

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Issuance and Sale of Commercial Paper Notes from time to time on a revolving basis in a principal amount not to exceed \$100 million in one or more tax exempt or taxable series, approve the form of the Issuing and Paying Agent Agreement with U.S. Bank National Association, Letter of Credit and Reimbursement Agreement, together with Fee Letter, with State Street Bank and Trust Company, and Dealer Agreements with Loop Capital Markets LLC and Morgan Stanley & Co. Incorporated, and authorize the Director of Transportation to negotiate and execute the final forms of these Agreements and take related actions necessary to implement the Commercial Paper Notes program, subject to Board of Supervisors concurrence.

**SUMMARY:**

- On April 17, 2012, the SFMTA Board of Directors approved a \$3.06 billion FY 2013-2017 Capital Improvement Program and the two-year Capital Budget of \$582.3 million for FY 2012-2013 and \$477.8 million for FY 2013-2014.
- As presented on February 19, 2013, the SFMTA wishes to access low-cost, interim financing to fund the costs of certain projects through the issuance of Commercial Paper Notes.
- The Charter and Administrative Code authorize the SFMTA to issue commercial paper notes, with the concurrence of the Board of Supervisors without voter approval
- The Board of Supervisors has previously authorized the SFMTA to issue Commercial Paper Notes.
- The credit markets require that a commercial paper program have credit support through a letter of credit or other credit facility and, therefore, on March 13, 2013, the SFMTA jointly with the Controller's Office of Public Finance (OPF) issued an RFP for a letter of credit or alternative credit facilities for both the SFMTA and the City.
- Based on the responses, State Street Bank and Trust Company (State Street Bank) was selected as the Letter of Credit bank

**ENCLOSURES:**

1. SFMTAB Resolution
2. Form of Letter of Credit and Reimbursement Agreement, together with Fee Letter
3. Form of Dealer Agreement
4. Form of Issuing and Paying Agent Agreement
5. Offering Memorandum

**APPROVALS:**

**DATE**

DIRECTOR \_\_\_\_\_

May 29, 2013

SECRETARY \_\_\_\_\_

May 29, 2013

**ASSIGNED SFMTAB CALENDAR DATE:** June 4, 2013

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### **PURPOSE**

Authorizing the Issuance and Sale of Commercial Paper Notes from time to time on a revolving basis in a principal amount not to exceed \$100 million in one or more tax-exempt or taxable series, approve the form of the Issuing and Paying Agent Agreement with US Bank, Letter of Credit and Reimbursement Agreement, together with the Fee Letter with State Street Bank and Dealer Agreements with Loop Capital and Morgan Stanley, and authorize the Director of Transportation to negotiate and execute the final forms of these Agreements and take related actions to implement the Commercial Paper Notes program subject to Board of Supervisors concurrence.

### **GOAL**

This item will meet the following goal and objectives of the SFMTA Strategic Plan:

- Goal 3: Improve the environment and quality of life in San Francisco
- Objective 3.5: Reduce capital and operating structural deficits

### **DESCRIPTION**

#### *Background*

Currently the SFMTA's debt program consists of long-term fixed rate revenue bonds. Commercial paper is a form of short-term (or interim) financing for capital projects that permits the SFMTA to fund early project costs on an interim basis. Commercial paper notes are issued and funding provided only when needed to pay project costs as they are incurred. Commercial paper has a fixed maturity date from one to 270 days, compared with a final maturity of 30-years for the SFMTA's existing long-term obligation. On the maturity date, the commercial paper note may be "rolled" (or refinanced) with the subsequent issuance of commercial paper notes or retired through the issuance of long-term revenue bonds (or other available repayment sources e.g. grants).

SFMTA is requesting the establishment of a not-to-exceed \$100 million Commercial Paper program (the "CP Program"). Under the proposed CP Program, Commercial Paper Notes (the "CP Notes") will be issued from time to time on a revolving basis to pay for Board-approved project costs in the SFMTA CIP and approved Budgets. Interest accruing from outstanding CP Notes will be paid from legally available monies and budgeted in the SFMTA's operating budget and/or the proceeds of "rolls" of CP Notes.

The CP Program allows the SFMTA to diversify its sources of financing by accessing a part of the short-term market; improve the efficiency of the SFMTA's debt program by reducing the number of times the SFMTA accesses the long-term debt market; minimize or eliminate the need to capitalize interest during construction; reduce borrowing costs by accessing debt markets only as funds are required and at short-term borrowing rates which are usually lower than long-term fixed-rates; and potentially simplify federal tax compliance.

The City has recently established a general fund lease-backed commercial paper program. The San Francisco International Airport and the San Francisco Public Utilities Commission have commercial paper programs of long standing.

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The City Charter 8A.102(b)13 states “To the maximum extent permitted by law, with the concurrence of the Board of Supervisors, and notwithstanding the requirements and limitations of Sections 9.107, 9.108, and 9.109, have authority without further voter approval to incur debt for Agency purposes and to issue or cause to be issued bonds, notes, certificates of indebtedness, commercial paper, financing leases, certificates of participation or any other debt instruments. Upon recommendation from the Board of Directors, the Board of Supervisors may authorize the Agency to incur on behalf of the City such debt or other obligations provided: 1) the Controller first certifies that sufficient unencumbered balances are expected to be available in the proper fund to meet all payments under such obligations as they become due; and 2) any debt obligation, if secured, is secured by revenues or assets under the jurisdiction of the Agency.”

A CP Program requires credit support through a letter of credit or other credit facility from a bank. In addition, a broker/dealer markets and places commercial paper notes from time to time on behalf of the SFMTA. On March 13, 2013, OPF and the SFMTA jointly issued a RFP for letters of credit or alternative credit facilities for both the SFMTA and the City to support the CP Program. The SFMTA received seven responses providing both letters of credit and alternative credit facilities and the review panel, consisting of SFMTA, OPF, the City Attorney’s Office, external Counsel and Financial Advisors, evaluated the proposals based on qualifications, strength of bank, debt coverage requirements, credit rating requirements, term, default provisions and proposed fees. Based on this competitive selection process, State Street Bank was selected as the Letter of Credit Bank (Bank).

The broker/dealer was selected through a mini RFP issued on April 10, 2013 and limited to underwriters in the City’s pool. The SFMTA received 9 bids and, based on the responses, Loop Capital and Morgan Stanley were selected as broker-dealers (CP Dealers) by the review panel.

## FINANCING DOCUMENTS

### *Issuing and Paying Agent Agreement*

An issuing and paying agent agreement (IPA Agreement) is the agreement between the SFMTA and a paying agent that sets forth the terms for the issuance from time to time on a revolving basis of commercial paper notes. The Board is asked to approve a form of an IPA Agreement and to authorize the Director of Transportation to negotiate the terms of the final IPA Agreement within the parameters established in the attached Resolution and subject to Board of Supervisors concurrence. The IPA Agreement creates a security interest on the SFMTA’s transportation revenue for the benefit of the CP Notes on a subordinate basis to the SFMTA’s revenue bonds. The IPA Agreement provides that draws on the letter of credit will be used to support the commercial paper notes.

### *Reimbursement Agreement*

A reimbursement agreement is the legal document between SFMTA and the Bank which sets out the terms of reimbursement for letter of credit draws and related covenants for the benefit of the letter of credit bank supporting the Commercial Paper Notes.

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The Board is asked to approve a form of a Letter of Credit and Reimbursement Agreement and to authorize the Director of Transportation to negotiate the terms of the final Agreement with the Bank within the parameters established in the attached Resolution and subject to Board of Supervisors concurrence. The Resolution approves the form of Reimbursement Agreement that provides for an Irrevocable Letter of Credit (the Letter of Credit) in the maximum stated amount that will cover the principal and interest on the up to \$100 million Commercial Paper Notes that may be drawn upon by the SFMTA. The SFMTA is required to repay the Bank should there be amounts drawn under the Letter of Credit in accordance with the terms and conditions set forth in the Reimbursement Agreement, which also includes a note to the Bank. The term of the letter of credit is five (5) years. The interest rate on any bank bond shall not exceed 12% per annum, and the amortization of such bank bond shall be five (5) years.

It is expected that the Bank will be repaid from the remarketing of commercial paper or the proceeds of long term take-out revenue bonds (or other available repayment sources).

SFMTA currently expects to enter a Reimbursement Agreement with the Bank with the above terms which would result in annual fees of approximately 0.535% or \$585,000.

The Reimbursement Agreement may be terminated at the option of the SFMTA for any reason, subject to a termination fee equal to the Commitment Fee during the first year equal to bank fee which would have accrued from the date of termination or reduction through the first anniversary of the closing date. During the first year, the Reimbursement Agreement may also be terminated without a termination fee should two of the Bank's short term credit ratings fall below "P-1," "A-1" or "F-1" by Moody's Investors Service (Moody's), Standard & Poor's (S&P), and Fitch Ratings, respectively (collectively, the Rating Agencies), or in the event the SFMTA should decide to retire the CP Program.

The current fee structure assumes that the SFMTA's senior lien revenue bonds credit rating remains at its current rating level from S&P of "A" and that the Moody's rating does not decline below "A2" (it is currently "Aa3"). The commitment fee may be increased in increments of 0.10% for every notch rating downgrade below the ratings of "A3" or "A-". Should the SFMTA's senior lien revenue bonds credit rating fall below "Baa1" and "BBB+" this would trigger a default. If an Event of Default occurs and is continuing, the commitment fee will automatically increase by 1.00% annually, commencing on the date of default and continuing until the SFMTA's ratings are raised or the default is waived by the Bank or until the letter of credit is terminated. Other customary remedies are also available to the Bank in the event of a default, including declaring all principal and interest to be immediately payable, as well as other remedies specified in Section 7.02 of the Reimbursement Agreement.

### *Dealer Agreement*

The Resolution also approves the form of CP Dealer Agreement with Loop Capital and Morgan Stanley. The CP Dealer Agreement sets forth the duties of the CP Dealer, including soliciting and arranging the sales of the CPs on behalf of the SFMTA at such rates and maturities as then prevailing in the market. The CP Notes will be purchased and/or sold in accordance with the terms and conditions and in the manner provided in the CP Dealer Agreement. The Dealer Agreement includes a term not less than one (1) year with a cost not to exceed 0.05% per annum of the weighted average of the principal amount of CPs outstanding each quarter, paid by the SFMTA quarterly in arrears.

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### *Commercial Paper Memorandum*

A draft of commercial paper memorandum (the CP Memo) has been prepared which describes the terms and security for the CP Notes, including a description of the Bank and the Letter of Credit. The CP Memo will be utilized by the Dealer as the disclosure document in the sale of the CP Notes. The CP Memo contains no financial information about the SFMTA. CP Note holders will rely on the credit of the Bank and its credit for repayment, rather than the SFMTA.

### *Commercial Paper Administration*

The SFMTA CP program will be jointly administered by the OPF and SFMTA. OPF will be responsible for initiating the issuance of CP with the CP Dealers and reporting on the CP Program. The SFMTA will be responsible for requesting drawdowns based on cash flow needs and encumbrance and expenditure schedules. Annual administration fees of the CP Program are not expected to exceed \$700,000, which is inclusive of the letter of credit, dealer fees, ratings surveillance and staff costs.

### *Documentation and Next Steps*

The Board is being asked to consider several legal documents authorizing the issuance of commercial paper by the SFMTA. These documents include the following:

- Form of an IPA Agreement with US Bank
- Form of a Letter of Credit and Reimbursement Agreement with State Street Bank, together with the proposed Fee Letter
- Form of Dealer Agreement for Loop Capital and Morgan Stanley

The Director of Transportation will be authorized to make any necessary modifications, changes or additions to the documents described above as long as they are within the parameters of the attached resolution.

The City Attorney's Office has reviewed this report.

## **ALTERNATIVES CONSIDERED**

The alternative to approving a commercial paper program is to fund capital improvements included in this program from the operating budget or issue additional revenues bonds or other debt instruments.

## **FUNDING IMPACT**

The proceeds from this bond offering will enable the SFMTA to fund the approved capital projects. Fee and interest payments are budgeted in the SFMTA's two-year operating budget.

## **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

This transaction will require the concurrence of the Board of Supervisors. The Controller will also need to issue a certification of the SFMTA's financial condition.

**RECOMMENDATION**

Authorize the SFMTA to establish a commercial paper program in an amount not to exceed \$100 million, such CP Notes to be issued in one or more tax exempt or taxable series, approve the form of the IPA Agreement with US Bank, Letter of Credit and Reimbursement Agreement, together with the Fee Letter with State Street Bank and a form of Dealer Agreement for Loop Capital and Morgan Stanley and authorize the Director of Transportation to negotiate and execute the final forms of these Agreements and take related actions to implement the Commercial Paper Notes program subject to Board of Supervisors concurrence.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) wishes to finance the costs of certain transportation projects included in the SFMTA Board of Directors approved Capital Improvement program and Capital Budget through the a commercial paper program (“CP Program”) through the issuance of commercial paper notes (“CP notes); and

WHEREAS, On April 17, 2012, the SFMTA Board of Directors approved a \$3.06 billion FY 2013-2017 Capital Improvement Program and the two-year Capital Budget of \$582.3 million for FY 2012-2013 and \$477.8 million for FY 2013-2014; and

WHEREAS, Pursuant to Section 8A.102 (b)(13) of the Charter (the “Charter”) and Chapter 43, Article XIII of the Administrative Code of the City and County of San Francisco (the “City”), the SFMTA may issue revenue bonds, commercial paper and other debt instruments, with the concurrence of the Board of Supervisors (Board) of the City and without voter approval; and

WHEREAS, The SFMTA Board of Directors has determined that it is desirable to authorize up to \$100 million in CP Notes to be issued from time to time on a revolving basis in one or more tax exempt or taxable series to finance SFMTA capital improvements and other SFMTA-related purposes; and

WHEREAS, In order to carry out the CP Program SFMTA will enter into an Issuing and Paying Agent Agreement (the “IPA Agreement”) that sets forth the terms for the issuance from time to time on a revolving basis of the CP Notes and creates a security interest on the SFMTA’s transportation revenue for the benefit of the CP Notes on a subordinate basis to the SFMTA’s revenue bonds; and

WHEREAS, In order to carry out the CP Program SFMTA is required to appoint a bank (“Bank”) to provide credit support for the CP notes under irrevocable direct pay letter of credit (“Credit Facility”) issued pursuant to the terms of a letter of credit and reimbursement agreement (“Reimbursement Agreement”) between the SFMTA and the Bank; and

WHEREAS, In order to carry out the CP program SFMTA is required to appoint a commercial paper dealer or dealers pursuant to the terms of an agreement between SFMTA and the dealer (“Dealer Agreement”), which dealers will utilize a CP Notes Offering Memorandum to be prepared by the SFMTA; and

WHEREAS, The SFMTA Board of Directors has duly considered such transactions and wishes at this time to approve such transactions in the interests of public transportation subject to the Board of Supervisor’s concurrence; now therefore be it

RESOLVED, That the SFMTA Board of Directors hereby authorizes the establishment of a SFMTA Commercial Paper program supported by the issuance and sale of Commercial Paper notes to temporarily finance the design, acquisition and construction of SFMTA approved projects and other SFMTA-related purposes, as well as paying interest on Commercial Paper Notes and costs of issuance and other incidental costs, provided, however, that (i) the maximum principal amount of Commercial Paper Notes at any one time outstanding shall not exceed \$100 million, (ii) the stated amount of the Letter of Credit shall be sufficient to support principal and interest on the Commercial Paper Notes as determined by the rating agencies and market practice; and (iii) the Commercial Paper Notes shall not mature later than 270 days from their respective dates of issuance (provided that obligations owing or issued to the Bank may have a longer maturity) and have a maximum rate or rates of interest of not to exceed twelve percent (12%) per annum. The Commercial Paper Notes (and any repayment obligations owing to the Bank) shall be secured by the SFMTA's transportation revenues on a subordinate basis to the payment of the SFMTA Senior Lien Revenue Bonds; and be it

FURTHER RESOLVED, That pursuant to Section 8A.102(b)(13) of the Charter, the concurrence of the SFMTA Board of Directors shall be obtained, and by passage of this resolution the Board of Directors hereby recommends that the Board of Supervisors authorize the Agency to establish a SFMTA Commercial Paper program; and be it

FURTHER RESOLVED, That the Director of Transportation is authorized to present to the Board of Supervisors the approval by the Board of Directors of the establishment of the SFMTA Commercial Paper program; and be it

FURTHER RESOLVED, That the Board of Directors hereby appoint State Street Bank and Trust as the letter of credit bank ("Bank") to provide credit support for the Commercial Paper notes, and approves the form of a Reimbursement Agreement; provided however, that (a) the term of any such letter of credit at its time of delivery shall not be less than one year nor more than six years, (b) the interest rate on amounts owed to the Bank shall be not to exceed twelve percent (12%) per annum (provided that such interest rate may be higher under certain circumstances as provided in the Reimbursement Agreement, including document provisions commonly known as claw backs or that characterize payment of interest as a fee) (c) the commitment fee payable on such letter of credit shall not exceed 1.00% of the commitment amount (provided that such rate may be higher if the SFMTA is in default), and (d) such covenants, customary bank indemnity, defense and increased cost provisions as the Bank shall require, and as the City Attorney shall approve, or on such terms and conditions as the Director of Transportation shall deem necessary, advisable or appropriate upon consultation with the City Attorney.

FURTHER RESOLVED, That the Board of Directors makes the following finding in compliance with the California Environmental Quality Act (CEQA), California Public Resources Code Sections 21000 et seq., the CEQA Guidelines, 15 Cal. Administrative Code Sections 15000 et seq., (CEQA Guidelines), and San Francisco Administrative Code Chapter 31 (Chapter 31); that the establishment of the CP Program and the issuance of the CP Notes is not subject to CEQA because as the establishment of a government financing mechanism that does not identify individual specific projects to be constructed with the funds, it is not a project as defined by



CEQA and the CEQA Guidelines and that the SFMTA shall consult with the City Attorney as to necessary CEQA findings and determinations with respect to any project prior to the expenditure of CP funds; and be it

FURTHER RESOLVED, That the Director of Transportation is authorized and directed to execute and deliver the Commercial Paper Notes, the Issuing and Paying Agent Agreement, the Reimbursement Agreement, the Dealer Agreements, a Commercial Paper Notes Offering Memorandum and such other related documents necessary or desirable to achieve the purposes and intent of this Resolution, including such resolutions or ordinances as may be necessary to obtain Board of Supervisors concurrence of the Agency's Commercial Paper Program set forth herein and that the Controller of the City, the Treasurer of the City, the Director of Transportation, the City Attorney, and all other appropriate officers, employees, representatives and agents of the City are authorized and directed to do everything necessary or desirable to provide for the execution and delivery of the Commercial Paper notes, including, but not limited to, executing and delivering such certificates and other documents as they may deem necessary or advisable; and be it

FURTHER RESOLVED, That the Director of Transportation is hereby authorized and directed to execute amendments to the Letter of Credit and Reimbursement Agreement to extend the term thereof for up to five years provided such amendments are in the best interests of the SFMTA, do not materially increase the costs or exposure of the SFMTA to the Bank and are otherwise executed in accordance with the Charter; and be it

FURTHER RESOLVED, That the Director of Transportation is authorized to approve and make such modifications, changes, additions or amendments to the Issuing and Paying Agent Agreement, Reimbursement Agreement, the Dealer Agreements and the Fee letter, upon consultation with the City Attorney, as may be necessary or desirable in the interests of the SFMTA, and which changes are within the parameters of this Resolution and that the Director of Transportation's approval of such modifications, changes, additions or deletions shall be conclusively evidenced by the execution and delivery by the Director of Transportation, of the Reimbursement Agreement, the Dealer Agreement and the Fee letter, provided that the Director of Transportation shall report to the Board of Directors on any modification, change, addition or amendment executed.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 4, 2013.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**Enclosure 2**

**Form of Letter of Credit and Reimbursement Agreement, together with Fee Letter**

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LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT

dated as of

June [ ], 2013

by and between

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

and

STATE STREET BANK AND TRUST COMPANY

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## LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT

This Letter of Credit and Reimbursement Agreement is dated as of \_\_\_\_ [ ], 2013 by and between the San Francisco Municipal Transportation Agency (the “Agency”), and STATE STREET BANK AND TRUST (the “Bank”).

WHEREAS, the Agency has undertaken a commercial paper program by causing the execution and delivery of its Commercial Paper Notes from time to time pursuant to the Issuing and Paying Agent Agreement, dated as of \_\_\_\_, 2013 by and between the Agency and the Issuing and Paying Agent (as hereinafter defined); and

WHEREAS, the Agency has determine to issue from time to time Commercial Paper Notes for the purposes of paying on an interim basis for the construction or acquisition of certain capital improvements for transit, parking improvements and street and traffic improvements of its Transportation System (as hereinafter defined) of the Agency, paying the principal of and interest on maturing Commercial Paper Notes, and paying for costs of issuing the Commercial Paper Notes; and

WHEREAS, the Agency has requested that the Bank issue an irrevocable direct-pay letter of credit (the “*Letter of Credit*”) to support the payment when due of the principal of and interest on the Commercial Paper Notes; and

WHEREAS, the Bank is willing to provide the Letter of Credit upon the terms and conditions herein set forth;

NOW, THEREFORE, in consideration of the premises and in order to induce the Bank to enter into this Agreement, the Agency and the Bank hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.01 Definitions. Capitalized terms used herein and not defined herein shall have the definitions ascribed thereto in the Issuing and Paying Agent Agreement. The following terms, as used herein, have the following respective meanings:

“*Advance*” and “*Advances*” has the meaning set forth in Section 2.02(c) hereof.

“*Advance Maturity Date*” shall mean the maturity date of any Advance, which date shall be 180 days following the date of the Drawing that gave rise to such Advance.

“*Agency*” means the San Francisco Municipal Transportation Agency as duly constituted from time to time under the Charter, and all commissions, agencies or public bodies which shall succeed to the powers, duties and obligations of the Agency.

“*Agreement*” means this Letter of Credit and Reimbursement Agreement, as amended, modified or supplemented from time to time, in accordance with the provisions hereof.

“*Applicable Letter of Credit Fee*” means, as of any date, the percentage per annum set forth in the table below under the heading “Applicable Letter of Credit Fee,” all as set forth in the Fee Letter.

“*Available Transportation System Revenues*” has the meaning ascribed to that term in the Issuing and Paying Agent Agreement.

“*Bank*” has the meaning ascribed to that term in the introductory paragraph of this Agreement.

“*Bank Information*” means information describing the Bank and furnished from time to time in writing by the Bank expressly for inclusion in any Offering Materials.

“*Bank Note*” has the meaning set forth in Section 2.02(b) hereof and shall be in the form of Exhibit E.

“*Bank Rate*” means, for any day, the highest of (i) the Bank’s Prime Rate plus 1.00%, (ii) Federal Funds Rate plus 2.00% and (iii) 6.00%.

“*Bank-Related Persons*” means the Bank, its affiliates and the officers, directors, employees, agents and attorneys-in-fact of the Bank and affiliates.

“*Business Day*” means any day other than (i) a Saturday, Sunday or other day on which commercial banks located in New York, New York and San Francisco, California or the city in which is located the office of the Bank at which demands for a draw on the Letter of Credit will be made, are required or authorized by law to close for business, (ii) the New York Stock Exchange is closed (iii) a legal holiday of the City or any other day the City is authorized by law to be closed for official business or (iv) a day on which banking institutions are authorized or required by law or executive order to be closed in the Commonwealth of Massachusetts for commercial banking purposes.

“*Change of Law*” means the adoption or implementation, after the Closing Date, of, or any change, after the Closing Date, in, any law, rule, treaty or regulation, or any policy, guideline or directive of, or any change, after the Closing Date, in the interpretation or administration thereof by any court, central bank or other administrative or Governmental Agency (in each case whether or not having the force of law), or compliance by the Bank with any request or directive of any such court, central bank or other administrative or Governmental Agency (whether or not having the force of law) or the occurrence of the effective date of any of the foregoing if adopted prior to the Closing Date or any change after the Closing Date in the application, interpretation or enforcement of any of the foregoing.

“*Charter*” means the Charter of the City and County of San Francisco, as amended and supplemented from time to time, and any new or successor Charter.

“*City*” means the City and County of San Francisco, a charter city and a municipal corporation organized and existing under the Constitution and laws of the State of California.

“*Closing Date*” means \_\_\_\_ [ ], 2013, the date on which the Letter of Credit is delivered to the Issuing and Paying Agent.

“*Code*” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“*Commercial Paper Notes*” has the meaning ascribed to such term in the Issuing and Paying Agent Agreement.

“*Dealer*” means Loop Capital Markets LLC, Morgan Stanley & Co. Incorporated or any successor or assigns permitted under a Dealer Agreement or any other dealer for the Commercial Paper Notes, which is appointed by the Agency and has entered into a Dealer Agreement.

“*Dealer Agreement*” means each Dealer Agreement, dated the date hereof, by and between the Agency and a Dealer, and any and all modifications, alterations, amendments and supplements thereto, any other dealer agreement entered into by the Agency and a Dealer with respect to the Commercial Paper Notes, as amended and supplemented from time to time, and any such agreement with any successor Dealer.

“*Debt Service Fund*” has the meaning ascribed to such term in the Issuing and Paying Agent Agreement.

“*Default Rate*” means, as of any date of determination, a rate per annum equal to the Bank Rate in effect on such date plus 3.00%.

“*Designated Representatives*” has the meaning ascribed to such term in the Issuing and Paying Agent Agreement.

“*Drawing*” means any Principal Drawing or Interest Drawing.

“*Event of Default*” has the meaning set forth in Section 7.01 hereof.

“*Excess Amount*” has the meaning set forth in Section 2.02(i) hereof.

“*Federal Funds Rate*” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day.

“*Fee Letter*” means that certain Fee Letter dated as of [\_\_\_\_], 2013, between the Agency and the Bank, as supplemented and amended, in each case with a signature from a Designated Representative of the Agency evidencing acceptance of such Fee Letter provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Bank on such day on such transactions as determined by the Bank.



“*Final Drawing Notice*” means \_\_\_\_\_.

“*Fiscal Year*” means the twelve (12) month period commencing on July 1 of each year and ending on the next following June 30 or any other twelve consecutive months as may be adopted by the Agency as its fiscal year.

“*Interest Component*” has the meaning ascribed to such term in the Letter of Credit.

“*Interest Drawing*” means a drawing under the Letter of Credit, accompanied by a certificate in the form of Annex B to the Letter of Credit.

“*Issuing and Paying Agent*” means [NAME TO COME], or any successor or assigns permitted by the Issuing and Paying Agent Agreement, or any other Issuing and Paying Agent appointed by the Agency pursuant to the Issuing and Paying Agent Agreement.

“*Issuing and Paying Agent Agreement*” means the Issuing and Paying Agent Agreement, dated as of \_\_\_\_\_ 1, 2013, by and between the Agency and the Issuing and Paying Agent, including any and all modifications, alterations, amendments or supplements thereto.

“*Letter of Credit*” means the irrevocable direct pay letter of credit to be issued by the Bank for the account of the Agency in favor of the Issuing and Paying Agent, as beneficiary, which shall be in substantially the form of *Exhibit A* to this Agreement.

“*Lien*” means any mortgage, lien, pledge, charge, security interest or encumbrance of any kind.

“*Liquidity Rate*” means, with respect to an Advance on days 1-30 of the Advance, the Bank Rate; on days 31-90, the Bank Rate plus 1.00%; on days 91-180, the Bank Rate plus 2.00% and on days 181 and after, the Term Loan Rate (at no time shall the Liquidity Rate with respect to any Advance be less than the highest rate then borne by any outstanding Commercial Paper Notes).

“*Material Adverse Effect*” means the existence or lack of existence of any state of facts or the occurrence of any event or the failure of any event to occur or any combination of the foregoing that has or that could reasonably be expected to have in the foreseeable future a material adverse effect on (i) the Agency’s ability to timely perform its obligations under the Related Documents or the Senior Lien Revenue Bond Documents or (ii) the enforceability of this Agreement or any of the other Related Documents.

“*Maximum Interest Rate*” means 12% per annum.

“*No Issuance Notice*” has the meaning set forth in Section 7.03 hereof.

“*Notice of Extension*” has the meaning set forth in Section 2.05 hereof.

“*Obligations*” means all obligations and all liabilities of the Agency to the Bank under this Agreement, including, but not limited to, Reimbursement Obligations.

“*Offering Materials*” means the Offering Memorandum and such future disclosure documents with respect to the Commercial Paper Notes and the Agency as may be prepared by the Agency or the Dealers from time to time in connection with the offering and sale of Commercial Paper Notes.

“*Offering Memorandum*” means the Offering Memorandum dated June [ ], 2013 delivered in connection with the delivery of the Letter of Credit.

“*Original Stated Amount*” has the meaning set forth in Section 2.01(a) hereof.

“*Outstanding*” (i) with respect to the Commercial Paper Notes, shall have the meaning assigned to such term in the Issuing and Paying Agent Agreement, (ii) with respect to the Bank Note, means the Bank Note, including the interest thereon, not repaid by the Agency, and (iii) with respect to Advances, means all Advances, including interest thereon, not repaid by the Agency and (iv) with respect to Term Loans, means all Term Loans, including interest thereon, not repaid by the Agency.

“*Parent*” means any Person controlling the Bank.

“*Parity Notes*” means commercial paper notes or other obligations payable from or secured by Available Transportation System Revenues.

“*Participant*” has the meaning set forth in Section 8.09 hereof.

“*Participation*” has the meaning set forth in Section 8.09 hereof.

“*Person*” means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“*Prime Rate*” means the rate of interest announced by the Bank from time to time as its prime commercial rate or equivalent, as in effect on such day for United States dollar loans, with any change in the Prime Rate resulting from a change in said prime commercial rate to be effective as of the date of the relevant change in said prime commercial rate, it being understood that such rate may not be the Bank’s best or lowest rate for any day the per annum rate of interest for such day announced by the Bank from time to time as its prime rate.

“*Principal Component*” has the meaning ascribed to such term in the Letter of Credit.

“*Principal Drawing*” means a drawing under the Letter of Credit, accompanied by a certificate in the form of Annex A to the Letter of Credit.

“*Reimbursement Obligations*” means all obligations of the Agency payable under Section 2.02 hereof, including without limitation, Advances or Term Loans.

“*Related Documents*” means this Agreement, the Commercial Paper Notes, the Fee Letter, the Dealer Agreements, and the Issuing and Paying Agent Agreement.

“*Senior Lien Parity Obligations*” means Parity Obligations as defined under the Senior Lien Revenue Bond Documents.

“*Senior Lien Revenue Bonds*” means all bonds currently outstanding or hereinafter issued by the Agency with a pledge or lien on the Available Transportation System Revenues prior to that of the Commercial Paper Notes.

“*Senior Lien Revenue Bond Documents*” means the Transportation System Bonds Indenture pursuant to which Senior Lien Revenue Bonds are issued.

“*Scheduled Termination Date*” means June [ ], 201\_, unless extended in accordance with Section 2.05(a) hereof, in which case the Scheduled Termination Date means the date to which the Letter of Credit has been extended.

“*Stated Amount*” has the meaning ascribed to such term in the Letter of Credit.

“*Substitute Letter of Credit*” means any letter of credit substituted for the Letter of Credit that is accepted by the Issuing and Paying Agent as provided in Section 9.02 of the Issuing and Paying Agent Agreement.

“*Taxes*” has the meaning set forth in Section 2.04(a) hereof.

“*Term Loan*” has the meaning set forth in Section 2.02(d) hereof.

“*Term Loan Maturity Date*” shall mean the maturity date of any Term Loan, which date shall be the date which is five (5) years following the date of the Drawing which gave rise to the Advance that was converted to such Term Loan.

“*Term Loan Rate*” means, with respect to a Term Loan, the Bank Rate plus 2.00% (at no time shall the Term Loan Rate be less than the highest rate then borne by any outstanding Commercial Paper Notes).

“*Termination Date*” means the date on which the Letter of Credit expires or terminates in accordance with its terms.

“*Transportation System Revenue Bonds Indenture*” has the meaning ascribed to such term in the Issuing and Paying Agent Agreement.

“*Transportation System*” has the meaning ascribed to such term in the Issuing and Paying Agent Agreement.

“*Underlying Provisions*” has the meaning set forth in Section 5.23 hereof.

Section 1.02 Gender; Plural. Unless the context clearly requires otherwise, all references made herein (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

Section 1.03 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with generally accepted accounting principles as in effect from time to time, applied on a basis consistent with the most recent audited financial statements of the Agency delivered to the Bank with respect to the Transportation System.

## ARTICLE II

### ISSUANCE OF LETTER OF CREDIT; PAYMENT

#### Section 2.01 Issuance of Letter of Credit; Drawings under the Letter of Credit.

(a) The Agency hereby applies to the Bank for, and authorizes and instructs the Bank to issue for the Agency's account, the Letter of Credit, and to make Advances and Term Loans. The Bank hereby agrees, on the terms and subject to the conditions hereinafter set forth, to issue to the Issuing and Paying Agent for the benefit of the owners from time to time of the Commercial Paper Notes the Letter of Credit (substantially in the form of *Exhibit A* hereto), dated the Closing Date and completed in accordance with such form and the terms of this subsection 2.01(a). The initial stated amount of the Letter of Credit as of the Closing Date shall be \$\_\_\_\_\_ (the "*Original Stated Amount*"), which amount is equal to \$100,000,000 maximum aggregate principal amount of the Commercial Paper Notes plus an interest component of \$\_\_\_\_\_. Subject to Section 2.01(d), the Original Stated Amount may be from time to time reduced and/or reinstated or adjusted in accordance with the terms of the Letter of Credit, but shall in no event be less than the aggregate principal amount of the Commercial Paper Notes Outstanding plus interest on the Commercial Paper Notes for 270 days at an assumed rate equal to the Maximum Interest Rate based on a year of 365 days. The Bank will use only its own funds in honoring Drawings on the Letter of Credit. Unless otherwise terminated in accordance with its terms, the Letter of Credit shall expire on the Scheduled Termination Date.

(b) The Letter of Credit is transferable in whole only to a successor Issuing and Paying Agent. Any such transfer (including any successor transfer) shall be effective upon receipt by the Bank of (i) the signed original of the instrument effecting each such transfer signed by an authorized officer of the transferor and by an authorized officer of the transferee in the form of Annex F attached to the Letter of Credit (which shall be conclusive of such transfer), (ii) the then current Letter of Credit and (iii) payment of the transfer fee described in Section 2.03(d) hereof. Upon the effectiveness of such a transfer (A) the Bank shall deliver a replacement Letter of Credit that is identical to the surrendered Letter of Credit but for the name of the beneficiary to the transferee or an amendment to the then current Letter of Credit reflecting that the transferee is the beneficiary of the Letter of Credit and (B) the transferee instead of the transferor shall, without the necessity of further action, be entitled to all the benefits of and rights under the Letter of Credit in the transferor's place; provided that, in each case, any certificates of the Issuing and

Paying Agent to be provided under the Letter of Credit shall be signed by one who states therein that such person is a duly authorized officer of the transferee.

(c) All Principal Drawings to be made under the Letter of Credit shall be made in the form of Annex A to the Letter of Credit and all Interest Drawings to be made under the Letter of Credit shall be made in the form of Annex B to the Letter of Credit, each to be addressed to the Bank and submitted by an authorized officer of the Issuing and Paying Agent at the time and place specified in the Letter of Credit, and no further presentation of documentation, including the original Letter of Credit, need be made; it being understood that such draw request in the form of Annex A or Annex B shall, in all events, be considered to be the sole operative instrument of drawing.

(d) *Reduction of Stated Amount; Termination of Letter of Credit.*

(i) The Agency may, upon at least five (5) Business Days' notice to the Bank, reduce the Stated Amount from time to time during the period from such date through the Termination Date, provided that (A) the amount of the Stated Amount may not be reduced below the sum of the aggregate principal amount of the Outstanding Commercial Paper Notes plus interest on the outstanding principal amount of Commercial Paper Notes for 270 days at an assumed rate equal to the Maximum Interest Rate based on a year of 365 days, and (B) the Bank shall have received a certificate, substantially in the form of Annex C, D or E to the Letter of Credit, with respect to such reduction submitted by an authorized officer of the Issuing and Paying Agent.

(ii) In the event that the Agency terminates the Letter of Credit pursuant to (d)(i) above, the Agency shall pay to the Bank any fee due under the Fee Agreement in connection with such termination.

## Section 2.02 Repayment of Drawings; Bank Note.

(a) *Payment of Amounts Drawn on Drafts.* Subject to Sections 2.02(b) and (c) hereof, the Agency shall reimburse, or shall cause the Issuing and Paying Agent in accordance with the Issuing and Paying Agent Agreement to reimburse, the Bank for the amount paid by the Bank upon a Drawing under the Letter of Credit by 4:00 p.m. (New York time) on the day such Drawing is paid by the Bank.

(b) *Bank Note.*

(i) The Obligations of the Agency to the Bank under this Agreement shall be evidenced by a promissory note (the "*Bank Note*") issued by the Agency on the Closing Date and which shall be registered in the name of and delivered to the Bank. The Bank Note shall evidence an obligation of the Agency until the principal of and interest with respect to the Bank Note and any and all Reimbursement Obligations shall have been paid by the Agency to the Bank in the amounts and at the times provided therein and herein.

(ii) The principal amount of the Bank Note and the interest thereon shall not be paid

with the proceeds of a Drawing under the Letter of Credit.

- (c) *Advances.* If the Bank shall make any payment under the Letter of Credit pursuant to a Drawing and the conditions precedent set forth in Section 3.04(a) shall have been fulfilled, and the Agency does not reimburse or cause to be reimbursed the Bank in connection therewith by 5:00 p.m. (New York time) on the day such payment is made, then such payment shall constitute an advance made by the Bank to the Agency on the date and in the amount of such payment (each such advance being an “*Advance*” and, collectively, the “*Advances*”), and such unreimbursed Drawing shall be deemed paid. Each Advance made by the Bank to the Agency shall mature and the outstanding principal amount of such Advance shall be due and payable on the Advance Maturity Date for such Advance. Subject to Section 2.02(g), interest shall accrue on the unpaid principal amount of each Advance during the period from the date such Advance is made to and including the Advance Maturity Date for such Advance at a rate per annum equal to the Liquidity Rate. Accrued interest on each Advance shall be payable in arrears on the first Business Day of each calendar month and the Advance Maturity Date for such Advance. In the event that the principal of, and interest on, any outstanding Advance is not paid when due, the Agency shall pay interest on the principal amount of such Advance and the amount of the unpaid interest, if any, on demand, at the Default Rate. Interest shall be calculated on the basis of a year consisting of 365/366 days and actual days elapsed. The Agency may prepay each Advance, in whole or in part, at any time, pursuant to Section 2.02(e) below.
- (d) *Term Loans.* Unless the Agency has paid the Advance in full on the Advance Maturity Date, then, provided that the conditions precedent set forth in Section 3.04(b) shall have been fulfilled, the unpaid principal amount of such Advance shall be converted into, and the Bank shall be deemed to have extended to the Agency, a term loan (each, a “*Term Loan*”), and such unpaid Advance shall be deemed paid. Each Term Loan shall mature on the Term Loan Maturity Date therefore. The Agency shall pay the principal amount of each Term Loan in twenty (20) equal quarterly installments in arrears over the term of the applicable Term Loan to be made on the first Business Day of each [January, April, July and October] commencing with the first Business Day of the [January, April, July and October], as the case may be, next following at least the three (3) month anniversary of the date on which such Term Loan was extended and continuing until paid in full on or prior to the Term Loan Maturity Date for such Term Loan. Subject to Section 2.02(g), interest shall accrue on the unpaid principal amount of each Term Loan from the date upon which such Term Loan is made to and including the Term Loan Maturity Date at the Term Loan Rate. Interest on each Term Loan shall be payable, (i) on or prior to the applicable Term Loan Maturity Date for such Term Loan, monthly in arrears on the first Business Day of each month and on the Term Loan Maturity Date, and (ii) upon each date of prepayment. In the event that the principal of, and interest on, any outstanding Term Loan is not paid when due, the Agency shall pay interest on the principal amount of such Term Loan and the amount of the unpaid interest, if any, on demand, at the Default Rate. Interest shall be calculated on the basis of a year consisting of 365/366 days and actual days elapsed. The Agency may prepay each Term Loan, in whole or in part, at any time, pursuant to Section 2.02(e) below.

(e) *Optional Prepayment.*

- (i) The Agency may prepay any Outstanding Advance and any Outstanding Term Loan, together with accrued interest to the date of such prepayment, in whole, or in part in a minimum amount of \$100,000, at any time upon one Business Day's prior written notice delivered to the Bank. In the event an Advance or Advances or a portion of the Outstanding Advances or Term Loans are prepaid in part, such prepayment shall be applied as shall be determined by the Agency with the approval of the Bank.
- (ii) Upon a prepayment of an Advance, the Principal Component and the Interest Component of the Letter of Credit corresponding to the related Drawing shall be reinstated as provided in the Letter of Credit.

- (f) *Payments and Computations.* The Agency will make each payment pursuant to this Section 2.02 and pursuant to Sections 2.03(a) and 2.03(b) not later than 4:00 p.m. (New York time) on the date when due, in lawful money of the United States of America and in immediately available funds, to the Bank to the following account:

[BANK NAME]

ABA # \_\_\_\_\_

Further Credit to Acct # \_\_\_\_\_

Attention: \_\_\_\_\_

Further Credit: San Francisco Municipal Transportation Agency

Loan Number: \_\_\_\_\_

Whenever any payment to be made under this Agreement shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. All computations of interest hereunder shall be made on the basis of a year of 365/366 days for the actual number of days occurring in the period for which such interest is payable. Amounts received later than 4:00 p.m. New York time on a Business Day but before the Bank's close of business on such Business Day shall be deemed received on or before 4:00 p.m. New York time on the next Business Day.

- (g) *Default Rate.* If the Agency shall fail to pay when due (whether at maturity or otherwise) principal of or interest on the Bank Note or shall fail to pay any other Obligation after the grace period provided for such payment in Section 7.01 shall have lapsed, each such unpaid amount shall bear interest for each day from and including the date it was so due or such grace period shall have expired, as applicable, until paid in full at a rate per annum equal to the Default Rate. During the continuance of an Event of Default, each Drawing, Advance, Term Loan and any other Obligation shall bear interest at a rate per annum equal to the Default Rate. Interest shall be calculated on the basis of a year consisting of 365/366 days and actual days elapsed.

- (h) *Determination of Bank Rate.* The Bank shall give notice to the Agency and the City of the Bank Rate as soon as practicable following a request therefor. Each determination of

the Bank Rate shall be conclusive (absent error) and binding upon the Agency and the City.

- (i) *Maximum Interest Rate.* No interest rate due to the Bank hereunder shall exceed the Maximum Interest Rate; provided if the rate of interest payable hereunder shall exceed the Maximum Rate for any period for which interest is payable, then (i) interest at the Maximum Rate shall be due and payable with respect to such interest period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and (B) the Maximum Rate (the "*Excess Interest*"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed such maximum interest rate, at which time the Agency shall pay or cause to be paid to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal such maximum interest rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank. Upon the termination of this Agreement, in consideration for any limitation of the rate of interest which may otherwise be payable hereunder, the Agency shall pay or cause to be paid to the Bank the amount of all unpaid deferred Excess Interest.

Section 2.03      Payment of Bank Fees. The Bank and the Agency agree to perform the obligations provided for in the Fee Letter, including without limitation, the payment of any and all fees provided therein. The terms of said Fee Letter are incorporated by reference as if set forth in full herein.

Section 2.04      No Deductions and Withholding for Taxes, Increased Costs.

- (a) All payments made by the Agency hereunder and under the Bank Note shall be made without setoff, counterclaim or other defense. All such payments will be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein (but excluding, except as provided below, any tax imposed on or measured by the overall net income of the Bank pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) under which the Bank is organized) and all interest, penalties or similar liabilities with respect thereto (collectively, "*Taxes*"). If the Agency shall be required by any law, rule or regulation to deduct any Taxes from or in respect of any sum payable under this Agreement or any Related Document to the Bank, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Agency shall make such deductions, (iii) the Agency shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable laws, rules and regulations and (iv) within forty-five (45) days after the date of such payment, the Agency shall furnish to the Bank the original or a certified copy of a receipt evidencing payment thereof. The Agency will to the maximum



extent permitted by applicable law indemnify and hold harmless the Bank, and reimburse the Bank upon its written request, for the amount of any Taxes so levied or imposed and paid by the Bank.

- (b) If the Bank shall have determined that a Change of Law shall (A) change the basis of taxation of payments to the Bank of any amounts payable hereunder or under the Fee Agreement (except for taxes on the overall net income of the Bank), (B) impose, modify or deem applicable any reserve, special deposit or similar requirement against making or maintaining its obligations under this Agreement or the Letter of Credit or assets held by, or deposit with or for the account of, the Bank or (C) impose on the Bank any other condition regarding this Agreement or the Letter of Credit, and the result of any event referred to in clause (A), (B) or (C) above shall be to increase the cost to the Bank of making or maintaining its obligations hereunder or under the Letter of Credit, or to reduce the amount of any sum received or receivable by the Bank hereunder or under the Fee Agreement, then the Agency shall pay to the Bank, at such time and in such amount as is set forth in paragraph (c) of this Section, such additional amount or amounts as will compensate the Bank for such increased costs or reductions in amount received or receivable.
- (c) If the Bank shall have determined that a Change of Law shall impose, modify or deem applicable any capital adequacy, liquidity or similar requirement (including, without limitation, a request or requirement that affects the manner in which the Bank allocates capital resources to its commitments, including its obligations under letters of credit) that either (A) affects or would affect the amount of capital or liquidity to be maintained by the Bank or (B) reduces or would reduce the rate of return on the Bank's capital to a level below that which the Bank could have achieved but for such circumstances (taking into consideration the Bank's policies with respect to capital adequacy), then the Agency shall pay to the Bank at such time and in such amount as is set forth in paragraph (c) of this Section 2.04, such additional amount or amounts as will compensate the Bank for such cost of maintaining such increased capital or liquidity or such reduction in the rate of return on the Bank's capital.
- (d) Notwithstanding the foregoing, for purposes of this Section \_\_\_\_, (i) all requests, rules, guidelines or directives in connection with the Dodd-Frank Act shall be deemed to be a Change of Law, regardless of the date enacted, adopted or issued, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar Agency) or any Governmental Agency shall be deemed a Change of Law regardless of the date enacted, adopted or issued.
- (e) All payments of amounts referred to in paragraphs (a) and (b) of this Section 2.04 shall be due and payable in full within thirty (30) days after the Agency's receipt of notice thereof. Interest on the sums due as described in paragraphs (a), (b) and (c) of this Section 2.04, and in the preceding sentence, shall begin to accrue from the date when the payments were first due at a rate per annum equal to the Default Rate until such delinquent payments have been paid in full and shall be payable on demand and in accordance with Section 2.04 hereof. A certificate as to such increased cost, increased

capital or reduction in return incurred by the Bank as a result of any event mentioned in paragraph (a), (b) or (c) of this Section 2.04 setting forth, in reasonable detail, the basis for calculation and the amount of such calculation shall be submitted by the Bank to the Agency and shall be conclusive (absent manifest error) as to the amount thereof. In making the determinations contemplated by such certificate, the Bank may make such reasonable estimates, assumptions, allocations and the like as the Bank in good faith determines to be appropriate.

- (f) Notwithstanding the provisions of this Section 2.04, the Agency shall have no liability for cost increases, yield reductions or other costs described in this Section \_\_ to the extent incurred by the Bank more than 120 days prior to the date on which the Bank provides the certificate specified in clause (d) above; *provided* that, to the extent such change that gives rise to such increased cost or reduction is retroactive, then the foregoing 120 day period shall be extended to include the period of retroactive effect thereof.
- (g) The obligations of the Agency under this Section 2.04 shall survive the termination of this Agreement.
- (h) The Bank and each Participant (if any) will promptly notify the Agency in writing of any event of which it has knowledge, occurring after the date hereof, which will entitle the Bank or such Participant to compensation pursuant to this Section. Each demand for compensation pursuant to this Section 2.04 shall be accompanied by a certificate of the Bank or such Participant in reasonable detail setting forth an explanation and a computation of such compensation (including the reason therefor). The Agency shall only be responsible for payment of any amounts under this Section 2.04 if notified of the event giving rise to such increased amount within ninety (90) days of such event.
- (i) Notwithstanding anything to the contrary contained in this Section 2.04, the Agency shall have no obligation to pay amounts to any Participant pursuant to this Section 2.04 in an amount greater than that which it would have been required to pay if the Bank had not participated any interest in the Letter of Credit.

Section 2.05 Extensions of the Letter of Credit. Not less than 120 days prior to the Scheduled Termination Date, the Agency may request in writing to the Bank that the Bank extend the Scheduled Termination Date. Within forty-five (45) days of the receipt of such written request, the Bank will notify the Agency in writing of the decision by the Bank in its absolute discretion (and after such due diligence (if any) as the Bank shall undertake) whether to extend for such additional period, the Scheduled Termination Date for purposes of this Agreement and the Letter of Credit, including in such notice the extended Scheduled Termination Date and the conditions of such consent (including conditions relating to legal documentation and the consent of the Issuing and Paying Agent). If the Bank shall not so notify the Agency, the Bank shall be deemed to have denied any such extension. If the Bank, in its sole discretion, elects to extend the Scheduled Termination Date then in effect, the Bank shall deliver to the Agency and the Issuing and Paying Agent a notice of extension in the form of Annex H to the Letter of Credit (each, a “*Notice of Extension*”) designating the date to which the Scheduled Termination Date is being extended. Such extension of the Scheduled Termination Date shall be effective, after receipt of such notice, on the Business Day following the date of delivery of such Notice of Extension, and thereafter all references in this Agreement to the Scheduled Termination Date shall be deemed to be references to the date designated as such in the most recent Notice of Extension delivered to the Issuing and Paying Agent.

Section 2.06 Limited Recourse Obligations. Notwithstanding any other provision of this Agreement or any other Related Document to the contrary, the Obligations (including the payment of the principal of, interest on and redemption price of the Bank Note, which shall have a lien on Available Transportation System Revenues as provided in the Issuing and Paying Agent Agreement) shall not be payable from any income, receipts or revenues of the Agency other than Transportation System Revenues, as provided in the Issuing and Paying Agent Agreement and from other amounts as set forth in Section 6.01 of the Issuing and Paying Agent Agreement, nor shall the Obligations (other than the payment of the principal of, interest on and redemption price of the Bank Note) constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of the property or upon any of the income, receipts, or revenues of the Agency, except Available Transportation System Revenues.

Section 2.07 Obligations Unconditional. Subject to Section 2.06, the Agency’s obligations under this Agreement and under the Bank Note shall be absolute, unconditional and irrevocable under any and all circumstances (except where the Bank has honored a drawing under the Letter of Credit (i) which constitutes gross negligence or willful misconduct of the Bank and (ii) the Bank has made such payment to a party other than the Agency, the Issuing and Paying Agent or any other Person as directed by the Issuing and Paying Agent in such request for Drawing).

### ARTICLE III

#### CONDITIONS PRECEDENT

Section 3.01 Conditions Precedent to Effectiveness of Agreement. This Agreement shall become effective upon the execution hereof by the parties hereto.

Section 3.02 Conditions Precedent to Issuance of Letter of Credit. The Letter of Credit shall be delivered upon the request of the Agency when each of the following conditions precedent has been fulfilled in a manner satisfactory to the Agency and the Bank, such satisfaction of the Bank to be conclusively evidenced by the issuance of the Letter of Credit by the Bank:

(a) *Delivery of Documents*. The Bank shall have received on or before the Closing Date the following, each in form and substance satisfactory to the Bank and its counsel and, unless indicated otherwise, dated the Closing Date:

- (1) executed copies of the Related Documents, dated their respective dates, and any amendments and supplements thereto, and a specimen copy of the Commercial Paper Notes;
- (2) a certificate of a Designated Representative of the Agency, certifying as to the incumbency and signature of each of the officers of the Agency authorized to sign the Related Documents to which the Agency is a party;
- (3) a certified copy of the resolution of the Agency approving the execution, delivery and performance of the Related Documents to which the Agency is a party, certified by a duly authorized officer of the Agency on the Closing Date, which certificate shall state that the resolution has not been amended or annulled and is in full force and effect on the Closing Date;
- (4) a certificate of a Designated Representative of the Agency certifying that they have delivered or caused to be delivered to the Bank true and correct copies of the Senior Lien Revenue Bond Documents, and that such documents have not been amended, modified or rescinded.
- (5) a certified copy of the resolution of the Board of Supervisors of the City approving of the issuance of the Commercial Paper Notes by the Agency, which certificate shall state that the Agency has authority to issue up to \$100 million in Commercial Paper Notes;
- (6) (A) the audited financial statements of the Agency with respect to the Transportation System for the Fiscal Years ended 2011 and 2012, (B) a copy of the Fiscal Years 2012-13 annual operating budget of the Agency for such Transportation System, and (C) a copy of the City's investment policy;
- (7) (A) favorable opinion of Bond Counsel for the Agency, as to the validity of the Commercial Paper Notes issued pursuant to the Issuing and Paying Agent Agreement and the tax exempt status of interest on the Commercial Paper Notes under Section 103 of the Code and (B) an opinion of Bond Counsel addressed to the Bank to the effect that this Agreement and the other Related Documents are valid and binding agreements of the Agency enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium or other laws affecting creditors' rights, to general principles of equity and to limitations on remedies against public agencies;
- (8) a certificate of a duly authorized officer of the Agency, certifying that all

conditions precedent with respect to the execution of the Related Documents shall have been satisfied and that, except as previously disclosed to the Bank, there has been no material adverse change in the financial condition, business, assets, liabilities or prospects of the Transportation System since June 30, 2012;

(9) an opinion of the City Attorney of the City to the effect that (A) the Agency is duly organized and validly existing as a Agency of the City pursuant to the Charter with full legal power and authority to execute this Agreement and the other Related Documents and to issue the Commercial Paper Notes; (B) this Agreement and the other Related Documents are valid and binding agreements of the Agency enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium or other laws affecting creditors' rights, to general principles of equity and to limitations on remedies against public agencies; (C) no authorization, approval, consent or order of any agency or body having jurisdiction over the Agency is required which has not been obtained; (D) the issuance of the Commercial Paper Notes and the execution, delivery and performance of this Agreement and the other Related Documents do not conflict in any material respect with any law or agreements to which the Agency is a party, or cause a default under any documents to which the Agency is a party; and (E) no litigation is pending or threatened against the Agency threatening its existence or power or the ability to issue the Commercial Paper Notes or to enter into and perform its obligations under this Agreement and the other Related Documents;

(10) written confirmation from \_\_\_\_\_ that the Commercial Paper Notes are rated: \_\_;

(11) a certificate of the Issuing and Paying Agent, as to such matters as the Bank may reasonably request;

(12) an opinion of counsel to the Issuing and Paying Agent, as to such matters as the Bank may reasonably request; and

(13) an opinion of United States counsel to the Bank, in form and substance satisfactory to the Bank and the Agency.

(14) a CUSIP and long-term rating from at least one rating agency shall be assigned to the Bank Note.

(b) *Representations and Covenants of the Agency; No Event of Default.* The following statements shall be true and correct on and as of the Closing Date, and the Bank shall have received a certificate signed by the Designated Representative of the Agency, dated the Closing Date, stating that:

(1) the representations of the Agency contained in Section 4.01 hereof are true and correct in all material respects on and as of the Closing Date as though made on and as of such date;

(2) the Agency has performed or complied with all of its obligations, agreements and covenants to be performed or complied with by it on or prior to the Closing Date; and

(3) after giving effect to the issuance of the Letter of Credit and the execution and delivery of this Agreement by the Agency, no Event of Default has occurred and is continuing.

(c) *Fees, Costs and Expenses.* The Bank shall have received payment of the fees, costs and expenses referred to in Section 8.06 hereof that are to be paid on or prior to the Closing Date.

Section 3.03 Conditions Precedent to Any Drawing. The obligation of the Bank to honor any Drawing is subject to the fulfillment of each of the following conditions precedent:

- (a) The Bank shall have timely received (or waived the receipt of, in the sole discretion of the Bank) a Drawing certificate in conformity with Annex A and/or Annex B, as applicable, to the Letter of Credit; and
- (b) The Termination Date shall not have occurred.

Section 3.04 Conditions Precedent to Advances and Term Loans.

- (a) *Advances.* Following any payment by the Bank under the Letter of Credit pursuant to a Principal Drawing, an Advance shall be made available to the Agency if on the date of such Advance (i) the representations and warranties set forth in this Agreement shall be true and correct in all material respects and (ii) no Event of Default has occurred and is continuing.
- (b) *Term Loans.* An Advance may be converted into a Term Loan if on the date of the making of such Term Loan (i) the representations and warranties set forth in this Agreement shall be true and correct in all material respects and (ii) no Event of Default has occurred and is continuing.

Section 3.05 Request to Increase Stated Amount of the Letter of Credit. During the period from and including the date hereof to and including the Termination Date, so long as (i) the representations and warranties set forth in the Agreement are true and correct in all material respects and (ii) no Default or Event of Default has occurred and is continuing, the Agency may, from time to time, submit a request to the Bank for an increase to the Stated Amount of the Letter of Credit. Such request shall be in the form of Exhibit D hereto and shall provide:

- (a) the requested increase in the Stated Amount of the Letter of Credit;
- (b) the date on which the increase in the Stated Amount of the Letter of Credit shall become effective; and
- (c) a certification from the Agency to the Bank that (i) the representations and warranties set forth in the Agreement are true and correct in all material respects and (ii) no Default or Event of Default has occurred and is continuing.

The Bank may, in its sole and absolute discretion, decide to accept or reject any such request (and, any such increase shall be subject to internal credit approval) and no increase shall become effective unless the Bank shall have delivered an amendment to the

Letter of Credit effecting such increase. The Bank shall use commercially reasonable efforts to respond to any request within 60 days from the date of any such request. If the Bank shall have failed to definitively respond to any such request within 60 days after receipt of all information necessary, in the Bank's reasonable judgment, to permit the Bank to make an informed credit decision, the Bank shall be deemed to have refused to grant such request."

Section 3.06 Conditions Precedent to the Issuance of Commercial Paper Notes. The Agency shall not issue any Commercial Paper Notes following the Closing Date, unless each of the following conditions precedent has been fulfilled in a manner satisfactory to the Agency and the Bank: (a) on the date of the issuance of such Commercial Paper Note(s) no Event of Default has occurred and is continuing; and (b) such issuance of Commercial Paper Note(s) will not cause the sum of the principal components of (i) any unreimbursed Drawings, (ii) Outstanding Advances and Term Loans (iii) Commercial Paper Notes outstanding (including the Commercial Paper Note(s) proposed to be issued), to exceed the Principal Component of the Stated Amount and (iv) no No-Issuance Notice or Final Drawing Notice shall have been issued by the Bank in accordance with the terms of this Agreement.

#### ARTICLE IV

##### REPRESENTATIONS OF AGENCY AND THE BANK

Section 4.01 Representations of the Agency. The Agency represents to the Bank as follows:

- (a) *Legal Existence; Powers*. The Agency (i) is an agency of the City and County of San Francisco organized and existing under the Charter, and (ii) has the full legal right, power and authority to (A) control its properties and to carry on its business as now being and hereafter proposed to be conducted, (B) execute and deliver the Related Documents to which it is a party, (C) perform its obligations under the Related Documents to which it is a party, (D) issue the Commercial Paper Notes in accordance with the Issuing and Paying Agent Agreement, and (E) repay the Bank Note, to pay all interest thereon, and to pay all fees and other amounts payable by the Agency hereunder.
- (b) *Due Authorization; No Violation; No Conflicts*. The issuance of the Commercial Paper Notes and the execution, delivery and performance by the Agency of the Related Documents to which the Agency is a party have been duly authorized by all necessary action on the part of the Agency, and do not and will not (i) violate the Charter, or any material provision of any court order by which the Agency is bound, (ii) conflict with or violate any material provision of existing law or regulation, or any order or decree of any court, tribunal or governmental authority, or (iii) conflict with, violate or cause a material default under any material provision of any bond, note or other evidence of indebtedness or other material agreement to which the Agency is a party.
- (c) *Consents*. No consent of any Person and no material license, approval or authorization of or notice to or registration, filing or declaration with, any governmental authority, bureau

or agency is required in connection with the execution, delivery, performance, validity or enforceability of any of the Related Documents to which the Agency is a party or for the Agency to issue the Commercial Paper Notes or incur the Obligations in accordance with this Agreement or, if required, the same has been obtained and is in full force and effect.

- (d) *Validity.* The Related Documents to which the Agency is a party constitute legal, valid and binding agreements or obligations, as the case may be, of the Agency, except as (i) the enforceability thereof may be limited by bankruptcy, insolvency moratorium or similar laws affecting creditors' rights generally, (ii) the availability of equitable remedies may be limited by equitable principles of general applicability and (iii) remedies available against public agencies such as the Agency may be limited.
- (e) *Litigation.* Except as disclosed in writing to the Bank prior to the date hereof, there are no actions, suits or proceedings at law or in equity pending or, to the knowledge of the Agency, threatened against or affecting it or its properties before any court or arbitrator or any governmental or nongovernmental body, agency or official having jurisdiction over the Agency in which the Agency determines an adverse decision would result in a Material Adverse Effect.
- (f) *Accuracy of Financial Reports.* The most recent financial reports of the Transportation System as of June 30, 2012, copies of which have been furnished to the Bank, have been prepared in accordance with generally accepted accounting principles and fairly present the financial position and results of operations of the Transportation System except as previously disclosed to the Bank in writing, as of the dates and for the periods set forth therein. Since June 30, 2012, except as previously disclosed to the Bank in writing, there have been no material adverse changes in the financial condition of the Transportation System.
- (g) *No Sovereign Immunity.* The Agency does not enjoy any defense on the grounds of sovereign immunity with respect to its obligations under this Agreement or any other Related Document, nor may there be attributed to the Agency any such immunity (whether or not claimed).
- (h) *Security.* The Bank has a valid pledge on the Available Transportation System Revenues, and all action necessary to create a lien on such funds and accounts and on moneys on deposit therein have been duly and validly taken. The Agency's obligation to pay the Obligations is *pari passu* with its obligation to pay all other Parity Notes.
- (i) *Business Days.* **Exhibit C** hereto contains a complete list of the days that are legal holidays of the City for 2013 as well as any other day the City is authorized by law to be closed for official business during 2013.
- (j) *Disclosure.* No written information furnished by the Agency to the Bank in connection with this Agreement (except information which has been superseded by subsequent information provided by the Agency and except for the Offering Memorandum) is incorrect or incomplete in any material respect. Except for information contained in the Offering Memorandum under the headings "SECURITY FOR THE PAYMENT OF THE



COMMERCIAL PAPER NOTES—The Letter of Credit and Reimbursement Agreement” and “THE BANK”, as to which no representation is made, the Offering Memorandum is accurate in all materials respects.

- (k) *Compliance with Laws.* The Agency is and has been in full compliance with all laws, rules, regulations, governmental orders, judgments and decrees to which it is subject the failure to comply with which would not have a Material Adverse Effect.
- (l) *Retirement Plan.* The Agency, as an enterprise fund department of the City, participates in the San Francisco City and County Employees’ Retirement System (the “City Plan”). All required contributions to the City Plan have been made. The City Plan is a “governmental plan” that is not subject to the Employee Retirement Income Security Act of 1974, as amended or recodified from time to time.
- (m) *Environmental Matters.* The Agency has not received notice to the effect that its Transportation System operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, in each case which non-compliance or remedial action would result in a Material Adverse Effect.
- (n) *Tax-Exempt Status.* The Agency has not taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by the City or any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Commercial Paper Notes from gross income for Federal income tax purposes or the exemption of such interest from State of California personal income taxes.

Section 4.02      Representations and Warranties of the Bank. The Bank represents and warrants to the Agency as follows:

- (a) *Organization; Power.* The Bank is duly organized and existing under the laws of the United States of America and has all requisite power and authority (i) to conduct its business and to carry on its activities and (ii) to execute, deliver and perform its obligations under this Agreement and the Letter of Credit.
- (b) *Valid and Binding Obligations.* This Agreement has been duly executed by an authorized representative of the Bank, the Letter of Credit has been duly issued by the Bank and this Agreement and the Letter of Credit constitute the legal, valid and binding obligations of the Bank enforceable against the Bank in accordance with their terms, except as enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors’ rights generally and subject to general equitable principles.
- (c) *Due Authorization; No Violation; No Conflicts.* The execution, delivery and performance by the Bank of this Agreement and the Letter of Credit has been duly authorized by the Bank and will not (i) conflict with or violate any material law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Bank or (ii) result in a material breach of or constitute a material

default under any material indenture, mortgage, deed of trust or loan or credit agreement or any other material agreement or instrument to which the Bank is a party or by which it or its properties may be bound or affected.

- (d) *Litigation.* There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board, body or official pending or, to the knowledge of the Bank, threatened against or affecting (i) the transactions contemplated by or the validity of this Agreement or the Letter of Credit, (ii) the Bank's ability to perform its obligations under this Agreement or the Letter of Credit or (iii) which in any material way contests the existence, organization or powers of the Bank or the titles of the officers of the Bank to their respective offices, or which in any manner questions the validity or enforceability of this Agreement or the Letter of Credit.
- (e) *Offering Memorandum.* The information contained in the Offering Memorandum under the caption "THE BANK," as of the Closing Date is accurate in all material respects.

## ARTICLE V

### AFFIRMATIVE COVENANTS

Section 5.01 Payment of Principal and Interest. The Agency will punctually pay or cause to be paid the principal and interest (and premium, if any) to become due in respect of every Commercial Paper Note issued pursuant to the Issuing and Paying Agent Agreement at the times and places and in the manner provided therein and in the Commercial Paper Notes, in strict conformity with the terms of the Issuing and Paying Agent Agreement and of the Commercial Paper Notes, but solely from the Available Transportation System Revenues as provided in the Issuing and Paying Agent Agreement.

Section 5.02 Financial Statements.

- (a) The Agency will keep proper books of record and accounts of the Transportation System, 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 Transportation System. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Bank or their representatives authorized in writing, at reasonable hours and under reasonable conditions.
- (b) The Agency covenants that it will deliver to the Bank: (i) as soon as practicable and in any event within 270 days after the end of each fiscal year of the Agency, a copy of the comprehensive annual financial report for the Transportation System for such year ("CAFR") including an audited balance sheet, an audited statement of net assets as of the end of such fiscal year, an audited statement of revenues, expenses and changes in net assets and an audited statement of cash flows for such fiscal year (or, in each case, the equivalent thereof), setting forth in comparative form the corresponding figures for the preceding fiscal year, all in reasonable detail and accompanied in each case by an audit report of independent certified public accountants of recognized standing which are a member of the American Institute of Certified Public Accountants stating that such

financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and that such financial statements included in the CAFR present fairly the financial position of the Transportation System for such fiscal year, and (ii) as soon as practicable and in any event within 45 days after the final adoption thereof the annual budget of the Transportation System.

Section 5.03 Operation and Maintenance of Transportation System. The Agency covenants that it will operate and maintain its operations and the Transportation System as a revenue producing enterprise in accordance with law, including but not limited to the Charter and the Act. The Agency will make such repairs to its facilities and equipment as shall be required to enable it to perform its covenants contained herein.

Section 5.04 Inspection and Information. The Agency covenants that upon reasonable notice and at reasonable times it will permit any Person designated by the Bank in writing, at the Bank's expense, to visit any of the properties of the Transportation System, to examine the municipal books and financial records of the Agency and make copies thereof or extracts therefrom to the extent legally permissible and at the Bank's expense, and to discuss the affairs, finances and accounts of the Transportation System with the principal officers of the Agency all at such reasonable times. The Agency also covenants to provide the Bank with any information reasonably requested by the Bank from time to time, including but not limited to management letters and information regarding the financial position, results of operations, business or prospects of the Agency.

Section 5.05 Compliance with Agreements. The Agency will observe and perform all of its material covenants, agreements and obligations under the Commercial Paper Notes and the Related Documents to which it is a party.

Section 5.06 Preservation of Existence. The Agency will not take any action to accomplish a merger or consolidation of the Transportation System with any other entity or enterprise, unless and until the Agency shall have provided a method for segregating the Available Transportation System Revenues from the revenues of said other entity or enterprise in a manner that shall preserve the lien described in Section 5.12 hereof upon the Available Transportation System Revenues for the payment of the Commercial Paper Notes, the Bank Note and all obligations of the Agency relating to such Notes, and shall have obtained an opinion of counsel from a firm nationally recognized in the practice of tax-exempt financing that such merger or consolidation will not, in and of itself, (i) adversely affect the exclusion from gross income of the interest on the Commercial Paper Notes and (ii) cause the security interest created by this Agreement to be no longer valid. In the event the Agency does effect such a merger or consolidation, the Agency shall provide written notice thereof to the Bank and shall deliver a copy of the aforementioned opinion to the Bank.

Section 5.07 Use of Proceeds. The Agency shall use the proceeds of the Commercial Paper Notes solely in accordance with the purposes set forth in the Issuing and Paying Agent Agreement and shall cause the Drawings to be used solely to pay principal of and interest with respect to Commercial Paper Notes.

Section 5.08 Offering and Disclosure Documents. As soon as practicable the Agency shall deliver to the Bank, (a) after the issuance of any Senior Lien Revenue Bonds or any other bonds payable from Available Transportation System Revenues, a copy of the offering document relating thereto and (b) following the public distribution thereof, any disclosure documents distributed in connection with the Commercial Paper Notes pursuant to the Issuing and Paying Agent Agreement.

Section 5.09 Pledge of Available Transportation System Revenues. The Commercial Paper Notes and the Bank Note are revenue obligations, are not secured by the taxing power of the Agency and shall be payable as to both principal and interest from, and shall be secured by a pledge (which pledge shall be effected in the manner and to the extent hereinafter provided) of, the Available Transportation System Revenues. The Available Transportation System Revenues constitute a trust fund for the security and payment of the interest on and principal of the Commercial Paper Notes and the Bank Note and all obligations of the Agency relating to such Notes hereunder and under this Agreement and all Parity Notes secured by Available Transportation System Revenues. The Available Transportation System Revenues are hereby pledged to the payment of the Commercial Paper Notes and the Bank Note and all obligations of the Agency relating to such Notes hereunder and under this Agreement without priority or distinction of one over the other. The pledge of Available Transportation System Revenues herein made shall be irrevocable until all of the Commercial Paper Notes and the Bank Note and any Parity Notes secured by Available Transportation System Revenues have been paid and retired and any related obligations of the Agency under this Agreement have been satisfied.

Section 5.10 Payment of Taxes, Etc. The Agency will pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Agency on account of the Transportation System or any portion thereof and which, if unpaid, might impair the security of the Commercial Paper Notes, when the same shall become due, but nothing herein contained shall require the Agency to pay any such tax, assessment or charge so long as it shall in good faith contest the validity thereof. The Agency will duly observe and conform with all valid material requirements of any governmental authority relative to the Transportation System or any part thereof.

Section 5.11 Compliance with Laws, Regulations and Investment Policies. The Agency shall comply with (a) any statute, law, ordinance, order, rule or regulation, judgment, decree or requirement now in force or hereafter enacted by any competent governmental authority or agency, including but not limited to environmental, health and safety statutes and regulations, applicable or with respect to or affecting the acquisition, construction or reconstruction of the Transportation System or with respect to the operation, manner, use or condition of the Transportation System; provided that the Agency need not comply with any such statute, law, ordinance, order, rule, regulation, judgment, decree, or requirement if failure to comply is not expected to result in a Material Adverse Effect.

Section 5.12      Ratings. The Agency shall maintain at least two long-term unenhanced ratings assigned to the Senior Lien Bonds and may substitute any existing rating from a rating agency with the rating from another rating agency; provided that the Agency may not at any time withdraw any rating if the effect of such withdrawal would be to cure a Default or an Event of Default under this Agreement or to reduce amount payable to the Bank under the Agreement. The Agency shall notify the Bank as soon as practicable of any suspension, reduction or withdrawal in any such rating of which the Agency has actual knowledge.

Section 5.13      Maintenance of Insurance. The Agency maintains self-insurance for general liabilities, property damage and workers' compensation claims. The Agency shall, at all times, continue to maintain such self-insurance or shall use commercially reasonable efforts to maintain or cause to be maintained insurance or self-insurance against loss from such hazards and risks to the person or property of others as are usually insured or reserved against by those with rights and interests in property similar to the Transportation System. The insurance described above may be provided as a part of any other self-insurance or insurance maintained by the City and not separately for the Transportation System.

Section 5.14      Further Assurances. The Agency agrees to do such further acts and things and to execute and deliver to the Bank such additional assignments, agreements, powers and instruments as the Bank may reasonably require or reasonably deem advisable to carry into effect the purposes of this Agreement or to better assure and confirm to the Bank its rights, powers and remedies hereunder and under the Related Documents.

Section 5.15 Future Credit Facilities. In the event that the Agency shall, directly or indirectly, enter into or otherwise consent to any Bank Agreement with respect to any bonded indebtedness or notes secured by or payable from Available Transportation Revenues on a basis senior to or on a parity with the Reimbursement Obligations (other than Senior Parity Obligations as provided under the Senior Lien Revenue Bond Documents), which such Bank Agreement provides such Person with additional or more restrictive covenants, additional or more restrictive events of default, shorter amortization periods with respect to term outs and/or rights or remedies than are provided to the Bank in this Agreement or a maximum rate with respect to the obligations under the related Bank Agreement in excess of 12% per annum (collectively, the “Additional Rights”), such Additional Rights shall automatically be deemed to be incorporated into this Agreement and the Bank shall have the benefits of such Additional Rights. Upon the request of the Bank, the Agency shall promptly, enter into an amendment to this Agreement to include such Additional Rights, provided that the Bank shall maintain the benefit of such Additional Rights even if the Agency fails to provide such amendment. Notwithstanding the foregoing, no Additional Rights (except for those relating to shorter amortization periods with respect to term outs or a maximum rate as described further below) shall be incorporated by reference into this Agreement, and the Agency shall have no obligation to enter into an amendment to include any such Additional Rights, if the related Bank Agreement is entered into by the Agency after the four (4) month anniversary of the Closing Date; except that any Additional Rights relating to shorter amortization periods with respect to term outs or a maximum rate with respect to the obligations under the related Bank Agreement in excess of 12% per annum shall be incorporated herein by reference pursuant to this Section 5.15, and the Agency shall enter into an amendment hereto to include such Additional Rights, no matter when such Bank Agreement is entered into. If the Agency shall amend the related Bank Agreement such that it no longer provides for such Additional Rights, then, without the consent of the Bank this Agreement shall be deemed to automatically no longer contain the related Additional Rights and the Bank shall no longer have the benefits of any such Additional Rights.

“Bank Agreement” means any credit agreement, bond purchase agreement, liquidity agreement, direct purchase agreement or other agreement or instrument (or any amendment, supplement or modification thereto) entered into by the Agency with any Person, directly or indirectly, or otherwise consented to by the Agency, under which any Person or Persons undertakes to purchase debt, make loans, extend credit or liquidity to the Agency in connection with any Parity Notes.

## ARTICLE VI

### NEGATIVE COVENANTS

Section 6.01 Compliance with Laws. The Agency covenants that it will not violate any laws, rules, regulations or governmental orders to which it is subject, which violation would materially and adversely affect its financial condition, business or results of operations or would materially and adversely affect the Agency's ability to perform its obligations under this Agreement, the other Related Documents to which the Agency is a party.

Section 6.02 Sale or Other Disposition of Property. The Agency covenants that it will not dispose of or lease assets necessary to operate the Transportation System in the manner and at the levels of activity required to enable it to perform its covenants contained herein; provided that sales or leases of assets in the ordinary course of business, disposition of obsolete or worn out property and sales of assets for value shall be permitted.

Section 6.03 Amendments. The Agency covenants that it will not, directly or indirectly, amend or modify, or consent to the amendment or modification of the Related Documents to which the Agency is a party, or of any of the Senior Lien Revenue Bond Documents, in any way that would adversely affect (i) the rights, remedies or security of the Bank thereunder or hereunder or (ii) the obligations of the Agency under this Agreement, without the prior written consent of the Bank, which consent shall not be unreasonably withheld; provided that supplements or amendments to the Senior Lien Revenue Bond Documents entered into for the purpose of issuing additional Senior Lien Bonds or to provide for the details of other actions permitted under such Documents shall be permitted without consent from the Bank.

Section 6.04 Tax Covenant. The Agency will not take any action or omit to take any action that, if taken or omitted, would adversely affect the exclusion of interest on the Commercial Paper Notes from the gross income of such owners for Federal income tax purposes pursuant to Section 103 of the Code.

Section 6.05 Liens. Except as permitted by the Senior Lien Revenue Bonds Documents or the Issuing and Paying Agent Agreement, or as otherwise acceptable to the Bank, the Agency will not create or cause to be created any material Lien on the Available Transportation System Revenues of the Transportation System.

Section 6.06 Dealers. In the event a Dealer resigns or the Agency removes a Dealer, the Agency shall appoint a successor thereto that shall be reasonably acceptable to the Bank. In the event a Dealer fails to perform its duties under its Dealer Agreement, the Agency shall, at the written direction of the Bank, remove such Dealer as soon as practicable.

## ARTICLE VII

### EVENTS OF DEFAULT; REMEDIES

Section 7.01 Events of Default. If one or more of the following events (each an "*Event of Default*") shall have occurred and be continuing:

- (a) The Agency shall fail to pay when due to the Bank (i) the principal of or interest on the

Bank Note; *provided, however*, that no failure to pay interest when due to the Bank shall constitute an Event of Default if (1) such failure to pay interest when due to the Bank was caused solely by an error or omission of an administrative or operational nature (which shall be demonstrated in writing by the Agency to the Bank), (2) the Agency had sufficient funds available on such day to make payment when due, and (3) the payment is made within one (1) Business Day after such amount was due; or (ii) any other Obligation when due and such failure continues for a period of three (3) Business Days; or

- (b) Any representation made by the Agency in this Agreement have been incorrect in any materially adverse respect when made; or
- (c) The Agency shall default in the due performances on observance of any term, covenant or agreement contained in Sections 5.01, 5.06, 5.07, 5.09 and \_\_\_\_\_; or
- (d) The Agency shall default in the due performance or observance of any term, covenant or agreement contained in this Agreement (other than those covered by clause (a), (b) or (c) of this Section 7.01), and such failure shall remain unremedied for a period of 60 days after the Bank shall have given the Agency and the City written notice of such default; provided, that so long as the Agency shall be proceeding with due diligence to remedy any default then such 60 day period shall be extended to the extent as shall be necessary to enable the Agency to begin and complete the remedying of such default through the exercise of due diligence; or
- (e) The Agency or the City shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall declare or be subject to a moratorium, or shall take any action to authorize any of the foregoing; or a case or other proceeding shall be commenced against the Agency or the City seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case shall remain undismissed and unstayed for a period of 90 consecutive days; or an order for relief shall be entered against the Agency or the City under the federal bankruptcy laws as now or hereafter in effect, or any writ, judgment, warrant of attachment, execution or similar process shall be issued or levied against a substantial part of the property, assets or business of the Agency or the City, and such proceedings or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be stayed, released, appealed, vacated or fully bonded, within the time permitted by law after commencement, filing or levy, as the case may be; or



- (f) This Agreement or any material provision hereof, at any time after the execution and delivery thereof, shall, cease to be valid and binding on the Agency or any material provision thereof is contested or repudiated by the Agency, the City or any other governmental authority of competent jurisdiction; or
- (g) The Agency shall fail to pay any Senior Lien Revenue Bonds (i) Parity Notes or other subordinate indebtedness in excess of \$1,000,000, or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) or any Senior Lien Bonds, Parity Notes or other subordinate indebtedness in excess of \$20,000,000 shall be accelerated after an event of default; or
- (h) Any security interest created by this Agreement shall fail to be valid with the priority required under this Agreement; or
- (i) The Agency shall fail to pay when due an uninsured, final and non-appealable judgment or order against the Agency of \$25,000,000 or more which shall be rendered against the Agency and such judgment has not been vacated, discharged, satisfied or stayed by the Agency within 60 days (provided that judgments payable in installments or which can be financed or paid with the proceeds of insurance in accordance with this Agreement or which can otherwise be legally satisfied shall be deemed satisfied so long as the Agency makes arrangements to satisfy such judgment within a reasonable period of time).
- (j) any of the rating agencies reduces its long-term unenhanced rating assigned to any Senior Lien Revenue Bonds below “Baa1/BBB+/BBB+” or a withdrawal or suspension of such rating.

Section 7.20      Remedies.

- (a) Upon the occurrence of an Event of Default, the Bank may, at the same or different times, so long as such Event of Default shall not have been remedied to the sole satisfaction of the Bank, take one or more of the following actions: (i) declare the principal of and interest on all Outstanding Obligations to be immediately due and payable, (ii) by notice to the Issuing and Paying Agent, permanently reduce the Stated Amount to the principal amount of Commercial Paper Notes Outstanding plus interest thereon, (iii) by notice to the Issuing and Paying Agent, issue a No Issuance Notice or (iv) proceed to enforce all other remedies available under applicable law and in equity. No reduction in the Stated Amount pursuant to clause (ii) above shall be effective until notice thereof is delivered to, and received by, the Issuing and Paying Agent. Notwithstanding anything to the contrary contained in the preceding sentence, upon the occurrence or existence of an Event of Default of the type described in Section 7.01(d), the remedies described in clauses (i) and (ii) above shall occur immediately and automatically without notice or further action on the part of the Bank or any other person and the remedy described on clause (iii) above shall occur by the giving of notice only to the Issuing and Paying Agent. Anything in Article II hereof the contrary notwithstanding, from and after the occurrence an Event of Default, all Reimbursement Obligations shall bear interest at the Default Rate. The Bank shall have a remedy of a Final Drawing Notice (which Notice requires the Issuing and Paying Agent to draw down

under the Letter of Credit in an amount equal to all outstanding Commercial Paper Notes within 15 days of the occurrence of any Event of Default resulting in a termination of the Letter of Credit on the date of such drawing). Upon any action by the Bank as contemplated in the foregoing clauses (ii) and (iii), the Stated Amount shall be permanently reduced upon, and by the amount of, each Drawing under the Letter of Credit following the occurrence of an Event of Default.

- (b) The Bank shall promptly give telephonic notice, followed by written confirmation, of any declaration or reduction pursuant to clause (i) or (ii) above to the Agency, the City, the Dealers and the Issuing and Paying Agent.

Section 7.03 No Issuance Notice. The Bank may, but is not required to, deliver a notice, in accordance with Section 7.02 hereof, to the Issuing and Paying Agent (a “*No Issuance Notice*”) at any time that the Bank shall have determined that an Event of Default shall have occurred and is continuing. Notwithstanding anything in this Section 7.03 which may be to the contrary, a No Issuance Notice shall not affect the obligation of the Bank to honor demands for payment under the Letter of Credit with respect to Commercial Paper Notes authenticated prior to the receipt by the Issuing and Paying Agent of such No Issuance Notice. The Bank shall concurrently furnish a copy of any No Issuance Notice to the Agency, the City and the Dealers, but the failure to so provide such copy shall not render ineffective any such No Issuance Notice.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01 Amendments and Waivers. No amendment or waiver of any provision of this Agreement or any other Related Document nor consent to any departure by the Agency herefrom or therefrom shall in any event be effective unless the same shall be in writing and signed by the Bank and, with respect to any amendment, the Agency and as approved by the City.

Section 8.02 No Personal Liability of Agency Members and Officials. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any present or future member, official, officer, agent or employee of the Agency, in his or her individual capacity, and neither the members, officers, agents and employees of the Agency, nor any person executing this Agreement shall be liable personally hereunder or be subject to any personal liability or accountability by reason hereof.

Section 8.03 Limitation on Liability. Neither the Bank nor any of its officers or directors shall be liable or responsible to any person for: (a) the use that may be made of the proceeds of any Drawing or of any Commercial Paper Note, or for any acts or omissions of the Issuing and Paying Agent or any Dealer in connection with this Agreement, the Issuing and Paying Agent Agreement or any of the Related Documents; (b) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Bank against presentment of documents that do not comply with the terms of this Agreement or the Letter of Credit, including failure of any documents to bear any reference or adequate reference to this Agreement or the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment hereunder, except only that the Agency shall have a claim against the Bank, and the Bank shall be liable to the Agency, to the extent, but only to the extent of (i) the Bank's willful misconduct or gross negligence in determining whether documents presented under this Agreement or the Letter of Credit strictly comply with the terms hereof or thereof; (ii) the Bank's willful misconduct or gross negligence in taking action in reliance on any certificate, statement or other document which is invalid, inaccurate, false or not genuine, whether by forgery, fraud or otherwise; or (iii) the Bank's wrongful failure to honor a Drawing required to be made by the Bank under the Letter of Credit after compliance with all conditions precedent to such Drawing, unless such Drawing was not otherwise permitted by law.

In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, unless the Issuing and Paying Agent has notified the Bank in writing that specifically identified documents to be presented to the Bank do not comply with this Agreement or the Letter of Credit.

Section 8.04 Indemnification. To the extent permitted by law, the Agency agrees to indemnify, save and hold harmless each Bank-Related Person from and against: (i) any and all claims, demands, actions or causes of action that (A) are asserted against any Bank-Related Person by any Person relating directly or indirectly to a claim, demand, action or cause of action that such Person asserts or may assert against the Agency or the City or any of their respective elected officials, officers or employees or any plant, property or equipment of the Agency or the City; and/or (B) may at any time (including at any time following repayment of the Obligations) be asserted or imposed against any Bank-Related Person arising out of or relating to this Agreement or any Related Document, the use or contemplated use of the proceeds of any Drawing, any Advance or any Term Loan, or the relationship of Agency and the Bank under this Agreement or any Related Document; (ii) any investigative, administrative or judicial proceeding by any governmental authority arising out of or related to a claim, demand, action or cause of action described in subsection (i) above; and (iii) any and all liabilities (including liabilities under indemnities), losses, costs or expenses (including attorney costs) that any Bank-Related Person suffers or incurs as a result of the assertion of any foregoing claim, demand, action, cause of action or proceeding, or as a result of the preparation of any defense in connection with any foregoing claim, demand, action, cause of action or proceeding, in all cases, and whether or not a Bank-Related Person is a party to such claim, demand, action, cause of action or proceeding; provided that no Bank-Related Person shall be entitled to indemnification for any claim caused by its default under this Agreement or the Letter of Credit or its own gross negligence or willful misconduct or for any loss asserted against it by another Bank-Related Person. The agreements

in this subsection shall survive the termination of the Letter of Credit and repayment of all of the Obligations.

Section 8.05 Bank Information.

- (a) The Bank agrees to provide to the Agency and the Dealers information concerning the Bank on a quarterly basis and as the Dealers and/or the Agency shall request from the Bank in connection with the preparation by the Agency and/or the Dealers of Offering Materials, provided that such requested information is reasonably available to the Bank. The Bank further agrees to provide to the Dealers and the Agency the certificate of an authorized officer of the Bank regarding the accuracy of the Bank Information.
- (b) The Bank shall notify promptly the Agency, the City, the Dealers and the Issuing and Paying Agent of any suspension, reduction or withdrawal in the ratings of the Bank by any rating agency.

Section 8.06 Cost and Expenses. The Agency agrees to pay, after closing, not more than \$\_\_\_\_ payable to [FIRM NAME], counsel to the Bank, in connection with the negotiation, preparation and execution of this Agreement, the Letter of Credit and the Related Documents. The Agency agrees to pay, on demand after closing, the out-of-pocket expenses of the Bank incurred in connection with the preparation and execution of this Agreement, the Letter of Credit and the Related Documents, which expenses shall not exceed \$\_\_\_\_\_.

Section 8.07 Notices. All notices, requests and other communications to any party hereunder shall be in writing (including bank wire or similar writing) or by telephone or telecopy (promptly confirmed in writing) and shall be given to such party, addressed to it, at its address or telephone number set forth below or such other address or telephone number as such party may hereafter specify for the purpose by notice to each other party. Each such notice, request or communication shall be effective (i) if given by mail, three (3) days after such communication is deposited in the mail with first-class postage prepaid, addressed as aforesaid, (ii) if given by telephone or telecopy, when given by telephone or telecopy to the party at its telephone number (if any) specified below or (iii) if given by any other means, when delivered at the address specified below:

Party	Address
-------	---------

If to the Bank with respect to this Agreement, to:

[BANK NAME/ADDRESS]

Attention:

Telephone:

Facsimile:

Issuing and  
Paying Agent:

[[BANK NAME]  
[ADDRESS TO COME]

Attention:  
Telephone:  
Telecopier:]

Agency:

San Francisco Municipal  
Transportation Agency  
One South Van Ness Avenue  
11th Floor  
San Francisco, California 94103  
Attention: Finance Director  
Telephone:  
Telecopier:

Section 8.08 No Waiver; Remedies. No failure on the part of the Bank or the Agency to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 8.09 Successors and Assigns; Participation of Agreement. Whenever in this Agreement any of the parties hereto is referred to, such reference shall, subject to the last sentence of this Section 8.09, be deemed to include the successors and assignees of such party, and all covenants, promises and agreements by or on behalf of the Agency which are contained in this Agreement shall inure to the benefit of the successors and assigns of the Bank. The Bank may not transfer their rights or obligations under this Agreement, including any substitution and appointment of a successor bank, without the prior written consent of the Agency and the City.

Notwithstanding the foregoing, the Bank shall be permitted to grant to one or more Persons (each a "*Participant*"), a participation or participations in all or any part of the Bank's rights and benefits under this Agreement on a participating basis but not as a party to this Agreement (a "*Participation*"), without the consent of the Agency and the City, provided the Bank agrees to give the Agency and the City notice of the grant of any Participation as soon as practicable following the effectiveness thereof, provided further that the failure of the Bank to give such notice shall not effect the validity of such Participation. In the event of any such grant by the Bank of a Participation to a Participant, whether or not upon notice to the Agency and the City, the Bank shall remain responsible for the performance of its obligations hereunder and under the Letter of Credit, and the Agency and the City shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement.

Section 8.10 City Requirements. The Bank hereby agrees to the City's requirements as provided on Exhibit D, attached hereto and incorporated herein by reference.

Section 8.11 Severability. Any provision of this Agreement that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 8.12 No Third Party Rights. Nothing expressed in or to be implied from this Agreement is intended to give, or shall be construed to give, any Person (including, without limitation, the Issuing and Paying Agent, the Dealers or the holder of any Commercial Paper Note), other than the parties hereto and their permitted successors and assigns, any benefit or legal or equitable right, remedy or claim under or by virtue of this Agreement.

Section 8.13 Governing Law; Waiver of Jury Trial. (i) This Agreement shall be governed by, and construed in accordance with, the laws of the State of California; provided that the Bank's obligations under the Letter of Credit shall be governed by the laws of the State of New York.

- (1) To the extent permitted by law, the Bank and the Agency waive their right to a trial by jury with respect to any suits, claims or actions relating to this Agreement, the Related Documents or the transactions arising thereunder and, to the extent that the waiver of jury trial is not permitted by law, to submit to a judicial referee with respect to such suits, claims or actions.

Section 8.14 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 8.15 Prior Agreements Superseded. This Agreement supersedes all prior undertaking and agreements, both written and oral, between the Agency and the Bank relating to the Letter of Credit, including those contained in any commitment letter or term sheet by or between the Agency and the Bank.

Section 8.16 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 8.17 Patriot Act. The Bank hereby notifies the City that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107 56 (signed into law October 26, 2001)) (the "*Patriot Act*"), the Bank is required to obtain, verify and record information that includes the name and address of the City and other information that will allow the Bank to identify the City in accordance with the Patriot Act.

Section 8.18 [Bank provisions regarding OFAC and ability to pledge the Bank Note to any federal reserve bank to come from Bank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY

By: \_\_\_\_\_  
Name: Edward D. Reiskin  
Title: Director of Transportation

APPROVED AS TO FORM:

DENNIS J. HERRERA, CITY ATTORNEY

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

STATE STREET BANK AND TRUST  
COMPANY

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

## Form of Fee Letter

### FEE AGREEMENT

DATED AS OF \_\_\_\_\_, 2013

Reference is hereby made to that certain Letter of Credit Reimbursement Agreement dated as of \_\_\_\_\_, 2013 (the “*Agreement*”), by and between the San Francisco Municipal Transportation Agency (the “*Agency*”) and State Street Bank and Trust Company (the “*Bank*”), relating to the [San Francisco Municipal Transportation Agency Subordinate Revenue Commercial Paper Notes, Series \_\_\_] (the “*Notes*”) and (ii) the certain Irrevocable Letter of Credit dated \_\_\_\_\_, 2013, issued by the Bank pursuant to the Agreement, supporting the Notes. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

The purpose of this Fee Agreement is to confirm the agreement between the Bank and the Agency with respect to the Letter of Credit Fees (as defined below) and certain other fees payable by the Agency to the Bank. This Fee Agreement is the Fee Agreement referenced in the Agreement and the terms hereof are incorporated by reference into the Agreement.

#### ARTICLE I. FEES.

*Section 1.1. Letter of Credit Fee.* The Agency hereby agrees to pay to the Bank a non-refundable Letter of Credit Fee quarterly in arrears on the first Business Day of each February, May, August and November (each such date referred to herein as a “*Quarterly Payment Date*”) (commencing on August 1, 2013, for the period from and including the Closing Date to and including July 31, 2013) occurring prior to the Termination Date and on the Termination Date in an amount equal to the rate per annum associated with the Rating (as defined below), as specified below (the “*Applicable Letter of Credit Fee Rate*”) on the Stated Amount of the Letter of Credit (without giving effect to any temporary reductions thereto that may be subject to reinstatement) and actual number of days elapsed (the “*Letter of Credit Fee*”) during each related period.

LEVEL	FITCH RATING	S&P RATING	MOODY’S RATING	APPLICABLE LETTER OF CREDIT FEE RATE
Level 1	A or above	A or above	A2 or above	0.535%
Level 2	A-	A-	A3	0.635%
Level 3	BBB+	BBB+	Baa1	0.785%

The term “*Rating*” as used above shall mean the long-term unenhanced debt ratings assigned by each of Fitch, S&P and Moody’s to any Senior Lien Revenue Bonds. In the event of a split Rating (i.e. one of the foregoing Rating Agency’s Rating is at a different level than the Rating of either of the other Rating Agencies), the Letter of Credit Fees shall be based upon the level in which the lowest rating appears. Any change in the Applicable Letter of Credit Fee Rate



resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to Ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, including, without limitation, any recalibration or realignment of the long-term unenhanced debt rating of any unenhanced Senior Lien Revenue Bonds in connection with the adoption of a “global” rating scale, each of the Ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The Agency represents that as of the Closing Date, the Applicable Letter of Credit Fee Rate is that specified above for Level 1. Upon the occurrence and during the continuance of an Event of Default, the Applicable Letter of Credit Fee Rate shall increase by 1.00% per annum over the Applicable Letter of Credit Fee Rate that would otherwise be applicable. The Letter of Credit Fees shall be payable quarterly in arrears, together with interest on the Letter of Credit Fees from the date three (3) business dates after payment is due until payment in full at the Default Rate. Such Letter of Credit Fees shall be payable in immediately available funds and computed on the basis of a 360-day year and the actual number of days elapsed.

*Section 1.2. Drawing Fee.* The Agency agrees to pay to the Bank, on the date of any drawing under the Letter of Credit, a drawing fee (each, a “*Drawing Fee*”) of \$250 for each Drawing under the Letter of Credit; *provided, however*, that in no event shall the aggregate amount of all Drawing Fees to be paid in any one calendar year exceed \$2,000 in such calendar year.

*Section 1.3. Transfer Fee.* Upon each transfer of the Letter of Credit in accordance with its terms, the Agency agrees to pay to the Bank a transfer fee in an amount equal to \$5,000, plus, in each case, the reasonable fees and expenses of counsel to the Bank, payable on the date of such transfer.

*Section 1.4. Amendment Fee.* The Agency shall pay to the Bank an amendment fee in an amount equal to \$5,000 (or such other amount reasonably determined by the Bank and agreed to by the Agency) for any change in the terms of pledged security, collateral, covenants or provisions in the Letter of Credit, the Agreement or the Related Documents requested by the Agency, plus the Bank’s reasonable costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses) which the Bank may incur by reason of or in connection with such change, payable not later than the effective date of each such amendment.

*Section 1.5. Termination Fee.* Notwithstanding anything set forth herein or in the Agreement to the contrary, the Agency agrees not to terminate or replace the Letter of Credit prior to the one (1) year anniversary of the Closing Date, without the payment by the Agency to the Bank of a termination fee in an amount equal to the product of (A) the Applicable Letter of Credit Fee Rate in effect on the date of termination or replacement, (B) the Stated Amount (without giving effect to any temporary reductions thereto that may be subject to reinstatement) as of the date of termination, and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such termination to and including the one (1) year anniversary of the Closing Date, and the denominator of which is 360; *provided further*,

*however*, that no termination fee shall become payable under this Section 1.5 if the Agency terminates or replaces the Letter of Credit pursuant to the terms hereof and of the Agreement as the result of (i) the Bank's senior unsecured short-term ratings having been reduced below "A-1" (or its equivalent) by S&P, "P-1" (or its equivalent) by Moody's, or "F-1" (or its equivalent) by Fitch or (ii) the Bank's imposition of increased costs pursuant to Section 2.04 of the Agreement.

*Section 1.6. Reduction Fees.* Notwithstanding the foregoing and anything set forth herein or in the Agreement to the contrary, the Agency agrees not to permanently reduce the Stated Amount of the Letter of Credit prior to the one (1) year anniversary of the Closing Date, without the payment by the Agency to the Bank of a reduction fee in connection with each and every permanent reduction of the Stated Amount in an amount equal to the product of (A) the Applicable Letter of Credit Fee Rate in effect on the date of such reduction, (B) the difference between the Stated Amount (without giving effect to any temporary reductions thereto that may be subject to reinstatement) prior to such reduction and the Stated Amount after (without giving effect to any temporary reductions thereto that may be subject to reinstatement) such reduction, and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to and including the one (1) year anniversary of the Closing Date, and the denominator of which is 360; *provided, however*, that no reduction fee shall become payable under this Section 1.6 if the Agency reduces the Stated Amount of the Letter of Credit pursuant to the terms hereof and of the Agreement as the result of (i) the Bank's senior unsecured short-term ratings having been reduced by any Rating Agency below "A-1" (or its equivalent) by S&P, "P-1" (or its equivalent) by Moody's, or "F-1" (or its equivalent) by Fitch or (ii) the Bank's imposition of increased costs pursuant to Section 2.04 of the Agreement.

## ARTICLE II. MISCELLANEOUS.

*Section 2.1. Out-of-Pocket Expenses; Administration.* (a) The Agency shall pay to the Bank promptly upon receipt of invoice any and all reasonable fees and expenses of the Bank (including the out-of-pocket expenses of the Bank, and the reasonable fees of domestic and foreign counsel to the Bank, plus disbursements of domestic and foreign counsel to the Bank), all payable in accordance with this Fee Agreement. The reasonable fees of counsel to the Bank shall be paid directly to Chapman and Cutler LLP in accordance with the instructions provided by Chapman and Cutler LLP.

(b) The Agency further agrees to pay all of the Bank's out-of-pocket expenses (including, without limitation, reasonable fees and disbursements of counsel for the Bank) arising in connection with the administration and enforcement of, preservation of rights in connection with a workout, restructuring or default under, or amendment or waiver with respect to the Agreement, the Letter of Credit and the other Related Documents.

*Section 2.2. Amendments.* No amendment to this Fee Agreement shall become effective without the prior written consent of the Agency and the Bank.

*Section 2.3. Governing Law.* THIS FEE AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA.

*Section 2.4. Counterparts.* This Fee Agreement may be executed in two or more counterparts, each of which shall constitute an original but both or all of which, when taken together, shall constitute but one instrument.

*Section 2.5. Severability.* Any provision of this Fee Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers as of date first set forth above.

SAN FRANCISCO MUNICIPAL TRANSPORTATION  
AGENCY

By: \_\_\_\_\_  
Name: Edward D. Reiskin  
Title: Director of Transportation

APPROVED AS TO FORM:

DENNIS J. HERRERA, CITY ATTORNEY

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

STATE STREET BANK AND TRUST COMPANY

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

**Enclosure 3**

**Form of Dealer Agreement**

**DEALER AGREEMENT  
(Dated as of \_\_\_\_\_, 2013)**

THIS DEALER AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2013 by and between the San Francisco Municipal Transportation Agency (the "SFMTA"), an agency of the City and County of San Francisco (the "City") and \_\_\_\_\_. ("\_\_\_\_\_" or the "Dealer").

**RECITALS**

The SFMTA proposes to issue and reissue its Commercial Paper Notes in the maximum amount of \$\_\_\_\_\_ at any time outstanding (the "Notes"). The Notes are authorized in two series, Series A-1 (Tax-Exempt) (the "Series A-1 Notes") and Series A-2 (Tax-Exempt) (the "Series A-2 Notes"), each in the maximum aggregate principal amount of \$\_\_\_\_\_. The Notes are issued pursuant to Resolution No. \_\_\_\_\_, adopted by the Board of Directors of the SFMTA on \_\_\_\_\_, 2013 (the "Note Resolution"), Sections 43.131 through 43.138 of Article XIII of Chapter 43 of the Administrative Code of the City adopted pursuant to Ordinance No. 57-12 on April 17, 2012 by the Board of Supervisors of the City (the "Board") and signed by the Mayor of the City on April 19, 2012 (collectively, the "Act").

Each Series of Notes will be issued in accordance with (i) an Issuing and Paying Agent Agreement dated as of \_\_\_\_\_, 2013 with respect to the Series A-1 Notes and (ii) an Issuing and Paying Agent Agreement dated as of \_\_\_\_\_, 2013 with respect to Series A-2 Notes (collectively, the "Issuing and Paying Agent Agreements"), each between the SFMTA and \_\_\_\_\_ (in this capacity, the "Issuing and Paying Agent").

All Notes are secured by a pledge of Subordinate Pledged Revenues of the SFMTA. The Series A-1 Notes are additionally supported by a dedicated credit and liquidity facility in the maximum aggregate principal amount of \$\_\_\_\_\_ issued by \_\_\_\_\_ and the Series A-2 Notes are additionally supported by a dedicated credit and liquidity facility in the maximum aggregate principal amount of \$\_\_\_\_\_ issued by \_\_\_\_\_. The credit and liquidity facilities are referred to herein individually as a "Facility" and collectively as the "Facilities." The issuing banks are referred to herein individually as a "Bank" and, collectively as the "Banks." Each Facility is in the form of a Irrevocable Letter of Credit, each dated \_\_\_\_\_, 2013, issued pursuant to a Letter of Credit and Reimbursement Agreement between the SFMTA and the respective Bank (collectively, the "Letters of Credit"). The Dealer has agreed to act as a Dealer for the Notes and to perform the duties imposed upon the Dealer by this Agreement.

**AGREEMENTS**

NOW, THEREFORE, for and in consideration of the covenants herein made, and subject to the conditions herein set forth, the parties hereto agree as follows:

Section 1. Definitions. Unless the context clearly indicates a contrary meaning, each capitalized term used in this Agreement shall have the meaning given to that term in the Issuing and Paying Agent Agreements.

Section 2. Appointment of Dealer; Acceptance; Allocations; Evaluations.

- (a) Subject to the terms and conditions set forth in this Agreement, the SFMTA hereby appoints \_\_\_\_\_ as a Dealer for the Notes, and \_\_\_\_\_ hereby accepts such appointment and accepts and agrees to perform the duties and obligations imposed upon it as a Dealer under this Agreement, subject to the terms, conditions and limitations set forth in this Agreement.
- (b) The Dealer shall act as a non-exclusive Dealer with respect to the Notes and shall be responsible to solicit and arrange sales of the Notes allocated to it, including, without limitation, the initial placement of such Notes and subsequent sales, establishing the rates and maturities of such Notes from time to time. Each dealer acknowledges that the SFMTA may enter into agreements with other dealers in connection with the offering and sale of the Notes. The SFMTA reserves the right to allocate and reallocate Notes among the Dealer and the other dealers with respect to the Notes at any time in its sole discretion for any reason.
- (c) The Dealer acknowledges that the SFMTA intends to conduct a regular evaluation of the Dealer. Such evaluation will consider, among other things, an analysis of interest rates on the Notes allocated hereunder and managed by the Dealer in comparison to the interest rates provided by other dealers.
- (d) The Dealer acknowledges that the SFMTA has delivered to it executed copies of the Note Resolution, the Issuing and Paying Agent Agreements, the Letters of Credit and a Certificate of Designated Representatives in accordance with Section 6 hereof.
- (e) The Dealer hereby agrees that it will comply with all statutes and regulations applicable to it, including without limitation, all applicable securities laws and requirements of the Securities Exchange Commission, the Municipal Securities Rulemaking Board or any regulatory body having jurisdiction over the Dealer, non-compliance with which would adversely affect the Notes or the SFMTA's Note program.

Section 3. Sale and Purchase of Notes.

(a) The Dealer acknowledges that the terms and conditions of the Notes are set forth in the Issuing and Paying Agent Agreements and that in particular, the Notes of each Series (i) shall be issued in denominations of \$100,000 and in integral multiples of \$1,000 in excess thereof, (ii) shall bear interest payable at maturity at an annual rate (calculated on the basis of a year consisting of 365 days and the actual number of days elapsed) payable at maturity which shall not in any event exceed the Maximum Interest Rate of 12%, (iii) shall mature on a Business Day not more than 270 days after their respective dates, but in no event later than the Business Day immediately preceding the Termination Date, and (iv) shall be sold at a price equal to 100% of the principal amount thereof.

(b) The Dealer shall use its best efforts, consistent with commercial practice, to solicit and arrange sales of the Notes at such rates and maturities as may prevail from time to time in the market in accordance with Section 4 below, provided such rates shall not exceed the Maximum Interest Rate. The Dealer agrees to notify SFMTA if for any reason it believes that it will not be able to sell the Notes on the date such Notes are to be issued. The Dealer and the SFMTA agree that any Notes which the Dealer may purchase or for which the Dealer may arrange the sale, will be purchased or sold on the terms and conditions and in the manner provided in the Issuing and Paying Agent Agreements and this Agreement. Anything herein to the contrary notwithstanding, to the extent of any conflict between the provisions hereof and the Issuing and Paying Agent Agreements, the provisions of the Issuing and Paying Agent Agreements shall be controlling.

Section 4. Transactions in Notes. All transactions in Notes between the Dealer and the SFMTA shall be in accordance with the Note Resolution, the Act, the Issuing and Paying Agent Agreements, this Agreement, the Letters of Credit and with the customs and practices in the commercial paper market regarding settlement and delivery formally adopted in writing from time to time by the New York Clearinghouse, to the extent not inconsistent with the Issuing and Paying Agent Agreements. As early as possible, but not later than 12:00 p.m. (New York City time) on the date on which any Notes are to be issued, the Dealer shall notify the SFMTA and the Director of the City's Office of Public Finance of the City (which shall be deemed to include his or her designee) of the proposed final maturities, prices and interest rates (which interest rates shall not exceed the Maximum Interest Rate) at which the Dealer will purchase the Notes, and provide the SFMTA and the Director of the City's Office of Public Finance with any other information as required for delivery of such Notes. The Dealer shall not be obligated to purchase any Notes unless and until agreement, as described in the following sentence, has been reached in each case on the proposed final maturities, prices and interest rates. Not later than 12:00 p.m. (New York City time) on the date of issuance of the Notes, the SFMTA and the Director of the City's Office of Public Finance may approve or disapprove of such final maturities, prices and interest rates (provided that if either the SFMTA or the Director of the City's Office of Public Finance does not provide notice to the Dealer of disapproval then the SFMTA or the Director of the City's Office of Public Finance, as applicable, shall be deemed to have approved such terms) and the Dealer shall either (a) confirm each transaction made with or arranged by it or (b) notify the SFMTA and the Issuing and Paying Agent of the difference, if any, between the amount of maturing Notes and the amount of Notes which the Dealer has arranged to sell or has agreed to purchase. Such confirmation or notification shall be given by telephone (or by other telecommunications medium acceptable to the SFMTA) and confirmed in writing to the SFMTA and the Issuing and Paying Agent.

Section 5. Payment for Notes. The Dealer shall pay for the Notes purchased by the Dealer or sold by the Dealer in immediately available funds by 12:15 p.m. (New York City time) on the Business Day such Notes are delivered to the Dealer. All Notes will be sold at par, and will be executed in the manner provided for in the Issuing and Paying Agent Agreements.

Section 6. Designated Representative. Note transactions with the SFMTA, pursuant to Section 4 hereof, shall be with the Director of the City's Office of Public Finance and any one of the officers or employees of the SFMTA or the City who are designated as a Designated Representative by a certificate signed by the General Manager of the SFMTA. The SFMTA will

deliver to the Dealer a Certificate of Designated Representatives in the form appended to the Issuing and Paying Agent Agreements as Exhibit C. The General Manager and the Director of the City's Office of Public Finance agree to provide the Dealer with a revised Certificate of Designated Representatives in substantially said form when and as required by changes in the Designated Representatives. The Dealer may rely upon such Certificate of Designated Representatives unless and until otherwise notified in writing by the General Manager or the Director of the City's Office of Public Finance.

The Controller of the City shall, throughout the term of this agreement, be authorized to initiate Note transactions, notwithstanding any provision hereof or future amendment hereof to the contrary.

Section 7. Certain Representations of the SFMTA. The SFMTA represents to the Dealer as follows:

- (a) As of the date of each issuance of Notes: (i) the SFMTA has full power and authority to issue the Notes, to enter into, perform and observe the covenants and agreements on its part contained in this Agreement, the Issuing and Paying Agent Agreements, the Letters of Credit (collectively, the "Documents"); (ii) such Documents have been duly authorized, executed and delivered by the SFMTA; and such Documents constitute legally valid and binding obligations of the SFMTA, in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject, as to enforceability, to the general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law), to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies agreement public entities in the State of California.
- (b) As of the date of each issuance of Notes, the Note Resolution is in full force and effect and has not been repealed, modified or amended since its adoption.
- (c) As of the date of each issuance of Notes, the Act is in full force and effect and has not been repealed, modified or amended since its adoption.
- (d) As of the date of each issuance of Notes, such Notes have been duly authorized and executed by the SFMTA, and when authenticated and delivered by the Issuing and Paying Agent, will be in conformity with, and entitled to the benefits of the Note Resolution and the Issuing and Paying Agent Agreements.
- (e) The Offering Memorandum related to the Series A-1 Notes and Series A-2 Notes, as supplemented or amended (the "Offering Memorandum") will not as of their respective dates, and as of the date of issuance of one or more Notes pursuant to an Issuance Request, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that the SFMTA makes no representation with respect to information therein regarding the Banks, the Letters of Credit, the Dealer or any other dealers, the Issuing and Paying Agent and DTC and its book-entry only system.)



Section 8. Offering Memorandum and Disclosure.

- (a) The SFMTA shall prepare or cause to be prepared the Offering Memorandum with respect to the Notes.
- (b) The SFMTA shall provide the Dealer with:
  - (1) copies of any notices filed by the SFMTA in accordance with Rule 15c2-12(b)(5)(i)(C) promulgated under the Securities Exchange Act of 1934 with respect to any outstanding revenue bonds, notes or other obligations for borrowed money of the SFMTA (the “SFMTA Bonds”) promptly following the filing thereof;
  - (2) copies of annual reports filed by the SFMTA in accordance with Rule 15c2-12(b)(5)(i)(A) with respect to SFMTA Bonds promptly following the filing thereof;
  - (3) copies of the official statements or other disclosure documents with respect to SFMTA Bonds promptly following the issuance thereof;
  - (4) prompt notice and a copy of any amendment to the Issuing and Paying Agent Agreements, or of the substitution, termination or extension of the Letters of Credit;
  - (5) prompt notice of the occurrence and continuance of an event of default under the Issuing and Paying Agent Agreements, or the Letters of Credit;
  - (6) prompt notice of the suspension, reduction or withdrawal of the rating on any SFMTA Bonds or the public announcement of the possibility thereof by the Rating Agencies then rating the SFMTA Bonds; and
  - (7) prompt notice of the receipt by the SFMTA of notification from Bond Counsel that the SFMTA may not continue to rely on their opinion regarding the validity or tax-exempt status of the Notes.
- (c) The SFMTA will furnish the Dealer such documents and information concerning the business, operations and financial condition of the SFMTA, as the Dealer may from time to time reasonably request.
- (d) The Dealer shall provide a copy of the Offering Memorandum, as supplemented, amended and updated from time to time, to each person to whom it sells Notes prior to or with the delivery of any payment confirmation. The Dealer shall not provide prospective or actual purchasers of the Notes with any written offering materials, disclosure documents or other documents or information in connection with the solicitation of purchases and sales of the Notes other than the Offering Memorandum and any supplements, amendments or updates thereto and the Issuing and Paying Agent Agreements and the Letters of Credit, as the same may be amended, supplemented or replaced from time to time.
- (e) The SFMTA authorizes the use and distribution of copies of the Offering Memorandum by the Dealer in connection with the sale of the Notes.



Fax: (415) 554-7466  
Attention: Benjamin Rosenfield  
Controller

If to Dealer:

Section 14.Assignment. This Agreement shall not be assignable by any party hereto without the prior written consent of the other parties. This Agreement shall inure to the benefit of and shall be binding upon the SFMTA and the Dealer and their respective successor and assigns. This Agreement shall not be deemed to give any legal or equitable right, remedy or claim to any other person or entity other than the parties hereto.

Section 15.Headings. The section headings hereof have been inserted for convenience of reference only, shall not be part of this Agreement, and shall not be used to construe, define, limit or interpret the meaning of any provision hereof.

Section 16.Severability. If any provision of this Agreement shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable for any reason, such determination shall not affect the validity or enforceability of the remaining provisions hereof.

Section 17.Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby, and supersedes all prior agreements and understandings between the parties. This Agreement shall only be amended, supplemented or modified in a writing signed by all of the parties hereto.

Section 18.No Personal Liability. The SFMTA, the City and their respective supervisors, members, officers, employees, representatives, agents and attorneys shall not be held personally liable for the execution or performance of this Agreement, or any breach or default of the provisions hereof.

Section 19.City Requirements. The Dealer hereby agrees to the City's requirements, as provided in Exhibit A attached hereto and incorporated hereby by this reference.

Section 20.Term. The initial term of this Agreement shall be from the date first written above through \_\_\_\_\_, 20\_\_\_. The initial term of this Agreement may be extended by written instrument signed by the parties hereto, provided that such extension is authorized under the Note Resolution and Act.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY

By: \_\_\_\_\_  
General Manager

APPROVED AS TO FORM:

DENNIS HERRERA  
City Attorney

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

\_\_\_\_\_

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

## EXHIBIT A

### City Requirements

For purposes of this Exhibit A the term Dealer shall mean \_\_\_\_\_.

(a) *Tropical Hardwood and Virgin Redwood Ban.* The City urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

(b) *Nondiscrimination: Penalties.*

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

(ii) *Subcontracts.* The Dealer shall incorporate by reference in all subcontracts made in fulfillment of its obligations hereunder the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. The Dealer's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

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

(iv) *HRC Form.* The Dealer shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(v) *Incorporation of Administrative Code Provisions by Reference.* The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Dealer shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the San Francisco Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Dealer understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Dealer and/or deducted from any payments due the Dealer; *provided, however*, that such damages shall not be set off against the payment of rental or other contract related to Commercial Paper Notes or other debt obligations of the City.

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

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

(e) *Conflict of Interest.* Through its execution of this Agreement, the Dealer hereby acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter,

Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

(f) *Earned Income Credit ("EIC") Forms.* San Francisco Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(i) The Dealer shall provide EIC Forms to each Eligible Employee at each of the following times: (A) within thirty days following the date on which this Agreement becomes effective (unless the Dealer has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (B) promptly after any Eligible Employee is hired by the Dealer; and (C) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

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

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

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

(g) *Local Business Enterprise Utilization; Liquidated Damages.*

(i) *The LBE Ordinance.* The Dealer shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase the Dealer's obligations or liabilities, or materially diminish the Dealer's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. The Dealer's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of the Dealer's obligations under this Agreement and shall entitle City,

subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, the Dealer shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(ii) *Compliance and Enforcement.* If the Dealer willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, the Dealer shall be liable for liquidated damages in an amount equal to the Dealer's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against the Dealer authorized in the LBE Ordinance, including declaring the Dealer to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Dealer's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to the San Francisco Administrative Code Section 14B.17.

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

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

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

(i) *Compliance with Americans with Disabilities Act.* The Dealer acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Dealer shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Dealer agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and



further agrees that any violation of this prohibition on the part of the Dealer, its employees, agents or assigns will constitute a material breach of this Agreement.

(j) *Sunshine Ordinance.* In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between the SFMTA or the City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

(k) *Requiring Minimum Compensation for Covered Employees.*

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

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

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

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

(v) The City is authorized to inspect the Dealer's job sites and conduct interviews with employees and conduct audits of the Dealer.

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

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

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

(ix) The City may conduct random audits of the Dealer. Random audits shall be (A) noticed in advance in writing; (B) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (C) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (D) limited to one audit of the Dealer every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

(l) *Requiring Health Benefits for Covered Employees.* Unless exempt, the Dealer agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at <http://www.sfgov.org/lwlh.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(i) For each Covered Employee, the Dealer shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Dealer chooses to offer the

health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(ii) Notwithstanding the above, if the Dealer is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (i) above.

(iii) The Dealer's failure to comply with the HCAO shall constitute a material breach of this Agreement. The City shall notify the Dealer if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, the Dealer fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Dealer fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

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

(v) The Dealer shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to the Dealer's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

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

(viii) The Dealer shall keep itself informed of the current requirements of the HCAO.

(ix) The Dealer shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on subcontractors and subtenants, as applicable.

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

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

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

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

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

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

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

Any failure of the Dealer to comply with this Section of this Agreement shall constitute a material breach of this Agreement.

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

(p) *Preservative-treated Wood Containing Arsenic.* The Dealer may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. The Dealer may purchase preservative-treated wood products on the list of environmentally preferable alternatives

prepared and adopted by the Department of the Environment. This provision does not preclude the Dealer from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

(q) *Nondisclosure of Private Information.* The Dealer agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the “*Nondisclosure of Private information Ordinance*”), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, the Dealer agrees to all of the following:

(i) Neither the Dealer nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

- (1) the disclosure is authorized by this Agreement;
- (2) the Dealer received advance written approval from the Contracting Department to disclose the information; or
- (3) the disclosure is required by law or judicial order.

(ii) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(iii) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(iv) Any failure of the Dealer to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar the Dealer, or bring a false claim action against the Dealer.

(r) *Proprietary or Confidential Information of City.* The Dealer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates’ directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the

extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the City and its obligations, (g) with the consent of the City or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Dealer on a nonconfidential basis from a source other than the City. For the purposes of this Section, “Information” means all information received from the City relating to the City or its business, other than any such information that is available to the Dealer on a nonconfidential basis prior to disclosure by the City; *provided* that, in the case of information received from the City after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(s) *Submitting False Claims; Monetary Penalties.* Pursuant to San Francisco Administrative Code Section 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys’ fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (i) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (ii) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (iii) conspires to defraud the City by getting a false claim allowed or paid by the City; (iv) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (v) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

(t) *Subcontracting.* Except as otherwise provided in this Agreement, the Dealer is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

(u) *Non-Waiver of Rights.* The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such

default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

(v) *City a Third Party Beneficiary.* The City is hereby designated as a third party beneficiary for the purpose of enforcing all of the obligations of the Dealer contained in this Exhibit A to this Agreement.



**Enclosure 4**

**Form of Issuing and Paying Agent Agreement**

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ISSUING AND PAYING AGENT AGREEMENT

Dated as of [\_\_\_\_\_], 2013

by and between

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

and

U.S. Bank National Association,  
as Issuing and Paying Agent

Relating to

UP TO \$100,000,000  
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY  
COMMERCIAL PAPER NOTES

SERIES A-1 (TAX-EXEMPT)  
AND  
SERIES A-2 (TAXABLE)

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## **ISSUING AND PAYING AGENT AGREEMENT**

### **W I T N E S S E T H**

This Issuing and Paying Agent Agreement (the “Agreement”) is dated as of [\_\_\_\_\_], 2013, by and between the San Francisco Municipal Transportation Agency (the “Agency”), and U.S. Bank National Association, as Issuing and Paying Agent (the “Issuing and Paying Agent”);

WHEREAS, the Agency is an agency of the City and County of San Francisco (the “City”) and is governed by its Board of Directors (the “SFMTA Board”); and

WHEREAS, under Sections 8A.100, 8A.101 and 8A.102 of the Charter of the City and County of San Francisco (the “Charter”), the Agency is charged with managing the City’s transportation system (the “Transportation System”), which includes the Municipal Railway, the former Department of Parking and Traffic and other transportation functions;

WHEREAS, under Section 8A.102 of the Charter and Ordinance No. 57-12 adopted by the Board of Supervisors of the City (the “Board”) on April 17, 2012 and signed by Mayor Edwin M. Lee on April 19, 2012, and codified as Chapter 43, Article XIII, Sections 43.13.1 through 43.13.8 of the San Francisco Administrative Code (the “Act”), the Agency has the authority to issue transportation revenue bonds and commercial paper and to enter into related credit enhancement facilities under such terms and conditions as the Agency may authorize by resolution, with the concurrence of the Board of Supervisors of the City;

WHEREAS, the SFMTA Board authorized, pursuant to Resolution No. 11-150 of the Agency, adopted on December 6, 2011, the issuance, its Revenue Bonds, Series 2012A and Series 2012B (collectively, the “Series 2012 Bonds”) and the Board of the City previously approved, pursuant to Resolution No 120-12, adopted on April 10, 2012 and signed by Mayor Edwin M. Lee on April 19, 2012, the issuance of such Series 2012 Bonds;

WHEREAS, pursuant to an Indenture of Trust, dated as of July 1, 2012, as supplemented by the First Supplemental Indenture of Trust, dated as of July 1, 2012 (as so supplemented, and as may be further supplemented and amended from time to time, the “Senior Lien Revenue Bonds Indenture”), by and between the Agency and The Bank of New York Mellon Trust Company, N.A. (the “Trustee”), the Agency issued the Series 2012 Bonds payable solely from Pledged Revenues, as defined in the Senior Lien Revenue Bonds Indenture, and from amounts on deposit in certain funds and accounts held under the Senior Lien Revenue Bonds Indenture;

WHEREAS, the SFMTA Board has authorized, pursuant to the Act and Resolution No. \_\_\_\_\_, adopted by the Board of Directors of the Agency on \_\_\_\_\_, 2013 (the “Note Resolution”), the issuance and reissuance on a revolving basis of its Commercial Paper Notes, Series A-1 (Tax-Exempt) (the “Tax-Exempt Notes”) and its Commercial Paper Notes, Series A-2 (Taxable) (the “Taxable Notes” and, together with the Tax-Exempt Notes, the “Commercial Paper Notes”) in the aggregate principal amount not to exceed \$100,000,000, pursuant to this Agreement;

WHEREAS, the SFMTA Board has further authorized, pursuant to the Note Resolution, the Agency to obtain from State Street Bank and Trust Company (the “Bank”) its Irrevocable

Letter of Credit, dated [\_\_\_\_], 2013 (the “Letter of Credit”), pursuant to a Letter of Credit and Reimbursement Agreement, dated as of [\_\_\_\_], 2013 (the “Reimbursement Agreement”), by and between the Agency and Bank, in the Stated Amount set forth therein, to support the Commercial Paper Notes;

WHEREAS, the Commercial Paper Notes will be special, limited obligations of the Agency payable solely from Available Transportation System Revenues on a subordinate basis to the Senior Lien Revenue Bonds and from amounts on deposit in certain funds and accounts held under this Agreement. No funds of the Agency other than the Available Transportation System Revenues are pledged to or available for payment of the principal of or interest on the Commercial Paper Notes, and such pledge or lien shall at all times be subordinate to the pledge or lien to the Senior Lien Revenue Bonds; and

WHEREAS, Section 8A.105 of the Charter requires the City to transfer certain monies to the Agency to support the Agency’s activities. The proceeds of transfers from the City’s General Fund to support such activities do not constitute any portion of Available Transportation System Revenues, and the principal of and interest on the Commercial Paper Notes are not payable from the proceeds of such transfers or from the City’s General Fund. The Agency has covenanted to hold the proceeds of such transfers separate and apart from the Enterprise Account and to deposit the proceeds of such transfers into the SFMTA General Fund Transfer Account. Amounts in the SFMTA General Fund Transfer Account will not be used to pay debt service on the Commercial Paper Notes, and the City has no obligation to transfer any amounts from the City’s General Fund to the Agency for the purpose of paying the principal of and interest on the Commercial Paper Notes.

NOW, THEREFORE, in consideration of the premises and in order to induce the Issuing and Paying Agent to enter into this Agreement the Issuing and Paying Agent and the Agency agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1. Definitions. Except as otherwise defined in this Agreement (including the preambles), capitalized terms herein shall have the meanings assigned thereto in this Section 1.01. The following definitions shall apply to terms used in this Agreement, unless the context clearly requires otherwise:

“Advance” means an Advance or a Term Loan, as such terms are defined in the Reimbursement Agreement.

“Agency” means the San Francisco Municipal Transportation Agency as duly constituted from time to time under the Charter, and all commissions, agencies or public bodies which shall succeed to the powers, duties and obligations of the Agency.

“Agreement” means this Issuing and Paying Agent Agreement, as it may from time to time be supplemented, modified or amended in accordance with the provisions hereof.

“Alternate Facility” means a letter of credit or another type of credit or liquidity facility enabling the Agency to borrow an amount equal to the principal amount of the Commercial Paper Notes which may be outstanding under this Agreement.

“Authenticating Agent” means, with respect to the Commercial Paper Notes, the Issuing and Paying Agent or each person or entity, if any, designated as such by the Agency, and its successors and assigns and any other person or entity which may at any time be substituted for it pursuant thereto.

“Authorized Agency Representatives” means the Director of Transportation or the Chief Financial Officer of the Agency, or the respective successors to the powers and duties thereof, or such other person as may be designated to act on behalf of the Agency by written certificate furnished to the Trustee containing the specimen signature of such person and signed on behalf of the Agency by the Director of Transportation or Chief Financial Officer and of the Agency, or their respective successors.

“Available Transportation System Revenues” means the portion of the Transportation System Revenues remaining after (a) the payments relating to the Senior Lien Revenue Bonds required by Sections 5.05 and 5.09 of the Senior Lien Revenue Bonds Indenture, and (b) all amounts required to be paid under any other indenture or resolution of the Agency for principal, interest, reserve fund and any other debt service requirements on Senior Lien Parity Obligations, as the same become due and payable.

“Bank” means State Street Bank and Trust Company, or any other entity that provides an Alternate Facility then outstanding and effective hereunder.

“Bank Payment Account” means the Bank Payment Account established within the Debt Service Fund pursuant to Section 3.01(b) hereof.

“Bank Note” means the promissory note issued by the Agency to the Bank to evidence the Agency’s obligations under the Reimbursement Agreement.

“Beneficial Owner” means a person who has a beneficial ownership interest in the Commercial Paper Notes purchased through a participant in the book-entry system of Cede & Co., as nominee of The Depository Trust Company, or its registered assigns.

“Bond Counsel” means Hawkins Delafield & Wood LLP or such other counsel selected by the City with nationally recognized expertise in municipal finance law, including matters related to the validity and tax-exempt status of interest on obligations of states and their political subdivisions.

“Business Day” means any day other than (i) a Saturday, Sunday or other day on which commercial banks located in New York, New York and San Francisco, California or the city in which is located the office of the Bank at which demands for a draw on the Letter of Credit will be made, are required or authorized by law to close for business, (ii) the New York Stock Exchange is closed (iii) a legal holiday of the City or any other day the City is authorized by law to be closed for official business or (iv) a day on which banking institutions are authorized or

required by law or executive order to be closed in the Commonwealth of Massachusetts for commercial banking purposes.

“Charter” means the Charter of the City and County of San Francisco, as amended and supplemented from time to time, and any new or successor Charter.

“City” means the City and County of San Francisco, a charter city and municipal corporation organized and existing under and by virtue of the Constitution and laws of the State of California and the Charter and any public body hereafter created which shall be a successor thereto.

“City Treasurer” means the duly elected and acting City Treasurer of the City.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations and procedures promulgated thereunder or under the Internal Revenue Code of 1954, as amended.

“Commitment Effective Date” shall mean [\_\_\_\_] [\_\_\_\_], 2013, the date on which the Letter of Credit is delivered to the Issuing and Paying Agent.

“Commitment Expiration Date” shall mean the Scheduled Termination Date, as defined in the Reimbursement Agreement; as such date may be extended from time to time pursuant to the Reimbursement Agreement.

“Commercial Paper Notes” means, collectively, Tax-Exempt Notes and the Taxable Notes.

“Controller” means the duly appointed and acting Controller of the City and includes any deputy acting for the Controller.

“Dealer” means each of [\_\_\_\_\_] and [\_\_\_\_\_] , or any successors or assigns permitted under a Dealer Agreement or any other dealer for the Commercial Paper Notes which is appointed by the Agency and has entered into a Dealer Agreement.

“Dealer Agreement” means the Dealer Agreement, dated as of [\_\_\_\_\_] , by and among the Agency, [\_\_\_\_\_] and [\_\_\_\_\_] , and any and all modifications, alterations, amendments and supplements thereto, or any other dealer agreement entered into by the Agency and a Dealer with respect to the Commercial Paper Notes.

“Debt Service Account” means the Debt Service Account established within the Debt Service Fund pursuant to Section 3.01(b) hereof.

“Debt Service Fund” means the Fund by that name established pursuant to Section 3.01(b) hereof.

“Director of Public Finance” means the Director of Public Finance of the City or such other officer of the City which may assume responsibility for management of the debt or other similar obligations of the City or any duly authorized designee of the Director of Public Finance or such other officer.



“DTC” means The Depository Trust Company, New York, New York.

“Enterprise Account” shall mean the Enterprise Account established under the Senior Lien Revenue Bonds Indenture.

“Event of Default” means an Event of Default described in Section 7.01 hereof.

“Expiration Date” means the date of expiration or termination of the Reimbursement Agreement or any Alternate Facility then in effect.

“Fiscal Year” means the twelve (12) month period commencing on July 1 of each year and ending on the following June 30 or any other period of twelve (12) consecutive months adopted by the Agency as its fiscal year.

“Fund” or “Account” shall mean any fund or account established pursuant to this Issuing and Paying Agent Agreement.

“Government Certificates” means evidences of indebtedness or ownership of proportionate interests in future principal and interest payments of Government Obligations, including depository receipts thereof, wherein (i) a bank or trust company acts as custodian and holds the underlying Government Obligations; (ii) the owner of the Government Certificate is a real party in interest with the right to proceed directly and individually against the obligor of the underlying Government Obligations; and (iii) the underlying Government Obligations are held in trust in a special account, segregated from the custodian’s general assets, and are not available to satisfy any claim of the custodian or any person claiming through the custodian, or any person to whom the custodian may be obligated.

“Government Obligations” mean direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury) or evidence of ownership in a portion thereof (which may consist of specified portions of interest thereon and obligations of the Resolution Funding Corporation which constitute interest strips) if held by a custodian on behalf of the Issuing and Paying Agent, obligations the principal and interest on which are unconditionally guaranteed by the United States of America, and rated in a rating category at least as high as obligations of the United States America.

“Holder” or “Commercial Paper Noteholder” means the registered owner of a Commercial Paper Note.

“Interest Component” shall have the meaning ascribed to such term in the Reimbursement Agreement.

“Issuance Request” means a request made by the Agency, acting through a Authorized Agency Representative, to the Issuing and Paying Agent for the delivery of a Commercial Paper Note or Commercial Paper Notes, the form of which is attached hereto as Exhibit D. The Controller of the City and County of San Francisco shall, throughout the term of this Issuing and Paying Agent Agreement, be authorized to submit Issuance Requests to the Issuing and Paying Agent notwithstanding any provision hereof, or future amendment hereof, to the contrary.

“Issuing and Paying Agent” means U.S. Bank National Association, or any successor or assigns permitted under this Agreement or any other Issuing and Paying Agent which is appointed by the Agency and has entered into an Issuing and Paying Agent Agreement.

“Issuing and Paying Agent Agreement” means this Issuing and Paying Agent Agreement, dated as of [\_\_\_\_\_], between the Agency and the Issuing and Paying Agent, and any and all modifications, alterations, amendments and supplements thereto.

“Letter of Credit” means the Irrevocable Letter of Credit, dated [\_\_\_\_\_], 2013, issued by the Bank under the Reimbursement Agreement to support the Commercial Paper Notes.

“Maximum Interest Rate” means 12% per annum.

“No Issuance Notice” shall have the meaning assigned thereto in the Reimbursement Agreement.

“Nominee” means the nominee of the Note Depository as determined from time to time in accordance with Section 2.05 hereof.

“Note Depository” means the securities depository for the Commercial Paper Notes appointed as such pursuant to Section 2.05 hereof, and its successors and assigns.

“Note Proceeds” means proceeds of the sale of the Commercial Paper Notes or any moneys, securities or other obligations that may be deemed to be proceeds of the Commercial Paper Notes within the meaning of the Code.

“Outstanding” when used as of a particular time with reference to Commercial Paper Notes, means all Commercial Paper Notes delivered hereunder except:

(a) Commercial Paper Notes cancelled by the Issuing and Paying Agent or surrendered to the Issuing and Paying Agent for cancellation;

(b) Commercial Paper Notes that are paid or deemed to be paid within the meaning of Section 8.05 hereof; and

(c) Commercial Paper Notes in lieu of or in substitution for which replacement Commercial Paper Notes shall have been issued by the Agency and delivered by the Issuing and Paying Agent hereunder.

“Parity Obligations” means any evidences of indebtedness for borrowed money issued from time to time by the Agency under any contractual obligation with a lien on Available Transportation System Revenues on a parity with the Commercial Paper Notes, including but not limited to bonds, notes, bond anticipation notes, commercial paper, lease or installment purchase agreements or certificates of participation therein or loans from financial institutions or governmental agencies.

“Participants” means those broker-dealers, banks and other financial institutions from time to time for which the Note Depository holds Commercial Paper Notes as depository.

“Paying Agent” means, with respect to the Commercial Paper Notes, the Issuing and Paying Agent or each person or entity, if any, designated as such by the Agency herein, and its successors and assigns and any other person or entity which may at any time be substituted for it pursuant thereto.

“Permitted Investments” shall mean and include any of the following, if and to the extent the same are at the time legal for the investment of the Agency’s money (*provided* that the Issuing and Paying Agent shall be entitled to rely upon any investment directions from the Agency as conclusive certification to the Issuing and Paying Agent that the investments described therein are so authorized under the laws of the State of California and are Permitted Investments):

- (a) Government Obligations and Government Certificates.
- (b) Obligations issued or guaranteed by any of the following:
  - (1) Export-Import Bank of the United States;
  - (2) Farmers Home Administration;
  - (3) Federal Farm Credit System;
  - (4) Federal Financing Bank;
  - (5) Federal Home Loan Bank System;
  - (6) Federal Home Loan Mortgage Corporation;
  - (7) Federal Housing Administration;
  - (8) Federal National Mortgage Association;
  - (9) Government National Mortgage Association;
  - (10) Private Export Funding Corporation;
  - (11) Resolution Funding Corporation;
  - (12) Student Loan Marketing Association; and
  - (13) any other instrumentality or agency of the United States.
- (c) Prerefunded municipal obligations rated at the time of purchase of such investment in the highest rating category by the Rating Agencies then rating the Commercial Paper Notes and meeting the following conditions:
  - (1) such obligations are: (A) not subject to redemption prior to maturity or the Issuing and Paying Agent has been given irrevocable instructions concerning their calling and redemption, and (B) the issuer of such obligations has covenanted not to redeem such

obligations other than as set forth in such instructions;

- (2) such obligations are secured by Government Obligations or Government Certificates that may be applied only to interest, principal and premium payments of such obligations;
  - (3) the principal of and interest on such Government Obligations or Government Certificates (plus any cash in the escrow fund with respect to such prerefunded obligations) are sufficient to meet the liabilities of the obligations;
  - (4) the Government Obligations or Government Certificates serving as security for the obligations have been irrevocably deposited with and are held by an escrow agent or trustee; and
  - (5) such Government Obligations or Government Certificates are not available to satisfy any other claims, including those against the trustee or escrow agent.
- (d) Direct and general long-term obligations of any State of the United States of America or the District of Columbia (a "State") to the payment of which the full faith and credit of such State is pledged and that are rated at the time of purchase of the investment in either of the two highest rating categories by the Rating Agencies then rating the Commercial Paper Notes.
  - (e) Direct and general short-term obligations of any State to the payment of which the full faith and credit of such State is pledged and that are rated at the time of purchase of the investment in the highest rating category by the Rating Agencies then rating the Commercial Paper Notes.

- (f) Interest-bearing demand or time deposits or overnight bank deposits with, or banker's acceptances from, state banks or trust companies or national banking associations that are members of the Federal Deposit Insurance Corporation ("FDIC") including those of the Issuing and Paying Agent or an of its affiliates. Such deposits must be at least one of the following: (i) continuously and fully insured by FDIC; (ii) if they have a maturity of one year or less, with or issued by banks that are rated in one of the two highest short term rating categories by the Rating Agencies then rating the Commercial Paper Notes; (iii) if they have a maturity longer than one year, with or issued by banks that are rated at the time of purchase of the investment in one of the two highest rating categories by the Rating Agencies then rating the Commercial Paper Notes; or (iv) fully secured by Government Obligations and Government Certificates. Such Government Obligations and Government Certificates must have a market value at all times at least equal to the principal amount of the deposits or interests. The Government Obligations and Government Certificates must be held by a third party (who shall not be the provider of the collateral), or by any Federal Reserve Bank or depository, as custodian for the institution issuing the deposits or interests. Such third party must have a perfected first lien in the Government Obligations and Government Certificates serving as collateral, and such collateral must be free from all other third party liens.
- (g) Long-term or medium-term corporate debt guaranteed by any corporation that is rated at the time of purchase of the investment in one of the two highest rating categories by the Rating Agencies then rating the Commercial Paper Notes.
- (h) Repurchase agreements, including those of the Issuing and Paying Agent or any of its affiliates, longer than one year with financial institutions such as banks or trust companies organized under State or federal law, insurance companies, or government bond dealers reporting to, trading with, and recognized as a primary dealer by, the Federal Reserve Bank of New York and a member of the Security Investors Protection Corporation, or with a dealer or parent holding company that is rated at the time of purchase of the investment "AA" or better by the Rating Agencies then rating the Commercial Paper Notes. The repurchase agreement must be in respect of Government Obligations and Government Certificates or obligations described in paragraph (b) of this definition.
- (i) Prime commercial paper of a corporation, finance company or banking institution rated at the time of purchase of the investment in the highest short-term rating category by the Rating Agencies then rating the Commercial Paper Notes.
- (j) State or public agency or municipality obligations rated at the time of purchase of the investment in the highest credit rating category by the Rating Agencies then rating the Commercial Paper Notes.
- (k) Shares of a diversified open-end management investment company, as defined in the Investment Company Act of 1940, as amended, or shares in a regulated investment company, as defined in Section 851(a) of the Code, that is a money market fund that has been rated in the highest rating category by the Rating Agencies then rating the

Commercial Paper Notes.

- (l) Money market mutual accounts of any state or federal bank, or bank whose holding parent company is, rated in the top two short-term or long-term rating categories by the Rating Agencies then rating the Commercial Paper Notes, including such funds for which the Issuing and Paying Agent, its affiliates or subsidiaries provide investment advisory or other management services or for which the Issuing and Paying Agent or an affiliate of the Issuing and Paying Agent serves as investment administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Issuing and Paying Agent or an affiliate of the Issuing and Paying Agent receives fees from funds for services rendered, (ii) the Issuing and Paying Agent collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Issuing and Paying Agent or an affiliate of the Issuing and Paying Agent.
- (m) Investment agreements the issuer of which is rated at the time of purchase of the investment “AA” or better by the Rating Agencies then rating the Commercial Paper Notes.
- (n) The City and County of San Francisco Treasurer's Investment Pool.
- (o) Any other debt or fixed income security specified by an Authorized SFMTA Representative and rated at the time of purchase of the investment in the highest short-term rating category or one of the three highest long-term rating categories by the Rating Agencies then rating the Commercial Paper Notes.

“Principal Office” means the office of the Issuing and Paying Agent thereof designated in writing to the Agency.

“Project” has the meaning set forth in the recitals of this Agreement.

“Project Costs” means, collectively, the Tax-Exempt Project Costs and the Taxable Project Costs.

“Project Fund” means the Fund by that name established pursuant to Section 3.01(a) hereof.

“Rating Agencies” means the rating agencies providing a rating on the Commercial Paper Notes.

“Rebate Fund” means the Fund by that name established pursuant to Section 4.02 hereof.

“Registrar” means, with respect to the Commercial Paper Notes, each person or entity, if any, designated as such by the Agency herein authorizing the issuance of the Commercial Paper Notes, and its successors and assigns and any other person or entity which may at any time be substituted for it pursuant thereto.

“Reimbursement Agreement” means the Letter of Credit and Reimbursement Agreement, dated as of June [\_\_\_], 2013, between the Agency and the Bank, as amended, supplemented and modified from time to time, in accordance with the provisions thereof, and (ii) any similar document entered into with respect to a subsequent Alternate Facility. All references to obligations of the Agency under the Reimbursement Agreement hereunder shall be deemed to include the Agency’s obligations under the Bank Note.

“Senior Lien Parity Obligations” means the Senior Lien Revenue Bonds, including the Series 2012 Bonds, and any evidences of indebtedness for borrowed money issued from time to time by the Agency under the Senior Lien Revenue Bonds Indenture or under a supplemental indenture pursuant to Article II thereof, including but not limited to bonds, notes, bond anticipation notes, commercial paper, lease or installment purchase agreements or certificates of participation therein or loans from financial institutions or governmental agencies. Senior Lien Parity Obligations may also include, for the purposes of any particular provision of the Senior Lien Revenue Bonds Indenture as provided in a Supplemental Indenture, any other obligation, including but not limited to Repayment Obligations, as defined in the Senior Lien Revenue Bonds Indenture, and other contractual obligations, entered into by the Agency pursuant to the terms hereof with a lien on Pledged Revenues on a parity with other Outstanding Bonds, as defined in the Senior Lien Revenue Bonds Indenture.

“Senior Lien Revenue Bonds” means all bonds currently outstanding or hereinafter issued by the Agency with a pledge or lien on Transportation System Revenues prior to the lien of the Commercial Paper Notes on the Available Transportation System Revenues, including without limitation the Series 2012 Bonds.

“Senior Lien Revenue Bonds Indenture” means the Indenture of Trust, dated as of July 1, 2012, as supplemented by the First Supplemental Indenture of Trust, dated as of July 1, 2012, by and between the Agency and The Bank of New York Mellon Trust Company, N.A., as trustee.

“Series 2012 Bonds” means the San Francisco Municipal Transportation Agency Revenue Bonds, Series 2012A and the San Francisco Municipal Transportation Agency Revenue Bonds, Series 2012B, issued pursuant to the First Supplemental Indenture of Trust, dated as of July 1, 2012, supplementing the Senior Lien Revenue Bonds Indenture.

“SFMTA General Fund Transfer Account” shall mean the SFMTA General Fund Transfer Account created pursuant to the Senior Lien Revenue Bonds Indenture.

“Stated Amount” means the stated amount available to be drawn under the Letter of Credit, which is initially equal to a principal component of \$100,000,000 and an interest component of \$[\_\_\_\_\_].

“Supplemental Agreement” means any Supplemental Agreement authorized by Section 8.01 hereof.

“Tax Certificate” means the Tax Certificate, dated as of its date concerning certain matters pertaining to the use and investment of proceeds of the Commercial Paper Notes, executed by the Agency on the date of issuance of the Commercial Paper Notes, including any and all exhibits attached thereto.

“Tax-Exempt Notes” means the San Francisco Municipal Transportation Agency Commercial Paper Note Series A-1 (Tax-Exempt) in the form set forth in Exhibit A hereto.

“Tax-Exempt Project Costs” means costs and expenses incurred or to be incurred by the Agency that are permitted under the Code, including without limitation costs and expenses incurred or to be incurred by the Agency in connection with the Agency’s projects, or otherwise.

“Taxable Notes” means the San Francisco Municipal Transportation Agency Commercial Paper Note Taxable (Taxable) in the form set forth in Exhibit B hereto.

“Taxable Project Costs” means costs and expenses incurred or to be incurred by the Agency that serve any lawful purpose of the Agency in accordance with all relevant provisions of the Charter.

“Transportation System Revenues” means the Pledged Revenues, as defined in the Senior Lien Revenue Bonds Indenture.

#### Section 1.02 Interpretation.

- (a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.
- (b) The words “hereof,” “herein,” “hereto,” “hereby” and “hereunder” refer to this entire Agreement.
- (c) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

Section 1.03 Agreement to Constitute Contract. In consideration of the purchase and acceptance of any or all of the Commercial Paper Notes by those who shall own the same from time to time, the provisions of this Agreement shall be part of the contract of the Agency with Holders of the Commercial Paper Notes, and shall be deemed to be and shall constitute contracts between the Agency, the Issuing and Paying Agent and the Holders from time to time of the Commercial Paper Notes.

## ARTICLE II

### GENERAL AUTHORIZATION AND ISSUANCE; THE COMMERCIAL PAPER NOTES

#### Section 2.01 Authorized Amount of Commercial Paper Notes; Terms and Description of Commercial Paper Notes.

- (a) The Agency hereby authorizes the issuance from time to time on a revolving basis of its “San Francisco Municipal Transportation Agency Commercial Paper Notes Series A-1 (Tax-Exempt)” (the “Tax-Exempt Notes”) and its “San Francisco Municipal



Transportation Agency Commercial Paper Note Series A-2 (Taxable) (the “Taxable Notes” and, together with the Tax-Exempt Notes, the “Commercial Paper Notes”) in order to provide interim financing for the Project Costs, subject to the provisions of this Section 2.01 and as hereinafter provided. The Commercial Paper Notes shall be issued to finance and refinance the Project Costs. Proceeds of Commercial Paper Notes may be used to repay the Bank for draws on the Letter of Credit used to pay principal and interest due on such maturing Commercial Paper Notes and may be used to repay the Bank for principal or interest due on the Bank Note under the Reimbursement Agreement. The aggregate principal amount of Commercial Paper Notes that may be Outstanding at any one time hereunder shall not at any time exceed \$100,000,000.

- (b) The Commercial Paper Notes shall be dated the date of their respective authentication and issuance; shall be issued in registered form, shall be issued in denominations of \$100,000 and in integral multiples of \$1,000 in excess thereof. The Commercial Paper Notes (i) shall bear interest payable at maturity at an annual rate (calculated on the basis of the actual number of days elapsed and a year consisting of 365 or 366 days, as applicable, not to exceed the Maximum Rate (ii) shall mature on a Business Day not more than 270 days after their respective dates, but in no event later than the Business Day immediately preceding the Commitment Expiration Date, and (iii) shall be sold by the Dealer pursuant to a Dealer Agreement at a price of not less than 100% of the principal amount thereof. The stated interest rate, maturity date and other terms of each Commercial Paper Note shall be as set forth in the Issuance Request required by Section 2.04 hereof directing the issuance of such Commercial Paper Note; provided that such Issuance Request is consistent with the terms of this Agreement.
- (c) The Commercial Paper Notes shall not be subject to redemption prior to maturity.
- (d) The Commercial Paper Notes shall be numbered in such manner as the Issuing and Paying Agent may deem appropriate.
- (e) The Agency and the Issuing and Paying Agent may deem and treat the registered owner of Commercial Paper Notes in registered form as the absolute owner thereof (whether or not such Commercial Paper Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by anyone other than the Issuing and Paying Agent), for the purpose of receiving payment thereof or on account thereof and for all other purposes, and neither the Agency nor the Issuing and Paying Agent shall be affected by any notice to the contrary.

Section 2.02      Payment. The Agency covenants to duly and punctually pay or cause to be paid from draws on the Letter of Credit the principal of and interest on, each and every Commercial Paper Note when due, as described in Section 3.03 hereof.

The principal of and the interest on the Commercial Paper Notes shall be payable at the Principal Office of the Issuing and Paying Agent on or before the close of business on any Business Day upon which such Commercial Paper Notes have become due and payable, *provided* that such Commercial Paper Notes are presented and surrendered on a timely basis. Upon presentation of such a Commercial Paper Note to the Issuing and Paying Agent by 9:00 a.m. (New York City time) on a Business Day, payment for such Commercial Paper Note shall be made by the Issuing and Paying Agent in immediately available funds on such Business Day. If a Commercial Paper Note is presented for payment after 9:00 a.m. (New York City time) on a Business Day, payment therefor may be made by the Issuing and Paying Agent on the next succeeding Business Day without the accrual of additional interest thereon.

Notwithstanding the provisions of the previous paragraph, in the event the Commercial Paper Notes are issued as a master note or master notes in book-entry form, they shall be payable at maturity without physical presentation or surrender in accordance with the procedures of the Note Depository.

Section 2.03 Form and Authentication of Commercial Paper Notes. The Commercial Paper Notes shall be executed by and in the name of the Agency under this Agreement, by the signature of the Director of Transportation, Chairman or Vice Chairman of the Agency and shall be delivered to the Issuing and Paying Agent. Such signature shall be manually affixed to the Commercial Paper Notes, except that if the Commercial Paper Notes shall have been manually authenticated by the Issuing and Paying Agent, the signature of the Director of Transportation, Chairman or Vice Chairman of the Agency may be a printed, lithographed or engraved facsimile thereof. The Issuing and Paying Agent is hereby authorized to cause the blank spaces in forms of Commercial Paper Notes attached hereto to be filled in as may be appropriate and to deliver the Commercial Paper Notes to the Dealers in accordance with the terms and provisions of the Dealer Agreements. The definitive Tax-Exempt and the Certificate of Authentication endorsed thereon shall be substantially in the form of the master note set forth in Exhibit A hereto and made a part hereof, and the definitive Taxable Notes and the Certificate of Authentication endorsed thereon shall be substantially in the form of the master note set forth in Exhibit B hereto with such appropriate variations, omissions and insertions as shall be required or appropriate in order to designate the series thereof and to accomplish the purpose of the transactions authorized by this Agreement. Notwithstanding anything herein to the contrary, the Issuing and Paying Agent shall not (i) authenticate Commercial Paper Notes which mature later than the Business Day immediately preceding the Commitment Expiration Date, (ii) authenticate Commercial Paper Notes if (a) an Event of Default then exists of which it has actual knowledge or (b) after the Issuing and Paying Agent has received a No Issuance Notice, which No Issuance Notice has not been withdrawn or rescinded by the Bank.

When any Commercial Paper Notes are delivered to the Issuing and Paying Agent by the Agency, the Issuing and Paying Agent shall execute and deliver to the Agency a receipt therefor and shall hold such Commercial Paper Notes for the account of the Agency in safekeeping in accordance with its customary practice.

Section 2.04 Procedures for Delivery of Commercial Paper Notes.

(a) Prior to the issuance of the first Commercial Paper Notes hereunder, Commercial Paper

Notes shall be executed by the signature of the Director of Transportation, Chairman or Vice Chairman of the Agency on behalf of the Agency and delivered to the Issuing and Paying Agent, who shall hold such Commercial Paper Notes unauthenticated in safekeeping for the Agency. Subject to the provisions of this Section 2.04, at any time and from time to time prior to the Commitment Expiration Date, Commercial Paper Notes shall be manually authenticated and delivered by the Issuing and Paying Agent for the consideration and in the manner hereinafter provided, but only upon receipt by the Issuing and Paying Agent of an Issuance Request in the form attached hereto as Exhibit D (which also may be transmitted by telephone, email or the System described in Section 2.04(d) below), no later than 10:00 a.m. (New York City time) on the Business Day on which Commercial Paper Notes are to be delivered, directing the Issuing and Paying Agent to authenticate the Commercial Paper Notes referred to therein and to deliver the same to or upon the order of a Dealer. Each Issuance Request shall include: (i) the series designation of each Commercial Paper Note to be delivered; (ii) the principal amount and date of each Commercial Paper Note then to be delivered; (iii) the rate and amount of interest thereon; and (iv) the maturity date thereof. Any such Issuance Request shall be accompanied by an acknowledgment from the [Director of Public Finance,] or his or her designee, approving of said Issuance Request. No later than 11:45 a.m. (New York City time) on each Business Day on which the Agency proposes to issue Commercial Paper Notes, the Dealer shall report to the Agency each transaction made with or arranged by it or shall notify the Agency and the Issuing and Paying Agent of the difference, if any, between the amount of maturing Notes and the amount of Notes which the Dealer has arranged to sell or has agreed in its sole discretion to purchase.

Subject to the provisions of this Section 2.04, upon receipt of such Issuance Request by 10:00 a.m. (New York City time), the Issuing and Paying Agent shall, by 11:30 a.m. (New York City time) on such day, complete each Commercial Paper Note then to be delivered as to amount, date, maturity date, interest rate and interest amount specified in such Issuance Request, and deliver each such Commercial Paper Note to or upon the order of the Dealer upon receipt of payment therefor. Notwithstanding any provision herein to the contrary, no such Commercial Paper Notes shall be delivered by the Issuing and Paying Agent if (A) it shall have received notice from a Authorized Agency Representative directing the Issuing and Paying Agent to cease authenticating and delivering Commercial Paper Notes until such time as such direction is withdrawn by similar notice, (B) it shall have actual knowledge that an Event of Default shall have occurred and be continuing, (C) it shall have received notice from Bond Counsel that their opinion regarding the exclusion of interest on the Tax-Exempt Notes from gross income for federal income tax purposes thereof is being withdrawn, (D) the maturity date of such Commercial Paper Notes would extend beyond the Business Day immediately preceding the Commitment Expiration Date, (E) the Issuing and Paying Agent shall have received a No Issuance Notice or (F) such delivery would result in the aggregate principal amount of Commercial Paper Notes Outstanding being in excess of \$100,000,000 [or an aggregate amount of principal and interest to be come due being in excess of the Stated Amount].

- (b) In addition to the Issuance Request described above in this Section 2.04, and as a further condition to the issuance of any Commercial Paper Notes, the Authorized Agency Representative shall certify to the Issuing and Paying Agent that, as of the date of

delivery of such Commercial Paper Notes, (i) the Reimbursement Agreement is in full force and effect; (ii) after the issuance of such Commercial Paper Notes and the application of the proceeds thereof, the aggregate principal amount of Commercial Paper Notes Outstanding will not exceed the amount that at the time is authorized to be Outstanding as provided in Section 2.01(a) hereof; (iii) the interest rates borne by the Commercial Paper Notes to be delivered on such date do not exceed the Maximum Interest Rate; (iv) the facts, estimates, circumstances and representations set forth or made (as the case may be) in the Tax Certificate continue to exist and are reaffirmed on such date; *provided, however*, that the foregoing certification is not a condition to the issuance of Taxable Notes; (v) the terms of the Commercial Paper Notes do not exceed 270 days and the maturity dates of such Commercial Paper Notes set forth in the Issuance Request do not extend beyond the Business Day immediately preceding the Commitment Expiration Date [or the latest maturity date allowed by the Act]; (vi) the Agency has not been notified by Bond Counsel that their opinion with respect to the validity of the Commercial Paper Notes and, if the Issuance Request calls for the issuance of Tax-Exempt Notes, the tax treatment of the interest thereof, delivered prior to the initial issuance of the Commercial Paper Notes has been revised or withdrawn or, if any such revisions or withdrawal has occurred, the revised opinion or a substitute opinion acceptable to the Dealer has been delivered; (vii) no Event of Default has occurred and is then continuing; and (viii) all of the conditions precedent to the issuance of such Commercial Paper Notes, including the consent of the Director of Public Finance to the delivery of such Issuance Request, set forth in this Section 2.04 have been satisfied.

The delivery of any Issuance Request to the Issuing and Paying Agent by a Authorized Agency Representative in the manner provided in this Section 2.04 shall be deemed to constitute the certification and representation of the Agency as of the date of such Issuance Request as to the matters set forth in the immediately preceding paragraph.

- (c) Any Issuance Request made by telephone pursuant to this Section 2.04 may be recorded by the Issuing and Paying Agent and confirmed promptly in writing by a Authorized Agency Representative; *provided, however*, that the failure so to confirm any such Issuance Request, or any conflict between any such recorded oral Issuance Request and the written confirmation thereof, shall not affect the validity of any recorded oral Issuance Request received by the Issuing and Paying Agent as provided herein. If the Issuing and Paying Agent does not record an oral Issuance Request, and a conflict exists between such oral Issuance Request and the written confirmation thereof, the terms of the written confirmation shall control.
- (d) The Agency and the Issuing and Paying Agent agree that all instructions under this Agreement are to be directed to the Issuing and Paying Agent's [Commercial Paper Operations Department]. The Issuing and Paying Agent shall provide the Agency with access to the Issuing and Paying Agent's Money Market Issuance System or other electronic means (collectively, the "System") in order that the Issuing and Paying Agent may receive electronic instructions for the issuance of the Commercial Paper Notes. Electronic instructions will be subject to an acceptance of terms issued by the Issuing and Paying Agent if the Agency elects to use the Issuing and Paying Agent's internet-based

communications program to access the System. Electronic instructions must be transmitted in accordance with the procedures furnished by the Issuing and Paying Agent to the Agency in connection with the System. These transmissions shall be the equivalent to the giving of a written Issuance Request to the Issuing and Paying Agent. If the System is inoperable at any time, the Authorized Agency Representatives may deliver written, telephone or facsimile instructions to the Issuing and Paying Agent, which instructions shall be verified in accordance with any security procedures agreed upon by the parties.

Section 2.05 Book-Entry System. Unless the [\_\_\_\_\_] of the Agency or his or her designee determines that the Commercial Paper Notes shall be issued in registered form other than in book-entry form, the Commercial Paper Notes shall initially be issued in book-entry form as further provided in this Section 2.05.

- (a) Each series of the Commercial Paper Notes issued pursuant to this Agreement shall initially be issued in the form of a separate single fully-registered note evidencing each series of the Commercial Paper Notes. Except as provided in subsection (c) of this Section 2.05, all of the Commercial Paper Notes shall be registered in the name of the Nominee. Notwithstanding any provision to the contrary in Section 2.04, so long as the Commercial Paper Notes remain in the form of one or more master notes in book-entry form, the issuance of Notes pursuant to an Issuance Request against payment therefor shall not require the physical delivery of note certificates.

The Issuing and Paying Agent and the Agency may treat the registered owner of each Commercial Paper Note as the sole and exclusive owner thereof for the purposes of payment of the principal of or interest on the Commercial Paper Notes, giving any notice permitted or required to be given to Commercial Paper Noteholders under this Agreement, registering the transfer of Commercial Paper Notes, obtaining any consent or other action to be taken by Commercial Paper Noteholders, and for all other purposes whatsoever, and neither the Issuing and Paying Agent nor the Agency shall be affected by any notice to the contrary.

Neither the Issuing and Paying Agent nor the Agency shall have any responsibility or obligation to any participant in the Note Depository (a "Participant"), any person claiming a beneficial ownership interest in the Commercial Paper Notes under or through the Note Depository or any Participant, or any other person who is not shown on the registration books as being a Commercial Paper Noteholder, with respect to (i) the accuracy of any records maintained by the Note Depository or any Participant; (ii) the payment by the Note Depository or any Participant of any amount in respect of the principal of or interest on the Commercial Paper Notes; (iii) the delivery of any notice which is permitted or required to be given to Commercial Paper Noteholders under this Agreement; (iv) any consent given or other action taken by the Note Depository as Commercial Paper Noteholder; or (v) any other purpose.

The Issuing and Paying Agent shall pay all principal of and interest on the Commercial Paper Notes only to or upon the order of the Note Depository, and all such payments shall be valid and effective to fully satisfy and discharge the Agency's obligations with respect to the payment of the principal of and interest on the Commercial Paper Notes to the extent of the sum

or sums so paid. Upon delivery by the Note Depository to the Issuing and Paying Agent of written notice to the effect that the Note Depository has determined to substitute a new Nominee in place of the current Nominee, and subject to the provisions herein with respect to record dates, the word Nominee in this Article II shall refer to such new Nominee.

- (b) In order to qualify the Commercial Paper Notes for the Note Depository's Book-Entry System, the appropriate officers or employees of the Agency are hereby authorized and directed to execute, seal, countersign and deliver, with a copy to the Issuing and Paying Agent, on behalf of the Agency to the Note Depository for the Commercial Paper Notes, a Letter of Representation from the Agency representing such matters as shall be necessary to so qualify the Commercial Paper Notes. The execution and delivery of the Letter of Representation shall not in any way limit the provisions of this Section 2.05 or in any other way impose upon the Agency any obligation whatsoever with respect to persons having beneficial ownership interests in the Commercial Paper Notes other than the Commercial Paper Noteholders.
- (c) In the event (i) the Note Depository determines not to continue to act as securities depository for Commercial Paper Notes, or (ii) the Agency determines that the Note Depository shall no longer so act and delivers a written certificate to the Issuing and Paying Agent to that effect, then the Agency will discontinue the Book-Entry System with the Note Depository for such Commercial Paper Notes. If the Agency determines to replace the Note Depository for the Commercial Paper Notes with another qualified securities depository, the Agency shall prepare or direct the preparation of a new, single, separate, fully registered Commercial Paper Note for such Commercial Paper Notes registered in the name of such successor or substitute qualified Note Depository or its Nominee, or make such other arrangements acceptable to the Issuing and Paying Agent and such successor or substitute Note Depository as are not inconsistent with the terms of this Agreement. If the Agency fails to identify another qualified Note Depository to replace the incumbent Note Depository for the Commercial Paper Notes, then such Commercial Paper Notes shall no longer be restricted to being registered in the bond registration books in the name of the incumbent Note Depository or its Nominee, but shall be registered in whatever name or names the incumbent Note Depository or its Nominee transferring or exchanging such Commercial Paper Notes shall designate.
- (d) Notwithstanding any provision of this Agreement to the contrary, so long as the Commercial Paper Notes are registered in the name of the Nominee, all payments with respect to principal of and interest on the Commercial Paper Notes and all notices with respect to the Commercial Paper Notes shall be made and given, respectively, as provided in the Letter of Representation or as otherwise instructed by the Note Depository.
- (e) The initial Note Depository with respect to the Commercial Paper Notes shall be the Depository Trust Company ("DTC"). The initial Nominee with respect to the Commercial Paper Notes shall be CEDE & CO., as nominee of DTC.

Section 2.06 Mutilated, Lost, Stolen or Destroyed Commercial Paper Notes. If any Commercial Paper Note shall become mutilated, the Agency, at the expense of the Holder of such Commercial Paper Note, shall execute or cause to be executed, and the Issuing and Paying Agent shall thereupon authenticate and deliver a new Commercial Paper Note of like tenor bearing a different number in exchange and substitution for the Commercial Paper Note so mutilated, but only upon surrender to the Issuing and Paying Agent of the Commercial Paper Note so mutilated. If any Commercial Paper Note shall be lost, destroyed or stolen, evidence of the ownership thereof, and of such loss, destruction or theft may be submitted to the Agency and the Issuing and Paying Agent and, if such evidence be satisfactory to both and indemnity satisfactory to them shall be given, the Agency, at the expense of the Holder, shall execute, and the Issuing and Paying Agent shall thereupon authenticate and deliver a new Commercial Paper Note of like tenor and bearing a different number in lieu of and in substitution for Commercial Paper Note so lost, destroyed or stolen (or if any such Commercial Paper Note shall have matured or shall be about to mature, instead of issuing a substitute Commercial Paper Note, the Agency may direct the Issuing and Paying Agent to pay the same without surrender thereof). The Agency and Issuing and Paying Agent may require payment by the registered Holder of a Commercial Paper Note of a sum not exceeding the actual cost of preparing each new Commercial Paper Note executed and delivered pursuant to this paragraph and of the expenses which may be incurred by the Agency and the Issuing and Paying Agent. Any Commercial Paper Note executed and delivered under these provisions in lieu of any Commercial Paper Note alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Agency whether or not Commercial Paper Note so alleged to be lost, destroyed or stolen shall be at any time enforceable by anyone, and shall be entitled to the benefits of this Agreement with all other Commercial Paper Notes secured by this Agreement.

Section 2.07 Surrender of Commercial Paper Notes. All Commercial Paper Notes surrendered for payment or registration of transfer, if surrendered to any person other than the Issuing and Paying Agent, shall be delivered to the Issuing and Paying Agent and shall be promptly cancelled by it. The Agency may at any time deliver to the Issuing and Paying Agent for cancellation any Commercial Paper Notes previously authenticated and delivered hereunder which the Agency may have acquired in any manner whatsoever, and all Commercial Paper Notes so delivered shall promptly be cancelled by the Issuing and Paying Agent. No Commercial Paper Note shall be authenticated in lieu of or in exchange for any Commercial Paper Notes cancelled as provided herein, except as expressly permitted hereunder. All cancelled Commercial Paper Notes held by the Issuing and Paying Agent shall be disposed of as directed by the Agency.

Section 2.08 Non-Presentation of Commercial Paper Notes; Unclaimed Money.

- (a) If any Commercial Paper Notes are not presented for payment when the principal thereof becomes due, all liability of the Agency to the Holder thereof for the payment of such Commercial Paper Notes shall be completely discharged if funds sufficient to pay such Commercial Paper Notes and the interest due thereon to the stated maturity date shall be held by the Issuing and Paying Agent for the benefit of such Holder, and thereupon it shall be the duty of the Issuing and Paying Agent to hold such funds subject to subsection (b) below, without liability for interest thereon, for the benefit of such Holder, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature under



this Agreement or on, or with respect to, such Commercial Paper Note.

- (b) Anything contained herein to the contrary notwithstanding, any money held by the Issuing and Paying Agent in trust for the payment and discharge of any Commercial Paper Notes which remains unclaimed for two (2) years after the date when the payments on such Commercial Paper Notes have become payable, if such money was held by the Issuing and Paying Agent on such date, or for two (2) years after the date of deposit of such money if deposited with the Issuing and Paying Agent after the date when the principal of such Commercial Paper Notes have become payable, shall upon written notice from the Agency be repaid by the Issuing and Paying Agent to the Agency as its absolute property free from trust, and the Issuing and Paying Agent shall thereupon be released and discharged with respect thereto and the Holders shall look only to the Agency for the payment of the principal of such Commercial Paper Notes and the interest due thereon to the stated maturity date; *provided* that before being required to make any such payment to the Agency, the Issuing and Paying Agent shall, at the expense of the Agency, publish once in The Wall Street Journal a notice that such money remains unclaimed and that after a date named in such notice, which date shall not be less than sixty (60) days after the date of the earliest publication of such notice, the Issuing and Paying Agent shall promptly pay to the Bank so much of such money as the Bank certifies to the Issuing and Paying Agent, with notice to the Agency and the City, that the Agency owes to the Bank with respect to any Commercial Paper Note or under the Reimbursement Agreement or this Agreement, and the balance of such money then unclaimed will be returned to the Agency.

### ARTICLE III

#### FUNDS AND ACCOUNTS; APPLICATION OF NOTE PROCEEDS

##### Section 3.01 Establishment and Designation of Funds and Accounts.

- (a) There is hereby established a Project Fund, and within such Project Fund, subaccounts known as the “Tax-Exempt Account of the Project Fund” and the “Taxable Account of the Project Fund,” which shall be held by the Agency or the City Treasurer on behalf of the Agency in accordance with this Agreement;
- (b) There is hereby established hereunder a Debt Service Fund, and the Issuing and Paying Agent shall hold such fund in accordance with this Agreement and within such fund establish and maintain the following accounts:
- (1) Debt Service Account; and
  - (2) Bank Payment Account.

Section 3.02 Deposit of Proceeds of Commercial Paper Notes. Immediately upon receipt thereof, the Issuing and Paying Agent shall deposit the proceeds of the sale of any Commercial Paper Notes into the Debt Service Account. Such amount, together with any amount paid by the Agency for deposit into such Debt Service Account shall be applied in the following order: (i) to pay the principal of and interest due on the Commercial Paper Notes in accordance with Section 3.03(d) hereof, (ii) for transfer to the Bank Payment Account to reimburse the Bank for any draws made under the Letter of Credit, and (iii) for transfer to the City Treasurer for deposit in the Project Fund.

Section 3.03 Deposits Into and Uses of the Debt Service Account and the Bank Payment Account.

- (a) The Issuing and Paying Agent shall make information available to the Agency and the Bank on or before 5:00 p.m., (New York City time), on the Business Day prior to the maturity date of each Commercial Paper Note, as to the total amount of principal and interest due on such maturity date.
- (b) On or before 11:30 a.m., (New York City time), on the maturity date of each Commercial Paper Note, the Agency shall, at its option, transfer to the Issuing and Paying Agent or cause the Dealers to transfer to the Issuing and Paying Agent amounts representing proceeds of sale of Commercial Paper Notes, or the Agency, at its option, shall transfer to the Issuing and Paying Agent Available Transportation System Revenues from the Enterprise Account, an amount sufficient, together with all other amounts available to the Issuing and Paying Agent, to pay principal and interest due on all Commercial Paper Notes on such maturity date.
- (c) In the event that the Agency or Dealers have not made, nor have notified the Issuing and Paying Agent that they expect to make, the deposit required by Section 3.03(b), then, on or before 11:30 a.m., New York City time, on the maturity date of each Commercial Paper Note, the Issuing and Paying Agent shall submit a request to draw an amount under the Letter of Credit sufficient, together with all other amounts available to the Issuing and Paying Agent in the Debt Service Account, to pay the principal of and interest due on all Commercial Paper Notes on such maturity date on or before 2:30 p.m., New York City time.
- (d) The Issuing and Paying Agent shall deposit any amounts received pursuant to Sections 3.03(b) and (c), along with Available Transportation System Revenues in the amounts specified in the direction of the Agency pursuant to Section 3.03(b), if any, into the Debt Service Account, and shall immediately apply such amounts to pay the principal of and interest due on the Commercial Paper Notes on such maturity date.
- (e) If, following the payment of the Commercial Paper Notes from proceeds of a draw under the Letter of Credit, the Issuing and Paying Agent shall receive the proceeds of Commercial Paper Notes or other amounts from the Agency, such amounts shall be deposited into the Bank Payment Account and used to reimburse the Bank for any draws made under the Reimbursement Agreement.

Section 3.04 Draws Under the Letter of Credit. As a beneficiary of the Letter of Credit the Issuing and Paying Agent agrees to enforce the Letter of Credit (to the extent permitted by law) for the benefit of the Holders, from time to time, of the Commercial Paper Notes. On or before each maturity date for any Commercial Paper Note, in the manner described in Section 3.03(c), an authorized officer of the Issuing and Paying Agent shall present all required drawing certificates and accompanying documentation, if required, to the Bank and demand payment be made under the Letter of Credit on such maturity date at such time and in such amount not in excess of the Stated Amount of the Letter of Credit so as to be timely and sufficient to pay the entire amount of principal becoming due on all Commercial Paper Notes on such date; *provided* that, in each case any certificates of the Issuing and Paying Agent shall be signed by one who states therein that such person is a duly authorized officer of the Issuing and Paying Agent.

Section 3.05 Application of Moneys in Project Fund.

- (a) Moneys in the Tax-Exempt Account of the Project Fund shall be applied to the payment of the Tax-Exempt Project Costs, and Moneys in the Taxable Account of the Project Fund shall be applied to the Taxable Project Costs, and moneys in either subaccount of the Project Fund shall be applied to the payment of the administrative costs related to the Commercial Paper Notes, including but not limited to the fees and expenses of the Dealers, the Issuing and Paying Agent, the Rating Agencies, the Bank and any other attorneys, consultants or service providers.
- (b) The Authorized Agency Representative hereby authorized to disburse from the Project Fund the amount required for the payment of the Project Costs and administrative costs and is directed to make such disbursements upon receipt of a warrant drawn by the Controller.

Section 3.06 Investments Authorized. Money held by the Issuing and Paying Agent in any fund or account hereunder shall be invested by the Issuing and Paying Agent in Qualified Investments pending application as provided herein solely at the written direction of a Authorized Agency Representative, shall be registered in the name of the Issuing and Paying Agent where applicable, as Issuing and Paying Agent, and shall be held by the Issuing and Paying Agent. Money held in any fund, account, or subaccount hereunder (other than the Rebate Fund) may be commingled for purposes of investment only; *provided, however*, that each fund, account, or subaccount held by the Issuing and Paying Agent hereunder shall be accounted for separately and *provided, further*, that moneys in the Debt Service Account and the Bank Payment Account shall not be invested.

Section 3.07 Moneys Remaining in Funds and Accounts. At any time there are no Commercial Paper Notes Outstanding or any amounts outstanding under the Reimbursement Agreement, the Agency may withdraw moneys from any Fund or Account established hereunder by written direction to the Issuing and Paying Agent. Upon receipt of such a written request, the Issuing and Paying Agent shall deliver any amounts so specified to, or upon the order of, the Agency.

## ARTICLE IV

### COVENANTS; REPRESENTATIONS

Section 4.01 No Arbitrage. The Agency shall not take, nor permit to be taken by the Issuing and Paying Agent or otherwise, any action which, if such action had been reasonably expected to have been taken or had been deliberately and intentionally taken on the date of the issuance of any Tax-Exempt Notes, would have caused such Tax-Exempt Notes to be “arbitrage bonds” within the meaning of Section 148(a) of the Code and Regulations. To that end, the Agency will comply with all requirements of Section 148 of the Code to the extent applicable to the Tax-Exempt Notes. In the event that at any time the Agency is of the opinion that for purposes of this Section 4.01 it is necessary to restrict or to limit the yield on the investment of any moneys held by the Issuing and Paying Agent under this Agreement, the Agency shall so instruct the Issuing and Paying Agent in writing, and the Issuing and Paying Agent shall take such action as may be necessary in accordance with such instructions.

Section 4.02 Rebate to United States. The Agency will pay or cause to be paid to the United States Government the amounts required by Section 148(f) of the Code and any Regulations promulgated thereunder at the times required thereby. To further the satisfaction of such rebate requirement, there is hereby created, to be held by the Issuing and Paying Agent as a separate fund for the Tax-Exempt Notes distinct from all other funds and accounts held by the Issuing and Paying Agent under the Agreement, a fund designated as the “Rebate Fund.” The Issuing and Paying Agent shall hold any payments received from the Agency for deposit into the Rebate Fund for purposes of ultimate rebate to the United States, all as more particularly described in the Tax Certificate. Pending payment to the United States, moneys held in the Rebate Fund are hereby pledged to secure such payments to the United States as provided herein and in the Tax Certificate, and neither the Agency, the Owners nor any other person shall have any rights in or claim to such moneys. The Issuing and Paying Agent shall invest all amounts held in the Rebate Fund as directed in writing by a Authorized Agency Representative in Nonpurpose Investments (as defined in the Tax Certificate), as directed by the Agency in the Tax Certificate.

Computations of the rebate amount and all calculations under this Section and the Tax Certificate shall be furnished by or on behalf of the Agency. The Issuing and Paying Agent shall be deemed conclusively to have complied with the provisions of this Section if it follows the payment directions of the Authorized Agency Representative. The Issuing and Paying Agent shall have no liability or responsibility to enforce compliance by the Agency with the Tax Certificate. The Issuing and Paying Agent shall have no obligation to pay any amounts required to be rebated pursuant to this Section, other than from moneys required to be held in the funds and accounts created under this Agreement, including the Rebate Fund, or from other moneys provided to it by the Agency.

The Agency and the Issuing and Paying Agent shall keep and retain, for a period of two (2) years following the retirement of the Tax-Exempt Notes, records of the determinations made pursuant to this Section 4.02.

In order to provide for the administration of this Section 4.02, the Agency may provide for the employment of independent attorneys, accountants and consultants, who shall be selected by the Agency with reasonable care and compensated on such reasonable basis as the Agency may deem appropriate, and the Issuing and Paying Agent may rely conclusively upon the

opinions, calculations, determinations and advice of such attorneys, accountants and consultants employed hereunder.

Section 4.03 Tax Covenant. The Agency shall not use or knowingly permit the use of any proceeds of the Commercial Paper Notes or any other funds of the Agency, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Tax-Exempt Notes being treated as an obligation not described in Section 103(a) of the Code. Without limiting the generality of the foregoing, the Agency will comply with all the requirements and covenants contained in the Tax Certificate. This covenant shall survive the payment in full or defeasance of the Commercial Paper Notes.

Section 4.04 Letter of Credit. The Agency hereby covenants to maintain in effect the Letter of Credit or an Alternate Facility meeting the requirements hereof at all times that Commercial Paper Notes are Outstanding hereunder.

## ARTICLE V

### PLEDGE OF AVAILABLE TRANSPORTATION SYSTEM REVENUES

Section 5.01 Pledge of Available Transportation System Revenues; Trust Estate. Principal and interest payments on the Commercial Paper Notes shall be secured by a pledge of, first lien on and security interest in, and, to the extent not paid from proceeds of draws on the Letter of Credit, shall be paid exclusively from, the Available Transportation System Revenues. The Available Transportation System Revenues deposited in the Enterprise Account established under the Senior Lien Revenue Bonds Indenture shall constitute a trust fund for the security and payment of the principal amount of and interest on the Commercial Paper Notes; *provided, however,* that the lien on such trust fund shall be subordinate at all times to the lien on the Pledged Revenues established under the Senior Lien Revenue Bonds Indenture for the benefit of the holders of the Senior Lien Revenue Bonds. The Agency hereby grants a first lien on and security interest in, assigns, transfers, pledges and grants and conveys to the Holders and the holders of any other Parity Obligations, the following property:

- (a) amounts on deposit from time to time in the Funds and Accounts created pursuant to this Issuing and Paying Agent Agreement, including the earnings thereon, subject to the provisions of this Issuing and Paying Agent Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein.
- (b) amounts constituting Available Transportation System Revenues in the Enterprise Account or otherwise available; and
- (c) any and all other property of any kind from time to time conveyed, pledged, assigned or transferred, as and for additional security hereunder for the Commercial Paper Notes.

The pledge of the Available Transportation System Revenues and other moneys and property described above shall be irrevocable until all of the Commercial Paper Notes have been paid and retired and all obligations under the Agency hereunder and under the Reimbursement

Agreement without priority or distinction of one over the other, except as expressly provided hereunder. Such pledge shall be valid and binding from and after the date hereof and all Available Transportation System Revenues shall immediately be subject to the lien of such pledge as and when received by the Agency, without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Agency.

All Commercial Paper Notes issued hereunder and at any time Outstanding shall be equally and ratably secured with all Parity Obligations, with the same right, lien, preference and priority with respect to Available Transportation System Revenues, without preference, priority or distinction on account of the date or dates or the actual time or times of the issuance or maturity thereof or otherwise. Notwithstanding the foregoing, amounts drawn under the Letter of Credit or an Alternate Facility with respect to particular Commercial Paper Notes and all other amounts held in Funds or Accounts established with respect to particular Commercial Paper Notes pursuant to the provisions hereof shall be applied solely to make payments on such particular Commercial Paper Notes.

The Commercial Paper Notes are special, limited obligations of the Agency payable solely from Available Transportation System Revenues of the Agency, from moneys held in certain Funds and Accounts established hereunder, and draws on the Letter of Credit or an Alternate Facility. The General Fund of the City is not liable for the payment of principal or interest on the Commercial Paper Notes, and neither the credit nor the taxing power of the City is pledged to the payment of principal or interest on the Commercial Paper Notes. The Commercial Paper Notes are not secured by a legal or equitable pledge of, or charge, lien, or encumbrance upon, any of the property of the City or of the Agency or any of its income or receipts, except Available Transportation System Revenues as provided herein.

## ARTICLE VI

### ISSUING AND PAYING AGENT; DEALER

Section 6.01 Appointment of Issuing and Paying Agent. The Agency hereby appoints U.S. Bank National Association to serve as Issuing and Paying Agent hereunder. The Issuing and Paying Agent hereby accepts such appointment and hereby agrees to hold such funds, and fulfill such other duties of the Issuing and Paying Agent as more fully set forth in this Agreement. The Agency acknowledges that (i) the Issuing and Paying Agent has previously entered into a commercial paper certificate agreement (the "Certificate Agreement") with DTC, a copy of which is on file with the Agency and the Issuing and Paying Agent, and (ii) the continuing effectiveness of the Certificate Agreement is a necessary prerequisite to the Issuing and Paying Agent's providing services related to the issuance and payment of the Commercial Paper Notes while the Commercial Paper Notes are in book-entry only form and DTC is the Note Depository.

#### Section 6.02 Reports and Records.

- (a) The Issuing and Paying Agent shall at all times keep or cause to be kept proper books and records, as shall be consistent with prudent industry practice, in which complete and accurate entries shall be made of all transactions, including without limitation a complete

record of all Issuance Requests, made by it relating to the proceeds of the Commercial Paper Notes and all Funds and Accounts established and maintained by the Issuing and Paying Agent hereunder. Such records shall be available for inspection by the Agency, the City and the Bank on each Business Day upon reasonable notice during reasonable business hours and by any Commercial Paper Noteholder or its agent or representative duly authorized in writing at reasonable hours upon reasonable notice.

- (b) The Issuing and Paying Agent shall provide to the Agency each month a report of the amounts deposited in each Fund and Account held by it under this Agreement and the amount disbursed from such Funds and Accounts, the earnings thereon, if any, the ending balance in each such Fund and Account, and the investments in each such Fund and Account. The Issuing and Paying Agent shall also make available to the Agency such information regarding the issuance of Commercial Paper Notes during the subject month as the Agency shall reasonably request.
- (c) The Issuing and Paying Agent shall maintain such books, records, and accounts as may be necessary to evidence the obligations of the Agency resulting from the Commercial Paper Notes, the principal amounts owing thereunder, the maturity schedule therefor, the respective rates of interest thereon and the principal and interest paid from time to time thereunder. So long as the Commercial Paper Notes are in book-entry form, in any legal action or proceeding with respect to a master note, the entries made in such books, records or accounts shall be, absent manifest error, conclusive evidence of the existence and the amounts of the obligations of the Agency therein recorded.

Section 6.03 Duties. The Issuing and Paying Agent's duties and responsibilities in connection with the payment of the Commercial Paper Notes shall include:

- (a) upon presentment at maturity of a Commercial Paper Note, to pay the principal of and interest on the Commercial Paper Note to the Holder thereof;
- (b) to make the necessary and timely drawings under the Reimbursement Agreement in accordance with the terms and provisions thereof in order to effectuate the timely payment of principal of and interest on the Commercial Paper Notes as the same becomes due;
- (c) to credit amounts received from the Agency and the Dealers for the payment of the principal of or interest on the Commercial Paper Notes to the Bank Payment Account;
- (d) to credit amounts received from the Bank as a result of drawings under the Reimbursement Agreement to the Debt Service Account;
- (e) to keep amounts on deposit in the Debt Service Account separate from all other funds and accounts of the Issuing and Paying Agent and to utilize such amounts in accordance with the terms hereof; and
- (f) the Issuing and Paying Agent agrees that it will not consent to the reduction of the Stated Amount of the Letter of Credit below the amount of Commercial Paper Notes outstanding.

The Issuing and Paying Agent shall have no obligation to pay amounts due on the Commercial Paper Notes at their maturity other than from funds received by the Issuing and Paying Agent from the Agency or the Bank pursuant to draws made on the Letter of Credit.

Section 6.04 Compensation. The Agency agrees to pay compensation for the Issuing and Paying Agent's services hereunder in accordance with the Issuing and Paying Agent's fee schedule, as amended from time to time (with notice to and the consent of the Agency), and to reimburse the Issuing and Paying Agent for such disbursements (including the reasonable fees and expenses of counsel). The Issuing and Paying Agent's fee schedule is attached hereto as Exhibit E. The Agency shall also reimburse the Issuing and Paying Agent for any fees and charges imposed by the Note Depository with respect to Commercial Paper Notes issued in book-entry form as set forth in the fee schedule. The Issuing and Paying Agent shall have no lien on Commercial Paper Proceeds, on any unreimbursed draw on the Letter of Credit or on any Advance outstanding under the Reimbursement Agreement for payment of its compensation hereunder.

Section 6.05 Liability. The Agency agrees that the Issuing and Paying Agent shall not be liable for any losses, damages, liabilities or costs suffered or incurred by the Agency as a result of (a) the Issuing and Paying Agent's having duly executed Issuance Requests in good faith in accordance therewith and with this Agreement; (b) the Issuing and Paying Agent's improperly executing or failing to execute any Issuance Requests because of erroneous Issuance Requests, failure of communications media, or any other circumstances beyond the Issuing and Paying Agent's control; (c) the actions or inactions of DTC or any broker, dealer, consignee or agent not selected by the Issuing and Paying Agent; or (d) any other acts or omissions of the Issuing and Paying Agent (or of any of its agents, directors, officers, employees or correspondents) relating to this Agreement or the transactions or activities contemplated hereby except to the extent, if any, that such other acts or omissions constitute negligence or willful misconduct by the Issuing and Paying Agent (or by any of its agents, directors, officers, employees or correspondents). This Section 6.05 shall survive any termination of this Agreement and the issuance and payment of any Commercial Paper Notes.

Section 6.06 Additional Information. Upon the reasonable written request of the Agency, the City or the Bank, as applicable, the Issuing and Paying Agent agrees promptly to provide the Agency, the City or the Bank, as applicable, with information with respect to the Commercial Paper Notes issued and paid hereunder. Such request shall be in written form and shall include the principal amount, date of issue, maturity date, interest rate and amount of interest, as applicable, of each Commercial Paper Note which has been issued or paid by the Issuing and Paying Agent and for which the request is being made.

Section 6.07 Resignation and Replacement of Issuing and Paying Agent. The Issuing and Paying Agent may at any time resign and be discharged of the duties and obligations created by this Agreement by giving at least 30 days' written notice to the Bank, the City and the Agency. The Issuing and Paying Agent may be removed, with the written consent of the Bank, which consent shall not be unreasonably withheld, at any time by an instrument signed by a Authorized Agency Representative and filed with the Issuing and Paying Agent and the Bank. No such resignation or removal shall become effective, however, until a successor Issuing and Paying Agent has been selected by the Agency with the consent of the Bank (which such consent



shall not be unreasonably withheld) and assumed the duties of the Issuing and Paying Agent hereunder and under the Reimbursement Agreement. The Agency will use its best efforts to at all times maintain a Issuing and Paying Agent that is reasonably acceptable to the Bank.

In the event of the resignation or removal of the Issuing and Paying Agent, the Issuing and Paying Agent shall pay over, assign and deliver to the Agency any moneys held by it in such capacity to its successor.

The Issuing and Paying Agent shall, at all times, be a bank or trust company having an office in New York, New York and shall at all times be a corporation or a national banking association organized and doing business under the laws of the United States of America or of any state with a combined capital and surplus of at least \$50,000,000 and authorized under such laws to exercise corporate trust powers and be subject to supervision or examination by federal or state authority. If such corporation or national banking association publishes reports of condition at least annually pursuant to law or the requirements of such authority, then for the purposes of this section, the combined capital and surplus of such corporation or national banking association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

Any corporation or national banking association into which any Issuing and Paying Agent may be merged or converted or with which it may be consolidated, or any corporation or national banking association resulting from any merger, consolidation or conversion to which any Issuing and Paying Agent shall be a party, or any corporation or national banking association succeeding to the corporate trust business of any Issuing and Paying Agent shall be the successor of the Issuing and Paying Agent if such successor corporation or national banking association is otherwise eligible under this Section, without the execution or filing of any further act on the part of the Issuing and Paying Agent or such successor corporation or national banking association.

Section 6.08 Dealers. The Agency hereby agrees that, at or prior to the time of issuance of any Commercial Paper Notes, the Agency will enter into a Dealer Agreement with each Dealer. The Agency covenants that at all times prior to the Commitment Expiration Date, it will maintain in effect one or more Dealer Agreements, pursuant to which each Dealer will agree to fulfill the duties and obligations of the Dealer as set forth in this Agreement and its Dealer Agreement.

Section 6.09 Compliance with City Requirements. The Issuing and Paying Agent hereby agrees to comply with the City's requirements as set forth in Exhibit F.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES OF COMMERCIAL PAPER NOTEHOLDERS

Section 7.01 Events of Default. Each of the following shall constitute an "Event of Default":

- (a) if default shall be made in the due and punctual payment of the principal of any Commercial Paper Notes when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;
- (b) if default shall be made in the due and punctual payment of any installment of interest on any Commercial Paper Notes when and as such interest installment shall become due and payable; or
- (c) if Bank shall have declared the principal amount of the Bank Note and interest accrued thereon to be due and payable prior to the maturity thereof pursuant to the Reimbursement Agreement.

[Upon the occurrence of the events listed in subsections (a), (b), and (c) above, the Bank may instructing the Issuing and Paying Agent to declare the principal of the Commercial Paper Notes outstanding, and the interest accrued thereon, to be due and payable immediately, whereupon the same shall become and shall be immediately due and payable, anything in this Agreement or in the Commercial Paper Notes or in the Reimbursement Agreement contained to the contrary notwithstanding, *provided, however*, that such remedy shall not be available to the Bank if said Event of Default was caused by a failure of the Bank to honor a properly presented draw made under the Letter of Credit in conformance with the terms hereof.]

[If the Bank becomes insolvent or for any reason fails to honor a draw under the Letter of Credit or Alternate Facility and there is a default in the payment of principal or interest on the Commercial Paper Notes, the Holders of the Commercial Paper Notes shall have the right to take remedies, as provided in Section 7.02 hereof, to obtain payment of amounts due.]

Section 7.02 Suits at Law or in Equity and Mandamus. In case one or more Events of Default shall occur, then and in every such case any Holder of any Commercial Paper Note at the time outstanding and the Bank shall be entitled to proceed to protect and enforce such Holder's rights or the Bank's rights, as the case may be, by such appropriate judicial proceeding as such enforcer shall deem most effectual to protect and enforce any such right, whether by mandamus or other suit or proceeding at law or in equity, for the specific performance of any covenant or agreement contained in this Agreement, or in aid of the exercise of any power granted in this Agreement, or to enforce any other legal or equitable right. The provisions of this Agreement shall be a contract with the Bank and with each and every Holder of Commercial Paper Notes, and the duties of the Agency and of the Board shall be enforceable by the Bank (subject to Section 7.04 hereof) or any Commercial Paper Noteholder by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction.

Section 7.03 Remedies Not Exclusive. No remedy herein conferred upon the Bank or the Holders of Commercial Paper Notes is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised at any time or from time to time, and as often as may be necessary, by the Bank (subject to Section 7.04 hereof) or the Holder of any one or more of the Commercial Paper Notes.

Section 7.04 Bank to Control Remedies. So long as the Bank is not insolvent and has not failed to honor a properly presented and conforming draw under the Letter of Credit, no remedy (other than the right of the Holders of the Commercial Paper Notes to declare an acceleration thereof and the right of the Issuing and Paying Agent to request a draw under the Letter of Credit) under this Agreement with respect to the Commercial Paper Notes may be pursued without the prior written consent of the Bank. The Bank shall have the right to direct the Issuing and Paying Agent to pursue any right, power, or remedy available under this Agreement.

Section 7.05 Waiver of Events of Default. No Event of Default with respect to the Commercial Paper Notes shall be waived pursuant to Section 7.04 unless after such waiver the Reimbursement Agreement shall have been reinstated and shall be in full force and effect.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01 Supplemental Agreements. The Agency may modify or amend this Agreement and the rights and obligations of the Bank and the Holders of Commercial Paper Notes and the Agency hereunder at any time by a supplemental agreement, without notice to or the consent of the Bank or any Commercial Paper Noteholder, but only to (a) make such provisions for the purpose of (i) curing any ambiguity or formal defect or omission herein, (ii) curing, correcting or supplementing any defective provision contained in this Agreement which may be inconsistent with any provision herein, or to make any other provisions with respect to matters or questions arising hereunder which shall not have a material adverse affect on the Holders or the Bank, (iii) granting or conferring upon the Holders and the Bank any additional rights, remedies, powers or authority that may be lawfully granted or conferred; (iv) securing additional revenues or providing additional security for the payment of any Commercial Paper Notes and the Bank Note; (v) complying with requirements of the Code, in order to satisfy the covenants of Section 4.01 hereof; (vi) adding requirements the compliance of which is required by a Rating Agency in connection with issuing or maintaining a rating on the Commercial Paper Notes (vii) making any change or addition hereto which, in the opinion of Bond Counsel, shall not have a material adverse affect on the interests of the Holders or the Bank and (viii) making any change or addition hereto with the consent of the Bank. The Agency shall provide a copy of any such amendment to the Bank and the City promptly upon its execution.

Section 8.02 Alternate Facility. Notwithstanding anything herein to the contrary, the Agency may obtain an Alternate Facility to replace a Reimbursement Agreement then in effect hereunder so long as said Alternate Facility shall go into effect at least one Business Day prior to the termination of the Letter of Credit then in effect, the Expiration Date with respect to such Alternate Facility shall be no earlier than the earlier of (i) six (6) months after its date or (ii) the Expiration Date set forth in the Letter of Credit then in effect. The following are further conditions to the Issuing and Paying Agent's ability to release an existing Reimbursement Agreement and accept an Alternate Facility:

(a) The Agency shall deliver written notice of the proposed Alternate Facility to the Issuing and Paying Agent, the Bank, the City and each Dealer not less than 30 days prior to the substitution date.

(b) Prior to the substitution date, there shall be delivered to the Agency and/or the Issuing and Paying Agent written evidence from each Rating Agency then maintaining a rating on the Commercial Paper Notes, that the substitution of such Reimbursement Agreement will not, in and of itself, result in any rating then assigned to the Commercial Paper Notes being suspended, reduced or withdrawn (provided that if all the Commercial Paper Notes mature on the substitution date of the Alternate Facility this condition shall not apply).

(c) The Issuing and Paying Agent shall deliver written notice of such substitution to the registered Holders of the Commercial Paper Notes at least 30 days prior to the substitution date (provided that if all the Commercial Paper Notes mature on the substitution date of the Alternate Facility this condition shall not apply).

(d) An opinion or opinions of counsel to the successor Bank shall be delivered to the effect that the Alternate Facility is a legal, valid and binding obligation of the issuing Bank and is enforceable against the Bank in accordance with its terms.

(e) An opinion of Bond Counsel shall be delivered to the Issuing and Paying Agent to the effect that the substitution of a Letter of Credit is authorized hereunder and will not, in and of itself, adversely affect the exclusion from gross income for federal tax purposes of interest on the Commercial Paper Notes.

Section 8.03 Reserved.

Section 8.04 Timeliness of Deposits. Funds shall be deemed transferred for purposes of timeliness of receipt under this Agreement when transfer instructions for transfer by federal reserve wire have been given and a federal wire number confirmation has been received; *provided* that the party to receive such funds shall not be required to take any action required to be taken hereunder with respect to such funds until it has confirmation of actual receipt of such funds.

Section 8.05 Defeasance of Commercial Paper Notes. Commercial Paper Notes shall be deemed to have been paid in full, and the obligation of the Agency thereunder to have ceased, terminated and become void and completely discharged and satisfied, if payment of the principal

of, and interest on the Commercial Paper Notes either (a) shall have been made or caused to be made in accordance with the terms of the Commercial Paper Notes and this Agreement or (b) shall have been provided for by irrevocably depositing with the Issuing and Paying Agent in trust and irrevocably setting aside exclusively for such payment (i) moneys sufficient to make such payment and/or (ii) noncallable obligations backed by the full faith and credit of the United States Government (“Government Obligations”), in each case, in an amount sufficient, with reinvestment, to pay when due the principal amount of the Commercial Paper Notes, including accrued interest thereon.

Section 8.06 Payments or Actions Occurring on Non-Business Days. If a payment date is not a Business Day at the place of payment or if any action required hereunder is required on a date that is not a Business Day, then payment may be made at that place on the next Business Day or such action may be taken on the next Business Day with the same effect as if payment were made on the action taken on the stated date, and no interest shall accrue for the intervening period.

Section 8.07 Notices to Rating Agencies. The Agency shall provide each Rating Agency, with a copy to the City, with written notice of the occurrence of the following events: (i) removal or appointment of any Dealer (ii) the appointment of a successor Issuing and Paying Agent, (iii) amendments to this Agreement or the Letter of Credit, (iv) the expiration, termination, substitution or extension of a Letter of Credit, and (v) the defeasance or acceleration of all Outstanding Commercial Paper Notes. Notice to Moody’s shall be addressed as follows (or as provided in any subsequent notice to the Agency) Moody’s Investors Service, 7 World Trade Center, 250 Greenwich Street, New York, New York 10007, Attention: Public Finance Group; notice to Fitch shall be addressed as follows (or as provided in any subsequent notice to the Agency) to Fitch Ratings, Inc., One State Street Plaza, New York, New York 10004, Attention: Municipal Structured Finance; and notice to Standard and Poor’s shall be addressed as follows (or as provided in any subsequent notice to the Agency) Standard and Poor’s, 55 Water Street, New York, New York 10041, Attention: Public Finance Structured Group.

Section 8.08 Issuance Requests; Addresses. Issuance Requests hereunder shall be (a) mailed, (b) telephoned, (c) transmitted by facsimile device, and/or (d) transmitted via the System described in Section 2.04(d) hereof to the Issuing and Paying Agent at the address, telephone number, facsimile number specified below or through the System and shall be deemed delivered upon receipt by the Issuing and Paying Agent at the address, telephone number, and/or facsimile number specified below or through the System.

[\_\_\_\_\_]

All notices, requests, demands, including any No Issuance Notices and other communications hereunder (excluding Issuance Requests) shall be in writing and shall be deemed to have been duly given (a) upon delivery by hand (against receipt), or (b) three days after such notice, request, demand, or other communication is delivered to a United States Post Office certified mail (against receipt) or by regular mail (upon receipt) to the party and at the address set forth below or at such other address as a party may designate by written notice:

(a) If to the Agency:

San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, California 94103  
Attention: Manager, Finance, Contracts and Special Projects

(b) If to the City:

City and County of San Francisco  
Office of Public Finance  
Attention: Director of Public Finance  
City Hall, Room 336  
San Francisco, California 94102  
Telephone: (415) 554-4862  
Facsimile: (415) 554-4864

with copies to:

City and County of San Francisco  
Office of the Treasurer  
Attention: Treasurer  
City Hall, Room 140  
San Francisco, California 94102  
Telephone: (415) 554-4476  
Facsimile: (415) 554-4672

City and County of San Francisco  
Office of the Controller  
Attention: Controller  
City Hall, Room 316  
San Francisco, California 94102  
Telephone: (415) 554-7500  
Facsimile: (415) 554-7466]

(c) If to the Dealers:

As set forth in the Dealer Agreement.

(d) If to the Issuing and Paying Agent:

[\_\_\_\_\_]

(e) If to the Bank:

[\_\_\_\_\_]

Notwithstanding the foregoing, any notices required to be sent or received under the Reimbursement Agreement shall be sent and received as provided therein.

Section 8.09 Reserved.

Section 8.10 Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of California.

Section 8.11 Assignment; Issuing and Paying Agent's Successor in Interest. This Agreement may not be assigned by either the Agency or the Issuing and Paying Agent except by a writing or writings duly executed by the duly authorized representatives of the Agency and the Issuing and Paying Agent and approved in writing by the Bank (which approval shall not be unreasonable withheld). Anything in this Agreement to the contrary notwithstanding, any corporation or national banking association into which the Issuing and Paying Agent may be merged or converted or with which it may be consolidated, or any corporation or national banking association resulting from any merger, consolidation or conversion to which the Issuing and Paying Agent shall be a party, or any corporation or national banking association succeeding to the corporate trust business of the Issuing and Paying Agent shall be the successor of the Issuing and Paying Agent if such successor corporation or national banking association is otherwise eligible under Section 6.07 hereof, without the execution or filing of any document or any further act on the part of the Issuing and Paying Agent or such successor corporation or national banking association.

Section 8.12 Complete Agreement. This Agreement contains the entire understanding and agreement between the parties with respect to the subject matter hereof and all prior agreements, understandings, representations, statements, promises, inducements, negotiations and undertakings between the parties with respect to said subject matter are superseded hereby.

Section 8.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

Section 8.14 Section Headings. Section headings in this Agreement are for convenience of reference only, shall not constitute part of this Agreement and shall not be used to continue the meaning or intent of the provisions hereof.

Section 8.15 Waiver of Set-Off, Offset Lien or Counterclaims. The Issuing and Paying Agent hereby waives to the fullest extent possible under applicable law any and all rights of set-off, offset, lien or counterclaim it may have with respect to any amounts held by it in the Bank Payment Account and the Commercial Paper Debt Service Account by reason of any claim it may have against the Agency, the Bank or any other person.

Section 8.16 Benefit of Agreement. This Agreement is solely for the benefit of the parties hereto, the Bank and the owners of the Commercial Paper Notes, and no other person shall acquire or have any right under or by virtue hereof.

Section 8.17 Covenant of Further Assurances. It is hereby covenanted and warranted by the Agency that all representations and recitals contained in this Agreement are true and correct and that the Agency, and their appropriate officials, have duly taken all proceedings

necessary to be taken by them, and will take any additional proceedings necessary to be taken by them, for collection of Available Transportation System Revenues in accordance with law and for carrying out the provisions of this Agreement.

Section 8.18 Waiver of Personal Liability. No officer or employee of the Agency shall be individually or personally liable for the payment of the Commercial Paper Notes, but nothing contained herein shall relieve any officer or employee of the Agency from the performance of any official duty provided by any applicable provision of law or hereby.

Section 8.19 Acquisition of the Commercial Paper Notes by the Agency. All Commercial Paper Notes acquired by the Agency, whether by purchase or gift or otherwise, may be surrendered to the Issuing and Paying Agent for cancellation.

Section 8.20 Notice by Mail. With respect to Commercial Paper Notes, any notice required to be given hereunder by mail to the Holders shall be given by mailing a copy of such notice, first-class postage prepaid, to the Holders of all the Commercial Paper Notes at their addresses appearing in the books required to be kept by the Issuing and Paying Agent pursuant to the provisions of this Agreement.

Section 8.21 Partial Invalidity. If any one or more of the conditions, covenants or terms contained herein or required herein to be observed or performed by or on the part of the Agency, the Issuing and Paying Agent or the Bank shall be contrary to law, then such condition or conditions, such covenant or covenants, or such term or terms shall be null and void and shall be deemed separable from the remaining conditions, covenants and terms hereof and shall in no way affect the validity hereof or of the Commercial Paper Notes, and the Holders and the Bank shall retain all the benefit, protection and security afforded to them hereunder and under all provisions of applicable law. The Agency declares that it would have executed and delivered this Agreement and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized the execution and delivery of the Commercial Paper Notes pursuant hereto irrespective of the fact that any one or more of the articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 8.22 Reference to the Bank. Notwithstanding any provisions contained herein to the contrary, after the expiration or termination of a Letter of Credit, by its terms (or if a Bank shall have failed to honor a properly presented and conforming draw under the Letter of Credit), and after all obligations owed to a Bank pursuant to a Letter of Credit (other than the right to indemnification and other rights which purport to survive satisfaction of present payment obligations) have been paid in full or discharged, all references to the Bank contained herein shall be null and void and of no further force and effect.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

U.S. BANK NATIONAL ASSOCIATION,  
as Issuing and Paying Agent

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

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY

By: \_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation

Approved as to Form:

DENNIS J. HERRERA  
City Attorney of the City and  
County of San Francisco

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

[Acknowledged:

NADIA SESAY  
Director of Public Finance of the City  
and County of San Francisco

\_\_\_\_\_  
BENJAMIN ROSENFELD  
Controller of the City and  
County of San Francisco  
\_\_\_\_\_ ]

## **EXHIBIT A**

### **FORM OF TAX-EXEMPT MASTER NOTE**

Unless this certificate is presented by an authorized representative of The Depository Trust Company (“DTC”) to the Agency or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of CEDE & CO. or such other name as requested by an authorized representative of DTC (and any payment is made to CEDE & CO. or to such other entity as is requested by an authorized officer of DTC), 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.

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY  
COMMERCIAL PAPER NOTES  
SERIES A-1 (TAX-EXEMPT)**

No. DTC Master Note 1

Registered Owner: CEDE & CO.

Principal Sum: Not to Exceed \$100,000,000

The SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, duly constituted and established under Article VIIIA of the Charter of the City and County of San Francisco (hereinafter called the “Agency”), for value received, hereby promises to pay (but only out of the Available Transportation System Revenues hereinafter referred to) to the registered owner hereinabove named or registered assigns, the principal amount, together with unpaid accrued interest thereon, if any, on the maturity date of each obligation identified on the records of Agency (the “Underlying Records”) as being evidenced by this Master Commercial Paper Note, which Underlying Records are maintained by [\_\_\_\_\_], as Issuing and Paying Agent (the “Issuing and Paying Agent”). Interest shall be calculated on the basis of the actual number of days elapsed and a year consisting of 365 or 366 days, as applicable, at the rate specified on the Underlying Records. Payments shall be made solely from Available Transportation System Revenues (as defined in the Agreement referred to hereinafter) and draws on the Letter of Credit or any Alternate Facility to the registered owner stated hereinabove from the Issuing and Paying Agent without the necessity of presentation and surrender of this Master Commercial Paper Note.

This Master Commercial Paper Note is one of a duly authorized issue of San Francisco Municipal Transportation Agency Commercial Paper Notes (hereinafter called the “Obligations”) of the series and designation indicated on the face hereof. Said authorized issue of Obligations is not limited in aggregate principal amount and consists of multiple series of varying denominations, dates, maturities, interest rates and other provisions, as in the Agreement hereinafter mentioned provided, all obligations issued and to be issued pursuant to the provisions of the Charter of the City and County of San Francisco, and all laws of the State of California supplemental thereto, including Section 8A.102 of the Charter and Ordinance No. 57-12 adopted

by the Board of Supervisors of the City (the "Board") on April 17, 2012 and signed by Mayor Edwin M. Lee on April 19, 2012, and codified as Chapter 43, Article XIII, Sections 43.13.1 through 43.13.8 of the San Francisco Administrative Code (the "Act"). This Master Commercial Paper Note has been issued pursuant to the Issuing and Paying Agent Agreement (the "Agreement"), dated as of [\_\_\_\_\_], 2013, by and between the Agency and the Issuing and Paying Agent, which Agreement provides for the issuance of the Obligations. This Master Commercial Paper Note evidences a series of Commercial Paper Notes designated as the "San Francisco Municipal Transportation Agency Commercial Paper Notes Series A-1 (Tax-Exempt)," the aggregate principal amount of which is limited to \$100,000,000.

Reference is hereby made to the Agreement for a description of the terms on which the Obligations are issued and to be issued, the provisions with regard to the nature and extent of the Available Transportation System Revenues, as that term is defined in the Agreement, and the rights of the registered owners of the Obligations; and all the terms of the Agreement are hereby incorporated herein and made a contract between the Agency and the registered owner from time to time of this Master Commercial Paper Note, and to all the provisions thereof the registered owner of this Master Commercial Paper Note, by its acceptance hereof, consents and agrees.

This Master Commercial Paper Note, including the interest hereon, together with all other Obligations, and the interest thereon, issued under the Agreement (and to the extent set forth in the Agreement), is payable from, and is secured by a charge and lien on, the Available Transportation System Revenues derived by the Agency from the Project (as those terms are defined in the Agreement).

The obligation of the Agency to pay the registered owners from time to time of Commercial Paper Notes shall be only from Available Transportation System Revenues. No holder of this Master Commercial Paper Note shall ever have the right to compel any exercise of the taxing power of the City and County of San Francisco to pay this Master Commercial Paper Note or the interest hereon.

At the request of the registered owner, the Agency shall promptly issue and deliver one or more separate note certificates evidencing each obligation evidenced by this Master Commercial Paper Note. As of the date any such note certificate or certificates are issued, the obligations which are evidenced thereby shall no longer be evidenced by this Master Commercial Paper Note. This Commercial Paper Note is transferable by the registered owner hereof, in person or by attorney duly authorized in writing, at the principal office of the Issuing and Paying Agent in New York, New York, but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement, and upon surrender and cancellation of this Master Commercial Paper Note. Upon such transfer a new fully registered Master Commercial Paper Note without coupons, of authorized denomination or denominations, for the same aggregate principal amount will be issued to the transferee in exchange herefor.

The Agency and the Issuing and Paying Agent may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the Agency and the Issuing and Paying Agent shall not be affected by any notice to the contrary.

The rights and obligations of the Agency and of the registered owners of the Obligations may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Agreement.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Master Commercial Paper Note, and in the issuing of this Master Commercial Paper Note, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California and the Charter of the City and County of San Francisco, and that this Master Commercial Paper Note, together with all other indebtedness of the Agency pertaining to the Project, is within every debt limitation and other limit prescribed by the Constitution and statutes of the State of California and said Charter, and is not in excess of the amount of Obligations permitted to be issued under the Agreement.

This Master Commercial Paper Note shall not be entitled to any benefit under the Agreement, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been signed by the Issuing and Paying Agent. This Master Commercial Paper Note is a valid and binding obligation of Agency.

Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY has caused this Master Commercial Paper Note to be executed in its name and on its behalf by its Director of Transportation and countersigned by its Secretary, and this Master Commercial Paper Note to be dated as of the [\_\_\_\_] day of [\_\_\_\_], 2013.

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY

By \_\_\_\_\_  
Director of Transportation

Countersigned

\_\_\_\_\_  
Secretary

**CERTIFICATE OF AUTHENTICATION**

This is the Master Commercial Paper Note described in the within-mentioned Agreement.

Dated: [\_\_\_\_\_], 2013

U.S. Bank National Association, as Issuing and  
Paying Agent

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

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto

\_\_\_\_\_  
(Name, address, and Taxpayer Identification Number of Assignee)

this Master Commercial Paper Note and all rights thereunder, hereby irrevocably constituting and appointing \_\_\_\_\_ attorney to transfer said Master Commercial Paper Note on the books of the Agency with full power of substitution in the premises.

Dated:

Signature(s) Guaranteed

Notice: The signature on this assignment must correspond with the name as written upon the face of this Master Commercial Paper Note, in every particular, without alteration or enlargement or any change whatsoever.

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

## **EXHIBIT B**

### **FORM OF TAXABLE MASTER NOTE**

Unless this certificate is presented by an authorized representative of The Depository Trust Company (“DTC”) to the Agency or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of CEDE & CO. or such other name as requested by an authorized representative of DTC (and any payment is made to CEDE & CO. or to such other entity as is requested by an authorized officer of DTC), 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.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY  
COMMERCIAL PAPER NOTES  
SERIES A-2 (TAXABLE)

No. DTC Master Note 1

Registered Owner: CEDE & CO.

Principal Sum: Not to Exceed \$100,000,000

The SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, an agency duly constituted and established under Article VIII A of the Charter of the City and County of San Francisco (hereinafter called the “Agency”), for value received, hereby promises to pay (but only out of the Available Transportation System Revenues hereinafter referred to) to the registered owner hereinabove named or registered assigns, the principal amount, together with unpaid accrued interest thereon, if any, on the maturity date of each obligation identified on the records of Agency (the “Underlying Records”) as being evidenced by this Master Commercial Paper Note, which Underlying Records are maintained by U.S. Bank National Association, as Issuing and Paying Agent (the “Issuing and Paying Agent”). Interest shall be calculated on the basis of the actual number of days elapsed and a year consisting of 365 or 366 days, as applicable, at the rate specified on the Underlying Records. Payments shall be made solely from Available Transportation System Revenues (as defined in the Agreement referred to hereinafter) and draws on the Letter of Credit or any Alternate Facility to the registered owner stated hereinabove from the Issuing and Paying Agent without the necessity of presentation and surrender of this Master Commercial Paper Note.

This Master Commercial Paper Note is one of a duly authorized issue of San Francisco Municipal Transportation Agency Commercial Paper Notes (hereinafter called the “Obligations”) of the series and designation indicated on the face hereof. Said authorized issue of Obligations is not limited in aggregate principal amount and consists of multiple series of varying denominations, dates, maturities, interest rates and other provisions, as in the Agreement hereinafter mentioned provided, all obligations issued and to be issued pursuant to the provisions of the Charter of the City and County of San Francisco, and all laws of the State of California supplemental thereto, including Section 8A.102 of the Charter and Ordinance No. 57-12 adopted by the Board of Supervisors of the City (the “Board”) on April 17, 2012 and signed by Mayor

Edwin M. Lee on April 19, 2012, and codified as Chapter 43, Article XIII, Sections 43.13.1 through 43.13.8 of the San Francisco Administrative Code (the "Act"). This Master Commercial Paper Note has been issued pursuant to the Issuing and Paying Agent Agreement (the "Agreement"), dated as of [\_\_\_\_\_], 2013, by and between the Agency and the Issuing and Paying Agent, which Agreement provides for the issuance of the Obligations. This Master Commercial Paper Note evidences a series of Commercial Paper Notes designated as the "San Francisco Municipal Transportation Agency Commercial Paper Notes Series A-2 (Taxable)," the aggregate principal amount of which is limited to the \$100,000,000, as such terms are defined in the Agreement.

Reference is hereby made to the Agreement for a description of the terms on which the Obligations are issued and to be issued, the provisions with regard to the nature and extent of the Available Transportation System Revenues, as that term is defined in the Agreement, and the rights of the registered owners of the Obligations; and all the terms of the Agreement are hereby incorporated herein and made a contract between the Agency and the registered owner from time to time of this Master Commercial Paper Note, and to all the provisions thereof the registered owner of this Master Commercial Paper Note, by its acceptance hereof, consents and agrees.

This Master Commercial Paper Note, including the interest hereon, together with all other Obligations, and the interest thereon, issued under the Agreement (and to the extent set forth in the Agreement), is payable from, and is secured by a charge and lien on, the Available Transportation System Revenues derived by the Agency from the Project (as those terms are defined in the Agreement).

The obligation of the Agency to pay the registered owners from time to time of Commercial Paper Notes shall be only from Available Transportation System Revenues. No holder of this Master Commercial Paper Note shall ever have the right to compel any exercise of the taxing power of the City and County of San Francisco to pay this Master Commercial Paper Note or the interest hereon.

At the request of the registered owner, the Agency shall promptly issue and deliver one or more separate note certificates evidencing each obligation evidenced by this Master Commercial Paper Note. As of the date any such note certificate or certificates are issued, the obligations which are evidenced thereby shall no longer be evidenced by this Master Commercial Paper Note. This Commercial Paper Note is transferable by the registered owner hereof, in person or by attorney duly authorized in writing, at the principal office of the Issuing and Paying Agent in New York, New York, but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement, and upon surrender and cancellation of this Master Commercial Paper Note. Upon such transfer a new fully registered Master Commercial Paper Note without coupons, of authorized denomination or denominations, for the same aggregate principal amount will be issued to the transferee in exchange herefor.

The Agency and the Issuing and Paying Agent may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the Agency and the Issuing and Paying Agent shall not be affected by any notice to the contrary.



The rights and obligations of the Agency and of the registered owners of the Obligations may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Agreement.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Master Commercial Paper Note, and in the issuing of this Master Commercial Paper Note, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California and the Charter of the City and County of San Francisco, and that this Master Commercial Paper Note, together with all other indebtedness of the Agency pertaining to the Project, is within every debt limitation and other limit prescribed by the Constitution and statutes of the State of California and said Charter, and is not in excess of the amount of Obligations permitted to be issued under the Agreement.

This Master Commercial Paper Note shall not be entitled to any benefit under the Agreement, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been signed by the Issuing and Paying Agent. This Master Commercial Paper Note is a valid and binding obligation of Agency.

Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY has caused this Master Commercial Paper Note to be executed in its name and on its behalf by its Director of Transportation and countersigned by its Secretary, and this Master Commercial Paper Note to be dated as of the [\_\_\_\_] day of [\_\_\_\_], 2013.

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY

By \_\_\_\_\_  
Director of Transportation

Countersigned

\_\_\_\_\_  
Secretary

**CERTIFICATE OF AUTHENTICATION**

This is the Master Commercial Paper Note described in the within-mentioned Agreement.

Dated: [\_\_\_\_\_], 2013

U.S. Bank National Association, as Issuing and  
Paying Agent

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

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto  
\_\_\_\_\_  
(Name, address, and Taxpayer Identification Number of Assignee)

this Master Commercial Paper Note and all rights thereunder, hereby irrevocably constituting  
and appointing \_\_\_\_\_ attorney to transfer said Master Commercial Paper Note  
on the books of the Agency with full power of substitution in the premises.

Dated:

Signature(s) Guaranteed

Notice: The signature on this assignment must  
correspond with the name as written upon the face  
of this Master Commercial Paper Note, in every  
particular, without alteration or enlargement or any  
change whatsoever.

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

**EXHIBIT C**

**CERTIFICATE OF AUTHORIZED AGENCY REPRESENTATIVES**

I am the [\_\_\_\_\_] of the San Francisco Municipal Transportation Agency (the “Agency”) duly authorized pursuant to the Issuing and Paying Agent Agreement, dated as of [\_\_\_\_\_] , 2013 (the “SFMTA Issuing and Paying Agent Agreement”), between the Agency and [\_\_\_\_\_] relating to the San Francisco Municipal Transportation Agency Commercial Paper Notes Series A-1 (Tax-Exempt) (the “Tax-Exempt Notes”) and San Francisco Municipal Transportation Agency Commercial Paper Notes Series A-2 (Taxable) (the “Taxable Notes” and, together with the Tax-Exempt Notes, the “Commercial Paper Notes”), to appoint Authorized Agency Representatives of the Agency in connection with the issuance, from time to time, by the Agency of the Commercial Paper Notes in accordance with the SFMTA Issuing and Paying Agent Agreement. I hereby designate the following persons to act on my behalf in accordance with the SFMTA Issuing and Paying Agent Agreement and with respect to actions taken under the following agreements relating to the Commercial Paper Notes, the signatures of which persons are set forth beside their names: (i) Letter of Credit and Reimbursement Agreement relating to the Commercial Paper Notes, dated as of [\_\_\_\_\_] , 2013, by and between the Agency and State Street Bank and Trust Company (“State Street”), (ii) the Fee Letter relating to the Commercial Paper Notes, dated as of [\_\_\_\_\_] , 2013, by and between the Agency and State Street and (iii) the Dealer Agreement, dated as of [\_\_\_\_\_] , 2013, by and among the Agency, [\_\_\_\_\_] and [\_\_\_\_\_].

<u>Designated Persons</u>	<u>Title</u>	<u>Specimen Signature</u>
		_____
		_____
		_____
		_____

EXECUTED THIS \_\_\_\_\_, 2013.

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY

By: \_\_\_\_\_  
Director of Transportation

## EXHIBIT D

### FORM OF ISSUANCE REQUEST

Date: \_\_\_\_\_

Request Number: \_\_\_\_\_

The undersigned, a Authorized Agency Representative of the San Francisco Municipal Transportation Agency (the “Agency”) does hereby request U.S. Bank National Association as Issuing and Paying Agent (the “Issuing and Paying Agent”) under the Issuing and Paying Agent Agreement, dated as of \_\_\_\_\_, 2013 (the Agreement”) between the Agency and the Issuing and Paying Agent, to issue the Agency’s Commercial Paper Notes, as follows:

1. Series Designation:
2. Date of Issuance:
3. Principal Amount/Purchase Price for Notes:
4. Term of Commercial Paper Notes:
5. Rate of Interest:
6. Amount of Interest:
7. Maturity (specified actual date and number of days):
8. Total Commercial Paper Notes outstanding (including this request and excluding any Commercial Paper Notes maturing as of even date hereof):
9. Amount of Utilized Credit Capacity under Letter of Credit:
10. Stated Amount of Letter of Credit:
11. Remaining Amount of Unutilized Credit Capacity under Letter of Credit:
12. Commitment Expiration Date:

The delivery of this Issuance Request constitutes a certification and representation of the Agency as of the date hereof as to the matters set forth in Section 2.04(b) of the Agreement, and reproduced on Attachment A hereto.

All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Agreement.

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY

By: \_\_\_\_\_  
Authorized Agency Representative

ACKNOWLEDGED:

Secretary

\_\_\_\_\_

## ATTACHMENT A

### AGENCY CERTIFICATIONS

- (i) the Letter of Credit is in full force and effect;
- (ii) after the issuance of such Commercial Paper Notes and the application of the proceeds thereof, the aggregate principal amount of Commercial Paper Notes Outstanding will not exceed the amount that at the time is authorized to be Outstanding as provided in Section 2.01(a) of the Agreement;
- (iii) the interest rates borne by the Commercial Paper Notes to be delivered on such date do not exceed the Maximum Interest Rate;
- (iv) the terms of the Commercial Paper Notes do not exceed 270 days and the maturity dates of such Commercial Paper Notes set forth in the Issuance Request do not extend beyond the Business Day immediately preceding the Commitment Expiration Date or the latest maturity date allowed by the Ordinance;
- (v) the Commercial Paper Notes, the facts, estimates, circumstances and representations set forth or made (as the case may be) in the Tax Certificate continue to exist and are reaffirmed on such date;
- (vi) the Agency has not been notified by Bond Counsel that their opinion with respect to the validity of the Commercial Paper Notes and the tax treatment of the interest thereof delivered prior to the initial issuance of the Commercial Paper Notes has been revised or withdrawn or, if any such revisions or withdrawal has occurred, the revised opinion or a substitute opinion acceptable to the Dealer has been delivered;
- (vii) no Event of Default has occurred and is then continuing; and
- (viii) all of the conditions precedent to the issuance of such Commercial Paper Notes, including the consent of the [Director of Public Finance], or his or her designee, to the delivery of such Issuance Request, set forth in Section 2.04 of the Agreement have been satisfied.

**EXHIBIT E**

**SCHEDULE OF FEES AND EXPENSES FOR  
ISSUING AND PAYING AGENT SERVICES**



## **EXHIBIT F**

### **CITY REQUIREMENTS**

(a) *Tropical Hardwood and Virgin Redwood Ban.* The City urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

(b) *Nondiscrimination: Penalties.*

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

(ii) *Subcontracts.* The Issuing and Paying Agent shall incorporate by reference in all subcontracts made in fulfillment of its obligations hereunder the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. The Issuing and Paying Agent's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

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

(iv) *HRC Form.* The Issuing and Paying Agent shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Agency.

(v) *Incorporation of Administrative Code Provisions by Reference.* The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Issuing and Paying Agent shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the San Francisco Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Issuing and Paying Agent understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Issuing and Paying Agent and/or deducted from any payments due the Issuing and Paying Agent; *provided, however*, that such damages shall not be set off against the payment of rental or other contract related to Commercial Paper Notes or other debt obligations of the City.

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

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

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

(f) *Earned Income Credit ("EIC") Forms.* San Francisco Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(i) The Issuing and Paying Agent shall provide EIC Forms to each Eligible Employee at each of the following times: (A) within thirty days following the date on which this Agreement becomes effective (unless the Issuing and Paying Agent has already *provided* such EIC Forms at least once during the calendar year in which such effective date falls); (B) promptly after any Eligible Employee is hired by the Issuing and Paying Agent; and (C) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

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

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

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

(g) *Local Business Enterprise Utilization; Liquidated Damages.*

(i) *The LBE Ordinance.* The Issuing and Paying Agent shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), *provided* such amendments do not materially increase the Issuing and Paying Agent's obligations or liabilities, or materially diminish the Issuing and Paying Agent's rights, under this Agreement. Such

provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. The Issuing and Paying Agent's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of the Issuing and Paying Agent's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, the Issuing and Paying Agent shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(ii) **Compliance and Enforcement.** If the Issuing and Paying Agent willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, the Issuing and Paying Agent shall be liable for liquidated damages in an amount equal to the Issuing and Paying Agent's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Agency or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against the Issuing and Paying Agent authorized in the LBE Ordinance, including declaring the Issuing and Paying Agent to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Issuing and Paying Agent's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to the San Francisco Administrative Code Section 14B.17.

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

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

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

(i) ***Compliance with Americans with Disabilities Act.*** The Issuing and Paying Agent acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services

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

(j) *Sunshine Ordinance.* In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between the Agency or the City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

(k) *Requiring Minimum Compensation for Covered Employees.*

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

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

(iii) The Issuing and Paying Agent shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted

exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

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

(v) The City is authorized to inspect the Issuing and Paying Agent's job sites and conduct interviews with employees and conduct audits of the Issuing and Paying Agent.

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

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

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

(ix) The City may conduct random audits of the Issuing and Paying Agent. Random audits shall be (A) noticed in advance in writing; (B) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (C) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (D) limited to one audit of the Issuing and Paying Agent every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

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

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

(ii) Notwithstanding the above, if the Issuing and Paying Agent is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (i) above.

(iii) The Issuing and Paying Agent’s failure to comply with the HCAO shall constitute a material breach of this Agreement. The City shall notify the Issuing and Paying Agent if such a breach has occurred. If, within 30 days after receiving City’s written notice of a breach of this Agreement for violating the HCAO, the Issuing and Paying Agent fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Issuing and Paying Agent fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

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

(v) The Issuing and Paying Agent shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to the Issuing and Paying Agent’s noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO,

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

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

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

(viii) The Issuing and Paying Agent shall keep itself informed of the current requirements of the HCAO.

(ix) The Issuing and Paying Agent shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on subcontractors and subtenants, as applicable.

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

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

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

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

(m) *Prohibition on Political Activity with City Funds.* In accordance with San Francisco Administrative Code Chapter 12.G, the Issuing and Paying Agent may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. The Issuing and Paying Agent agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event the Issuing and Paying Agent violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and



(ii) prohibit the Issuing and Paying Agent from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider the Issuing and Paying Agent's use of profit as a violation of this section.

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

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

Any failure of the Issuing and Paying Agent to comply with this Section of this Agreement shall constitute a material breach of this Agreement.

(o) *Food Service Waste Reduction Requirements.* The Issuing and Paying Agent agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, the Issuing and Paying Agent agrees that if it breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Issuing and Paying Agent agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is

reasonable estimate of the damage that the City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by the City because of such Issuing and Paying Agent's failure to comply with this provision.

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

(q) *Nondisclosure of Private Information.* The Issuing and Paying Agent agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "*Nondisclosure of Private information Ordinance*"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, the Issuing and Paying Agent agrees to all of the following:

(i) Neither the Issuing and Paying Agent nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

(1) the disclosure is authorized by this Agreement;

(2) the Issuing and Paying Agent received advance written approval from the Contracting Department to disclose the information; or

(3) the disclosure is required by law or judicial order.

(ii) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(iii) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security

number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(iv) Any failure of the Bark to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar the Issuing and Paying Agent, or bring a false claim action against the Issuing and Paying Agent.

(r) *Proprietary or Confidential Information of City.* The Issuing and Paying Agent agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the City and its obligations, (g) with the consent of the City or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Issuing and Paying Agent on a nonconfidential basis from a source other than the City. For the purposes of this Section, "Information" means all information received from the City relating to the City or its business, other than any such information that is available to the Issuing and Paying Agent on a nonconfidential basis prior to disclosure by the City; *provided* that, in the case of information received from the City after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(s) *Submitting False Claims; Monetary Penalties.* Pursuant to San Francisco Administrative Code Section 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (i) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (ii) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (iii) conspires to defraud the City by getting a false claim allowed or paid by the City; (iv) knowingly makes,

uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (v) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

(t) *Subcontracting.* Except as otherwise provided in this Agreement, the Issuing and Paying Agent is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

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

(v) *City a Third Party Beneficiary.* The City is hereby designated as a third party beneficiary for the purpose of enforcing all of the obligations of the Issuing and Paying Agent contained in this Exhibit F to this Agreement.

Enclosure 5

Offering Memorandum

OFFERING MEMORANDUM DATED JUNE \_\_\_\_, 2013

Ratings: Moody's: \_\_  
S&P: \_\_

(See "RATINGS" herein)

In the opinions of Hawkins Delafield & Wood LLP and Curls Bartling P.C., Oakland, California, Co-Bond Counsel to the SFMTA, under existing statutes and court decisions and assuming continuing compliance with certain tax covenants described herein, (i) interest on the Tax-Exempt Commercial Paper Notes is excluded from gross income for Federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) interest on the Tax-Exempt Commercial Paper Notes is not treated as a preference item in calculating the alternative minimum tax imposed on individuals and corporations under the Code and is not included in the adjusted current earnings of corporations for purposes of calculating the alternative minimum tax. Interest on the Taxable Commercial Paper Notes is included in gross income for Federal income tax purposes pursuant to the Code. In addition, in the opinions of Co-Bond Counsel, under existing statutes, interest on the Commercial Paper Notes is exempt from personal income taxes imposed by the State of California. See "Tax Matters - Tax-Exempt Commercial Paper Notes" and "Tax Matters - Taxable Commercial Paper Notes" herein.

**SFMTA**

**Not to Exceed \$100,000,000**  
**San Francisco Municipal Transportation Agency**  
**Commercial Paper Notes**  
**SERIES A-1 (TAX-EXEMPT)**  
**SERIES A-2 (TAXABLE)**

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The San Francisco Municipal Transportation Agency ("SFMTA") Commercial Paper Notes ("Commercial Paper Notes") are special limited obligations of the SFMTA payable from, and secured solely by drawings on an irrevocable direct-pay letter of credit ("Letter of Credit") issued by State Street Bank and Trust Company (the "Bank") and from Available Transportation System Revenues. The Commercial Paper Notes are payable from Available Transportation System Revenues on a subordinate basis to the SFMTA's Senior Lien Revenue Bonds.

**The Commercial Paper Notes are not secured by any property or other assets of the SFMTA (or the City), except for draws on the Letter Of Credit and available transportation system revenues. The general fund of the City and County of San Francisco is not liable, and the credit or the taxing power of the City and County of San Francisco is not pledged, for the payment of the Commercial Paper Notes and the interest thereon.**

The Commercial Paper Notes are being offered solely on the basis of the Letter of Credit and the financial strength of the Bank and not the operations, financial strength or condition of the SFMTA. Accordingly, this Offering Memorandum does not describe the financial condition of the SFMTA. The ratings assigned to the Commercial Paper Notes are based on the creditworthiness of the Bank. The Commercial Paper Notes have not been registered under the Securities Act of 1933, as amended, in reliance upon an exemption from registration contained therein.

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**Dealers**

**Loop Capital Markets**

**Morgan Stanley**

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**Not to Exceed \$100,000,000**  
**San Francisco Municipal Transportation Agency**  
**Commercial Paper Notes**  
**SERIES A-1 (TAX-EXEMPT)**  
**SERIES A-2 (TAXABLE)**

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**INTRODUCTION**

The purpose of this Offering Memorandum is to provide certain general information in connection with the issuance and sale of the San Francisco Municipal Transportation Agency ("SFMTA") Commercial Paper Notes ("Commercial Paper Notes"). Capitalized terms used herein and not defined shall have the respective meanings given such terms in the Issuing and Paying Agent Agreement (defined herein).

The Commercial Paper Notes are secured by an irrevocable direct-pay letter of credit (the "Letter of Credit") issued by State Street Bank and Trust Company (the "Bank"). The Commercial Paper Notes will be payable solely from drawings on the Letter of Credit and from Available Transportation System Revenues (defined herein) of the SFMTA on a subordinate basis to the SFMTA's Senior Lien Revenue Bonds. **The Commercial Paper Notes are not secured by any property or other assets of the SFMTA (or the City), except for Available Transportation System Revenues. The General Fund of the City and County of San Francisco (the "City") is not liable, and the credit or the taxing power of the City is not pledged, for the payment of the Commercial Paper Notes or the interest thereon.**

The SFMTA may issue, and have outstanding at any one time, an aggregate principal amount of Commercial Paper Notes up to \$100,000,000. The Commercial Paper Notes are expected to be initially issued on June \_\_, 2013. The Commercial Paper Notes may be issued on a tax-exempt or taxable basis.

**The SFMTA does not expect that it will have on hand, on any maturity date for Commercial Paper Notes, Available Transportation System Revenues sufficient to pay maturing Commercial Paper Notes. Payment of maturing Commercial Paper Notes is therefore dependent on the Letter of Credit and on the ability of the SFMTA to sell rollover Commercial Paper Notes or bonds issued for the purpose of refinancing such Commercial Paper Notes. Prospective investors therefore should base their investment decision on an evaluation of the credit of the Bank, rather than on the credit of the SFMTA.**

The information in this Offering Memorandum has been obtained from the SFMTA, the Bank and other sources believed to be reliable. The references herein to the Issuing and Paying Agent Agreement, and the Letter of Credit and Reimbursement Agreement (all as hereinafter defined) do not purport to be complete or definitive, do not constitute summaries thereof, and are qualified in their entirety by reference to the provisions thereof.

The information and expressions of opinion in this Offering Memorandum are subject to change without notice after the date hereof and future use of this Offering Memorandum shall not otherwise create any implication that there has been no change in the matters referred to in this Offering Memorandum since the date hereof. The information contained herein will not typically be updated and distributed upon each new sale of Commercial Paper Notes, although the information will be updated and distributed from time to time. See “Additional Information.”

## **THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

**The SFMTA is an enterprise department of the City and a multi-modal transportation agency responsible for planning, designing, constructing, managing, operating and maintaining public transit, paratransit, street and traffic management and improvements, bicycle and pedestrian safety and enhancement programs, on and off-street parking improvements and programs, and the regulation of taxis and commercial vehicles within the City.**

## **THE COMMERCIAL PAPER NOTES**

### **General**

The Commercial Paper Notes are issued pursuant to the terms of the Issuing and Paying Agent Agreement, dated as of \_\_\_\_\_, 2013 (the “Issuing and Paying Agent Agreement”), by and between U.S. Bank National Association, as issuing and paying agent, and the SFMTA.

The Commercial Paper Notes are dated the date of their original issuance, will be issued in book-entry form only in denominations of \$100,000, and in integral multiples of \$1,000 in excess of \$100,000, and bear interest at stated interest rates not to exceed 12% per annum. The SFMTA may issue, and have outstanding at any one time, an aggregate principal amount of Commercial Paper Notes up to \$100,000,000.

Each Commercial Paper Note (i) will bear interest payable at maturity at an annual rate calculated on the basis of actual days elapsed and a year of 365 days, (ii) will mature not more than 270 days after its issuance date, but in no event later than the Business Day immediately preceding the Termination Date, (iii) will be sold at a price of not less than 100% of the principal amount thereof, and (iv) will mature on a Business Day. The Commercial Paper Notes will not be subject to redemption prior to maturity. Payments of principal of and interest on maturing Commercial Paper Notes will be made by the Issuing and Paying Agent directly to DTC.

The Commercial Paper Notes are fully registered notes registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company (“DTC”), New York, New York. Beneficial ownership interests in the Commercial Paper Notes are available in book-entry form only, and purchasers of the Commercial Paper Notes will not receive certificates representing their interests in the Commercial Paper Notes purchased. While held in book-entry form, all payments of principal of and interest on the Commercial Paper Notes will be made by wire transfer to DTC or its

nominee as the sole registered owner of the Commercial Paper Notes. Payments to the beneficial owners are the responsibility of DTC and its participants. See Appendix A – “Book-Entry System For Commercial Paper Notes.”

The Commercial Paper Notes are exempt from registration under the Securities Act of 1933, as amended.

## **Use of Proceeds**

The Commercial Paper Notes will be issued from time to time to provide interim financing for the construction or acquisition of certain capital improvements of the SFMTA and other SFMTA-related purposes.

## **SECURITY AND SOURCES OF PAYMENT FOR THE COMMERCIAL PAPER NOTES**

### **The Letter of Credit and Reimbursement Agreement**

*General.* The Commercial Paper Notes, as they mature, will be paid from funds drawn by the Issuing and Paying Agent under an irrevocable direct-pay letter of credit issued by the Bank pursuant to the Letter of Credit and Reimbursement Agreement, dated as of \_\_\_\_\_, 2013, (the “Reimbursement Agreement”) between the SFMTA and the Bank. The Issuing and Paying Agent is required to draw upon the Letter of Credit in an amount sufficient to pay both principal of and interest on the Commercial Paper Notes when due. Pursuant to the Issuing and Paying Agent Agreement, the SFMTA has covenanted to maintain in effect a Letter of Credit meeting the requirements of the Issuing and Paying Agent Agreement (see “- Substitution of the Letter of Credit” below) at all times that Commercial Paper Notes are outstanding. The SFMTA further covenants that if it is unable to obtain a binding commitment for a substitute Letter of Credit or an extension of the existing Letter of Credit at least 90 days prior to the expiration date of the Letter of Credit, it shall use its best efforts, to the extent permitted by law, to endeavor to refinance the outstanding Commercial Paper Notes.

**Timely payment of the Commercial Paper Notes is dependent upon the availability of the funds under the Letter of Credit. If for any reason the Bank fails to make a payment due under the Letter of Credit, the SFMTA makes no representation, and no assurance can be given, that the SFMTA would have sufficient funds on hand and available to make the corresponding payment of principal and interest on the Commercial Paper Notes. Prospective investors therefore should base their investment decision on the credit standing of the Bank, rather than the SFMTA.**

The following is a brief description of certain provisions of the Letter of Credit and the Reimbursement Agreement and is not to be considered to be a full statement of the provisions thereof and is qualified by reference to the full text thereof.

*Letter of Credit.* The Letter of Credit in place at any time is required to have a stated amount (the “Stated Amount”) comprised of a principal component of the

Commercial Paper Notes (the “Principal Component”) and an interest component of the Commercial Paper Notes (the “Interest Component”) equal to 270 days’ interest on the amount of the Principal Component calculated at an interest rate of 12% per annum, [the maximum rate on the Commercial Paper Notes]. The Stated Amount of the Letter of Credit may be reduced or increased at any time, so long as the SFMTA complies with the terms set forth in the Reimbursement Agreement. The SFMTA may not issue, and have outstanding at any one time, an amount of Commercial Paper Notes exceeding the Principal Component of the then-effective Letter of Credit.

As of the date hereof, the SFMTA has a commitment from the Bank (the “Commitment Amount”) to issue a Letter of Credit with a Stated Amount of up to \$100,000,000, comprised of a Principal Component of \$100,000,000 and an Interest Component of \$\_\_\_\_\_ (together, the “Maximum Commitment Amount”). The Letter of Credit has been issued with a Stated Amount equal to the Maximum Commitment Amount. The Stated Amount of the Letter of Credit will be reduced following, and by the amount of, each drawing made by the Issuing and Paying Agent thereunder that is honored by the Bank. So long as the Bank has not delivered a notice to the Issuing and Paying Agent that an Event of Default has occurred under the Reimbursement Agreement, the Stated Amount of the Letter of Credit shall be reinstated following a drawing thereunder by and to the extent of amounts received by the Bank by or on behalf of the SFMTA in reimbursement for such drawing or amounts on deposit in the Bank Note Account held under the Issuing and Paying Agent Agreement deemed to be held for the account of the Bank as reimbursement for such drawing; provided, however, that in no event shall the Interest Component be reinstated to an amount in excess of [270] days’ interest (computed at the rate of 12% per annum and on the basis of a 365-day year and the actual number of days elapsed) on the then applicable Principal Component of the Letter of Credit.

The Letter of Credit will expire at 5:00 p.m. New York City time on the date (the “Termination Date”) that is the earliest of: (i) June\_\_\_\_, 20\_\_\_, which date may be extended as provided in the Reimbursement Agreement (the “Scheduled Termination Date”), (ii) the date of payment of a drawing, not subject to reinstatement, which when added to all other drawings honored by the Bank under the Letter of Credit that were not subject to reinstatement, in the aggregate, equals the Stated Amount on the date of issuance of the Letter of Credit or as adjusted in accordance with the terms thereof, (iii) the date the Letter of Credit is terminated by the Issuing and Paying Agent as a result of the substitution thereof or payment in full of the Commercial Paper Notes, or (iv) the date the Issuing and Paying Agent surrenders the Letter of Credit to the Bank for cancellation. The Letter of Credit may not be terminated while any Commercial Paper Notes remain outstanding unless a substitute letter of credit is in place. See “- Substitution of the Letter of Credit” below.

*Reimbursement Agreement.* Pursuant to the Reimbursement Agreement, the SFMTA is required to repay to the Bank all amounts drawn under the Letter of Credit, with interest. The unreimbursed amount of each drawing on the Letter of Credit shall be due and payable on the day such drawing is made; provided, that so long as no default

has occurred and is continuing, the Principal Component of any drawing may remain outstanding and unpaid for a period of time up to and including the earlier of one hundred eighty (180) days from the date of such drawing (the "Liquidity Period"), after which any such unreimbursed amount of each drawing shall automatically be converted to a term loan (each, a "Term Loan") from the Bank to the SFMTA on the last day of the Liquidity Period, but only if no Default or Event of Default has occurred and is continuing and the sum of the Commercial Paper Notes outstanding, plus accrued and unpaid interest with respect thereto, plus all unreimbursed drawings and all unpaid Term Loans including the Term Loan then proposed to be made, shall not exceed the Stated Amount of the Letter of Credit in effect on the date such Term Loan is made. Each Term Loan shall mature on the earlier of the date which is five (5) years following the date of the drawing to which such Term Loan relates. The principal amount of each Term Loan shall be payable in twenty (20) equal quarterly installments in arrears, over the term of the applicable Term Loan, to be made on the first Business Day of the January, April, July and October, as the case may be, next following at least the three (3) month anniversary of the date on which such Term Loan was extended and continuing until paid in full. The SFMTA may prepay any Term Loan. The SFMTA has also agreed to pay the Bank certain fees and to reimburse the Bank for certain costs and expenses incurred in connection with the Letter of Credit. The obligations of the SFMTA to reimburse the Bank and to pay fees and other amounts owing under the Reimbursement Agreement are payable solely from Available Transportation System Revenues and other amounts provided in the Issuing and Paying Agent Agreement (including rollover proceeds of the sale of Commercial Paper Notes). The Reimbursement Agreement contains representations, warranties and covenants of the SFMTA.

The Reimbursement Agreement specifies a number of events that will constitute events of default by the SFMTA, such as a failure to perform certain obligations under Reimbursement Agreement. Upon the occurrence of such an event of default, the Bank can issue a no-issuance notice and require the SFMTA to stop issuing new Commercial Paper Notes. In addition to the issuance of a no-issuance notice, the Bank may enforce other remedies. However, none of the remedies available to the Bank includes cancellation or noncompliance with the Letter of Credit guaranteeing payment of the Commercial Paper Notes outstanding on the date of any delivery by the Bank of a no-issuance notice. Accordingly, the failure of the SFMTA to perform its obligations under the Reimbursement Agreement or to perform its obligations to the Bank will not affect the Letter of Credit or the right of the Issuing and Paying Agent to obtain funds under the Letter of Credit to pay principal of and interest on maturing Commercial Paper Notes outstanding on the date of any delivery by the Bank of a no-issuance notice.

### **Substitution of the Letter of Credit**

**The SFMTA may obtain a substitute letter of credit (the "Substitute Letter of Credit") to replace the Letter of Credit then in effect, including while the Commercial Paper Notes remain outstanding.** The Substitute Letter of Credit must go into effect at least one (1) business day prior to the termination of the Letter of Credit then in effect, and the expiration date with respect to such Substitute Letter of Credit

must be no earlier than the earlier of: (i) six (6) months after its date or (ii) the Scheduled Termination Date set forth in the Letter of Credit then in effect. The Stated Amount of the Substitute Letter of Credit will be at least equal to that of the Letter of Credit being replaced.

Prior to the Issuing and Paying Agent's release of the existing Letter of Credit and acceptance of a Substitute Letter of Credit, the following will be delivered: (i) by the SFMTA, written notice of the proposed substitution to the Issuing and Paying Agent, the Bank, the City and each Dealer not less than forty-five (45) days prior to the substitution date; (ii) to the SFMTA and the Issuing and Paying Agent written evidence from each Rating Agency then maintaining a rating on the Commercial Paper Notes, that the substitution of such Letter of Credit will not, in and of itself, result in any rating then assigned to the Commercial Paper Notes being suspended, reduced or withdrawn; (iii) by the Issuing and Paying Agent, written notice to the registered owners of the Commercial Paper Notes at least thirty (30) days prior to the substitution date; (iv) by counsel to the successor Bank, a legal opinion to the effect that the Substitute Letter of Credit is a legal, valid and binding obligation of the successor Bank and is enforceable against the Bank in accordance with its terms; and (v) by Co-Bond Counsel, an opinion to the effect that the substitution of the Letter of Credit is authorized under the Issuing and Paying Agent Agreement and (with respect to Commercial Paper Notes other than Commercial Paper Notes designated as obligations not described in Section 103(a) of the Code) will not, in and of itself, adversely affect the exclusion from gross income for federal tax purposes of interest on the Commercial Paper Notes.

### **Limited Obligation of Commercial Paper Notes**

The Commercial Paper Notes will be payable solely from drawings on the Letter of Credit and from the proceeds of Commercial Paper Notes or Available Transportation System Revenues, as provided in the Issuing and Paying Agent Agreement.

“Available Transportation System Revenues” means the portion of the Transportation System Revenues remaining after (a) the payments relating to the Senior Lien Revenue Bonds required by the Senior Lien Revenue Bonds Indenture, and (b) all amounts required to be paid under any other indenture or resolution of the Agency for principal, interest, reserve fund and any other debt service requirements on Senior Lien Parity Obligations, as the same become due and payable.

Section 8A.105 of the Charter requires the City to transfer certain moneys to the SFMTA to support the SFMTA's activities. The proceeds of transfers from the City's General Fund to support such activities do not constitute any portion of Available Transportation System Revenues, and the principal of and interest on the Commercial Paper Notes is not payable from the proceeds of such transfers. The SFMTA will not apply the proceeds of such transfers to the payment of principal of and interest on the Commercial Paper Notes, and the City has no obligation to transfer any amounts from the City's General Fund to the SFMTA for the purpose of paying the principal of and interest on the Commercial Paper Notes. **The General Fund of the City is not liable,**

and the credit or the taxing power of the City is not pledged, for the payment of the Commercial Paper Notes.

### **THE BANK**

The following information has been furnished by the Bank for use in this Offering Memorandum. Such information has not been independently confirmed or verified by the SFMTA. No representation is made herein by the SFMTA as to the accuracy or adequacy of such information subsequent to the date hereof, or that the information contained and incorporated herein by reference is correct. The SFMTA has assumed no obligation to update such information in the future, or to advise of any adverse change in the financial condition of the Bank. Investors are advised to obtain and carefully review any financial reports and other information published after the date hereof about the Bank prior to making a decision of purchase the Commercial Paper Notes.

**{To Come}**

Except for the contents under this caption, "THE BANK," the Bank assumes no responsibility for the nature, contents, accuracy or completeness of the information set forth in this Offering Memorandum.

### **THE DEALERS**

The SFMTA has appointed Loop Capital Markets LLC and Morgan Stanley and Co., LLC, each as a [non-exclusive] dealer with respect to the offering and sale of the Commercial Paper Notes.

### **RATINGS**

Moody's and S&P have each assigned ratings on the Commercial Paper Notes of "\_\_\_" and "\_\_\_," respectively. Each of such ratings are based on the understanding that the Letter of Credit has been issued by the Bank. Such ratings reflect only the views of such organizations and an explanation of the significance of such ratings may be obtained only from the agencies at the following addresses: Moody's Investors Service, Inc., 7 World Trade Center, New York, New York 10007 and Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, 55 Water Street, New York, New York 10004. The SFMTA furnished to such rating agencies certain information and materials regarding the Commercial Paper Notes. In addition, the Bank furnished certain information to such rating agencies regarding the Bank and the Letter of Credit.

There is no assurance such ratings will continue for any given period or that they will not be revised downward or withdrawn entirely by the rating agencies, if in the judgment of such rating agencies, circumstances so warrant and, therefore, any prospective purchaser should confirm the ratings prior to purchasing the Commercial Paper Notes. Any such change in or withdrawal of such ratings could have an adverse

effect on the market for or market price of the Commercial Paper Notes. The above ratings are not recommendations to buy, sell or hold the Commercial Paper Notes. The SFMTA has not undertaken to provide notice to the holders of the Commercial Paper Notes of any change in the ratings on the Commercial Paper Notes.

The ratings on the Commercial Paper Notes may be adversely affected by a downgrade of the credit ratings of the Bank. Although the SFMTA has covenanted to maintain a liquidity facility for the Commercial Paper Notes, it is not obligated to replace the Bank in the event of a downgrade of such Bank's rating. The SFMTA has not covenanted to provide notice to holders of the Commercial Paper Notes of any downgrade of the credit ratings of the Bank.

### **ABSENCE OF LITIGATION**

There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body pending or, to the best of the knowledge of the SFMTA after reasonable investigation, threatened in any way (i) seeking to restrain or enjoin the issuance, sale or delivery of any of the Commercial Paper Notes, or (ii) challenging the validity of the Commercial Paper Notes.

### **TAX MATTERS – TAX-EXEMPT COMMERCIAL PAPER NOTES**

#### **Opinions of Co-Bond Counsel**

In the opinions of Hawkins Delafield & Wood LLP and Curls Bartling P.C., Oakland, California, Co-Bond Counsel to the SFMTA, under existing statutes and court decisions and assuming continuing compliance with certain tax covenants described herein, (i) interest on the Commercial Paper Notes Series A-1 (Tax-Exempt) (the "Tax-Exempt Commercial Paper Notes") is excluded from gross income for Federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) interest on the Tax-Exempt Commercial Paper Notes is not treated as a preference item in calculating the alternative minimum tax imposed on individuals and corporations under the Code and is not included in the adjusted current earnings of corporations for purposes of calculating the alternative minimum tax. In rendering their opinions, Co-Bond Counsel has relied on certain representations, certifications of fact, and statements of reasonable expectations made by the SFMTA in connection with the Tax-Exempt Commercial Paper Notes, and Co-Bond Counsel has assumed compliance by the SFMTA with certain ongoing covenants to comply with applicable requirements of the Code to assure the exclusion of interest on the Tax-Exempt Commercial Paper Notes from gross income under Section 103 of the Code.

In addition, in the opinions of Co-Bond Counsel to the SFMTA, under existing statutes, interest on the Tax-Exempt Commercial Paper Notes is exempt from personal income taxes imposed by the State of California.

Co-Bond Counsel express no opinion regarding any other Federal or state tax consequences with respect to the Tax-Exempt Commercial Paper Notes. Co-Bond



Counsel renders their opinions under existing statutes and court decisions as of the issue date, and assumes no obligation to update, revise or supplement their opinions to reflect any action hereafter taken or not taken, or any facts or circumstances that may hereafter come to their attention, or changes in law or in interpretations thereof that may hereafter occur, or for any other reason. Co-Bond Counsel express no opinion on the effect of any action hereafter taken or not taken in reliance upon an opinion of other counsel on the exclusion from gross income for Federal income tax purposes of interest on the Tax-Exempt Commercial Paper Notes, or under state and local tax law.

### **Certain Ongoing Federal Tax Requirements and Covenants**

The Code establishes certain ongoing requirements that must be met subsequent to the issuance and delivery of the Tax-Exempt Commercial Paper Notes in order that interest on the Tax-Exempt Commercial Paper Notes be and remain excluded from gross income under Section 103 of the Code. These requirements include, but are not limited to, requirements relating to use and expenditure of gross proceeds of the Tax-Exempt Commercial Paper Notes, yield and other restrictions on investments of gross proceeds, and the arbitrage rebate requirement that certain excess earnings on gross proceeds be rebated to the Federal government. Noncompliance with such requirements may cause interest on the Tax-Exempt Commercial Paper Notes to become included in gross income for Federal income tax purposes retroactive to their issue date, irrespective of the date on which such noncompliance occurs or is discovered. The SFMTA has covenanted to comply with certain applicable requirements of the Code to assure the exclusion of interest on the Tax-Exempt Commercial Paper Notes from gross income under Section 103 of the Code.

### **Certain Collateral Federal Tax Consequences**

The following is a brief discussion of certain collateral Federal income tax matters with respect to the Tax-Exempt Commercial Paper Notes. It does not purport to address all aspects of Federal taxation that may be relevant to a particular owner of a Tax-Exempt Commercial Paper Note. Prospective investors, particularly those who may be subject to special rules, are advised to consult their own tax advisors regarding the Federal tax consequences of owning and disposing of the Tax-Exempt Commercial Paper Notes.

Prospective owners of the Tax-Exempt Commercial Paper Notes should be aware that the ownership of such obligations may result in collateral Federal income tax consequences to various categories of persons, such as corporations (including S corporations and foreign corporations), financial institutions, property and casualty and life insurance companies, individual recipients of Social Security and railroad retirement benefits, individuals otherwise eligible for the earned income tax credit, and taxpayers deemed to have incurred or continued indebtedness to purchase or carry obligations the interest on which is excluded from gross income for Federal income tax purposes. Interest on the Tax-Exempt Commercial Paper Notes may be taken into account in determining the tax liability of foreign corporations subject to the branch profits tax imposed by Section 884 of the Code.

## **Information Reporting and Backup Withholding**

Information reporting requirements apply to interest paid on tax-exempt obligations, including the Tax-Exempt Commercial Paper Notes. In general, such requirements are satisfied if the interest recipient completes, and provides the payor with, a Form W-9, "Request for Taxpayer Identification Number and Certification," or if the recipient is one of a limited class of exempt recipients. A recipient not otherwise exempt from information reporting who fails to satisfy the information reporting requirements will be subject to "backup withholding," which means that the payor is required to deduct and withhold a tax from the interest payment, calculated in the manner set forth in the Code. For the foregoing purpose, a "payor" generally refers to the person or entity from whom a recipient receives its payments of interest or who collects such payments on behalf of the recipient.

If an owner purchasing a Tax-Exempt Commercial Paper Note through a brokerage account has executed a Form W-9 in connection with the establishment of such account, as generally can be expected, no backup withholding should occur. In any event, backup withholding does not affect the excludability of the interest on the Tax-Exempt Commercial Paper Notes from gross income for Federal income tax purposes. Any amounts withheld pursuant to backup withholding would be allowed as a refund or a credit against the owner's Federal income tax once the required information is furnished to the Internal Revenue Service.

## **Miscellaneous**

Tax legislation, administrative actions taken by tax authorities, or court decisions, whether at the Federal or state level, may adversely affect the tax-exempt status of interest on the Tax-Exempt Commercial Paper Notes under Federal or state law or otherwise prevent beneficial owners of the Tax-Exempt Commercial Paper Notes from realizing the full current benefit of the tax status of such interest. In addition, such legislation or actions (whether currently proposed, proposed in the future, or enacted) and such decisions could affect the market price or marketability of the Tax-Exempt Commercial Paper Notes. For example, the Fiscal Year 2014 Budget proposed on April 10, 2013, by the Obama Administration recommends a 28% limitation on itemized deductions and "tax preferences," including "tax-exempt interest." The net effect of such proposal, if enacted into law, would be that an owner of a Tax-Exempt Commercial Paper Note with a marginal tax rate in excess of 28% would pay some amount of federal income tax with respect to the interest on such Tax-Exempt Commercial Paper Note.

Prospective purchasers of the Tax-Exempt Commercial Paper Notes should consult their own tax advisors regarding the foregoing matters.

## **TAX MATTERS - TAXABLE COMMERCIAL PAPER NOTES**

### **Taxable Commercial Paper Notes**

In the opinions of Co-Bond Counsel, interest on the Commercial Paper Notes Series A-2 (Taxable) (the “Taxable Commercial Paper Notes”) (i) is included in gross income for Federal income tax purposes pursuant to the Code and (ii) is exempt, under existing statutes, from personal income taxes imposed by the State of California.

The following discussion is a brief summary of the principal United States Federal income tax consequences of the acquisition, ownership and disposition of Taxable Commercial Paper Notes by original purchasers of the Taxable Commercial Paper Notes who are “U.S. Holders”, as defined herein. This summary (i) is based on the Code, Treasury Regulations, revenue rulings and court decisions, all as currently in effect and all subject to change at any time, possibly with retroactive effect; (ii) assumes that the Taxable Commercial Paper Notes will be held as “capital assets”; and (iii) does not discuss all of the United States Federal income tax consequences that may be relevant to a holder in light of its particular circumstances or to holders subject to special rules, such as insurance companies, financial institutions, tax-exempt organizations, dealers in securities or foreign currencies, persons holding the Taxable Commercial Paper Notes as a position in a “hedge” or “straddle”, holders whose functional currency (as defined in Section 985 of the Code) is not the United States dollar, holders who acquire Taxable Commercial Paper Notes in the secondary market, or individuals, estates and trusts subject to the tax on unearned income imposed by Section 1411 of the Code.

Holders of Taxable Commercial Paper Notes should consult with their own tax advisors concerning the United States Federal income tax and other consequences with respect to the acquisition, ownership and disposition of the Taxable Commercial Paper Notes as well as any tax consequences that may arise under the laws of any state, local or foreign tax jurisdiction.

### **Acquisition Discount on Short-Term Federally Taxable Commercial Paper**

Each holder of Taxable Commercial Paper Notes with a maturity not longer than one year (“Short-Term Taxable Commercial Paper Notes”) is subject to rules of Sections 1281 through 1283 of the Code, if such holder is an accrual method taxpayer, bank, regulated investment company, common trust fund or among certain types of pass-through entities, or if Short-Term Taxable Commercial Paper Notes is held primarily for sale to customers, is identified under Section 1256(e)(2) of the Code as part of a hedging transaction, or is a stripped bond or coupon held by the person responsible for the underlying stripping transaction. In any such instance, interest on, and “acquisition discount” with respect to, the Short-Term Taxable Commercial Paper Notes accrues on a ratable (straight-line) basis, subject to an election to accrue such interest and acquisition discount on a constant interest rate basis using daily compounding. “Acquisition discount” means the excess of the stated redemption price

of Short-Term Taxable Commercial Paper Notes at maturity over the holder's tax basis therefor.

A holder of Short-Term Taxable Commercial Paper Notes not described in the preceding paragraph, including a cash-method taxpayer, must report interest income in accordance with the holder's regular method of tax accounting, unless such holder irrevocably elects to accrue acquisition discount currently.

## **Disposition and Defeasance**

Generally, upon the sale, exchange, redemption, or other disposition (which would include a legal defeasance) of a Taxable Commercial Paper Note, a holder generally will recognize taxable gain or loss in an amount equal to the difference between the amount realized (other than amounts attributable to accrued interest not previously includable in income) and such holder's adjusted tax basis in the Taxable Commercial Paper Note.

The SFMTA may cause the deposit of moneys or securities in escrow in such amount and manner as to cause the Taxable Commercial Paper Notes to be deemed to be no longer outstanding under the Issuing and Paying Agent Agreement (a "defeasance"). For Federal income tax purposes, such defeasance could result in a deemed exchange under Section 1001 of the Code and a recognition by such owner of taxable income or loss, without any corresponding receipt of moneys. In addition, the character and timing of receipt of payments on the Taxable Commercial Paper Notes subsequent to any such defeasance could also be affected.

## **Backup Withholding and Information Reporting**

In general, information reporting requirements will apply to non-corporate holders with respect to payments of principal, payments of interest, and the accrual of Original Issue Discount on a Taxable Commercial Paper Note and the proceeds of the sale of a Taxable Commercial Paper Note before maturity within the United States. Backup withholding may apply to holders of Taxable Commercial Paper Notes under Section 3406 of the Code. Any amounts withheld under the backup withholding rules from a payment to a beneficial owner, and which constitutes over-withholding, would be allowed as a refund or a credit against such beneficial owner's United States Federal income tax provided the required information is furnished to the Internal Revenue Service.

## **U.S. Holders**

The term "U.S. Holder" means a beneficial owner of a Taxable Commercial Paper Note that is: (i) a citizen or resident of the United States, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States or of any political subdivision thereof, (iii) an estate the income of which is subject to United States Federal income taxation regardless of its source or (iv) a trust whose administration is subject to the primary jurisdiction of a United States court and which

has one or more United States fiduciaries who have the SFMTA to control all substantial decisions of the trust.

### **IRS Circular 230 Disclosure**

The advice under the caption, "Tax Matters - Taxable Commercial Paper Notes", concerning certain income tax consequences of the acquisition, ownership and disposition of the Taxable Commercial Paper Notes, was written to support the marketing of the Taxable Commercial Paper Notes. To ensure compliance with requirements imposed by the Internal Revenue Service, Co-Bond Counsel informs you that (i) any Federal tax advice contained in this offering memorandum (including any attachments) or in writings furnished by Co-Bond Counsel to the SFMTA is not intended to be used, and cannot be used by any noteholder, for the purpose of avoiding penalties that may be imposed on the noteholder under the Code, and (ii) the noteholder should seek advice based on the noteholder's particular circumstances from an independent tax advisor.

### **Miscellaneous**

Tax legislation, administrative actions taken by tax authorities, or court decisions, whether at the Federal or state level, could affect the market price or marketability of the Taxable Commercial Paper Notes.

Prospective purchasers of the Taxable Commercial Paper Notes should consult their own tax advisors regarding the foregoing matters.

A copy of the form of opinion of Co-Bond Counsel is attached hereto as Appendix B.

### **LEGAL MATTERS**

Upon the issuance of the Commercial Paper Notes, Hawkins Delafield and Wood LLP, San Francisco, California, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel, will render the legal opinion described in "Tax Matters - Tax-Exempt Commercial Paper Notes" and "Tax Matters - Taxable Commercial Paper Notes" above, the form of which is set forth in Appendix B hereto. Co-Bond Counsel is not passing upon, and undertakes no responsibility for, the accuracy, completeness or fairness of the information contained in this Offering Memorandum. Certain legal matters in connection with the Reimbursement Agreement and the Letter of Credit are subject to the approval of Chapman and Cutler LLP, as special counsel to the Bank. Certain legal matters in connection with the Commercial Paper Notes are subject to the approval of the City Attorney for the City.

### **ADDITIONAL INFORMATION**

No information concerning the operations or finances of the SFMTA has been provided herein. No attempt is made herein to provide a complete summary of the

terms of the referenced Letter of Credit, Reimbursement Agreement or the Issuing Paying Agent Agreement. The descriptions of and reference to such documents contained herein do not purport to be complete, and such references to and descriptions of such documents and all other documents and other items described herein are qualified in their entirety by reference to each such document and item.

No Dealer or other person has been authorized by the SFMTA to give any information or to make any representations other than those contained in this Offering Memorandum, and if given or made, such other information or representations must not be relied upon as having been authorized by the SFMTA.

The Dealers have provided the following sentence for inclusion in this Offering Memorandum. The Dealers have reviewed the information in this Offering Memorandum in accordance with, and as part of, their responsibility to investors under the federal securities law as applied to the facts and circumstances of this transaction, but the Dealers do not guarantee the accuracy or completeness of such information.

The SFMTA maintains a website. However, the information presented there is not part of this Offering Memorandum and should not be relied upon in making an investment decision with respect to the Commercial Paper Notes.

## Appendix A

### Book-Entry System for Commercial Paper Notes

The Depository Trust Company (“DTC”), New York, New York, acts as securities depository for the Commercial Paper Notes. The Commercial Paper Notes are issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered master Commercial Paper Note certificate in the aggregate principal amount not exceeding \$\_\_\_\_\_ to secure the Commercial Paper Notes, Series A-1 (Tax-Exempt) under the Reimbursement Agreement has been registered in the name of Cede & Co., as nominee of DTC and has been deposited with DTC. One fully registered master Commercial Paper Note certificate in the aggregate principal amount not exceeding \$\_\_\_\_\_ to secure the Commercial Paper Notes, Series A-2 (Taxable) under the Reimbursement Agreement has been registered in the name of Cede & Co., as nominee of DTC and has been deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to Direct and Indirect Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). The information on such website is not incorporated herein by reference.

Purchases of the Commercial Paper Notes under the DTC system must be made by or through Direct Participants, which will receive a credit for the Commercial Paper Notes on DTC’s records. The ownership interest of each actual purchaser of each

Commercial Paper Note (the “Beneficial Owner”) is in turn recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmations from DTC of their purchases. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owners entered into the transaction. Transfers of ownership interests in the Commercial Paper Notes are to be accomplished by entries made on the books of Direct or Indirect Participants acting on behalf of the Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Commercial Paper Notes, except in the event that use of the book-entry system for the Commercial Paper Notes is discontinued.

To facilitate subsequent transfers, all Commercial Paper Notes deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Commercial Paper Notes with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the identities of the actual Beneficial Owners of the Commercial Paper Notes. DTC’s records reflect only the identities of the Direct Participants to whose accounts the Commercial Paper Notes are credited, which may or may not be the Beneficial Owners. The Direct or Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Commercial Paper Notes may wish to take certain steps to augment transmission to them of notices of significant events with respect to the Commercial Paper Notes, such as redemptions, tenders, defaults and proposed amendments to the security documents. For example, Beneficial Owners of Commercial Paper Notes may wish to ascertain that the nominee holding the Commercial Paper Notes for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them. **The SFMTA and the Issuing and Paying Agent will not have any responsibility or obligation to such DTC Participants or the persons for whom they act as nominees with respect to the Commercial Paper Notes.**

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Commercial Paper Notes unless authorized by a Direct Participant in accordance with DTC’s Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the SFMTA as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts the Commercial Paper Notes are credited on the record date (identified in a listing attached to the Omnibus Proxy).



Payments of principal of and interest on the Commercial Paper Notes will be made to Cede & Co. or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuing and Paying Agent on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Direct or Indirect Participant and not of DTC (or its nominee), the SFMTA or the Issuing and Paying Agent, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuing and Paying Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Commercial Paper Notes at any time by giving reasonable notice to the SFMTA or the Issuing and Paying Agent. Under such circumstances, in the event that a successor securities depository is not obtained, Commercial Paper Note certificates will be printed and delivered.

The SFMTA may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Commercial Paper Note certificates will be printed and delivered.

**The SFMTA and the Issuing and Paying Agent shall not have any responsibility or obligation to any DTC Participant, any beneficial owner or any other person claiming a beneficial ownership interest in the Commercial Paper Notes under or through DTC or any DTC Participant, or any other person which is not shown on the registration books of the Issuing and Paying Agent as being an owner with respect to: the accuracy of any records maintained by DTC or any DTC Participant; the payment by DTC or any DTC Participant of any amount in respect of the principal of or interest on the Commercial Paper Notes; any notice which is permitted or required to be given to owners; any consent given or other action taken by DTC as an owner; or any other procedures or obligations of DTC under the book-entry system.**

**So long as Cede & Co. is the registered owner of the Commercial Paper Notes, as nominee of DTC, references herein to the holders or owners or registered holders or registered owners of the Commercial Paper Notes shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Commercial Paper Notes.**

The foregoing description of the procedures and recordkeeping with respect to beneficial ownership interests in the Commercial Paper Notes, payment of principal and

interest on the Commercial Paper Notes to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in such Commercial Paper Notes and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters, and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.

**Appendix B**

**Form Of Co-Bond Counsel Opinion**