and all moneys deposited into said 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 in accordance with Section 9.03.

Amounts in the Administrative Expense Fund, the Costs of Issuance Fund and the Refunding Fund, and the Special Tax Revenues to be deposited to the Administrative Expense Fund pursuant to clause (i) of the second paragraph of Section 3.04(A), are not pledged to the repayment of the Bonds. The facilities financed by the District are not in any way pledged to pay the debt service on the Bonds. Any proceeds of the sale, condemnation or destruction of any facilities financed by the District are not pledged to pay the debt service on the Bonds and are free and clear of any lien or obligation imposed hereunder.

Section 4.02. Bond Fund.

(A) Establishment of Bond Fund and Special Tax Prepayments Account. There is hereby established as a separate fund to be held by the Fiscal Agent, the Community Facilities District No. 2002-01 (Heron Pointe) 2015 Special Tax Refunding Bonds Bond Fund to the credit of which deposits shall be made as required by the first subclause of clause (ii) of the second paragraph of Section 3.04(A), Section 3.04(B) and Section 4.03, and any other amounts required to be deposited therein by this Agreement or the Act. There is also hereby created in the Bond Fund a separate account held by the Fiscal Agent, consisting of the Special Tax Prepayments Account, to the credit of which deposits shall be made as required by clause (iii) of the second paragraph of Section 3.04(A). Moneys in the Bond Fund and the Special Tax Prepayments Account shall be held by the Fiscal Agent for the benefit of the Owners of the Bonds, shall be disbursed for the payment of the principal of, and interest and any premium on, the Bonds as provided below, and, pending such disbursement, shall be subject to a lien in favor of the Owners of the Bonds.

(B) Disbursements. (i) Bond Fund Disbursements. On each Interest Payment Date, and following any transfers required pursuant to Sections 3.04(A), 3.04(B), 4.02(B)(ii) and 4.03(C), (E) and (F) in connection with such 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, then due and payable on the Bonds, including any amounts due on the Bonds by reason of a redemption of the Bonds required by Section 2.03(A)(i) or (ii), such payments to be made in the priority listed in the second succeeding paragraph. Notwithstanding the foregoing, amounts in the Bond Fund as a result of a transfer pursuant to clause (ii) of the second paragraph of Section 3.04(A) shall be immediately disbursed by the Fiscal Agent to pay past due amounts owing on the Bonds.

In the event that amounts in the Bond Fund are insufficient for the purpose set forth in the preceding paragraph, the Fiscal Agent shall notify the Director of Finance/City Treasurer of

the amount of the insufficiency, and the Fiscal Agent shall withdraw from the Reserve Fund to the extent of any funds therein an amount to cover the amount of such Bond Fund insufficiency. Amounts so withdrawn from the Reserve Fund shall be deposited by the Fiscal Agent in the Bond Fund.

If, after the foregoing transfers, there are insufficient funds in the Bond Fund to make the payments provided for in the first sentence of the first paragraph of this Section 4.02(B), the Fiscal Agent shall apply the available funds first to the payment of interest on the Bonds, and then to the payment of principal due on the Bonds. 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.

(ii) Special Tax Prepayments Account Disbursements. 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 under Section 2.03(A)(iii) can timely be given by the Fiscal Agent under Section 2.03(E), 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.

(C) Investment. Moneys in the Bond Fund and the Special Tax Prepayments Account shall be invested in accordance with Section 6.01. Interest earnings and profits resulting from investment of amounts in the Bond Fund and the Special Tax Prepayments Account shall be retained in the Bond Fund and the Special Tax Prepayments Account, respectively, to be used for the purposes of such fund and account.

(D) State Reporting. If at any time the Fiscal Agent fails to pay principal and interest due on any scheduled payment date for the Bonds, the Fiscal Agent shall notify the Director of Finance/City Treasurer in writing of such failure, and (in addition to any notice required under the Continuing Disclosure Agreement) the Director of Finance/City Treasurer shall notify the California Debt and Investment Advisory Commission of such failure within 10 days of the failure to make such payment.

Section 4.03. Reserve Fund.

(A) Establishment of Reserve Fund. There is hereby established as a separate fund to be held by the Fiscal Agent, the Community Facilities District No. 2002-01 (Heron Pointe) 2015 Special Tax Refunding Bonds Reserve Fund to the credit of which a deposit shall be made as required by clause (i) of Section 3.02(A), which deposit is equal to the initial Reserve Requirement, and deposits shall be made as provided in subclause second of clause (ii) of the second paragraph of Section 3.04(A), and Section 3.04(B)(i). Moneys in the Reserve Fund shall be held by the Fiscal Agent for the benefit of the Owners of the Bonds as a reserve for the payment of principal of, and interest and any premium on, the Bonds and shall be subject to a lien in favor of the Owners of the Bonds.

(B) Use of Reserve Fund. Except as otherwise provided in this Section, all amounts deposited in the Reserve Fund shall be used and withdrawn by the Fiscal Agent solely for the purpose of making transfers to the Bond Fund (as described in the second paragraph of Section 4.02(B)(i)) in the event of any deficiency at any time in the Bond Fund of the amount then required for payment of the principal of, and interest and any premium on, the Bonds or for the purpose of redeeming Bonds from the Bond Fund. If at any time funds are withdrawn by the Fiscal Agent from the Reserve Fund for transfer to the Bond Fund due to a deficiency in the amount in the Bond Fund needed to pay debt service due on the Bonds (as described in the

second paragraph of Section 4.02(B)), the Fiscal Agent shall notify the Director of Finance/City Treasurer of the date of withdrawal and the amount so withdrawn, and the Director of Finance/City Treasurer shall, in addition to any notice required under the Continuing Disclosure Agreement, notify the California Debt and Investment Advisory Commission of such withdrawal within 10 days of the date of such withdrawal.

(C) Transfer of Excess of Reserve Requirement. Whenever, on the Business Day before any Interest Payment Date, or on any other date at the request of an Authorized Officer, the amount in the Reserve Fund exceeds the Reserve Requirement, the Fiscal Agent shall provide written notice to the City of the amount of the excess and shall transfer an amount equal to the excess from the Reserve Fund to the Bond Fund to be used for the payment of interest on the Bonds on the next Interest Payment Date in accordance with Section 4.02.

(D) Transfer for Rebate Purposes. Amounts in the Reserve Fund shall be withdrawn, at the written request of the Director of Finance/City Treasurer, for purposes of making payment to the federal government to comply with Section 6.02.

(E) Transfer When Balance Exceeds Outstanding Bonds. Whenever the balance in the Reserve Fund equals or exceeds the amount required to redeem or pay all of the Outstanding Bonds, including interest accrued to the date of payment or redemption and premium, if any, due upon redemption, the Fiscal Agent shall transfer the amount in the Reserve Fund to the Bond Fund to be used for the payment and redemption, in accordance with Section 4.02 or 2.03, as applicable, of all of the Outstanding Bonds. In the event that the amount then on deposit in the Reserve Fund exceeds the amount required to pay and redeem the Outstanding Bonds, the balance in the Reserve Fund in excess of the amount needed for such payment and redemption shall be transferred by the Fiscal Agent to the Director of Finance/City Treasurer, to be retained by the City, unencumbered by this Fiscal Agent Agreement, to be used by the City for any lawful purpose under the Act.

Notwithstanding the foregoing, no amounts shall be transferred from the Reserve Fund pursuant to this Section 4.03(E) until after (i) the calculation, pursuant to Section 6.02, of any amounts due to the federal government following payment of the Bonds and withdrawal of any such amount under Section 4.03(D) for purposes of making such payment to the federal government, and (ii) payment of any fees and expenses due to the Fiscal Agent.

(F) Transfer Upon Special Tax Prepayment. Whenever Special Taxes are prepaid and Bonds are to be redeemed with the proceeds of such prepayment pursuant to Section 2.03(A)(iii) and 4.02(B)(ii), a proportionate amount in the Reserve Fund (determined in accordance with the applicable provisions of the Rate and Method of Apportionment and communicated by the Director of Finance/City Treasurer to the Fiscal Agent) shall be transferred not later than the Business Day prior to the redemption date by the Fiscal Agent to the Bond Fund to be applied to the redemption of the Bonds pursuant to Section 2.03(A)(iii).

(G) Investment. Moneys in the Reserve Fund shall be invested in accordance with Section 6.01. Interest earnings and profits resulting from said investment shall be retained by the Fiscal Agent in the Reserve Fund to be used for purposes of the Reserve Fund, including as provided in Section 4.03(C) above.

ARTICLE V

OTHER COVENANTS OF THE CITY

Section 5.01. 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 5.02. Limited Obligation. The Bonds are limited obligations of the City on behalf of the District and are payable solely from and secured solely by the Special Tax Revenues and the amounts in the Bond Fund, the Reserve Fund and the Special Tax Fund created hereunder.

Section 5.03. 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 5.04. 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, except as permitted by this Agreement.

Section 5.05. 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 deposits to and expenditure of amounts disbursed from the Administrative Expense Fund and the Special Tax Fund, and to the Special Tax Revenues. Such books of record and accounts shall at all times during City business hours and following reasonable prior written notice 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 5.06. 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 5.07. Compliance with Law. The City will comply with all applicable provisions of the Act in administering the District; provided that the City shall have no obligation to advance any of its own funds for any purpose whatsoever under this Agreement.

Section 5.08. Private Activity Bond Limitation. The City shall assure that the proceeds of the Prior Bonds and of the 2015 Bonds are not so used as to cause the Prior Bonds or the 2015 Bonds to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

Section 5.09. 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 any of the 2015 Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

Section 5.10. 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.

On or about July 1 of each year, the Fiscal Agent shall provide the Director of Finance/City Treasurer with a notice stating the amounts then on deposit in the Reserve Fund and in the Bond Fund. The receipt of such notice by the Director of Finance/City Treasurer shall in no way affect the obligations of the Director of Finance/City Treasurer under the following three paragraphs. Also on or about July 1 of each year, the Director of Finance/City Treasurer shall communicate with the Auditor or other appropriate official of the County to ascertain the relevant parcels on which the Special Taxes are to be levied, taking into account any parcel splits during the preceding and then current year. In computing the amount of Special Taxes to be levied, the Director of Finance/City Treasurer shall take into account funds in the Bond Fund and the Special Tax Fund, and any amounts then in the Reserve Fund in excess of the Reserve Requirement, available to make the payment of debt service on the Bonds due on the Interest Payment Dates occurring in the next calendar year.

The Director of Finance/City Treasurer shall effect the levy of the Special Taxes from time to time during each Fiscal Year in accordance with the Ordinance and the Rate and Method of Apportionment. Specifically, the Director of Finance/City Treasurer shall compute the amount of Special Taxes to be so levied each Fiscal Year before the final date on which the Auditor will accept the transmission of the Special Tax amounts for the parcels within the District for inclusion on the next secured or unsecured, as applicable, real property tax roll. Upon the completion of the computation of the amounts of the levy, the Director of Finance/City Treasurer 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. The Special Taxes so levied shall be payable and be collected in the same manner and at the same time and in the same installment as the ad valorem taxes on property levied on the tax roll are payable, and have the same priority, become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the general ad valorem taxes levied on the County secured tax roll.

In the event that the Director of Finance/City Treasurer determines to levy all or a portion of the Special Taxes by means of direct billing of the property owners within the District, and to the extent permitted by the Ordinance, the Director of Finance/City Treasurer shall, not less than forty-five (45) days prior to each Interest Payment Date, send bills to the property owners in the District for Special Taxes necessary to meet the financial obligations of the District due on the next Interest Payment Date said bills to specify that the amounts so levied shall be due and payable not less than thirty (30) days prior to such Interest Payment Date and shall be delinquent if not paid when due.

In any event, the City shall fix and levy the amount of Special Taxes within the District required for the timely payment of principal of and interest on any outstanding Bonds becoming due and payable, including any necessary replenishment or expenditure of the Reserve Fund for the Bonds and an amount estimated to be sufficient to pay the Administrative Expenses, and shall take into account any prepayments of Special Taxes theretofore received by the City. The Special Taxes so levied shall not exceed the maximum amounts as provided in the Rate and Method of Apportionment.

The Director of Finance/City Treasurer 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 Director of Finance/City Treasurer (including a charge for City staff time) in conducting its duties hereunder shall be an Administrative Expense hereunder.

Section 5.11. 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 5.12. 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 2015 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 2015 Bonds would have caused the 2015 Bonds to be "arbitrage bonds" within the meaning of section 148 of the Code.

Section 5.13. Maintenance of Tax-Exemption. The City shall take all actions necessary to assure the exclusion of interest on the 2015 Bonds from the gross income of the owners of the 2015 Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the 2015 Bonds.

Section 5.14. Covenant to Foreclose. 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 paragraph. The Director of Finance/City Treasurer shall notify legal counsel of any such delinquency of which it is aware, and such legal counsel shall commence, or cause to be commenced, such proceedings.

On or about July 1 of each Fiscal Year, the Director of Finance/City Treasurer shall compare the amount of Special Taxes theretofore levied in the District to the amount of Special Tax Revenues theretofore received by the City. Following such comparison, or if at any other time the Director of Finance/City Treasurer becomes aware of any delinquency in the payment of any Special Tax due and owing:

(A) Individual Delinquencies. If the Director of Finance/City Treasurer determines that any single parcel subject to the Special Tax in the District is delinquent in the payment of Special Taxes in the aggregate amount of \$10,000 or more, the Director of Finance/City Treasurer shall send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner by the following October 1, and (if the delinquency remains uncured) foreclosure proceedings shall be commenced by the City against the delinquent parcel within 90 days of the sending of such notice and shall be diligently pursued by the City to completion. Notwithstanding the foregoing, the City need not take any such action so long as the amount then in the Reserve Fund is at least equal to the Reserve Requirement.

(B) Aggregate Delinquencies. If the Director of Finance/City Treasurer determines that the aggregate amount of Special Taxes levied in the District for the preceding Fiscal Year and theretofore collected is less than ninety-five percent (95%) of

the total amount of Special Taxes levied for such Fiscal Year, the Director of Finance/City Treasurer shall send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to each property owner with delinquent Special Taxes by the following October 1, and (if any such delinquency remains uncured) foreclosure proceedings shall be commenced by the City within 90 days of the sending of such notices against all such delinquent parcels.

The Director of Finance/City Treasurer is 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 5.15. No Additional Bonds. Except as expressly permitted by Section 2.14 hereof, the City shall not issue any additional bonds secured by (A) a pledge of Special Taxes on a parity with or senior to the pledge thereof under Section 4.01 hereof; or (B) any amounts in any funds or accounts established hereunder.

Section 5.16. Yield of the 2015 Bonds. In determining the yield of the 2015 Bonds to comply with Section 5.12 and 6.02 hereof, 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 2015 Bonds, without regard to whether or not prepayments are received or 2015 Bonds redeemed.

Section 5.17. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Agreement, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered a default on the Bonds or a breach of any other provision of this Agreement; however, the Participating Underwriter, any Bondowner or any beneficial owner of the Bonds may take such actions as may be necessary and appropriate to compel performance by the City, of its obligations under the Continuing Disclosure Agreement, including seeking mandate or specific performance by court order.

Section 5.18. Reduction of Special Taxes. The City covenants and agrees to not consent or conduct proceedings with respect to a reduction in the maximum Special Taxes that may be levied in the District on Developed Property (as defined in the Rate and Method of Apportionment) below an amount, for any Bond Year, equal to 110% of the aggregate of the debt service due on the Bonds in such Bond Year, plus a reasonable estimate of Administrative Expenses for each such Bond Year. It is hereby acknowledged that Bondowners are purchasing the Bonds in reliance on the foregoing covenant, and that said covenant is necessary to assure the full and timely payment of the Bonds.

Section 5.19. State Reporting Requirements. The following requirements shall apply to the 2015 Bonds, in addition to those requirements under Section 5.17:

(A) Annual Reporting. (A) Annual Reporting. Not later than October 30 of each calendar year, beginning with the October 30, 2015, and in each calendar year thereafter until the October 30 following the final maturity of the Bonds, the Director of Finance/City Treasurer shall cause the following information to be supplied to the California Debt and Investment Advisory Commission ("CDIAC"): (i) the name of the City; (ii) the full name of the District; (iii) the name, title, and series of the Bond issue; (iv) any credit rating for the Bonds and the name of the rating agency; (v) the Closing Date of the Bond issue and the original principal amount of the Bond issue; (vi) the amount of the Reserve Requirement; (vii) the principal amount of Bonds outstanding;

(viii) the balance in the Reserve Fund; (ix) that there is no capitalized interest account for the Bonds; (x) the number of parcels in the District that are delinquent with respect to Special Tax payments, the amount that each parcel is delinquent, the total amount of Special Taxes due on the delinquent parcels, the length of time that each has been delinquent, when foreclosure was commenced for each delinquent parcel, the total number of foreclosure parcels for each date specified, and the total amount of tax due on the foreclosure parcels for each date specified; (xi) that there is no balance in any improvement fund for the District; (xii) the assessed value of all parcels subject to the Special Tax to repay the Bonds as shown on the most recent equalized roll, the date of assessed value reported, and the source of the information; (xiii) the total amount of Special Taxes due, the total amount of unpaid Special Taxes, and whether or not the Special Taxes are paid under the County's Teeter Plan (Chapter 6.6 (commencing with Section 54773) of the California Government Code); (xiv) the reason and the date, if applicable, that the Bonds were retired; and (xv) contact information for the party providing the foregoing information. 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 by the Fiscal Agent from the Reserve Fund pursuant to Section 4.03(B) for transfer to the Fiscal Agent to be used to pay principal and interest on the Bonds, the Treasurer-Tax Collector shall notify CDIAC and the Original Purchaser of such failure or withdrawal within 10 days of such failure or withdrawal, and the Director of Finance/ City Treasurer shall provide notice under the Continuing Disclosure Agreement of any such event as required thereunder.

(C) Special Tax Reporting. The Director of Finance/ City Treasurer shall file a report with the City no later than January 1, 2016, 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 District, (ii) the amount of Bond proceeds collected and expended with respect to the District, and (iii) the status of the Project. It is acknowledged that the Special Tax Fund, the Bond Fund, the Reserve Fund, the Special Tax Prepayments Account and the Administrative Expense Fund are the accounts into which Special Taxes collected in the District will be deposited for purposes of Section 50075.1(c) of the California Government Code, and the funds and accounts listed in Section 3.02(A) are the funds and accounts into which Bond proceeds will be deposited for purposes of Section 53410(c) of the California Government Code, and the annual report described in the preceding sentence is intended to satisfy the requirements of Sections 50075.1(d), 50075.3(d) and 53411 of the California Government Code.

(D) Amendment. The reporting requirements of this Section 5.19 shall be amended from time to time, without action by the City or the Fiscal Agent (i) with respect to subparagraphs (A) and (B) above, to reflect any amendments to Section 53359.5(b) or Section 53359.5(c) of the Act, and (ii) with respect to subparagraph (C) above, to reflect any amendments to Section 50075.1, 50075.3, 53410 or 53411 of the California Government Code. Notwithstanding the foregoing, any such amendment shall not, in itself, affect the City's obligations under the Continuing Disclosure Agreement. 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 (including but not limited to the Director of Finance/ City Treasurer), or the Fiscal

Agent, shall be liable for any inadvertent error in reporting the information required by this Section 5.19.

The Director of Finance/City Treasurer shall provide copies of any reports prepared pursuant to this Section 5.19 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 produce such information and pay any postage or other delivery cost to provide the same, as determined by the Director of Finance/City Treasurer. The term "Bondowner" for purposes of this Section 5.19 shall include any beneficial owner of the Bonds.

Section 5.20. 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 penalties amnesty program if to do so would materially and adversely affect the interests of the owners of the Bonds. The City further covenants not to permit the tender of Bonds in payment of any Special Taxes except upon receipt of a certificate of an Independent Financial Consultant that to accept such tender will not result in the City having insufficient Special Tax Revenues to pay the principal of and interest on the Bonds that will remain Outstanding following such tender.

Section 5.21. City Bid at Foreclosure Sale. The City will not bid at a foreclosure sale of property in respect of delinquent Special Taxes unless it expressly agrees to take the property subject to the lien for Special Taxes imposed by the District and that the Special Taxes levied on the property are payable while the City owns the property.

ARTICLE VI

INVESTMENTS; DISPOSITION OF INVESTMENT PROCEEDS; LIABILITY OF THE CITY

Section 6.01. Deposit and Investment of Moneys in Funds. 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, 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. The Officer's Certificate shall contain a certification to the Fiscal Agent that the investments being directed are Permitted Investments as required hereunder. In the absence of any such Officer's Certificate, the Fiscal Agent shall invest any such moneys in Permitted Investments described in clause (h) of the definition thereof; provided, however, that any such investment shall be made by the Fiscal Agent only if, prior to the date on which such investment is to be made, the Fiscal Agent shall have received an Officer's Certificate specifying a specific money market fund into which the funds shall be invested and, if no such Officer's Certificate is so received, the Fiscal Agent shall hold such moneys uninvested.

Moneys in any fund or account created or established by this Agreement and held by the Director of Finance/City Treasurer shall be invested by the Director of Finance/City Treasurer in any lawful investments that the City may make or in any Permitted Investment, which in any event by their terms mature 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.

The Fiscal Agent or the Director of Finance/City Treasurer may act as principal or agent in the acquisition or disposition of any investment, and all investments may be made through the Fiscal Agent's investment department or that of its affiliates. The Fiscal Agent or its affiliates may act as sponsor, agent manager or depository with regard to any Permitted Investment. Neither the Fiscal Agent nor the Director of Finance/City Treasurer shall incur any liability for losses arising from any investments made pursuant to this Section.

Except as otherwise provided in the next sentence, the City shall direct or make investments hereunder such that 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 Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Agreement or the Code) at Fair Market Value. The City shall direct or make investments hereunder such that investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code and (unless valuation is undertaken at least annually) investments in the Reserve Fund shall be valued at their present value (within the meaning of section 148 of the Code). The Fiscal Agent shall have no duty in connection with the determination of the Fair Market Value of any investment other than to follow: (A) its normal practices in the purchase, sale and determining the value of Permitted Investments; and (B) the investment directions of the City.

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 Director of Finance/City Treasurer hereunder, provided that the Fiscal Agent or the Director of Finance/City Treasurer, 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.

The Fiscal Agent shall sell in a commercially reasonable manner, 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 Director of Finance/City Treasurer shall be liable or responsible for any loss resulting from the acquisition or disposition of such investment security in accordance herewith.

The City acknowledges that regulations of the Comptroller of the Currency grant the City the right to receive brokerage confirmations of security transactions to be effected by the Fiscal Agent hereunder as they occur. The City specifically waives the right to receive such notification to the extent permitted by applicable law and agrees that it will instead receive monthly cash transactions statements which include detail for the investment transactions effected by the Fiscal Agent hereunder; provided, however, that the City retains its rights to, upon written request to the Fiscal Agent, receive brokerage confirmation on any investment transaction requested by the City.

Section 6.02. Rebate of Excess Investment Earnings to the United States. The City shall take any and all actions necessary to assure compliance with section 148(f) of the 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 Bonds.

The City may withdraw such amounts from the Reserve Fund pursuant to Section 4.03(D) as necessary to make any required rebate payments, and pay such amounts to the federal government as required by the Code and the Regulations. In the event of any shortfall in amounts available to make such payments under Section 4.03(D), the Director of Finance/City Treasurer shall make such payment from any amounts available in the Administrative Expense Fund or from any other lawfully available funds of the District or the City. Any fees or expenses incurred by the City under or pursuant to this Section 6.02 shall be Administrative Expenses.

In order to provide for the administration of this Section 6.02, the Director of Finance/City Treasurer may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Director of Finance/City Treasurer may deem appropriate and in addition the Director of Finance/City Treasurer may rely conclusively upon and be fully protected from all liability in relying upon the opinions, determinations, calculations and advice of such agents, attorneys and consultants employed hereunder.

The Fiscal Agent may rely conclusively upon the City's determinations, calculations and certifications required by this Section. The Fiscal Agent shall have no responsibility to independently make any calculation or determination or to review the City's calculations hereunder.

Section 6.03. Liability of City. 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.

In the absence of bad faith, the City, including the Director of Finance/City Treasurer, 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 and conforming to the requirements of this Agreement. The City, including the Director of Finance/City Treasurer, 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.

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.

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.

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 satisfactory established, if disputed.

Whenever in the administration of its duties under this Agreement the City 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 City, be deemed to be conclusively proved and established by a certificate of the Fiscal Agent or other appropriate agent or consultant, and such certificate shall be full warrant to the City 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 City may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Section 6.04. Employment of Agents by City. In order to perform its duties and obligations hereunder, the City and/or the Director of Finance/City Treasurer 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. Appointment of Fiscal Agent. The Bank of New York Mellon Trust Company, N.A., at its corporate trust office in Los Angeles, California is hereby appointed Fiscal Agent and paying agent 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 covenants or obligations shall be read into this Agreement against the Fiscal Agent.

Any company or association into which the Fiscal Agent may be merged or converted or with which it may be consolidated or any company or association resulting from any merger, conversion or consolidation to which it shall be a party or any company or association to which the Fiscal Agent may sell or transfer all or substantially all of its corporate trust business, provided such company or association shall be eligible under the following paragraph of this Section, 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 Director of Finance/City Treasurer written notice of any such succession hereunder.

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, 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, 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, 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.

The Fiscal Agent may at any time resign by giving written notice to the City 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. Upon such acceptance, the successor Fiscal Agent shall be vested with all rights and powers of its predecessor hereunder without any further act.

If no appointment of a successor Fiscal Agent shall be made pursuant to the foregoing provisions of this Section 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 Bondowner 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.

If, by reason of the judgment of any court, or reasonable agency, 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 Director of Finance/City Treasurer for the benefit of the Owners. The City covenants for the direct benefit of the Owners that its Director of Finance/City Treasurer 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. In such event, the Director of Finance/City Treasurer may designate a successor Fiscal Agent qualified to act as Fiscal Agent hereunder.

Section 7.02. Liability of Fiscal Agent. 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, or makes any representations as to the validity or sufficiency of this Agreement or of the Bonds, or shall 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 default. 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.

In the absence of bad faith, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished by the City to the Fiscal Agent and conforming to the requirements of this Agreement; but in the case of any such certificates 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 on their face. Except as provided above in this paragraph, Fiscal Agent shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Agreement, upon any resolution, order, notice, request, requisition, Officer's Certificate, consent or waiver, certificate, statement, affidavit, or other paper or document which it shall in good faith 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.

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

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.

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 pursuant to this Agreement unless such Owners shall have offered to the Fiscal Agent security or indemnity satisfactory to it against the fees, expenses and liabilities (including reasonable attorney's fees) which might be incurred by it in compliance with such request or direction.

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

The Fiscal Agent shall have no duty or obligation whatsoever to enforce the collection of Special Taxes or other funds to be deposited with it hereunder, or as to the correctness of any amounts received, and its liability shall be limited to the proper accounting for such funds as it shall actually receive.

In order to perform its duties and obligations hereunder, the Fiscal Agent may employ such persons or entities as it deems necessary or advisable.

The Fiscal Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Agreement and delivered using Electronic Means ("Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Fiscal Agent, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder); provided, however, that the City shall provide to the Fiscal Agent an incumbency certificate listing officers with the authority to provide such Instructions and containing specimen signatures of such officers, which incumbency certificate shall be amended by the City whenever a person is to be added or deleted from the listing. If the City elects to give the Fiscal Agent Instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such Instructions, the Fiscal Agent's reasonable understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Fiscal Agent cannot determine the identity of the actual sender of such Instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Fiscal Agent and that the City and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the City. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Fiscal Agent except from arising from Fiscal Agent's negligence or willful misconduct, including without limitation the risk of the Fiscal Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Fiscal Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the City; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iii) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures. In the event of an ambiguity or a contradiction in such Instructions as determined by the Fiscal Agent in its reasonable discretion, the Fiscal Agent shall notify the City and request clarification from the City, and the Fiscal Agent shall not be required to act on such ambiguous or contradictory Instructions pending the City's clarification. The Fiscal Agent shall not be liable hereunder except for its negligence or willful misconduct.

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, 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, 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.

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 quarterly statements reporting funds held and transactions 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 deposit to and expenditure of amounts disbursed from the Bond Fund, the Special Tax Prepayments Account, the Reserve Fund and the Costs of Issuance Fund. Such books of record and accounts shall upon reasonable prior notice at all times during business hours be subject to the inspection of the City and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

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, requisition, Officer's Certificate, 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 Fiscal Agent may consult with counsel, who may be counsel to the City, with regard to legal questions, and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The 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 a 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, promptly upon written request, 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 their 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, reasonable expenses, including reasonable legal fees and expenses, 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 obligation 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.

ARTICLE VIII

MODIFICATION OR AMENDMENT OF THIS AGREEMENT

Section 8.01. Amendments Permitted. 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. Any such amendment may not modify any of the rights or obligations of the Fiscal Agent without its written 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:

(A) to add to the covenants and agreements of the City in this Agreement contained, other covenants and agreements thereafter to be observed, or to limit or surrender any right or power herein reserved to or conferred upon the City;

(B) to make modifications not adversely affecting any outstanding series of Bonds of the City in any material respect;

(C) 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 may deem necessary or desirable and not inconsistent with this Agreement, and which shall not materially adversely affect the rights of the Owners of the Bonds;

(D) to make such additions, deletions or modifications as may be necessary or desirable to assure the exclusion from gross income, for purposes of federal income taxation, of interest on the 2015 Bonds; and

(E) in connection with the issuance of Parity Bonds under and pursuant to Section 2.14.

The Fiscal Agent may in its discretion, but shall not be obligated to, enter into any such Supplemental Agreement authorized by this Section which materially adversely affects the Fiscal Agent's own rights, duties or immunities under this Fiscal Agent Agreement or otherwise with respect to the Bonds or any agreements related thereto. The Fiscal Agent may request and shall be fully protected in relying upon, an opinion of Bond Counsel that any proposed Supplemental Agreement complies with the applicable requirements of this Section 8.01.

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 the first paragraph of Section 8.01, to take effect when and as provided in this Section. The City or the Fiscal Agent may obtain an opinion of Bond Counsel that such Supplemental Agreement complies with the provisions of this Article VIII, and the City and Fiscal Agent may rely conclusively upon such opinion. 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 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 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 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 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 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 (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, unless all of the outstanding Bonds are so owned or held. Upon written request, the City shall specify to the Fiscal Agent in a certificate executed by an Authorized Officer those Bonds disqualified pursuant to this Section 8.04. The Fiscal Agent may conclusively rely upon such certificate of the City.

Section 8.05. Effect of Supplemental Agreement. From and after the time any Supplemental Agreement becomes effective pursuant to 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 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 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 is Deemed Included in All References to 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. The City shall have the option to pay and discharge the entire indebtedness on all or any portion of the Bonds Outstanding in any one or more of the following ways:

(A) by well and truly paying or causing to be paid the principal of, and interest and any premium on, such 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 Sections 4.02 and 4.03 is fully sufficient to pay such Bonds Outstanding, including all principal, interest and redemption premiums; or

(C) by irrevocably depositing with the Fiscal Agent or another fiduciary, in trust, cash and Federal Securities in such amount as the City shall determine as confirmed by Bond Counsel, an Independent Financial Consultant or 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 Sections 4.02 and 4.03, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates.

If the City shall have taken any of the actions specified in (A), (B) or (C) above, and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption shall have been given as in this Agreement provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, then, at the election of the City, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Special Taxes and other funds provided for in this Agreement and all other obligations of the City under this Agreement with respect to such Bonds Outstanding shall cease and terminate. Notice of such election shall be filed with the Fiscal Agent. Notwithstanding the foregoing, the obligations 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, to pay all amounts owing to the Fiscal Agent pursuant to Section 7.05, and otherwise 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, shall continue in any event.

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 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 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 registry books.

Any request, declaration 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 Councilmember, officer, agent or employee of the City shall be individually or personally liable for the payment of the principal of, or interest or any premium on, the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

Section 9.06. Notices to and Demands on City and Fiscal Agent. Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the Fiscal Agent to or on the City may be given or served by 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 of Seal Beach, California
211 Eighth Street
Seal Beach, California 90740
Attention: Director of Finance/City Treasurer

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 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:

The Bank of New York Mellon Trust Company, N.A.
400 South Hope Street, Suite 400
Los Angeles, California 90071
Attn: Corporate Trust

Section 9.07. Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Agreement shall for any reason be held 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 issue of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Agreement may be held illegal, invalid or unenforceable.

Section 9.08. Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any moneys held by the Fiscal Agent in trust for the payment and discharge of the principal of, and the interest and any premium on, the Bonds which remains unclaimed for two (2) years after the date when the payments 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 Bond Owners 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 of California applicable to contracts made and performed in the State of California.

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 pursuant to 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 pursuant to this Agreement is other than a Business Day, the payment of interest or principal (and premium, if any) or the action need not be made on such date but may 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. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name and the Fiscal Agent has caused this Agreement to be executed in its name, all as of July 1, 2015.

CITY OF SEAL BEACH, CALIFORNIA, for
and on behalf of CITY OF SEAL BEACH
COMMUNITY FACILITIES DISTRICT NO.
2002-01 (HERON POINTE)

By: _____
Ellery A. Deaton,
Mayor

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Fiscal Agent

By: _____
Mark A. Golder,
Vice President

19040.02:J13210

EXHIBIT A
FORM OF BOND

No. _____

\$ _____

UNITED STATES OF AMERICA
STATE OF CALIFORNIA

CITY OF SEAL BEACH
COMMUNITY FACILITIES DISTRICT NO. 2002-01
(HERON POINTE)
2015 SPECIAL TAX REFUNDING BOND

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP
	September 1, ____	July 1, 2015	812054 ____

REGISTERED OWNER:

PRINCIPAL AMOUNT:

DOLLARS

The City of Seal Beach, California (the "City"), for and on behalf of the City of Seal Beach Community Facilities District No. 2002-01 (Heron Pointe) (the "District"), for value received, hereby promises to pay solely from the Special Tax (as hereinafter defined) to be collected in the District or amounts in the 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 the Bond Date shown above, or from the most recent Interest Payment Date (defined below) to which interest has been paid or duly provided for, semiannually on March 1 and September 1, commencing March 1, 2016 (each, an "Interest Payment Date"), at the interest rate set forth above, until the principal amount hereof is paid or made available for payment. The principal of this Bond is payable to the registered owner hereof in lawful money of the United States of America upon presentation and surrender of this Bond at the principal corporate trust office of The Bank of New York Mellon Trust Company, N.A. (the "Fiscal Agent"). Interest on this Bond shall be paid by check of the Fiscal Agent mailed on each Interest Payment Date to the registered owner hereof as of the close of business on the 15th day of the month preceding the month in which the Interest Payment Date occurs (the "Record Date") at such registered owner's address as it appears on the registration books maintained by the Fiscal Agent, or (i) if the Bonds are in book-entry-only form, or (ii) otherwise upon written request filed with the Fiscal Agent prior to any Record Date by a registered owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to the depository for the Bonds or to an account in the United States designated by such registered owner in such written request, respectively.

Interest on this Bond shall be payable from the interest payment date next preceding the date of authentication hereof, unless (i) it is authenticated on an interest payment date, in which event it shall bear interest for such Interest Payment Date, or (ii) such date of authentication is after a Record Date but on or prior to an Interest Payment Date, in which event interest will be payable from such Interest Payment Date, or (iii) such date of authentication is prior to the first

Record Date, in which event interest will be payable from the Bond Date shown above; provided however, that if at the time of authentication of this Bond, interest is in default hereon, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment hereon.

This Bond is one of a duly authorized issue of bonds in the aggregate principal amount of \$3,480,000 approved by a resolution of the City Council adopted on May 26, 2015 (the "Resolution"), pursuant to provisions of the California Government Code (the "Act") for the purpose of refunding the City of Seal Beach Community Facilities District No. 2002-01 (Heron Pointe) Special Tax Bonds, Series 2005, and is one of the series of Bonds designated "City of Seal Beach Community Facilities District No. 2002-01 (Heron Pointe) 2015 Special Tax Refunding Bonds" (the "Bonds"). The creation of the Bonds and the terms and conditions thereof are provided for in the Fiscal Agent Agreement, dated as of July 1, 2015, between the City, for and on behalf of the District, and the Fiscal Agent (the "Agreement") and this reference incorporates the Resolution and the Agreement herein, and by acceptance hereof the owner of this Bond assents to said terms and conditions. Pursuant to and as more particularly provided in the Agreement, additional bonds may be issued by the City from time to time secured by a lien on funds held under the Agreement on a parity with the lien securing the Bonds. The Agreement is authorized under and this Bond is issued under, and both are to be construed in accordance with, the laws of the State of California.

The Bonds are not general obligations of the City, but are limited obligations payable solely from the revenues and funds pledged therefor under the Agreement. Neither the faith and credit nor the taxing power of the City (except to the extent of the Special Tax levy in the District, as set forth in the Agreement) or the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

Pursuant to the Act, and the Agreement, the principal of and interest on this Bond are payable solely from the annual Special Tax authorized under the Mello-Roos Community Facilities Act of 1982 to be collected within the District 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 said County is obligated to levy or pledge, or has levied or pledged, general or special taxation other than described hereinabove.

The City has covenanted for the benefit of the owners of the Bonds that it will commence and pursue to completion appropriate foreclosure actions in the event of delinquencies of any Special Tax installments levied for payment of principal and interest as more particularly set forth in the Agreement.

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

<u>Redemption Dates</u>	<u>Redemption Prices</u>
any Interest Payment Date from March 1, 2016 to and including March 1, 2023	103%
September 1, 2023 and March 1, 2024	102
September 1, 2024 and March 1, 2025	101
September 1, 2025 and any Interest Payment Date thereafter	100

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, in whole, or in part among maturities as provided in the Agreement, at a redemption price (expressed as a percentage at 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 Dates</u>	<u>Redemption Prices</u>
any Interest Payment Date from March 1, 2016 to and including March 1, 2023	103%
September 1, 2023 and March 1, 2024	102
September 1, 2024 and March 1, 2025	101
September 1, 2025 and any Interest Payment Date thereafter	100

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. Notices of redemption may be conditioned upon receipt by the Fiscal Agent of sufficient moneys to redeem the Bonds on the anticipated redemption date, and if the Fiscal Agent does not receive sufficient funds by the scheduled redemption date the redemption shall not occur and the Bonds for which notice of redemption was given shall remain outstanding for all purposes of the Agreement.

The Bonds are issuable as fully registered Bonds without coupons in denominations of \$5,000 or any integral multiple thereof. Subject to the limitations and upon payment of the charges, if any, provided in the Agreement, Bonds may be exchanged at the Principal Office of the Fiscal Agent for a like aggregate principal amount and maturity of Bonds of other authorized denominations.

Each registration and transfer of registration of this Bond shall be entered by the Fiscal Agent in books kept by it for this purpose and authenticated by its manual signature upon the certificate of authentication endorsed hereon.

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

The Agreement and the rights and obligations of the City thereunder may be modified or amended as set forth therein. The Agreement contains provisions permitting the City to make provision for the payment of the interest on, and the principal of the Series 2015 Bonds so that such Series 2015 Bonds shall no longer be deemed to be outstanding under the terms of the Agreement.

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 manually signed by the Fiscal Agent.

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED 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 does not exceed any debt limit prescribed by the laws or Constitution of the State of California.

IN WITNESS WHEREOF, City of Seal Beach, California, has caused this Bond to be dated the Bond Date shown above, to be signed by the facsimile signature of the Mayor of the City and countersigned by the facsimile signature of the City Clerk.

CITY OF SEAL BEACH, CALIFORNIA

By: _____
Mayor

[S E A L]

Attest: _____
City Clerk

FISCAL AGENT'S CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the Resolution and the Agreement which has been authenticated on _____.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.,
as Fiscal Agent

By: _____
Authorized Signatory

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby sell, assign and transfer unto

(Name, address and Tax identification Number of Assignee)

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

Dated: _____

Signatures Guaranteed:

Note: 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.

Note: The signature(s) 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.