



# Misappropriated Bond Proceeds at the Association of Bay Area Governments

An oversight report  
prepared for the  
California State Senate  
Committee on  
Governance & Finance



May 14, 2015

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## **Introduction**

Last December, while conducting routine accounting, staff working for the City and County of San Francisco discovered that about \$1.3 million of bond proceeds, which had been held for the city in accounts managed by a third-party trustee, had been unexpectedly withdrawn and disbursed in August, 2014. During the weeks following this discovery, city staff made urgent inquiries to try to understand the transactions that led to the unusual disbursement of the bond proceeds. Towards the end of January, 2015, these inquiries led officials to focus on the activities of Clarke Howatt, Finance Director for the Association of Bay Area Governments (ABAG). Howatt served as the Secretary for ABAG's Finance Authority for Nonprofit Corporations, which had issued the bonds for San Francisco. Howatt subsequently resigned his position with ABAG and, on February 13, in Federal District Court, the United States Attorney's Office filed a charge of wire fraud relating to Howatt's involvement with the misappropriated bond funds.

Acknowledging that bond funds designated for improvements in San Francisco had been misappropriated, ABAG's finance authority voted on February 3, 2015 to use reserve funds to restore the missing balance of funds to the accounts from which Mr. Howatt allegedly stole bond proceeds, pending efforts to recover the missing money.

In response to these startling events, the Chairman of the Senate Governance & Finance Committee, Senator Robert M. Hertzberg, in collaboration with California State Treasurer John Chiang and California State Senate President pro Tempore Kevin de León, directed the Committee to begin conducting oversight activities to ensure that monies raised through the sale of government bonds are safe from fraud, abuse, and mismanagement. The State Treasurer also has established a special task force charged with developing best practices guidelines on the fiduciary care of bond proceeds that will be issued to all State and local government issuers of debt. The State Controller has initiated an audit of ABAG's internal administrative and accounting controls for fiscal years 2012-13 and 2013-14. ABAG will be conducting its own internal forensic audit of transactions in which Mr. Howatt was involved.

This committee oversight report will serve as a foundation for future oversight efforts that the Senate Governance & Finance Committee conducts to ensure that monies raised through the sale of government bonds are safe. The Committee expects that the contents of the report also will help to support the work of the Treasurer's Special Task Force on Bond Accountability as it identifies best practices for managing bond proceeds and strategies to increase transparency and oversight of the use of bond funds.

This report contains the committee staff's best effort, as of May 14, 2015, to compile an accurate description, based on available information, of Clarke Howatt's alleged embezzlement of bond proceeds. To be clear, the committee staff's research is not intended to be comparable to any investigation being conducted by law enforcement authorities or audits being conducted by ABAG, the California State Controller's Office, or any other entity. As investigations and audits proceed, significant new facts may be uncovered and additional avenues of inquiry revealed,

which may enhance public understanding of the embezzlement case and contribute to future oversight efforts by the committee. The contents of this report should not be regarded as drawing any conclusions about any legal liability or criminal culpability or innocence. The committee's sole purpose in producing this oversight report is to find out what happened and consider the events' public policy implications.

The remainder of this committee oversight report is organized into three sections that:

- Describe how San Francisco used bonds issued by ABAG's finance authority to finance the costs of mitigation projects associated with the One Rincon Hill development.
- Explain the series of events that led to the alleged embezzlement of some proceeds from the bonds issued by ABAG's finance authority.
- Consider policy questions that the Senate Governance & Finance Committee and the Treasurer's special task force may wish to pursue as part of their oversight efforts to ensure that municipal bond proceeds are managed in a safe and transparent manner.

### **Understanding the bonds issued for San Francisco's Rincon Hill development.**

The Mello-Roos Community Facilities Act (Government Code §53311 et seq.) allows counties, cities, special districts, and school districts to finance public works projects and a limited list of public services by levying special taxes within a community facilities district (CFD). A CFD issues bonds against these special taxes – commonly referred to as parcel taxes – to finance the public works projects. Mello-Roos Act special taxes require 2/3-voter approval. But, if there are fewer than 12 registered voters within the boundaries of the CFD, the affected landowners vote.

The Mello-Roos Act is an important feature of the local fiscal landscape, providing local officials with a key tool for accumulating the public capital needed to pay for the public works projects that make new residential development possible. Since 1992, CFDs have issued more than \$22 billion in long-term bonds, mostly for capital improvements.

In August of 2005, the City and County of San Francisco adopted Ordinance No. 217-05, creating the Rincon Hill Downtown Residential District, which encompasses a roughly 55-acre area south of the city's financial district, adjacent to the western end of the Bay Bridge. The 2005 ordinance required, among other things, that property owners must pay a "community improvements impact fee" for new residential developments on properties within the Rincon Hill district. The ordinance also allowed residential project developers, in lieu of paying the required impact fee, to enter into a waiver agreement with the city under which their properties

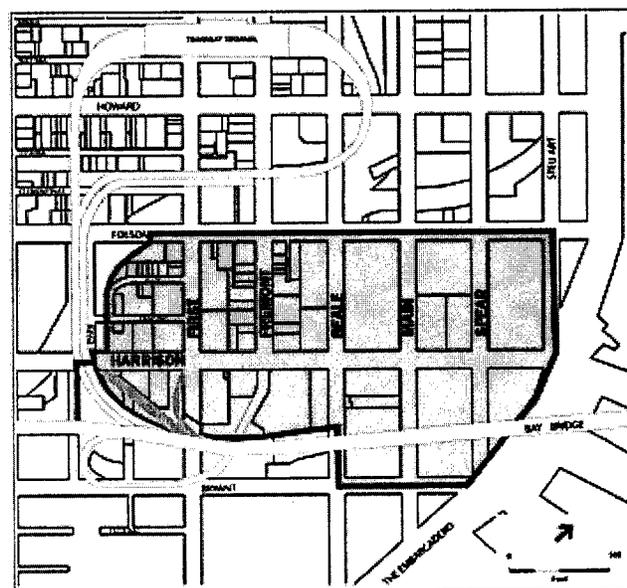


Figure 1 Rincon Hill Downtown Residential District

would be placed into a CFD. The CFD would levy parcel taxes on the property and issue bonds to finance improvements that would otherwise be financed by the impact fee. In return, the city would waive payment of the impact fee.

In 2006, after developers of a proposed new residential tower in the Rincon Hill district chose, pursuant to Ordinance No. 217-05, to place their property into a CFD instead of paying an impact fee, city officials decided to form the CFD and issue the bonds through a “conduit financing” arrangement with the Association of Bay Area Governments’ Finance Authority for Nonprofit Corporations. San Francisco’s decision to form the CFD through a conduit financing authority was motivated, in part, by the fact that San Francisco had not yet adopted local goals and policies for CFD financing, which is a prerequisite to forming a CFD.

The Joint Exercise of Powers Act allows two or more public agencies to exercise their common powers by signing joint powers agreements (Government Code §6500 et seq.). Sometimes an agreement creates a joint powers authority (JPA). Public agencies use the JPA law and the related Marks-Roos Local Bond Pooling Act to form bond pools to finance public works, working capital, insurance needs, and other public benefit projects. The Association of Bay Area Governments (ABAG) is a JPA comprised of local governments from within the nine-county San Francisco Bay Area region.

ABAG’s Financing Authority for Nonprofit Corporations (the “Authority”) is a separate JPA, created for the purpose of performing various municipal financing activities, including issuing conduit revenue bonds, Mello-Roos bonds, special assessment bonds, municipal credit obligations, and providing other municipal financing services. Borrowers utilizing the Authority’s services include cities, counties, special districts and other local government entities, hospitals, private universities, private schools, nonprofit housing and healthcare organizations, housing developers and private businesses.

On April 4, 2006, the San Francisco Board of Supervisors adopted a resolution (Res. No. 202-06) approving a Joint Community Facilities Agreement (JCFA) between the City and the Authority [see Attachment A]. The Mello-Roos Act (Government Code §53316.2) required the City and the Authority to enter into the JCFA in order for the Authority to complete the process of forming a CFD and issuing bonds. The JCFA specifies the terms under which the Authority was to establish a CFD, issue bonds, allocate the proceeds, and repay the bonds using special tax revenues from the CFD.

The JCFA included two attachments. The first attachment, entitled “Exhibit A,” specified the types of improvements that San Francisco could fund with the CFD bond proceeds. The second attachment, entitled “Exhibit B,” contained a requisition request form that had to be submitted to a third-party trustee for San Francisco to withdraw amounts from accounts containing CFD bond proceeds. The JCFA specified that a requisition to withdraw funds from the City’s accounts could only be executed by the Director of the Mayor’s Office of Public Finance or a designee. The JCFA included a statement that the City reasonably expected to be able to expend the amounts of bond proceeds deposited into city project accounts within three years of the bonds’ issuance date. The JCFA specified that its provisions would terminate no later than December 31, 2011.

At a public hearing on May 12, 2006, the Authority's executive committee formed a community facilities district in the Rincon Hill neighborhood covering a roughly one-acre site which was designated for a residential tower development commonly referred to as "One Rincon Hill Phase I." At its May 12 hearing, the board also:

- Obtained landowner approval for the CFD to levy special taxes, issue bonds, and establish an appropriations limit, as required by the Mello-Roos Act.
- Adopted an ordinance levying the special taxes.
- Adopted a resolution authorizing the issuance of bonds.

In June, the Authority sold \$5.8 million dollars in bonds pursuant to a bond indenture dated June 1, 2006 [see Attachment B]. Article IV of the indenture specified the manner in which the trustee was required to deposit the proceeds from the bond sale into various accounts, including an "Improvement Fund" created pursuant to the indenture. The Improvement Fund was comprised of a "Rincon Hill Community Improvement Account" and a "SOMA Community Stabilization Account." The SOMA Community Stabilization Account included three subaccounts for the city, redevelopment agency, and school district, respectively.

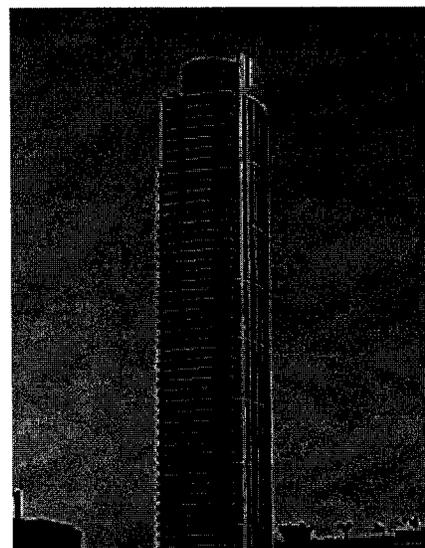


Figure 2 South Tower at One Rincon Hill

Under the indenture's terms, funds deposited into the Rincon Hill Community Improvement Account were to be administered by the city planning department. Funds deposited into the SOMA Community Stabilization Account were to be administered by the Mayor's Office of Housing and Community Development with guidance from the SOMA Community Stabilization Fund Community Advisory Committee. From 2006 through 2009, the City and County of San Francisco requisitioned bond proceeds from the Improvement Fund to pay for improvements constructed in the Rincon Hill and South of Market neighborhoods that were eligible to be paid for with bond proceeds under the terms of the JCFA and bond indenture.

At the beginning of August, 2014, approximately \$371,174 in unencumbered bond proceeds remained in the Rincon Hill Community Improvement Account and approximately \$925,166 in unencumbered bond proceeds remained in the city subaccount of the SOMA Community Stabilization Account. In December, 2014, San Francisco city staff who were looking at account statements noticed that those accounts, which should have held nearly \$1.3 million in remaining proceeds from the CFD bonds issued in 2006, no longer contained the expected balances. Inquiries into this discrepancy soon revealed that funds had been disbursed from the accounts without any apparent involvement or approval of city staff.

### **Understanding the alleged embezzlement scheme.**

Section 8.01(C) of the June 1, 2006 bond indenture for the Rincon Hill CFD bonds allowed the indenture to be modified or amended, without the consent of bond owners, "to make such

provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this indenture.” The indenture required that any such amendments should be consistent with the indenture and not adversely affect the rights of bond owners.

In a public hearing held on July 16, 2014, the ABAG Authority’s executive board adopted a resolution (Res. 14-15) authorizing an amendment to the original 2006 indenture for the Rincon Hill CFD bonds issued by the Authority [see Attachment C]. The proposed resolution approving the amendment to the indenture was accompanied by a staff report, which asserted that the developer of the One Rincon Hill project was seeking reimbursement for approximately \$1.3 million in bond proceeds for “project-related public infrastructure costs” that were “not originally intended to be funded by the bonds” [see Attachment D]. The staff report stated that, because the 2006 Joint Community Facilities Agreement between the Authority and the City had expired, there was no longer a mechanism for disbursing bond proceeds that remained in the Trustee accounts. To solve this ostensible problem, the staff recommended that the executive board approve an amendment to the bond indenture to “allow and direct reimbursement to the Developer for qualified costs.” The staff report was prepared for the Authority’s board by the Authority’s Secretary, Clarke Howatt.

The amendments to the original indenture language are contained in a document entitled the “First Supplemental Indenture,” [see Attachment E] which was drafted before the July 16 hearing by a bond counsel who had not drafted the original indenture and did not work for the firm that had drafted the original indenture. Article II of the First Supplemental Indenture contained the amendment language, which effectively gave the Authority the power to direct the trustee to make disbursements from the accounts upon the receipt of a specified certificate, which could be executed by the Authority and sent to the trustee without any involvement by the City of San Francisco.

On August 11, 2014, the Authority sent the trustee a request for disbursement, which was followed by a revised request that was sent to the trustee on August 12 [see Attachment F]. The second request was drafted to meet specifications contained in the First Supplemental Indenture. The Authority’s August 12 request specified that the trustee was to transfer \$371,174 from the Rincon Hill Community Improvements Account into the city subaccount of the SOMA Community Stabilization Account. The pre-transfer balance in the city subaccount of \$925,166.66, combined with the \$371,174 transferred from the Improvement Account, was then supposed to be redeemed into cash and disbursed in an aggregate amount of \$1,296,340.66 to a specified bank account in La Jolla. The Authority’s request asserted that the funds being disbursed were for “reimbursable costs fees and expenses submitted to the ABAG Finance Authority by Urban West for Rincon Developers, LLC.” The request directed the trustee to refer any question about the request to “Clarke J. Howatt, ABAG Public Finance Director.” Questions about the wire transfer were supposed to be referred to “David Kaiser at Urban West.” The request was signed by Howatt and the Authority’s Chief Financial Officer.

Roughly four months later, while reviewing account statements, City of San Francisco staff noticed that the “Improvement Account” and “City Sub Account” no longer held the expected balances of Rincon Hill CFD bond proceeds. As staff made inquiries about the account

balances, it was soon discovered that the trustee had disbursed funds from the accounts, without the apparent knowledge of anyone in San Francisco city government, pursuant to the August 12 request submitted by the Authority under the terms of the First Supplemental Indenture. Based on some of the language in the August 12 disbursement request, officials first assumed that the proceeds had been disbursed to the developer of the One Rincon Hill project.

After contacting the developer about the funds, San Francisco officials learned that the developer had neither requested nor received the disbursements from those accounts. The entity which had apparently received the funds that the bond trustee disbursed pursuant to the August 12 requisition from the Authority – Urban West for Rincon Developers, LLC – was not affiliated with the developer of the One Rincon Hill project, although it had a similar name. The bank account to which the funds had been disbursed was not affiliated with the developer and the contact name on the August 12 requisition – David Kaiser – was not associated with the project's developer.

After determining that the proceeds were not with the developer, the San Francisco City Attorney's Office sent ABAG a letter, dated January 28, 2015, demanding the return of the bond proceeds [see Attachment G]. On January 29, Clarke Howatt notified ABAG of his resignation, adding that he would attempt to return the missing money.

Subsequent news media reports indicated that Howatt had opened the bank account ostensibly associated with "Urban West for Rincon Developers, LLC." Howatt also reportedly purchased a \$1.5 million beach house in Pacific City, Oregon only three days after the bond proceeds were transferred. The house was later advertised as being available for rent. Some of those listings apparently referred to the rental property as "Rincon Hill."

On February 13, 2015, the United States Attorney's Office filed, in United States District Court - Northern District of California, allegations that Clarke J. Howatt, the former Public Finance Director for the Association of Bay Area Governments (ABAG), committed wire fraud [see Attachment H]. As described by the U.S. Attorney's Office, Mr. Howatt allegedly devised a "scheme and artifice" to defraud ABAG's Finance Authority for Nonprofit Corporations (FAN) and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and by means of concealment of material facts. Specifically, the alleged scheme and artifice consisted of Mr. Howatt's obtaining unused development project funds and surplus cash from bond accounts by making material misrepresentations to the Authority.



Figure 3 Beach house allegedly bought with stolen bond money.

Source: Tillamook County Pioneer.

## Questions to consider regarding the safety and transparency of bond proceeds.

Much remains to be learned about Clarke Howatt's activities while working at the ABAG Authority for Nonprofit Corporations and about the management of public funds administered by the Authority.

Based on the information that is currently available, it is too early to draw firm conclusions about any changes to policies or laws that might be warranted

in light of the events described in this paper. However, elected officials and members of the public are demanding answers to questions about the disappearance of more than \$1 million that was held in trust to pay for neighborhood improvements in a community that is home to thousands of Californians.

*"Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people."*

*- Henry Clay*

A threshold question policy makers may wish to consider is whether last year's disbursement of Rincon Hill CFD bond proceeds resulted from a rare confluence of circumstances that would be difficult to reproduce. Or, does the incident reveal any broad, systemic problems with how bonds proceeds are managed?

Senate committee staff conducting research for this paper heard from several long-time municipal finance practitioners that they were not aware of any similar occurrence of bond proceeds in California being disbursed improperly from trustee accounts under circumstances suggesting fraudulent activity. Committee staff has been unable to find a record of any recent case in which California bond funds were fraudulently withdrawn from a trustee account as part of an apparent embezzlement scheme. Although anecdotal, these observations suggest that policymakers should be cautious about drawing any conclusions about the existence of systemic problems based on what is currently known about the recent events at ABAG.

However, policymakers who seek to investigate possible systemic problems may wish to consider inquiring into the following policy issues:

### Best Practices

- Is there a universally accepted set of "best practices" among bond issuers that is applicable to the management of bond proceeds?
- Are best practices the same for all issuers, or do practices vary depending on whether the issuer is a JPA conduit issuer or an individual local government?
- If best practices differ among issuers, is there good reason for these differences?
- Are current best practices sufficient to ensure appropriate accountability to the public for the management of bond funds?
- How well did ABAG's Finance Authority comply with best practices? How does this compare to other issuers' compliance?

### Community Facilities Districts

The fact that the bond proceeds for the Rincon Hill project were issued by a Community Facilities District may have added to the complexity of administering those bond proceeds. For example, unlike some types of bonds that generate proceeds which are deposited into funds

administered directly by the issuing public agency, CFD bond proceeds are deposited into accounts administered by a bond trustee. Policymakers may wish to consider whether CFD bonds create any unique challenges for ensuring the safety and transparency of the bonds' proceeds.

#### Timely Bond Proceed Expenditures

The fact that unspent Rincon Hill CFD bond proceeds remained in the trustee accounts for years, without any disbursements being made over an extended period of time, may have made them more susceptible to misappropriation. Federal law requires CFD bond issuers to declare their reasonable expectation that bond proceeds will be expended within three years. Policy makers may wish to identify policies that would help ensure that bond proceeds are used in a timely and transparent manner.

- What role do citizens' oversight boards play in speeding up or slowing down bond expenditures?
- Aside from forming citizen's oversight committees, how else can public debt issuers assure stakeholders that bond proceeds are being expended as intended?
- What rules or practices should apply to the size of bond issuances to prevent significant balances from remaining in trustee accounts for long periods of time?
- What role do IRS requirements regarding the expenditure of bond proceeds play in encouraging timely bond expenditures?

#### Transparency of Bond Indenture Amendments

The First Supplemental Indenture for the Rincon Hill CFD bonds, which altered the manner in which bond funds could be requisitioned from the trustee, played a central role in facilitating the disbursement of bond funds to an allegedly fraudulent recipient. The circumstances surrounding the adoption of the First Supplemental Indenture raise a variety of policy questions.

State law requires a conduit financing provider, like ABAG's Finance Authority, to post specified information, including meeting agendas, staff reports, and minutes, on its Internet website (see Government Code §5870 et seq.). The Authority's website does not contain substantial amounts of information that state law requires it to post. Specifically, the agenda, staff report, and minutes from the July 16, 2014 meeting at which the Authority's board approved the First Supplemental Indenture are not available online. While the agenda and staff report are included in the attachments to this report, it is unclear whether an approved set of minutes from that meeting was ever produced. Policymakers may wish to consider whether the Authority's apparent lack of compliance with state laws requiring disclosure of conduit financing activities may have facilitated the adoption of the First Supplemental Indenture without the knowledge of any City of San Francisco staff.

However, it is far from certain that anyone from San Francisco would have noticed the ABAG Finance's Authority's adoption of a First Supplemental Indenture, even if the Authority had complied with statutory disclosure requirements. As a result, policymakers may wish to consider whether increased transparency requirements should apply to changes to bond indentures that don't require bondholders' approval. For example, state law could require that a bond issuer must mail notice of a hearing to consider any proposed change to a bond indenture to any party that requests to receive mailed notice. Or, bond indentures themselves could specify a list of

interested parties who must receive notice of any proposed changes, to include bond counsels and financial advisors who worked on the bond, as well as specified recipients of bond funds.

### Fraud Detection

Finally, policymakers may find it worthwhile to consider what can be learned from San Francisco city staff's relatively swift discovery that bond proceeds were missing from trustee accounts and the staff's diligent efforts to track down those missing funds. It is unlikely that any combination of laws and policies can prevent every possible opportunity for a determined individual to commit fraud or embezzlement involving public funds. Efforts to achieve that goal could end up making the bond administration process unnecessarily costly and burdensome. Instead, policies that help local agencies to rapidly identify anomalous activities involving bond trustee accounts could deter potential wrongdoing and increase the likelihood of recovering improperly disbursed bond proceeds. Rather than focusing solely on preventive measures, policymakers should inquire into what laws, policies, and practices can improve the rapid detection of malfeasance after it occurs.

### Informal Checks

The fact that bond proceeds are rarely embezzled could foster a sense of complacency among some participants in the municipal finance process that, paradoxically, might make it easier for an individual to engage in fraudulent activity. Complacency may not necessarily result in a failure to follow laws or formal best practices. Instead, it may influence some municipal finance practitioners' informal behaviors that can play a role in preventing fraud. A high degree of trust and autonomy afforded to Mr. Howatt as he carried out his responsibilities for the ABAG Authority seems to be a contributing factor in the peculiar disbursement of the Rincon Hill CFD bond funds. The events described in this report, although they remain open to interpretation, might support the conclusion that none of the formal actions taken by the Authority's executive board, bond counsel, the trustee, or the City of San Francisco with regard to the CFD bond proceeds were contrary to official policies or usual practices. But, that does not foreclose the possibility that the occasions on which individuals could have asked additional questions or sought input from additional parties may have been missed opportunities to prevent the misappropriation. The type of personal trust that Mr. Howatt apparently used to his advantage is not likely to be overcome through changes in law, but through more subtle changes in the types of informal double-checking and verification efforts that municipal finance professionals encourage and welcome from their colleagues.

### Conclusion

This committee oversight report is the first step in a broader legislative oversight effort aimed at ensuring that monies raised through the sale of government bonds are safe. The factual and documentary record contained in this paper will help to support legislators' ongoing oversight efforts, which may include committee hearings and additional research. By suggesting specific policy areas that merit further consideration, this report's third section is intended to lay the groundwork for more extensive discussions of policy options based on the factual record included in the report's earlier sections. While some specific policy responses are mentioned, they are meant to be illustrative, and do not constitute policy recommendations made by the Senate Governance & Finance Committee. The challenging work of formulating sensible and

effective policies to enhance the safety of proceeds from bonds issued by California local governments is just beginning.

## **Acknowledgements**

Senate Governance & Finance Committee Consultant Brian Weinberger thanks staff members from the City and County of San Francisco and the Association of Bay Area Governments who provided information and assistance that contributed greatly to this report. Mr. Weinberger takes full responsibility for any errors in this report.

# ATTACHMENT A

## Joint Community Facilities Agreement

**JOINT COMMUNITY FACILITIES AGREEMENT****ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS  
COMMUNITY FACILITIES DISTRICT NO. 2006-1  
(SAN FRANCISCO RINCON HILL)**

This Joint Community Facilities Agreement (the "Agreement"), dated for convenience as of May 1, 2006, is by and between the ABAG Finance Authority For Nonprofit Corporations (the "Authority") and the City and County of San Francisco (the "City").

**RECITALS:**

WHEREAS, the Board of Supervisors of the City has adopted Ordinance No. 217-05 (File No. 050865) on August 9, 2005 (the "Ordinance") providing for, among other matters, the payment of a Community Improvements Impact Fee (the "Fee") by owners of property in the Rincon Hill Downtown Residential District that are developing their property with new residential development, and the Ordinance allows for the property owners, in lieu of payment of the applicable Fee, to place their property into a community facilities district that will levy special taxes on such property; and

WHEREAS, the Ordinance allows for the property owners, in lieu of payment of the applicable Fee, to enter a waiver agreement with the City (each, a "Waiver Agreement"), under which such property owners agree to place their property into a community facilities district that will levy special taxes on such property in order to finance improvements that would otherwise be financed by the Fee, in return for the City's waiver of the payment of the Fee; and

WHEREAS, the Ordinance contemplates that any Waiver Agreement will provide that any such special taxes will be used to pay for various public improvements some of which are identified in Exhibit A hereto (the "Improvements"), by means of the issuance of bonds (the "Bonds") for such community facilities district and the use of the proceeds of the Bonds to finance the Improvements; and

WHEREAS, the City requires that each such Waiver Agreement will provide that each project sponsor's obligation to pay the Fee will be extinguished in amounts equal to the amounts of Bond proceeds that are made available to the City by such community facilities district; and

WHEREAS, the Authority is undertaking proceedings to form the ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) (the "CFD"), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), being Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at Section 53311, of the California Government Code, and the Authority intends to issue Bonds under the Act in order to finance costs of the Improvements in furtherance of the purposes of the Ordinance; and

WHEREAS, Section 53316.2 of the Act requires that the Authority enter into a joint community facilities agreement with the City, prior to the adoption by the Authority of a resolution of formation of the CFD, in respect of any public improvements that are to be financed with the proceeds of the Bonds, and, upon completion, are to be owned and operated by the City; and

WHEREAS the Authority and the City now desire to enter into this Agreement to satisfy the requirements of Section 53316.2 of the Act and to memorialize their understanding with

respect to the CFD, the proceeds of the Bonds and the Improvements, all as more particularly set forth below.

#### A G R E E M E N T :

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

Section 1. The Authority expects to enter into an Indenture (the "Indenture") with Union Bank of California, N.A., as trustee (the "Trustee"), which will provide for the issuance of the Bonds, and which will establish various funds and accounts with the Trustee into which proceeds of the Bonds will be deposited. Those funds and accounts will include a Rincon Hill Community Improvements Account (the "Rincon Hill Account") and a SOMA Community Stabilization Account (the "SOMA Account"), and within the SOMA Account a City Subaccount (the "SOMA City Subaccount"), a Redevelopment Agency Subaccount (the "SOMA RDA Subaccount") and, if the San Francisco Unified School District (the "School District") executes a joint community facilities agreement with the Authority prior to the formation of the CFD, a School District Subaccount (the "SOMA School District Subaccount").

Unless otherwise directed in writing by the Director of the Mayor's Office of Public Finance (the "City's Public Finance Director") or other authorized representative of the City to the Chief Financial Officer of the Authority prior to the issuance of any series of the Bonds as to some other allocation of funds, five-eighths (0.625%) of the proceeds of the Bonds available for deposit to the accounts and subaccounts referenced in the preceding paragraph shall be deposited to the Rincon Hill Account and three-eighths (0.375%) of such proceeds shall be deposited to the SOMA Account. The City shall use its best efforts to determine the allocation of funds initially deposited to the SOMA Account to the SOMA City Subaccount, the SOMA RDA Subaccount and, if applicable the SOMA School District Subaccount within six months of the date of issuance of each series of the Bonds, and will in any event make such determination within twelve months of the date of issuance of each series of the Bonds, and will provide written direction executed by the City's Public Finance Director or other authorized representative of the City to the Trustee (with a copy to the Chief Financial Officer of the Authority) as to such determination. If for any reason the Trustee fails to receive any such determination by the date which is one year after the date of issuance of a series of Bonds, the Trustee will be directed in the Indenture to transfer all amounts deposited in the SOMA Account from such series of the Bonds to the SOMA City Subaccount. The Indenture shall allow for transfers of amounts on deposit in the Rincon Hill Account, the SOMA Account and/or the SOMA City Subaccount from time to time to one or more of the other accounts or subaccounts referenced in the first paragraph of this Section 1, upon the written direction of the City's Director of Public Finance or other authorized representative of the City delivered to the Trustee, with a copy to the Chief Financial Officer of the Authority.

Amounts deposited to the Rincon Hill Account and the SOMA Account, and any amounts transferred from the SOMA Account to the SOMA City Subaccount, together with any investment earnings on any amounts in such accounts and subaccount, shall be held for the sole and exclusive benefit of the City. Amounts in the SOMA Account shall be disposed of solely as provided in the preceding paragraph (i.e. for transfer to one or more subaccounts therein), and amounts in the Rincon Hill Account and the SOMA City Subaccount (collectively, the "City Projects Accounts") shall be disposed of solely as provided in the preceding paragraph (i.e. for transfer to another account or subaccount), or as otherwise provided in Section 2 below. The Authority shall have no interest in any amounts on deposit in the Rincon Hill Account, the SOMA Account, the SOMA City Subaccount, the SOMA RDA Subaccount, and, if established,

the SOMA School District Subaccount, and such amounts shall in no way be pledged as security for the Bonds.

Section 2. The City agrees to encumber, pursuant to a written agreement or written agreements with one or more entities not related to or under the control of the City or its Board of Supervisors, or to otherwise expend, within six months of the date of issuance of a series of the Bonds, an amount equal to not less than five percent (5%) of the aggregate amount of proceeds of such series of the Bonds deposited to the Rincon Hill Account and the SOMA Account (and any of the subaccounts therein). The City agrees to use all amounts, including investment proceeds, on deposit in the City Project Accounts for costs of the Improvements incurred by the City after the date on which the Board of Supervisors of the City has approved this Agreement, including any planning, engineering, design, inspection or other expenses of the City incidental to the construction of the Improvements, all as contemplated by the Ordinance. The City hereby represents that each of the Improvements has a useful life of five years or longer, are necessitated, in part, by development occurring within the Rincon Hill Downtown Residential District, and no nongovernmental person or entity has or will have any special legal entitlements to any of the Improvements.

The City shall be entitled to withdraw amounts from either of the City Projects Accounts upon submission to the Trustee of a requisition request, substantially in the form of Exhibit B hereto, executed by the Director of the Mayor's Office of Public Finance of the City or her designee. All amounts shall remain on deposit in the respective City Projects Accounts until withdrawn by the City or otherwise transferred to another account or subaccount (as allowed for in Section 1 above), and any investment of such amounts shall be at the sole and absolute discretion of the City, and the Director of the Mayor's Office of Public Finance, or her designee, shall provide written instructions to the Trustee as to such investments.

The City hereby represents that it reasonably expects to be able to expend amounts deposited in the City Project Accounts within three years of the date of issuance of the Bonds the proceeds of which were deposited to either of the City Project Accounts.

Section 3. If and only if a deposit of Bond proceeds is made to the Rincon Hill Account and/or the SOMA Account as provided in Section 1 above, the City will provide a credit against the Fee due under the Ordinance which would otherwise be charged against the property included in the CFD, all as further provided in the applicable Waiver Agreement. Said credit shall be applied without regard to any investment earnings on amounts in the Rincon Hill Account or the SOMA Account (or any of the subaccounts therein). The provisions of the preceding paragraph shall in no way relieve any owner or developer of the property in the Rincon Hill area of the City from the payment of any fees, other than the Fee due under the Ordinance, charged by the City, and then only to the extent set forth in the applicable Waiver Agreement.

Subject to the provisions of the first paragraph of this Section 3, any deposit to the Rincon Hill Account or the SOMA Account (or any of the subaccounts therein) pursuant to Section 1 above shall in no way fix the amount of the fees due under the Ordinance with respect to the property in the CFD, and any increase in any of the fees imposed by the Ordinance (including but not limited to the Fee) from and after the date of this Agreement shall be taken into account in determining the amount of the credit to be given pursuant to the applicable Waiver Agreement. Subject to the provisions of the first paragraph of this Section 3, if the total Fee due under the Ordinance with respect to the property included in the CFD is greater than the amounts, if any, deposited to the Rincon Hill Account and the SOMA Account (or any of the subaccounts therein) pursuant to Section 1 above, the excess shall be charged to the owners of the land in the CFD as provided in the applicable Waiver Agreement. This Agreement shall

in no way be construed as a deferral of any fee otherwise due under the Ordinance with respect to the property in the CFD.

Section 4. All obligations of the Authority under and pursuant to this Agreement shall be limited to the amounts, if any, on deposit in the Rincon Hill Account and the SOMA Account (or any of the subaccounts therein). No member of the Executive Committee of the Authority, or member, officer or employee of the Authority shall in any event be personally liable hereunder. Following any deposit of Bond proceeds in the Rincon Hill Account or the SOMA Account (or any of the subaccounts therein) as provided in Section 1 above, the Authority shall have no liability with respect to the handling or the investment of such funds by the Trustee, or the disposition of such funds by the City.

All special taxes levied for the CFD shall be disposed of as provided in the proceedings for the establishment of the CFD and the issuance of the Bonds.

Section 5. The City shall have no obligation whatsoever with respect to the payment of the Bonds or any other aspect of the CFD. The only obligation of the City hereunder shall be to encumber and expend the amounts, if any, deposited to the City Projects Accounts in a manner consistent with Section 2 above, and its indemnity obligations as provided in Section 8 below.

Section 6. Notwithstanding any other provision of this Agreement, this Agreement shall cease to be effective and shall terminate if the first series of the Bonds is not issued by December 31, 2006. If not earlier terminated pursuant to the preceding sentence, this Agreement shall terminate upon the earlier of December 31, 2011, or the disbursement of all amounts from the City Projects Accounts to pay costs of the Improvements.

Section 7. The provisions of this Agreement shall in no way obligate the Authority to form the CFD. Notwithstanding the foregoing, by their respective approvals of this Agreement, the Authority and the City have each declared and hereby confirm that this Agreement is beneficial to the residents within the jurisdiction of their respective entities in assuring the provision of financing for a portion of the costs of the Improvements in furtherance of the purposes of the Ordinance and the Act.

Section 8. The City hereby agrees to indemnify, hold harmless and defend the Authority and the CFD, and the members, boardmembers, officers, employees and agents of the Authority, against any and all claims, demands, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys fees) arising from or related to (i) any application by the City of funds drawn from the City Projects Accounts that is not in compliance with the provisions of this Agreement, (ii) any failure to comply with any law regarding prevailing wages or public bidding with respect to the Improvements, (iii) the construction, ownership or operation of the Improvements, (iv) any failure of the City to otherwise comply with the obligations on its part under this Agreement, or (v) any failure of the City to comply with the Ordinance or any Waiver Agreement. It is hereby acknowledged that the Authority has agreed to form the CFD and issue the Bonds to facilitate the implementation of the Ordinance and any Waiver Agreement, and is not assuming any responsibility for the implementation by the City of the Ordinance, any actions by the City under any Waiver Agreement, any action by the City or its representatives as to the allocation or any reallocation of amounts deposited to any of the accounts or subaccounts referenced in Section 1 above, or any misapplication of funds by the City drawn from either of the City Projects Accounts.

Section 9. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 10. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement is for the sole benefit of the Authority and the City and their successors and assigns, and no other person or entity shall be deemed to be a beneficiary hereof or have an interest herein; provided, however, that the owners of land in the CFD shall be beneficiaries of any reduction in Fees imposed under the Ordinance as described in Section 3 above, as determined solely by the City consistent with the provisions of the applicable Waiver Agreement.

Section 11. This Agreement may be amended at any time but only in writing signed by each party hereto.

Section 12. This Agreement contains the entire agreement between the parties hereto with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties hereto with respect to the subject matter of this Agreement. The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the party for whom they sign.

Section 13. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California applicable to contracts made and performed in such State.

Section 14. This Agreement may be executed in counterparts, each of which shall be deemed an original.

\*\*\*\*\*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written alongside their signature below.

ABAG FINANCE AUTHORITY FOR  
NONPROFIT CORPORATIONS

Date of Execution: 6/12, 2006

By:   
\_\_\_\_\_  
Chief Financial Officer

CITY AND COUNTY OF SAN  
FRANCISCO

Date of Execution: \_\_\_\_\_, 2006

By: \_\_\_\_\_  
Mayor

01009.29:J8594

\*\*\*\*\*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written alongside their signature below.

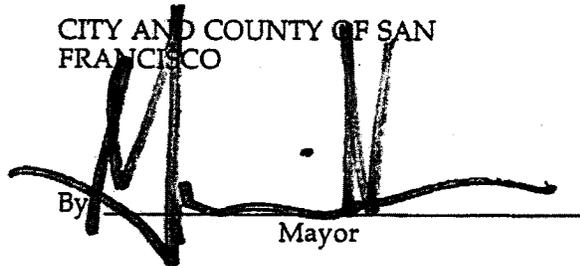
ABAG FINANCE AUTHORITY FOR  
NONPROFIT CORPORATIONS

Date of Execution: \_\_\_\_\_, 2006

By: \_\_\_\_\_  
Chief Financial Officer

CITY AND COUNTY OF SAN  
FRANCISCO

Date of Execution: 5/19, 2006

By:  \_\_\_\_\_  
Mayor

01009.29:j8594

EXHIBIT A  
IMPROVEMENTS

Rincon Hill Community Improvements

The CFD is intended to finance the following improvements, all within 250 feet of the Rincon Hill Downtown Residential District as defined in Section 318.6 of the City's Planning Code:

1. Neighborhood open spaces, including, but not limited to:
  - a. acquisition of open space, parkland, pocket parks, and other land for recreational purposes;
  - b. grading, lighting and landscaping;
  - c. construction of improvements relating to such open space, including bathrooms, picnic and playground structures and other related improvements.
  
2. Streetscape improvements, including pedestrian safety improvements, traffic calming, sidewalk widening, corner bulb outs, paving, lighting, landscaping, stairways, medians, public transit passenger facilities (such as transit shelters, transit platforms, and other passenger amenities) and other improvement and mitigation measures required as a consequence of the development of the land in the CFD, including the following locations:
  - a. Main, Beale and Spear Streets between Folsom and Bryant Streets;
  - b. First Street between Folsom Street and its southeastern terminus;
  - c. Fremont Street between Folsom Street and its southeastern terminus;
  - d. Harrison Street between Essex Street and The Embarcadero;
  - e. Folsom Street between Essex Street and The Embarcadero; and
  - f. Guy Place, Lansing Street, Zeno Alley and Grote Alley.
  
3. Mid-block pathway improvements, including but not limited to landscaping, paving and other permanent improvements.
  
4. Community center facilities, including acquisition and improvement of land and facilities for use as publicly owned and accessible space for community functions, outreach and other activities; and potentially including the acquisition of a leasehold interest in and improvements to the Sailor's Union building located at 450 Harrison Street for such uses.
  
5. Library facilities and related improvements.

SOMA Stabilization Fund Improvements

The CFD is also intended to finance the following improvements, all within the area bounded by Market Street to the north, The Embarcadero to the east, King Street to the south and South Van Ness Avenue and Division Street to the west:

1. Neighborhood open spaces, including, but not limited to:
  - a. acquisition of open space, parkland, pocket parks, and other land for recreational purposes;
  - b. grading, lighting and landscaping;

- c. construction of improvements relating to such open space, including bathrooms, picnic and playground structures and other related improvements.
2. Community center facilities, including but not limited to the acquisition and improvement of land and facilities for use as publicly owned and accessible space for community functions, outreach and other activities.
3. Streetscape improvements, including pedestrian safety improvements, traffic calming, sidewalk widening, corner bulb outs, paving, lighting, landscaping, stairways, medians, public transit passenger facilities (such as transit shelters, transit platforms, and other passenger amenities) and other improvement and mitigation measures.
4. Library facilities and related improvements.
5. Affordable and/or supportive housing to be owned and operated by the City.

EXHIBIT B

FORM OF REQUEST FOR WITHDRAWAL FROM  
RINCON HILL ACCOUNT OR SOMA CITY SUBACCOUNT

Request No. \_\_\_\_\_

Date Submitted: \_\_\_\_\_, 200\_\_.

The undersigned, being the \_\_\_\_\_ of the City and County of San Francisco (the "City"), hereby states and certifies as follows:

1. The City hereby requests that \$\_\_\_\_\_ be disbursed from the \_\_\_\_\_ [insert "Rincon Hill Account" or "SOMA City Subaccount"] held pursuant to the Indenture (as such terms are defined in the Joint Community Facilities Agreement, dated as of May 1, 2006, between the City and the ABAG Finance Authority For Nonprofit Corporations (the "Agreement")), and that said amount be remitted to the payee identified in Attachment 1 hereto.

2. The disbursement requested pursuant to 1 above, is for payment of a cost identified in general in Attachment 1 hereto, which cost relates to an Improvement, as such term is defined in the Agreement.

3. The disbursement requested hereby is in accordance with the provisions of Section 2 of the Agreement, and no portion of the amount requested to be disbursed was set forth in any request for withdrawal from the \_\_\_\_\_ [insert "Rincon Hill Account" or "SOMA City Subaccount"] previously submitted by the City pursuant to the Agreement.

CITY AND COUNTY OF SAN  
FRANCISCO

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTACHMENT 1 TO EXHIBIT B

Purpose of Disbursement

Amount Requested

Payee

**JOINT COMMUNITY FACILITIES AGREEMENT—SCHOOL FACILITIES****ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS  
COMMUNITY FACILITIES DISTRICT NO. 2006-1  
(SAN FRANCISCO RINCON HILL)**

This Joint Community Facilities Agreement—School Facilities (the "Agreement"), dated for convenience as of May 1, 2006, is by and between the ABAG Finance Authority For Nonprofit Corporations (the "Authority") and the San Francisco Unified School District (the "School District").

**RECITALS:**

WHEREAS, the Board of Supervisors of the City and County of San Francisco (the "City") has adopted Ordinance No. 217-05 (File No. 050865) on August 9, 2005 (the "Ordinance") providing for, among other matters, the payment of a Community Improvements Impact Fee (the "Fee") by owners of property in the Rincon Hill Downtown Residential District that are developing their property with new residential development, and the Ordinance allows for the property owners, in lieu of payment of the applicable Fee, to place their property into a community facilities district that will levy special taxes on such property; and

WHEREAS, the Ordinance allows for the property owners, in lieu of payment of the applicable Fee, to enter a waiver agreement with the City (each, a "Waiver Agreement"), under which such property owners agree to place their property into a community facilities district that will levy special taxes on such property in order to finance improvements that would otherwise be financed by the Fee, in return for the City's waiver of the payment of the Fee; and

WHEREAS, the Ordinance contemplates that any Waiver Agreement will provide that any such special taxes will be used to pay for various public improvements as determined by the Board of Supervisors of the City, which may include school facilities identified in Exhibit A hereto (the "School Improvements"), by means of the issuance of bonds (the "Bonds") for such community facilities district and the use of the proceeds of the Bonds to finance, among other improvements and subject to allocation by the City, the School Improvements; and

WHEREAS, the Authority is undertaking proceedings to form the ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) (the "CFD"), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), being Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at Section 53311, of the California Government Code, and the Authority intends to issue Bonds under the Act in order to finance costs of the public improvements, which may include the School Improvements, in furtherance of the purposes of the Ordinance; and

WHEREAS, Section 53316.2 of the Act requires that the Authority enter into a joint community facilities agreement with the School District, prior to the adoption by the Authority of a resolution of formation of the CFD, in respect of any public improvements that may be financed with the proceeds of the Bonds, and, upon completion, are to be owned and operated by the School District; and

WHEREAS the Authority and the School District now desire to enter into this Agreement to satisfy the requirements of Section 53316.2 of the Act and to memorialize their understanding with respect to the CFD, the proceeds of the Bonds, the proceeds of special taxes levied for the CFD, and the School Improvements, all as more particularly set forth below.

## A G R E E M E N T :

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

Section 1. Following the issuance of Bonds, and the determination by the Board of Supervisors of the City to allocate a portion of the proceeds of the Bonds for the financing of School Improvements, the Director of the Mayor's Office of Public Finance of the City, by written notice to the Authority and the School District, may direct the Authority to set aside a portion of the proceeds of the Bonds in a separate subaccount (the "SOMA School District Subaccount"), to be established and held by the Trustee for the Bonds (the "Trustee") pursuant to an Indenture (the "Indenture") between the Authority and the Trustee. Any such amount, together with any investment earnings thereon, shall be held in the SOMA School District Subaccount for the sole and exclusive benefit of the School District, and shall be disposed of solely as set forth in Section 2 below. The Authority shall have no interest in any amounts on deposit in the SOMA School District Subaccount, and such amounts shall in no way be pledged as security for the Bonds.

Section 2. The School District agrees to use all amounts, including investment proceeds, withdrawn by it from the SOMA School District Subaccount for costs of the School Improvements incurred by the School District after the date on which the School District has approved this Agreement, including any planning, engineering, design, inspection or other expenses of the School District incidental to the construction of the School Improvements, all as contemplated by the Ordinance. The School District hereby represents that each of the School Improvements each have a useful life of five years or longer, are necessitated, in part, by development occurring within the Rincon Hill Downtown Residential District, and no nongovernmental person or entity has or will have any special legal entitlements to any of the School Improvements.

The School District shall be entitled to withdraw amounts from the SOMA School District Subaccount upon submission to the Trustee of a requisition request, substantially in the form of Exhibit B hereto, executed by the Superintendent of the School District, the Superintendent's written designee or any Assistant Superintendent for Business Affairs. All amounts shall remain on deposit in the SOMA School District Subaccount until withdrawn by the School District, and any investment of such amounts shall be at the sole and absolute discretion of the City, and the Director of the Mayor's Office of Public Finance, or her designee or other authorized representative of the City, shall provide written instructions to the Trustee as to such investments.

The School District hereby represents that it reasonably expects to be able to expend amounts deposited in the SOMA School District Subaccount within three years of the date of such deposit.

Section 3. All obligations of the Authority under and pursuant to this Agreement shall be limited to the amounts, if any, on deposit in the SOMA School District Subaccount. No member of the Executive Committee of the Authority, or member, officer or employee of the Authority shall in any event be personally liable hereunder. Following any deposit of Bond proceeds in the SOMA School District Subaccount as provided in Section 1 above, the Authority shall have no liability with respect to the handling or the investment of such funds by the Trustee, or the disposition of such funds by the School District. All special taxes levied for the CFD shall be disposed of as provided in the proceedings for the establishment of the CFD and the issuance of the Bonds.

Section 4. The School District shall have no obligation whatsoever with respect to the payment of the Bonds or any other aspect of the CFD. The only obligation of the School District hereunder shall be to expend the amounts, if any, deposited to the SOMA School District Subaccount in a manner consistent with Section 2 above, and its indemnity obligations as provided in Section 7 below.

Section 5. Notwithstanding any other provision of this Agreement, this Agreement shall cease to be effective and shall terminate if the first series of the Bonds is not issued by December 31, 2006. If not earlier terminated pursuant to the preceding sentence, this Agreement shall terminate upon the earlier of December 31, 2011, or the disbursement of all amounts from the SOMA School District Subaccount to pay costs of the School Improvements.

Section 6. The provisions of this Agreement shall in no way obligate the Authority to form the CFD or the Board of Supervisors of the City to allocate proceeds of the Bonds to the SOMA School District Subaccount. Notwithstanding the foregoing, by their respective approvals of this Agreement, the Authority and the School District have each declared and hereby confirm that this Agreement is beneficial to the residents within the jurisdiction of their respective entities in allowing for the possible provision of financing for a portion of the costs of the School Improvements in furtherance of the purposes of the Ordinance and the Act.

Section 7. The School District hereby agrees to indemnify, hold harmless and defend the Authority, the City and the CFD, and the members, boardmembers, officers, employees and agents of the Authority and the City, against any and all claims, demands, damages, liabilities, costs and expenses (including, without limitations, reasonable attorneys fees) arising from or related to (i) any application by the School District of funds drawn from the SOMA School District Subaccount that is not in compliance with the provisions of this Agreement, (ii) any failure to comply with any law regarding prevailing wages or public bidding with respect to the School Improvements, (iii) the construction, ownership or operation of the School Improvements, or (iv) any failure of the School District to otherwise comply with the obligations on its part under this Agreement. It is hereby acknowledged that the Authority has agreed to form the CFD and issue the Bonds to facilitate the implementation of the Ordinance and any Waiver Agreement, and is not assuming any responsibility for the implementation by the City of the Ordinance or any Waiver Agreement, or any misapplication of funds by the School District drawn from the SOMA School District Subaccount.

Section 8. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 9. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement is for the benefit of the Authority and the School District and their successors and assigns, and no other person or entity shall be deemed to be a beneficiary hereof or have an interest herein; provided, however, that the City is an intended third party beneficiary of this Agreement.

Section 10. This Agreement may be amended at any time but only in writing signed by each party hereto, and approved by a duly authorized representative of the City.

Section 11. This Agreement contains the entire agreement between the parties hereto with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties hereto with respect to the subject matter of this Agreement. The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the party for whom they sign.

Section 12. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California applicable to contracts made and performed in such State.

Section 13. This Agreement may be executed in counterparts, each of which shall be deemed an original.

\*\*\*\*\*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written alongside their signature below.

ABAG FINANCE AUTHORITY FOR  
NONPROFIT CORPORATIONS

Date of Execution: 5/12, 2006

By:   
Chief Financial Officer

SAN FRANCISCO UNIFIED SCHOOL  
DISTRICT

Date of Execution: <sup>to 6</sup>  
5/12 / ~~11~~ 2006

By:   
Its: Chief Financial  
Officer

01009.29:J8690

Approved by Board of  
Education by  
Resolution 5/9/06  
#64-18501

## EXHIBIT A

### SCHOOL IMPROVEMENTS

- Upgrades and reconfiguration of Filipino Education Center, 824 Harrison site, to support K-8 expansion of Bessie/ FEC including: replacement of bungalows, maintenance of fence, development of garden space, improvement of restrooms, and other enhancements to educational facilities.

- Acquisition and improvement of the Sherman Way right-of-way for use as Bessie Carmichael Elementary School facilities (the street between Bessie Carmichael School and Victoria Manalo Draves Park).

EXHIBIT B

FORM OF REQUEST FOR WITHDRAWAL FROM  
SOMA SCHOOL DISTRICT SUBACCOUNT

Request No. \_\_\_\_\_

Date Submitted: \_\_\_\_\_, 200\_\_.

The undersigned, being the \_\_\_\_\_ of the San Francisco Unified School District (the "School District"), hereby states and certifies as follows:

1. The School District hereby requests that \$\_\_\_\_\_ be disbursed from the SOMA School District Subaccount held pursuant to the Indenture (as such terms are defined in the Joint Community Facilities Agreement—School Facilities, dated as of May 1, 2006, between the School District and the ABAG Finance Authority For Nonprofit Corporations (the "Agreement")), and that said amount be remitted to the payee identified in Attachment 1 hereto.

2. The disbursement requested pursuant to 1 above, is for payment of a cost identified in general in Attachment 1 hereto, which cost relates to a School Improvement, as such term is defined in the Agreement.

3. The disbursement requested hereby is in accordance with the provisions of Section 2 of the Agreement, and no portion of the amount requested to be disbursed was set forth in any request for withdrawal from the SOMA School District Subaccount previously submitted by the School District pursuant to the Agreement.

SAN FRANCISCO UNIFIED SCHOOL  
DISTRICT

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTACHMENT 1 TO EXHIBIT B

Purpose of Disbursement

Amount Requested

Payee

**JOINT COMMUNITY FACILITIES AGREEMENT –  
REDEVELOPMENT AGENCY FACILITIES  
(SOUTH OF MARKET REDEVELOPMENT PROJECT AREA)**

**ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS  
COMMUNITY FACILITIES DISTRICT NO. 2006-1  
(SAN FRANCISCO RINCON HILL)**

This Joint Community Facilities Agreement – Redevelopment Agency Facilities (the “Agreement”), dated for convenience as of April 1, 2006, is by and between the ABAG Finance Authority For Nonprofit Corporations, a joint powers agency (the “Authority”), and the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic (the “Redevelopment Agency”).

**RECITALS:**

WHEREAS, the Board of Supervisors of the City and County of San Francisco (the “City”) has adopted Ordinance No. 217-05 (File No. 050865 of the Clerk of the Board of Supervisors) on August 9, 2005, codified as Planning Code Section 318 et seq. (collectively the “Ordinance”) providing for, among other matters, the payment of a Community Improvements Impact Fee (the “Fee”) by owners of property in the Rincon Hill Downtown Residential District that are developing their property with new residential development; and

WHEREAS, the Ordinance allows for the Rincon Hill Downtown Residential District property owners, in lieu of payment of the applicable Fee, to enter a waiver agreement with the City (each, a “Waiver Agreement”), under which such property owners agree to place their property into a community facilities district that will levy special taxes on such property in order to finance improvements that would otherwise be financed by the Fee, in return for the City’s waiver of the payment of the Fee; and

WHEREAS, the Ordinance contemplates that any Waiver Agreement will provide that any such special taxes will be used to pay for various public improvements as determined by the Board of Supervisors of the City, which may include facilities to be constructed by or under the supervision of the Redevelopment Agency, to be owned by the Redevelopment Agency and/or to be operated by the Redevelopment Agency, as identified in Exhibit A hereto (the “Redevelopment Agency Improvements”), by means of the issuance of bonds (the “Bonds”) for such community facilities district and the use of the proceeds of the Bonds to finance, among other improvements and subject to allocation by the City, the Redevelopment Agency Improvements; and

WHEREAS, the Authority is undertaking proceedings to form the ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (Rincon Hill) (the “CFD”), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”), being Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at Section 53311, of the California Government Code, and the Authority intends to issue Bonds under the Act in order

to finance costs of the public improvements, which may include the Redevelopment Agency Improvements, in furtherance of the purposes of the Ordinance; and

WHEREAS, Section 53316.2 of the Act requires that the Authority enter into a joint community facilities agreement with the Redevelopment Agency, prior to the adoption by the Authority of a resolution of formation of the CFD, in respect of any public improvements that may be financed with the proceeds of the Bonds, and, upon completion, are to be owned or operated by the Redevelopment Agency; and

WHEREAS the Authority and the Redevelopment Agency now desire to enter into this Agreement to satisfy the requirements of Section 53316.2 of the Act and to memorialize their understanding with respect to the CFD, the proceeds of the Bonds, the proceeds of special taxes levied for the CFD, and the Redevelopment Agency Improvements, all as more particularly set forth below.

#### AGREEMENT:

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

Section 1. Following the issuance of Bonds, and the determination by the Board of Supervisors of the City to allocate a portion of the proceeds of the Bonds for the financing of Redevelopment Agency Improvements, the Director of the Mayor's Office of Public Finance of the City, by written notice to the Authority and the Redevelopment Agency, may direct the Authority to set aside a portion of the proceeds of the Bonds in a separate account (the "Redevelopment Agency Improvement Account"), to be established pursuant to the Indenture and held by the Trustee for the Bonds (the "Trustee") pursuant to an Indenture (the "Indenture") between the Authority and the Trustee. Any such amount, together with any investment earnings thereon, shall be held in the Redevelopment Agency Improvement Account for the sole and exclusive benefit of the Redevelopment Agency, and shall be disposed of solely as set forth in Section 2 below. The Authority shall have no interest in any amounts on deposit in the Redevelopment Agency Improvement Account, and such amounts shall in no way be pledged as security for the Bonds.

Section 2. The Redevelopment Agency agrees to use all amounts, including investment proceeds, received from the Redevelopment Agency Improvement Account for costs of the Redevelopment Agency Improvements incurred by the Redevelopment Agency [pursuant to] this Agreement and the Indenture, including any planning, engineering, design, inspection or other expenses of the Redevelopment Agency incidental to the construction of the Redevelopment Agency Improvements, all as contemplated by the Ordinance. The Redevelopment Agency hereby represents that each of the Redevelopment Agency Improvements each have a useful life of five years or longer, are necessitated, in part, by the impacts of development occurring within the Rincon Hill Downtown Residential District, and

no nongovernmental person or entity has or will have any special legal entitlements to any of the Redevelopment Agency Improvements.

The Redevelopment Agency shall be entitled to withdraw amounts from the Redevelopment Agency Improvement Account upon submission to the Trustee of a requisition request, substantially in the form of Exhibit B hereto, executed by the Deputy Executive Director, Finance and Administration of the Redevelopment Agency, or the Deputy Executive Director, Finance and Administration's written designee. All amounts shall remain on deposit in the Redevelopment Agency Improvement Account until withdrawn by the Redevelopment Agency, and any investment of such amounts shall be at the sole and absolute discretion of the City, and the Director of the Mayor's Office of Public Finance, or her designee, shall provide written instructions to the Trustee as to such investments.

The Redevelopment Agency hereby represents that it reasonably expects to be able to expend amounts deposited in the Redevelopment Agency Improvement Account within three years of the date of deposit of the Bond proceeds in the Redevelopment Agency Improvement Account.

Section 3. All obligations of the Authority under and pursuant to this Agreement shall be limited to the amounts, if any, on deposit in the Redevelopment Agency Improvement Account. No member of the Executive Committee of the Authority, or member, officer or employee of the Authority shall in any event be personally liable hereunder. Following any deposit of Bond proceeds in the Redevelopment Agency Improvement Account as provided in Section 1 above, the Authority shall have no liability with respect to the handling or the investment of such funds by the Trustee, or the disposition of such funds by the Redevelopment Agency. All special taxes levied for the CFD shall be disposed of as provided in the proceedings for the establishment of the CFD and the issuance of the Bonds.

Section 4. The Redevelopment Agency shall have no obligation whatsoever with respect to the payment of the Bonds or any other aspect of the CFD. The only obligation of the Redevelopment Agency hereunder shall be to expend the amounts, if any, deposited to the Redevelopment Agency Improvement Account in a manner consistent with Section 2 above, and its indemnity obligation as provided in Section 7 below.

Section 5. Notwithstanding any other provision of this Agreement, this Agreement shall cease to be effective and shall terminate if the first series of the Bonds is not issued by December 31, 2006. If not earlier terminated pursuant to the preceding sentence, this Agreement shall terminate upon the earlier of December 31, 2011, or the disbursement of all amounts from the Redevelopment Agency Improvement Account to pay costs of the Redevelopment Agency Improvements.

Section 6. The provisions of this Agreement shall in no way obligate the Authority to form the CFD or the Board of Supervisors of the City to allocate proceeds of the Bonds to the Redevelopment Agency Improvement Account. Notwithstanding the foregoing, by their respective approvals of this Agreement, the Authority and the Redevelopment Agency have

each declared and hereby confirm that this Agreement is beneficial to the residents within the jurisdiction of their respective entities in allowing for the possible provision of financing for a portion of the costs of the Redevelopment Agency Improvements in furtherance of the purposes of the Ordinance and the Act.

Section 7. The Redevelopment Agency hereby agrees to indemnify, hold harmless and defend the Authority, the City and the CFD, and the members, boardmembers, officers, employees and agents of the Authority and the City, against any and all claims, demands, damages, liabilities, costs and expenses (including, without limitations, reasonable attorneys fees) arising from or related to (i) any application by the Redevelopment Agency of funds drawn from the Redevelopment Agency Improvement Account that is not in compliance with the provisions of this Agreement, (ii) any failure to comply with any law regarding prevailing wages or public bidding with respect to the Redevelopment Agency Improvements, (iii) the construction, ownership or operation of the Redevelopment Agency Improvements, or (iv) any failure of the Redevelopment Agency to otherwise comply with the obligations on its part under this Agreement.

Section 8. The parties hereby acknowledge that the Redevelopment Agency has executed this Agreement, based on the Authority's proposed formation of the CFD and intended issuance of the Bonds to facilitate the implementation of the Ordinance and any Waiver Agreement approved by the City, and neither the Redevelopment Agency or the City assumes any responsibility for the implementation by the City of the Ordinance or any Waiver Agreement. In addition the parties also acknowledge that the Authority assumes no responsibility for any misapplication of funds by the Redevelopment Agency that may hereafter occur as to funds drawn from the Redevelopment Agency Improvement Account.

Section 9. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 10. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement is for the benefit of the Authority and the Redevelopment Agency and their successors and assigns, and no other person or entity shall be deemed to be a beneficiary hereof or have an interest herein; provided, however, that the City is an intended third party beneficiary of this Agreement.

Section 11. This Agreement may be amended at any time but only in writing signed by each party hereto, and approved by a duly authorized representative of the City.

Section 12. This Agreement contains the entire agreement between the parties hereto with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties hereto with respect to the subject matter of this Agreement. The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the party for whom they sign.

EXHIBIT A

REDEVELOPMENT AGENCY IMPROVEMENTS

The Redevelopment Agency Improvements eligible for funding with Bond proceeds from Community Facilities District No. 2006-1 (San Francisco Rincon Hill) are:

(a) a community, cultural or performing arts facility at 185 Sixth Street in the South of Market Redevelopment Project Area, and

(b) a community garden facility on the east side of Lapu Lapu Street between Rizal Street and Bonifacio Street in the Yerba Buena Center Redevelopment Project Area.

EXHIBIT B

FORM OF REQUEST FOR WITHDRAWAL FROM  
REDEVELOPMENT AGENCY IMPROVEMENT ACCOUNT

Request No. \_\_\_\_\_

Date Submitted: \_\_\_\_\_, 200\_\_.

The undersigned, being the \_\_\_\_\_ of the Redevelopment Agency of the City and County of San Francisco (the "Redevelopment Agency"), hereby states and certifies as follows:

1. The Redevelopment Agency hereby requests that \$\_\_\_\_\_ be disbursed from the Redevelopment Agency Improvement Account held pursuant to the Indenture (as such terms are defined in the Joint Community Facilities Agreement – Redevelopment Agency Facilities, dated as of \_\_\_\_\_ 1, 2006, between the Redevelopment Agency and the ABAG Finance Authority For Nonprofit Corporations (the "Agreement"), and that said amount be remitted to the payee identified in Attachment 1 hereto.

2. The disbursement requested pursuant to 1 above, is for payment of a cost identified in general in Attachment 1 hereto, which cost relates to a Redevelopment Agency Improvement, as such term is defined in the Agreement.

3. The disbursement requested hereby is in accordance with the provisions of Section 2 of the Agreement, and no portion of the amount requested to be disbursed was set forth in any request for withdrawal from the Redevelopment Agency Improvement Account previously submitted by the Redevelopment Agency pursuant to the Agreement.

REDEVELOPMENT AGENCY OF THE  
CITY AND COUNTY OF SAN  
FRANCISCO

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTACHMENT 1 TO EXHIBIT B

Purpose of Disbursement

Amount Requested

Payee

# ATTACHMENT B

## Bond Indenture

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**INDENTURE**

**by and between the**

**ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS**

**and**

**UNION BANK OF CALIFORNIA, N.A.,  
as Trustee**

**Dated as of June 1, 2006**

**relating to:  
\$5,825,000**

**ABAG Finance Authority For Nonprofit Corporations  
Community Facilities District No. 2006-1  
(San Francisco Rincon Hill)  
Special Tax Bonds, Series 2006A**

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EXHIBIT A – FORM OF 2006A BOND

## INDENTURE

### ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) Special Tax Bonds

THIS INDENTURE (the "Indenture"), dated as of June 1, 2006, is by and between the ABAG Finance Authority For Nonprofit Corporations, a joint exercise of powers authority organized and existing under and by virtue of the laws of the State of California (the "Authority") for and on behalf of the ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) (the "District"), and Union Bank of California, N.A., a national banking association duly organized and existing under the laws of the United States of America, as trustee (the "Trustee").

#### RECITALS:

**WHEREAS**, the Board of Directors of the Authority has formed the District under the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (Section 53311, *et seq.* of the California Government Code) (the "Act") and Resolution No. 06-16 of the Executive Committee of the Board of Directors of the Authority adopted on May 12, 2006 (the "Resolution of Formation");

**WHEREAS**, the Executive Committee of the Board of Directors of the Authority, as the legislative body for the District, is authorized under the Act to levy special taxes to pay for the costs of the District and to authorize the issuance of bonds secured by said special taxes;

**WHEREAS**, under the provisions of the Act, on May 12, 2006, the Executive Committee of the Board of Directors of the Authority adopted its Resolution No. 06-20 (the "Resolution"), which resolution authorized the issuance and sale of the ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) Special Tax Bonds, Series 2006A (the "2006A Bonds") in an aggregate principal amount of not to exceed \$6,500,000, and authorized the execution of this Indenture;

**WHEREAS**, it is in the public interest and for the benefit of the Authority, the District and the owners of the 2006A Bonds that the Authority enter into this Indenture to provide for the issuance of the 2006A Bonds, the disbursement of the proceeds of the 2006A Bonds, the disposition of the special taxes securing the 2006A Bonds and the administration and payment of the 2006A Bonds; and

**WHEREAS**, the Authority has determined that all things necessary to cause the 2006A Bonds, when executed by the Authority for the District and issued as in the Act, the Resolution and this Indenture provided, to be legal, valid and binding and special obligations of the Authority for the District in accordance with their terms, and all things necessary to cause the creation, authorization, execution and delivery of this Indenture and the creation, authorization, execution and issuance of the 2006A Bonds, subject to the terms hereof, have in all respects been duly authorized.

**AGREEMENT:**

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

**ARTICLE I**  
**STATUTORY AUTHORITY AND DEFINITIONS**

Section 1.01. Authority for this Indenture. This Indenture is entered into pursuant to the provisions of the Act and the Resolution.

Section 1.02. Indenture for Benefit of Owners of the Bonds. The provisions, covenants and agreements herein set forth to be performed by or on behalf of the Authority shall be for the equal benefit, protection and security of the Owners of the Bonds. All of the Bonds, without regard to the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided in or permitted by this Indenture. The Trustee may become the Owner of any of the Bonds in its own or any other capacity with the same rights it would have if it were not Trustee.

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

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

"Administrative Expenses" means costs directly related to the administration of the District consisting of the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the Chief Financial Officer or designee thereof or both) and the costs of collecting the Special Taxes (whether by the County, the Authority or otherwise); the costs of remitting the Special Taxes to the Trustee; fees and costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under this Indenture; the costs of the Authority or any designee of either the Authority of complying with the disclosure provisions of the Act, the Continuing Disclosure Agreement and this Indenture, including those related to public inquiries regarding the Special Tax and disclosures to Bondowners and the Original Purchaser; the costs of the Authority, the County or any designee of either the Authority or the County related to an appeal of the Special Tax; any amounts required to be rebated to the federal government in order for the Authority to comply with Section 5.13; an allocable share of the salaries of the Authority staff directly related to the foregoing and a proportionate amount of Authority general administrative overhead related thereto. Administrative Expenses shall also include amounts advanced by the Authority for any administrative purpose of the District, including costs related to prepayments of Special Taxes, recordings related to such prepayments and satisfaction of Special Taxes, amounts advanced to ensure compliance with Section 5.13, administrative costs related to the administration of any joint community facilities agreement regarding the District, and the costs of commencing and pursuing foreclosure of delinquent Special Taxes.

"Administrative Expense Fund" means the fund by that name established by Section 4.07(A) hereof.

"Annual Debt Service" means, for each Bond Year, the sum of (i) the interest due on the Outstanding Bonds in such Bond Year, assuming that the Outstanding Bonds are retired as scheduled (including by reason of the provisions of Section 2.03(A)(ii) providing for mandatory sinking payments), and (ii) the principal amount of the Outstanding Bonds due in such Bond

Year (including any mandatory sinking payment due in such Bond Year pursuant to Section 2.03(A)(ii)).

"Auditor" means the auditor-controller of the County.

"Authority" means the ABAG Finance Authority For Nonprofit Corporations and any successor thereto.

"Authority Attorney" means any attorney or firm of attorneys employed by the Authority in the capacity of counsel to the Authority.

"Authorized Officer" means the Chair, Chief Financial Officer, Secretary or any other officer or employee authorized by the Executive Committee of the Board of Directors of the Authority or by an Authorized Officer to undertake the action referenced in this Indenture as required to be undertaken by an Authorized Officer.

"Bond Counsel" means (i) Quint & Thimmig LLP, or (ii) any other attorney or firm of attorneys acceptable to the Authority and nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

"Bond Fund" means the fund by that name established by Section 4.05(A) hereof.

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

"Bond Year" means the one-year period beginning on September 2nd in each year and ending on September 1st in the following year, except that the first Bond Year shall begin on the Closing Date and end on September 1, 2006.

"Bonds" means the 2006A Bonds, and, if the context requires, any Parity Bonds, at any time Outstanding under this Indenture or any Supplemental Indenture.

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

"CDIAC" means the California Debt and Investment Advisory Commission of the office of the State Treasurer of the State of California or any successor agency or bureau thereto.

"Capitalized Interest Account" means the account by that name established within the Bond Fund by Section 4.05(A) hereof.

"Chief Financial Officer" means the Chief Financial Officer of the Authority or such other officer or employee of the Authority performing the functions of the chief financial officer of the Authority.

"City" means the City and County of San Francisco, California.

"City Subaccount" means the subaccount by that name within the SOMA Community Stabilization Account established by Section 4.02(A).

"Closing Date" means June 8, 2006, being the date upon which there is a physical delivery of the 2006A Bonds in exchange for the amount representing the purchase price of the 2006A Bonds by the Original Purchaser thereof.

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

"Continuing Disclosure Agreement" shall mean that certain Continuing Disclosure Certificate executed by the Authority and Goodwin Consulting Group, as dissemination agent, on the Closing Date, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

"Costs of Issuance" means items of expense payable or reimbursable directly or indirectly by the Authority and related to the authorization, sale and issuance of the Bonds, which items of expense shall include, but not be limited to, printing costs, costs of reproducing and binding documents, closing costs, filing and recording fees, initial fees and charges of the Trustee including its first annual administration fee, expenses incurred by the Authority in connection with the issuance of the Bonds and the establishment of the District, special tax consultant fees and expenses, preliminary engineering fees and expenses, Bond (underwriter's) discount, legal fees and charges, including bond counsel, disclosure counsel, financial consultants' fees, charges for execution, transportation and safekeeping of the Bonds, landowner expenses related to the District formation, Authority costs related to the District formation, and other costs, charges and fees in connection with the foregoing.

"Costs of Issuance Fund" means the fund by that name established by Section 4.03(A) hereof.

"County" means the City and County of San Francisco, California.

"Debt Service" means the scheduled amount of interest and amortization of principal (including principal payable by reason of Section 2.03(A)(ii)) on the 2006A Bonds and the scheduled amount of interest and amortization of principal payable on any Parity Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

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

"District" means the ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill), formed by the Authority under the Act and the Resolution of Formation.

"District Value" means the market value, as of the date of the appraisal described below and/or the date of the most recent County real property tax roll, as applicable, of all parcels of real property in the District subject to the levy of the Special Taxes and not delinquent in the payment of any Special Taxes then due and owing, including with respect to such nondelinquent parcels the value of the then existing improvements and any facilities to be constructed or acquired with any amounts then on deposit in the Improvement Fund and with the proceeds of any proposed series of Parity Bonds, as determined with respect to any parcel or group of parcels by reference to (i) an appraisal performed within six (6) months of the date of issuance of any proposed Parity Bonds by an MAI appraiser (the "Appraiser") selected by the Authority, or (ii), in the alternative, the assessed value of all such nondelinquent parcels and improvements thereon as shown on the then current County real property tax roll available to the Chief Financial Officer. It is expressly acknowledged that, in determining the District Value,

the Authority may rely on an appraisal to determine the value of some or all of the parcels in the District and/or the most recent County real property tax roll as to the value of some or all of the parcels in the District. Neither the Authority nor the Chief Financial Officer shall be liable to the Owners, the Original Purchaser or any other person or entity in respect of any appraisal provided for purposes of this definition or by reason of any exercise of discretion made by any Appraiser pursuant to this definition.

"Event of Default" means the occurrence of one or more of the events described as such in Section 9.01.

"Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is the Local Agency Investment Fund of the State of California but only if at all times during which the investment is held its yield is reasonably expected to be equal to or greater than the yield on a reasonably comparable direct obligation of the United States.

"Federal Securities" means any of the following which are non-callable and which at the time of investment are legal investments under the laws of the State of California for funds held by the Trustee: (i) direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the United States Department of the Treasury) and obligations, the payment of principal of and interest on which are directly or indirectly guaranteed by the United States of America, including, without limitation, such of the foregoing which are commonly referred to as "stripped" obligations and coupons; or (ii) any of the following obligations of the following agencies of the United States of America: (a) direct obligations of the Export-Import Bank, (b) certificates of beneficial ownership issued by the Farmers Home Administration, (c) participation certificates issued by the General Services Administration, (d) mortgage-backed bonds or pass-through obligations issued and guaranteed by the Government National Mortgage Association, (e) project notes issued by the United States Department of Housing and Urban Development, and (f) public housing notes and bonds guaranteed by the United States of America.

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

"Improvement Fund" means the fund by that name created by and held by the Trustee pursuant to Section 4.02(A) hereof.

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

"Independent Financial Consultant" means any consultant or firm of such consultants appointed by the Authority or the Chief Financial Officer, and who, or each of whom: (i) has experience in matters relating to the issuance and/or administration of bonds under the Act; (ii)

is in fact independent and not under the domination of the Authority; (iii) does not have any substantial interest, direct or indirect, with or in the Authority, or any owner of real property in the District, or any real property in the District; and (iv) is not connected with the Authority as an officer or employee of the Authority, but who may be regularly retained to make reports to the Authority.

"Information Services" means Financial Information, Inc.'s "Daily Called Bond Service", 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Kenny Information Services' "Called Bond Service", 65 Broadway, 16th Floor, New York, New York 10006; Moody's Investors Service "Municipal and Government", 99 Church Street, New York, New York 10007, Attention: Municipal News Reports; Standard & Poor's Corporation "Called Bond Record", 25 Broadway, 3rd Floor, New York, New York 10004; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such services providing information with respect to called bonds as the Authority may designate in an Officer's Certificate delivered to the Trustee.

"Interest Payment Dates" means March 1 and September 1 of each year, commencing September 1, 2006.

"Joint Community Facilities Agreement – City" means the Joint Community Facilities Agreement, dated as of May 1, 2006, between the Authority and the City.

"Joint Community Facilities Agreement – Redevelopment Agency" means the Joint Community Facilities Agreement, dated as of April 1, 2006, between the Authority and the Redevelopment Agency.

"Joint Community Facilities Agreement – School District" means the Joint Community Facilities Agreement, dated as of May 1, 2006, between the Authority and the School District.

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

"Moody's" means Moody's Investors Service, and any successor thereto.

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

"Ordinance" means any ordinance of the Authority levying the Special Taxes.

"Original Purchaser" means, collectively, Stone & Youngberg LLC and Backstrom McCarley Berry & Co., LLC, the first purchasers of the 2006A Bonds from the Authority.

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

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

"Parity Bonds" means bonds issued by the Authority for the District on a parity with any then Outstanding Bonds pursuant to Section 2.14 hereof.

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

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

(a) Federal Securities.

(b) Time certificates of deposit or negotiable certificates of deposit issued by a state or nationally chartered bank (including the Trustee and its affiliates) or trust company, or a state or federal savings and loan association; provided, that the certificates of deposit shall be one or more of the following: continuously and fully insured by the Federal Deposit Insurance Corporation, and/or continuously and fully secured by securities described in subdivision (a) of this definition of Permitted Investments which shall have a market value, as determined on a marked-to-market basis calculated at least weekly, and exclusive of accrued interest, of not less than 102 percent of the principal amount of the certificates on deposit.

(c) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided by either Moody's or S&P, which commercial paper is limited to issuing corporations that are organized and operating within the United States of America and that have total assets in excess of five hundred million dollars (\$500,000,000) and that have an "A" or higher rating for the issuer's debentures, other than commercial paper, by either Moody's or S&P, provided that purchases of eligible commercial paper may not exceed 180 days' maturity nor represent more than 10 percent of the outstanding commercial paper of an issuing corporation.

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

(e) An investment agreement or guaranteed investment contract with, or guaranteed by, a financial institution (not including any insurance company) the long-term unsecured debt obligations of which are rated "AA" (or its equivalent) or better by Moody's and S&P at the time of initial investment. The investment agreement shall be subject to a downgrade provision with at least the following requirements: (1) the agreement shall provide that within five Business Days after the financial institution's long-term unsecured credit rating has been withdrawn, suspended, other than because of general withdrawal or suspension by Moody's or S&P from the practice of rating that debt, or reduced below "AA-" by S&P or below "Aa3" by Moody's (these events are called "rating downgrades") the financial institution shall give notice to the Trustee and, within the five-day period, and for as long as the rating downgrade is in effect, shall (A) deliver in the name of the Trustee to the Trustee federal securities allowed as investments under subdivision (a) of this definition of Permitted Investments with

aggregate current market value equal to at least 105 percent of the principal amount of the investment agreement invested with the financial institution at that time, and shall deliver additional allowed federal securities as needed to maintain an aggregate current market value equal to at least 105 percent of the principal amount of the investment agreement within three days after each evaluation date, which shall be at least weekly, (B) assign the agreement to another financial institution acceptable to the Trustee and the Authority whose long-term unsecured debt obligations are then rated "A" (or its equivalent) or better by Moody's and S&P, or (C) return all invested funds to the Trustee; and (2) the agreement shall provide that, if the financial institution's long-term unsecured credit rating is reduced below "A3" by Moody's or below "A-" by S&P, the Trustee may, upon not more than five Business Days' written notice to the financial institution, withdraw the investment agreement, with accrued but unpaid interest thereon to the date, and terminate the agreement.

(f) The Local Agency Investment Fund of the State Treasurer of the State of California as permitted by the State Treasurer pursuant to Section 16429.1 of the California Government Code.

(g) Investments in a money market account (including any accounts of the Trustee or its affiliates) rated in the highest rating category by Moody's or S&P.

"Principal Office" means the principal corporate trust office of the Trustee set forth in Section 9.06, except for the purpose of maintenance of the registration books and presentation of Bonds for payment, transfer or exchange, such term shall mean the office at which the Trustee conducts its corporate agency business, or such other or additional offices as may be designated by the Trustee.

"Project" means the facilities eligible to be funded by the District more particularly described in the Resolution of Formation.

"Qualified Reserve Fund Credit Instrument" means an irrevocable standby or direct-pay letter of credit or surety bond issued by a commercial bank or insurance company and deposited with the Trustee pursuant to Section 4.04(H), provided that all of the following requirements are met: (a) the long-term credit rating or claims paying ability of such bank or insurance company is in one of the two highest rating categories (without regard to modifiers) by S&P and Moody's; (b) such letter of credit or surety bond has a term of at least twelve (12) months; (c) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released pursuant to Section 4.04(H); and (d) the Trustee is authorized pursuant to the terms of such letter of credit or surety bond to draw thereunder for the purpose of making payments required pursuant to Section 4.04.

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

"Redevelopment Agency" means the Redevelopment Agency of the City and County of San Francisco.

"Redevelopment Agency Subaccount" means the subaccount by that name within the SOMA Community Stabilization Account established by Section 4.02(A).

"Refunding Bonds" means bonds issued by the Authority for the District the net proceeds of which are used to refund all or a portion of the then Outstanding Bonds; provided that the debt service on the Refunding Bonds in any Bond Year is not in excess of the debt

service on the Bonds being refunded and the final maturity of the Refunding Bonds is not later than the final maturity of the Bonds being refunded.

"Reserve Fund" means the fund by that name established pursuant to Section 4.04(A) hereof.

"Reserve Requirement" means, as of any date of calculation an amount equal to the least of (i) the then Maximum Annual Debt Service, (ii) one hundred twenty-five percent (125%) of the then average Annual Debt Service, or (iii) ten percent (10%) of the then Outstanding principal amount of the Bonds. The Reserve Requirement as of the Closing Date is \$521,978.42.

"Resolution" means Resolution No. 06-20, adopted by the Executive Committee of the Board of Directors of the Authority on May 12, 2006.

"Resolution of Formation" means Resolution No. 06-16, adopted by the Executive Committee of the Board of Directors of the Authority on May 12, 2006.

"Resolution of Intention" means Resolution No. 06-14, adopted by the Executive Committee of the Board of Directors of the Authority on March 22, 2006.

"Rincon Hill Community Improvements Account" means the account by that name established by Section 4.02(A).

"S&P" means Standard & Poor's Ratings Service, a division of McGraw-Hill, and any successor thereto.

"School District" means the San Francisco Unified School District.

"School District Subaccount" means the subaccount by that name within the SOMA Community Stabilization Account established by Section 4.02(A).

"Securities Depositories" means The Depository Trust Company, 55 Water Street, 50<sup>th</sup> Floor, New York, New York 10041-0099, Attention: Call Notification Department, Fax (212) 855-7232; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Authority may designate in an Officer's Certificate delivered to the Trustee.

"SOMA Community Stabilization Account" means the account by that name established by Section 4.02(A).

"Special Tax Fund" means the fund by that name established by Section 4.06(A) hereof.

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

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

"Special Tax Revenues" means the proceeds of the Special Taxes received by the Authority, including any scheduled payments and any prepayments thereof, interest thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of

the Special Taxes to the amount of said lien and interest thereon. "Special Tax Revenues" does not include any penalties collected in connection with delinquent Special Taxes.

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

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

"Tax Consultant" means Goodwin Consulting Group or another independent financial or tax consultant retained by the Authority for the purpose of computing the Special Taxes.

"Trust Estate" means the assets pledged and assigned by the Authority to the Trustee pursuant to this Indenture, which are limited to and include only the following: (a) the Special Tax Revenues, and (b) the amounts in the Special Tax Fund, the Bond Fund and the Reserve Fund.

"Trustee" means the entity appointed by the Authority and acting as an independent trustee with the duties and powers herein provided, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 7.01.

"2006A Bonds" means the Bonds so designated and authorized to be issued under Section 2.01 hereof.

## ARTICLE II

### THE BONDS

Section 2.01. Principal Amount; Designation. Bonds in the aggregate principal amount of Twenty-Eight Million Dollars (\$28,000,000) are hereby authorized to be issued by the Authority for the District under and subject to the terms of the Resolution and this Indenture, the Act and other applicable laws of the State of California. The 2006A Bonds are hereby designated as the "ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) Special Tax Bonds, Series 2006A," and shall be in the initial principal amount of \$5,825,000.

Section 2.02. Terms of the 2006A Bonds.

(A) Form; Denominations. The 2006A Bonds shall be issued as fully registered Bonds without coupons in the denomination of \$5,000 or any integral multiple in excess thereof.

(B) Date of 2006A Bonds. The 2006A Bonds shall be dated the Closing Date.

(C) CUSIP Identification Numbers. "CUSIP" identification numbers shall be imprinted on the Bonds, but such numbers shall not constitute a part of the contract evidenced by the Bonds and any error or omission with respect thereto shall not constitute cause for refusal of any purchaser to accept delivery of and pay for the Bonds. In addition, failure on the part of the Authority or the Trustee to use such CUSIP numbers in any notice to Owners shall not constitute an event of default or any violation of the Authority's contract with such Owners and shall not impair the effectiveness of any such notice.

(D) Maturities, Interest Rates. The 2006A Bonds shall mature and become payable on September 1 in each of the years, and shall bear interest at the rates per annum as follows:

<u>Maturity Date (September 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2009	\$ 20,000	4.15%
2010	30,000	4.30
2011	35,000	4.40
2012	45,000	4.50
2013	55,000	4.60
2014	60,000	4.70
2015	70,000	4.80
2016	85,000	4.90
2017	95,000	4.95
2018	105,000	5.00
2019	120,000	5.05
2020	135,000	5.10
2021	150,000	5.15
2026	1,005,000	5.20
2036	3,815,000	5.25

(E) Interest. The 2006A Bonds shall bear interest at the rates set forth above payable on the Interest Payment Dates in each year. Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months. Each 2006A Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof unless (i) it is

authenticated on an Interest Payment Date, in which event it shall bear interest from such date of authentication, or (ii) it is authenticated prior to an Interest Payment Date and after the close of business on the Record Date preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (iii) it is authenticated prior to the Record Date preceding the first Interest Payment Date, in which event it shall bear interest from the Closing Date; provided, however, that if at the time of authentication of a 2006A Bond, interest is in default thereon, such 2006A Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

(F) Method of Payment. Interest on the 2006A Bonds (including the final interest payment upon maturity or earlier redemption) is payable by check of the Trustee mailed on the Interest Payment Dates by first class mail to the registered Owner thereof at such registered Owner's address as it appears on the registration books maintained by the Trustee at the close of business on the Record Date preceding the Interest Payment Date, or by wire transfer (i) to the Depository (so long as the Bonds are in book-entry form pursuant to Section 2.13), or (ii) to an account within the United States made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of Bonds received before the applicable Record Date, which instructions shall continue in effect until revoked in writing, or until such Bonds are transferred to a new Owner. The principal of the Bonds and any premium on the Bonds are payable by check in lawful money of the United States of America upon surrender of the Bonds at the Principal Office of the Trustee. All Bonds paid by the Trustee pursuant to this Section shall be canceled by the Trustee. The Trustee shall destroy the canceled Bonds and issue a certificate of destruction thereof to the Authority upon the Authority's request.

Section 2.03. Redemption.

(A) Redemption Dates.

(i) *Optional Redemption.* The 2006A Bonds maturing on and after September 1, 2017 are subject to optional redemption prior to their stated maturity on any Interest Payment Date on or after September 1, 2016, as a whole, or in part among maturities so as to maintain substantially level debt service on the Bonds and by lot within a maturity, at a redemption price equal to the principal amount of the 2006A Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.

(ii) *Mandatory Sinking Payment Redemption.* The 2006A Bonds maturing on September 1, 2026, are subject to mandatory sinking payment redemption in part on September 1, 2022, and on each September 1 thereafter to maturity, by lot, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, from sinking payments as follows:

<u>Redemption Date</u> <u>(September 1)</u>	<u>Sinking Payments</u>
2022	\$165,000
2023	180,000
2024	200,000
2025	220,000
2026 (maturity)	240,000

The 2006A Bonds maturing on September 1, 2036, are subject to mandatory sinking payment redemption in part on September 1, 2027, and on each September 1 thereafter to maturity, by lot, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, from sinking payments as follows:

<u>Redemption Date</u> <u>(September 1)</u>	<u>Sinking Payments</u>
2027	\$260,000
2028	285,000
2029	305,000
2030	335,000
2031	360,000
2032	390,000
2033	420,000
2034	450,000
2035	485,000
2036 (maturity)	525,000

The amounts in the foregoing tables shall be reduced to the extent practicable so as to maintain level debt service on the 2006A Bonds, as a result of any prior partial redemption of the 2006A Bonds pursuant to Section 2.03(A)(i) above or Section 2.03(A)(iii) below, as specified in writing by the Chief Financial Officer to the Trustee.

(iii) *Redemption From Special Tax Prepayments.* Special Tax Prepayments and any corresponding transfers from the Reserve Fund pursuant to Section 4.05(B)(ii) and Section 4.04(F), respectively, shall be used to redeem 2006A Bonds on the next Interest Payment Date for which notice of redemption can timely be given under Section 2.03(D), by lot and allocated among maturities of the 2006A Bonds so as to maintain substantially level debt service on the Bonds, at a redemption price (expressed as a percentage at the principal amount of the Bonds to be redeemed), as set forth below, together with accrued interest to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Prices</u>
any Interest Payment Date from September 1, 2006 to and including March 1, 2016	103%
September 1, 2016 and any Interest Payment Date thereafter	100

(B) Notice to Trustee. The Authority shall give the Trustee written notice of its intention to redeem 2006A Bonds pursuant to subsection (A)(i) or (A)(iii) not less than forty-five (45) days prior to the applicable redemption date, or such lesser number of days as shall be consented to by the Trustee.

(C) Purchase of Bonds in Lieu of Redemption. In lieu of redemption under Section 2.03(A), moneys in the Bond Fund may be used and withdrawn by the Trustee for purchase of Outstanding 2006A Bonds, upon the filing with the Trustee of an Officer's Certificate requesting such purchase, at public or private sale as and when, and at such prices (including brokerage and other charges) as such Officer's Certificate may provide, but in no event may 2006A Bonds be purchased at a price in excess of the principal amount thereof, plus interest accrued to the date of purchase and any premium which would otherwise be due if such 2006A Bonds were to be redeemed in accordance with this Indenture.

(D) Redemption Procedure by Trustee. The Trustee shall cause notice of any redemption of 2006A Bonds to be mailed by first class mail, postage prepaid, at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption, to the Original Purchaser, to the Securities Depositories, to one or more Information Services, and to the respective registered Owners of any 2006A Bonds designated for redemption, at their addresses appearing on the Bond registration books in the Principal Office of the Trustee; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice, or any defect therein, shall not affect the validity of the proceedings for the redemption of such 2006A Bonds.

Such notice shall state the redemption date and the redemption price and, if less than all of the then Outstanding 2006A Bonds are to be called for redemption, shall designate the CUSIP numbers and Bond numbers of the 2006A Bonds to be redeemed by giving the individual CUSIP number and Bond number of each 2006A Bond to be redeemed or shall state that all 2006A Bonds between two stated Bond numbers, both inclusive, are to be redeemed or that all of the 2006A Bonds of one or more maturities have been called for redemption, shall state as to any 2006A Bond called in part the principal amount thereof to be redeemed, and shall require that such 2006A Bonds be then surrendered at the Principal Office of the Trustee for redemption at the said redemption price, and shall state that further interest on such 2006A Bonds will not accrue from and after the redemption date.

Upon the payment of the redemption price of 2006A Bonds being redeemed, each check or other transfer of funds issued for such purpose shall, to the extent practicable, bear the CUSIP number identifying, by issue and maturity, of the 2006A Bonds being redeemed with the proceeds of such check or other transfer.

Whenever provision is made in this Indenture for the redemption of less than all of the Bonds or any given portion thereof, the Trustee shall select the Bonds to be redeemed, from all Bonds or such given portion thereof not previously called for redemption, among maturities as directed in writing by the Chief Financial Officer (who shall specify Bonds to be redeemed so as to maintain, as much as practicable, the same debt service profile for the Bonds as in effect prior to such redemption, unless otherwise specified herein), and by lot within a maturity in any manner which the Trustee deems appropriate.

Upon surrender of Bonds redeemed in part only, the Authority shall execute and the Trustee shall authenticate and deliver to the registered Owner, at the expense of the Authority, a new Bond or Bonds, of the same series and maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds.

(E) Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the principal of, and interest and any premium on, the Bonds so called for redemption shall have been deposited in the Bond Fund, such Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price, and no interest shall accrue thereon on or after the redemption date specified in such notice.

All Bonds redeemed and purchased by the Trustee pursuant to this Section shall be canceled by the Trustee. The Trustee shall destroy the canceled Bonds and issue a certificate of destruction thereof to the Authority.

Section 2.04. Form of Bonds. The 2006A Bonds, the form of Trustee's certificate of authentication and the form of assignment, to appear thereon, shall be substantially in the forms, respectively, set forth in Exhibit A attached hereto and by this reference incorporated

herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture, the Resolution and the Act.

Section 2.05. Execution of Bonds. The Bonds shall be executed on behalf of the Authority by the manual or facsimile signatures of its Chair or Chief Financial Officer and Secretary who are in office on the date of adoption of this Indenture or at any time thereafter, and the seal of the Authority shall be impressed, imprinted or reproduced by facsimile signature thereon. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the owner, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the owner. Any Bond may be signed and attested on behalf of the Authority by such persons as at the actual date of the execution of such Bond shall be the proper officers of the Authority although at the nominal date of such Bond any such person shall not have been such officer of the Authority.

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

Section 2.06. Transfer of Bonds. Any Bond may, in accordance with its terms, be transferred, upon the books required to be kept pursuant to the provisions of Section 2.08 by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a duly written instrument of transfer in a form acceptable to the Trustee. The cost for any services rendered or any expenses incurred by the Trustee in connection with any such transfer shall be paid by the Authority. The Trustee shall collect from the Owner requesting such transfer any tax or other governmental charge required to be paid with respect to such transfer.

Whenever any Bond or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount of authorized denomination(s).

No transfers of Bonds shall be required to be made (i) fifteen days prior to the date established by the Trustee for selection of Bonds for redemption, (ii) with respect to a Bond after such Bond has been selected for redemption, or (iii) between a Record Date and the succeeding Interest Payment Date.

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

No exchanges of Bonds shall be required to be made (i) fifteen days prior to the date established by the Trustee for selection of Bonds for redemption, (ii) with respect to a Bond after such Bond has been selected for redemption, or (iii) between a Record Date and the succeeding Interest Payment Date.

Section 2.08. Bond Register. The Trustee will keep or cause to be kept, at its Principal Office sufficient books for the registration and transfer of the Bonds, which books shall show the series number, date, amount, rate of interest and last known Owner of each Bond and shall

at all times be open to inspection by the Authority during regular business hours upon reasonable notice; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the ownership of the Bonds as hereinbefore provided.

The Authority and the Trustee will treat the Owner of any Bond whose name appears on the Bond register as the absolute Owner of such Bond for any and all purposes, and the Authority and the Trustee shall not be affected by any notice to the contrary. The Authority and the Trustee may rely on the address of the Bondowner as it appears in the Bond register for any and all purposes.

Section 2.09. Temporary Bonds. The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such authorized denominations as may be determined by the Authority, and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Authority upon the same conditions and in substantially the same manner as the definitive Bonds. If the Authority issues temporary Bonds it will execute and furnish definitive Bonds without delay and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange for the definitive Bonds at the Principal Office of the Trustee or at such other location as the Trustee shall designate, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under to this Indenture as definitive Bonds authenticated and delivered hereunder.

Section 2.10. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Authority, at the expense of the Owner of said Bond, shall execute, and the Trustee shall authenticate and deliver, a new Bond of like tenor and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by it and destroyed by the Trustee who shall deliver a certificate of destruction thereof to the Authority. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence be satisfactory to it and indemnity for the Authority and the Trustee satisfactory to the Trustee shall be given, the Authority, at the expense of the Owner, shall execute, and the Trustee shall authenticate and deliver, a new Bond of like tenor and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen. The Authority may require payment of a sum not exceeding the actual cost of preparing each new Bond delivered under this Section and of the expenses which may be incurred by the Authority and the Trustee for the preparation, execution, authentication and delivery. Any Bond delivered under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Authority whether or not the Bond so alleged to be lost, destroyed or stolen is at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued pursuant to this Indenture.

Section 2.11. Limited Obligation. All obligations of the Authority under this Indenture and the Bonds shall be special obligations of the Authority, payable solely from the Trust Estate. Neither the faith and credit nor the taxing power of the Authority (except with respect to its power to levy and collect the Special Taxes) or the State of California or any political subdivision thereof is pledged to the payment of the Bonds. The members and associate members of the Authority have no obligation whatsoever under this Indenture or otherwise with respect to the Bonds.

Section 2.12. No Acceleration. The principal of the Bonds shall not be subject to acceleration hereunder. Nothing in this Section shall in any way prohibit the redemption of Bonds under Section 2.03 hereof, or the defeasance of the Bonds and discharge of this Indenture under Section 10.03 hereof.

Section 2.13. Book-Entry System. DTC shall act as the initial Depository for the Bonds. One Bond for each maturity of each series of the Bonds shall be initially executed, authenticated, and delivered as set forth herein with a separate fully registered certificate (in print or typewritten form). Upon initial execution, authentication, and delivery, the ownership of the Bonds shall be registered in the Bond Register kept by the Trustee for the Bonds in the name of Cede & Co., as nominee of DTC or such nominee as DTC shall appoint in writing.

The representatives of the Authority and the Trustee are hereby authorized to take any and all actions as may be necessary and not inconsistent with this Indenture to qualify the Bonds for the Depository's book-entry system, including the execution of the Depository's required representation letter.

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

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

No person other than an Owner, as shown on the Bond Register, shall receive a physical Bond. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the transfer provisions in Section 2.06 hereof, references to "Cede & Co." in this Section 2.13 shall refer to such new nominee of DTC.

DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the Trustee during any time that the Bonds are Outstanding, and discharging its responsibilities with respect thereto under applicable law. The Authority may terminate the services of DTC with respect to the Bonds if it determines that DTC is unable to discharge its responsibilities with respect to the Bonds or that continuation of the

system of book-entry transfers through DTC is not in the best interest of the Beneficial Owners, and the Authority shall mail notice of such termination to the Trustee.

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

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

Section 2.14. Issuance of Parity Bonds. The Authority may issue bonds (the "Parity Bonds"), in addition to the 2006A Bonds authorized under Section 2.01 hereof, by means of a Supplemental Indenture and without the consent of any Bondowners, upon compliance with the provisions of this Section 2.14. Any such Parity Bonds shall constitute Bonds hereunder and shall be secured by a lien on and pledge of the Trust Estate on a parity with all other Bonds Outstanding hereunder. The Authority may issue the Parity Bonds subject to the following specific conditions precedent:

(A) Current Compliance. The Authority shall be in compliance on the date of issuance of the Parity Bonds with all covenants set forth in this Indenture and all Supplemental Indentures.

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

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

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

the Other District Bonds occurs), based upon information from the most recent available Fiscal Year.

(E) The Special Tax Coverage. The Authority shall obtain a certificate of a Tax Consultant to the effect that the amount of the maximum Special Taxes that may be levied in each Fiscal Year shall be at least one hundred ten percent (110%) of the total Annual Debt Service for each such Fiscal Year on the Bonds and the proposed Parity Bonds.

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

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

Nothing in this Section 2.14 shall prohibit the Authority from issuing bonds or otherwise incurring debt secured by a pledge of the Trust Estate subordinate to the pledge thereof under Section 3.02 of this Indenture.

## ARTICLE III

### ISSUANCE OF BONDS

Section 3.01. Issuance and Delivery of 2006A Bonds. At any time after the execution of this Indenture, the Authority may issue the 2006A Bonds for the District in the aggregate principal amount set forth in Section 2.01 and deliver the 2006A Bonds to the Original Purchaser. The Authorized Officers of the Authority are hereby authorized and directed to deliver any and all documents and instruments necessary to cause the issuance of the 2006A Bonds in accordance with the provisions of the Act, the Resolution and this Indenture, to authorize the payment of Costs of Issuance and costs of the Project by the Trustee from the proceeds of the 2006A Bonds and to do and cause to be done any and all acts and things necessary or convenient for delivery of the 2006A Bonds to the Original Purchaser.

Section 3.02. Pledge of Trust Estate. The Authority hereby irrevocably pledges, transfers in trust, grants a security interest in and assigns to the Trustee, for the benefit of the Owners from time to time of the Bonds, all right, title and interest of the Authority in the Trust Estate, subject to the provisions of this Indenture.

The pledge and assignment of the Trust Estate pursuant to this Indenture shall attach and be valid and binding upon the execution and delivery of this Indenture by the Authority and the Trustee, without any physical delivery of the Trust Estate or further act. Any and all interest in property acquired after the date of this Indenture of any kind or nature which is to become subject to the lien of this Indenture shall, without any further conveyance, assignment or act on the part of the Authority or the Trustee, be subject to the lien of this Indenture as fully and completely as though specifically described in this Indenture. The lien of the pledge and security interest created by this Indenture shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice of the lien. The Trust Estate is free and clear of any pledge, lien, charge or encumbrance other than the lien of this Indenture.

Amounts in the Administrative Expense Fund, the Improvement Fund (and the accounts and subaccounts therein) and the Costs of Issuance Fund are not pledged to the repayment of the Bonds. The Project financed with the proceeds of the Bonds is not in any way pledged to pay the Debt Service on the Bonds. Any proceeds of condemnation or destruction of any portion of the Project are not pledged to pay the Debt Service on the Bonds and are free and clear of any lien or obligation imposed hereunder.

Section 3.03. Bonds Not Asset or Liability of Authority For Financial Statement Purposes. The Bonds and the Authority's obligations under this Indenture with respect to the Bonds are not liabilities of the Authority for financial statement purposes, and the Trust Estate is not an asset of the Authority for financial statement purposes, it being acknowledged that the Authority has assigned the Trust Estate to the Trustee and the Bonds are payable solely from the Trust Estate.

Section 3.04. Validity of Bonds. The validity of the authorization and issuance of the Bonds shall not be dependent upon the completion of the construction of the Project, or upon the performance by any person of such persons obligation(s) with respect to the Project.

## ARTICLE IV

### FUNDS AND ACCOUNTS

Section 4.01. Application of Proceeds of Sale of 2006A Bonds and Other Moneys. The proceeds of the purchase of the 2006A Bonds by the Original Purchaser (being \$5,745,371.95) shall be paid to the Trustee, who shall forthwith set aside, pay over and deposit such proceeds on the Closing Date as follows:

(A) deposit in the Costs of Issuance Fund an amount equal to \$267,209.53;

(B) deposit in the Reserve Fund an amount equal to \$521,978.42;

(C) deposit in the Capitalized Interest Account of the Bond Fund an amount equal to \$603,460.00;

(D) deposit in the Administrative Expense Fund an amount equal to \$20,000.00;  
and

(E) deposit in the following accounts and subaccounts within the Improvement Fund the following amounts: (i) in the Rincon Hill Community Improvements Account an amount equal to \$3,162,889.00, and (ii) in the SOMA Community Stabilization Account an amount equal to \$1,169,835.00.

#### Section 4.02. Improvement Fund

(A) Establishment of Improvement Fund. There is hereby established as a separate fund to be held by the Trustee, the ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) Improvement Fund (the "Improvement Fund"), and within the Improvement Fund a Rincon Hill Community Improvements Account and a SOMA Community Stabilization Account. There is hereby established within the SOMA Community Stabilization Account three subaccounts, a City Subaccount, a Redevelopment Agency Subaccount and a School District Subaccount. Deposits shall be made to the accounts (and subaccounts within such accounts) within the Improvement Fund as required by Section 4.01(E), Section 4.02(B) and any Supplemental Indenture providing for the issuance of Parity Bonds. Moneys in the accounts (and subaccounts within such accounts) within the Improvement Fund shall be held in trust by the Trustee for the benefit of the City, the Redevelopment Agency (as to the Redevelopment Agency Subaccount only) and the School District (as to the School District Subaccount only), and shall be disbursed for the payment or reimbursement of costs of the Project.

(B) Procedure for Disbursement. Amounts in the SOMA Community Stabilization Account shall be transferred by the Trustee to the City Subaccount, the Redevelopment Agency Subaccount and the School District Subaccount in such amounts and on such dates as directed in writing by the Director of the Mayor's Office of Public Finance of the City or other authorized representative of the City. Notwithstanding the foregoing, if the Trustee does not receive written direction with respect to the transfer of all amounts in the SOMA Community Stabilization Account to one or more of the subaccounts therein by June 7, 2007, the Trustee shall, on June 8, 2007, transfer any remaining amounts on deposit in the SOMA Community Stabilization Account to the City Subaccount. Disbursements from the Rincon Hill Community Improvements Account and from the City Subaccount shall be made by the Trustee upon receipt of a certificate executed by an authorized representative of the City in the form of Exhibit B to the Joint Community Facilities Agreement – City which shall set forth the amount required to be

disbursed and the account or subaccount, as applicable, from which the disbursement is to be made. In addition to the foregoing, the Trustee shall, upon receipt of a written direction of the Director of the Mayor's Office of Public Finance or other authorized officer of the City, make transfers from the Rincon Hill Community Improvements Account and/or the City Subaccount on such dates, in such amounts and to such other accounts and subaccounts created pursuant to Section 4.02(A), as provided in any such written direction.

Disbursements from the Redevelopment Agency Subaccount shall be made by the Trustee upon receipt of a certificate executed by an authorized representative of the Redevelopment Agency in the form of Exhibit B to the Joint Community Facilities Agreement - Redevelopment Agency which shall set forth the amount required to be disbursed.

Disbursements from the School District Subaccount shall be made by the Trustee upon receipt of a certificate executed by an authorized representative of the School District in the form of Exhibit B to the Joint Community Facilities Agreement - School District which shall set forth the amount required to be disbursed.

Each certificate submitted to the Trustee as described in this Section 4.02(B) shall be sufficient evidence to the Trustee of the facts stated therein, and the Trustee shall have no duty to confirm the accuracy of such facts.

(C) Investment. Moneys in the subaccounts and the accounts within the Improvement Fund shall be invested at the written direction of the City's Director of Public Finance or other authorized representative of the City, and otherwise in accordance with Section 6.01. Interest earnings and profits from the investment and deposit of amounts in the subaccounts and the accounts within the Improvement Fund shall be retained in the respective subaccounts and accounts, to be used for the purposes of the respective subaccount and account.

(D) Closing of Fund. Upon receipt by the Trustee of a certificate of an authorized representative of the School District to the effect that all improvements to be funded from the School District Subaccount have been completed or that no further withdrawals will be made from the School District Subaccount, any amounts remaining on deposit in the School District Subaccount shall be transferred by the Trustee to the City Subaccount to be used for purposes of the City Subaccount, or, if the City Subaccount has theretofore been closed, to the Bond Fund to be used to pay Debt Service on the Bonds on the next Interest Payment Date, and when no amounts remain on deposit in the School District Subaccount the School District Subaccount shall be closed.

Upon receipt by the Trustee of a certificate of an authorized representative of the Redevelopment Agency to the effect that all improvements to be funded from the Redevelopment Agency Subaccount have been completed or that no further withdrawals will be made from the Redevelopment Agency Subaccount, any amounts remaining on deposit in the Redevelopment Agency Subaccount shall be transferred by the Trustee to the City Subaccount to be used for purposes of the City Subaccount, or, if the City Subaccount has theretofore been closed, to the Bond Fund to be used to pay Debt Service on the Bonds on the next Interest Payment Date, and when no amounts remain on deposit in the Redevelopment Agency Subaccount the Redevelopment Agency Subaccount shall be closed.

Upon receipt by the Trustee of a certificate of an authorized representative of the City to the effect that all improvements to be funded from the City Subaccount have been completed or that no further withdrawals will be made from the City Subaccount, any amounts remaining on deposit in the City Subaccount shall be transferred by the Trustee to the Bond Fund to be used to pay Debt Service on the Bonds on the next Interest Payment Date, and when no amounts remain on deposit in the City Subaccount the City Subaccount shall be closed.

Upon receipt by the Trustee of a certificate of an authorized representative of the City to the effect that all improvements to be funded from the Rincon Hill Community Improvements Account have been completed or that no further withdrawals will be made from the Rincon Hill Community Improvements Account, any amounts remaining on deposit in the Rincon Hill Community Improvements Account shall be transferred by the Trustee to the Bond Fund to be used to pay Debt Service on the Bonds on the next Interest Payment Date, and when no amounts remain on deposit in the Rincon Hill Community Improvements Account the Rincon Hill Community Improvements Account shall be closed.

#### Section 4.03. Costs of Issuance Fund.

(A) Establishment of Costs of Issuance Fund. There is hereby established as a separate fund to be held by the Trustee, the ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) Costs of Issuance Fund (the "Costs of Issuance Fund"), to the credit of which a deposit shall be made as required by Section 4.01(A). Moneys in the Costs of Issuance Fund shall be held in trust by the Trustee and shall be disbursed as provided in subsection (B) of this Section for the payment or reimbursement of Costs of Issuance.

(B) Disbursement. Amounts in the Costs of Issuance Fund shall be disbursed from time to time to pay Costs of Issuance, as set forth in a requisition containing respective amounts to be paid to the designated payees, signed by the Chief Financial Officer and delivered to the Trustee concurrently with the delivery of the Bonds, or otherwise in an Officer's Certificate delivered to the Trustee after the Closing Date. The Trustee shall pay all Costs of Issuance after receipt of an invoice from any such payee which requests payment in an amount which is less than or equal to the amount set forth with respect to such payee pursuant to an Officer's Certificate requesting payment of Costs of Issuance. The Trustee shall maintain the Costs of Issuance Fund for a period of 90 days from the date of delivery of the Bonds and then shall transfer any moneys remaining therein, including any investment earnings thereon, to the Administrative Expense Fund.

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

#### Section 4.04. Reserve Fund.

(A) Establishment of Fund. There is hereby established as a separate fund to be held by the Trustee the ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) Reserve Fund (the "Reserve Fund"), to the credit of which a deposit shall be made as required by Section 4.01(B) equal to the Reserve Requirement as of the Closing Date for the Bonds, and deposits shall be made as provided in Section 4.06(B). Moneys in the Reserve Fund shall be held in trust by the Trustee for the benefit of the Owners of the Bonds as a reserve for the payment of principal of, and interest and any premium on, the Bonds and shall be subject to a lien in favor of the Owners of the Bonds.

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

(C) Transfer Due to Deficiency in Bond Fund. Whenever transfer is made from the Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund, the Trustee shall provide written notice thereof to the Chief Financial Officer, specifying the amount withdrawn.

(D) Transfer of Excess of Reserve Requirement. Whenever, on the Business Day prior to any Interest Payment Date, or on any other date at the request of the Chief Financial Officer, the amount in the Reserve Fund exceeds the Reserve Requirement, the Trustee shall provide written notice to the Chief Financial Officer of the amount of the excess and shall transfer an amount equal to the excess from the Reserve Fund to the Bond Fund to be used for the payment of interest on the Bonds on the next Interest Payment Date in accordance with Section 4.05.

(E) Transfer When Balance Exceeds Outstanding Bonds. Whenever the balance in the Reserve Fund equals or exceeds the amount required to redeem or pay the Outstanding Bonds, including interest accrued to the date of payment or redemption and premium, if any, due upon redemption, the Trustee shall notify the Chief Financial Officer of such situation, and, upon the written direction of the Chief Financial Officer, the Trustee shall transfer the amount in the Reserve Fund to the Bond Fund to be applied, on the next succeeding Interest Payment Date to the payment and redemption, in accordance with Section 2.03 and 4.05, as applicable, of all of the Outstanding Bonds. In the event that the amount so transferred from the Reserve Fund to the Bond Fund exceeds the amount required to pay and redeem the Outstanding Bonds, the balance in the Reserve Fund shall be transferred to the Authority to be used for any lawful purpose of the Authority consistent with the provisions of the Act.

Notwithstanding the foregoing, no amounts shall be transferred from the Reserve Fund pursuant to this Section 4.04(E) until after (i) the calculation of any amounts due to the federal government pursuant to Section 5.13 following payment of the Bonds and withdrawal of any such amount from the Reserve Fund for purposes of making such payment to the federal government, and (ii) payment of any fees and expenses due to the Trustee.

(F) Transfer Upon Special Tax Prepayment. Whenever Special Taxes are prepaid and Bonds are to be redeemed with the proceeds of such prepayment pursuant to Section 2.03(A)(iii), a proportionate amount in the Reserve Fund (determined on the basis of the principal of Bonds to be redeemed, and the original principal of the Bonds) shall be transferred on the Business Day prior to the redemption date by the Trustee to the Bond Fund to be applied to the redemption of the Bonds pursuant to Section 2.03(A)(iii). The Chief Financial Officer shall deliver to the Trustee an Officer's Certificate specifying any amount to be so transferred, and the Trustee may rely on any such Officer's Certificate.

(G) Transfer to Pay Rebate. Amounts in the Reserve Fund may at any time be used, at the written direction of an Authorized Officer, for purposes of paying any rebate liability under Section 5.13.

(H) Substitution of Qualified Reserve Fund Credit Instrument. The Authority shall have the right at any time to release funds from the Reserve Fund, in whole or in part, by tendering to the Trustee: (i) a Qualified Reserve Fund Credit Instrument, and (ii) an opinion of Bond Counsel stating that neither the release of such funds nor the acceptance of such Qualified Reserve Fund Credit Instrument will cause interest on the Bonds to become includable in gross income for purposes of federal income taxation. Upon tender of such items to the Trustee, and upon delivery by the Authority to the Trustee of a written calculation of the amount permitted to be released from the Reserve Fund (upon which calculation the Trustee may conclusively rely), the Trustee shall transfer such funds from the Reserve Fund to the Authority free and clear of the lien of this Indenture. The Trustee shall comply with all documentation relating to a Qualified Reserve Fund Credit Instrument as shall be required to maintain such Qualified Reserve Fund

Credit Instrument in full force and effect and as shall be required to receive payments thereunder in the event and to the extent required to make any payment when and as required under Section 4.04.

At least fifteen (15) days prior to the expiration of any Qualified Reserve Fund Credit Instrument, the Authority shall be obligated either (i) to replace such Qualified Reserve Fund Credit Instrument with a new Qualified Reserve Fund Credit Instrument, or (ii) to deposit or cause to be deposited with the Trustee an amount of funds such that the amount on deposit in the Reserve Fund is equal to the Reserve Requirement (without taking into account such expiring Qualified Reserve Fund Credit Instrument). In the event that the Authority shall fail to take action as specified in clause (i) or (ii) of the preceding sentence, the Trustee shall, prior to the expiration thereof, draw upon the Qualified Reserve Fund Credit Instrument in full and deposit the proceeds of such draw in the Reserve Fund.

In the event that the Reserve Requirement shall at any time be maintained in the Reserve Fund in the form of a combination of cash and a Qualified Reserve Fund Credit Instrument, the Trustee shall apply the amount of such cash to make any payment required to be made from the Reserve Fund before the Trustee shall draw any moneys under such Qualified Reserve Fund Credit Instrument for such purpose. In the event that the Trustee shall at any time draw funds under a Qualified Reserve Fund Credit Instrument to make any payment then required to be made from the Reserve Fund, the Special Tax Revenues thereafter received by the Trustee, to the extent deposited to the Reserve Fund under Section 4.06(B)(ii), shall be used to reinstate the Qualified Reserve Fund Credit Instrument.

(I) Investment. Moneys in the Reserve Fund shall be invested and deposited in accordance with Section 6.01. Interest earnings and profits resulting from such investment shall be retained in the Reserve Fund to be used for the purposes of such fund.

#### Section 4.05. Bond Fund.

(A) Establishment of Bond Fund, Capitalized Interest Account and Special Tax Prepayments Account. There is hereby established as a separate fund to be held by the Trustee, the ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) Bond Fund (the "Bond Fund"), to the credit of which deposits shall be made as required by Sections 4.02(D), 4.04(B), 4.04(D), 4.04(E), 4.04(F), and 4.06(B), and any other amounts required to be deposited therein by this Indenture or the Act. There is also hereby created in the Bond Fund a separate account held by the Trustee, the Capitalized Interest Account, to the credit of which a deposit shall be made pursuant to Section 4.01(C). There is also hereby created in the Bond Fund a separate account to be held by the Trustee, the Special Tax Prepayments Account, to the credit of which deposits shall be made as provided in Section 4.06(A).

Moneys in the Bond Fund and the accounts therein shall be held in trust by the Trustee for the benefit of the Owners of the Bonds, shall be disbursed for the payment of the principal of, and interest and any premium on, the Bonds as provided below, and, pending such disbursement, shall be subject to a lien in favor of the Owners of the Bonds.

(B) Disbursements. (i) Bond Fund Disbursements. On each Interest Payment Date, the Trustee shall withdraw from the Bond Fund and pay to the Owners of the Bonds the principal, and interest and any premium, then due and payable on the Bonds, including any amounts due on the Bonds by reason of the sinking payments set forth in Section 2.03(A)(ii), or a redemption of the Bonds required by Section 2.03(A)(i), such payments to be made in the priority listed in the second succeeding paragraph. Notwithstanding the foregoing, amounts in the Bond Fund as a result of a transfer

pursuant to Section 4.02(D) shall be used to pay the principal of and interest on the Bonds prior to the use of any other amounts in the Bond Fund for such purpose.

In the event that amounts in the Bond Fund are insufficient for the purposes set forth in the preceding paragraph, the Trustee shall withdraw from the Reserve Fund to the extent of any funds therein amounts to cover the amount of such Bond Fund insufficiency. Amounts so withdrawn from the Reserve Fund shall be deposited in the Bond Fund.

If, after the foregoing transfers, there are insufficient funds in the Bond Fund to make the payments provided for in the first sentence of the first paragraph of this Section 4.05(B)(i), the Trustee shall apply the available funds first to the payment of interest on the Bonds, then to the payment of principal due on the Bonds other than by reason of sinking payments, and then to payment of principal due on the Bonds by reason of sinking payments. Any sinking payment not made as scheduled shall be added to the sinking payment to be made on the next sinking payment date.

(ii) Special Tax Prepayments Account Disbursements. Moneys in the Special Tax Prepayments Account shall be transferred by the Trustee to the Bond Fund on the next date for which notice of redemption of Bonds can timely be given under Section 2.03(A)(iii), and notice to the Trustee can timely be given under Section 2.03(B), and shall be used (together with any amounts transferred pursuant to Section 4.04(F)) to redeem Bonds on the redemption date selected in accordance with Section 2.03.

(iii) Capitalized Interest Account Disbursements. Moneys in the Capitalized Interest Account shall be transferred to the Bond Fund on the Business Day prior to each Interest Payment Date, in the amount equal to and to be used for the payment of interest on the Bonds due on the next succeeding Interest Payment Date; provided that no such transfer shall exceed the amount then on deposit in the Capitalized Interest Account. When no amounts remain on deposit in such account, the Capitalized Interest Account shall be closed.

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

#### Section 4.06. Special Tax Fund.

(A) Establishment of Special Tax Fund. There is hereby established as a separate fund to be held by the Trustee, the ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) Special Tax Fund (the "Special Tax Fund"), to the credit of which the Trustee shall deposit amounts received from or on behalf of the Authority consisting of Special Tax Revenues, and any amounts required by Section 4.07(B) to be deposited therein. The Authority shall promptly remit any such amounts received by it to the Trustee for deposit by the Trustee to the Special Tax Fund.

Notwithstanding the foregoing, (i) any Special Tax Revenues constituting payment of the portion of the Special Tax levy for Administrative Expenses, as identified by the Chief Financial Officer to the Trustee, shall be deposited by the Trustee in the Administrative Expense Fund, and (ii) any proceeds of Special Tax Prepayments, as identified by the Chief Financial Officer to the Trustee, shall be transferred by the Chief Financial Officer to the Trustee

for deposit by the Trustee directly in the Special Tax Prepayments Account established pursuant to Section 4.05(A).

Moneys in the Special Tax Fund shall be held in trust by the Trustee for the benefit of the Authority and the Owners of the Bonds, shall be disbursed as provided below and, pending disbursement, shall be subject to a lien in favor of the Owners of the Bonds and the Authority.

(B) Disbursements. On each Interest Payment Date, the Trustee shall withdraw from the Special Tax Fund and transfer the following amounts in the following order of priority (i) to the Bond Fund an amount, taking into account any amounts then on deposit in the Bond Fund and any expected transfers from the Improvement Fund, the Reserve Fund, the Capitalized Interest Account and the Special Tax Prepayments Account to the Bond Fund pursuant to Sections 4.02(D), 4.04(D), (E), and (F), and 4.05(B)(ii) and (iii), such that the amount in the Bond Fund equals the principal (including any sinking payment), premium, if any, and interest due on the Bonds on such Interest Payment Date, and (ii) to the Reserve Fund an amount, taking into account amounts then on deposit in the Reserve Fund, such that the amount in the Reserve Fund is equal to the Reserve Requirement.

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

#### Section 4.07. Administrative Expense Fund.

(A) Establishment of Administrative Expense Fund. There is hereby established as a separate fund to be held by the Trustee, the ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) Administrative Expense Fund (the "Administrative Expense Fund"), to the credit of which deposits shall be made as required by Sections 4.01(D), 4.03(B) and 4.06(A). Moneys in the Administrative Expense Fund shall be held in trust by the Trustee for the benefit of the Authority, and shall be disbursed as provided below.

(B) Disbursement. Amounts in the Administrative Expense Fund shall be withdrawn by the Trustee and paid to the Authority or its order upon receipt by the Trustee of an Officer's Certificate stating the amount to be withdrawn, that such amount is to be used to pay an Administrative Expense or a Costs of Issuance, and the nature of such Administrative Expense or Costs of Issuance. Amounts transferred from the Costs of Issuance Fund to the Administrative Expense Fund pursuant to Section 4.03(B) shall be separately identified at all times, and shall be expended for purposes of the Administrative Expense Fund prior to the use of amounts transferred to the Administrative Expense Fund from the Special Tax Fund pursuant to Section 4.06(A).

Annually, on the last day of each Fiscal Year commencing with the last day of Fiscal Year 2006-2007, the Trustee shall withdraw any amounts then remaining in the Administrative Expense Fund in excess of \$30,000 that have not otherwise been allocated to pay Administrative Expenses incurred but not yet paid, and which are not otherwise encumbered, and transfer such amounts to the Special Tax Fund.

(C) Investment. Moneys in the Administrative Expense Fund shall be invested and deposited in accordance with Section 6.01. Interest earnings and profits resulting from said investment shall be retained by the Trustee in the Administrative Expense Fund to be used for the purposes thereof.

## ARTICLE V

### OTHER COVENANTS OF THE AUTHORITY

Section 5.01. Punctual Payment. The Authority will punctually pay or cause to be paid the principal of, and interest and any premium on, the Bonds when and as due in strict conformity with the terms of this Indenture and any Supplemental Indenture, and it will faithfully observe and perform all of the conditions covenants and requirements of this Indenture and all Supplemental Indentures and of the Bonds.

Section 5.02. Limited Obligation. The Bonds are limited obligations of the Authority on behalf of the District and are payable solely from and secured solely by the Trust Estate.

Section 5.03. Extension of Time for Payment. In order to prevent any accumulation of claims for interest after maturity, the Authority shall not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and shall not, directly or indirectly, be a party to the approval of any such arrangement by purchasing or funding said claims for interest or in any other manner. In case any such claim for interest shall be extended or funded, whether or not with the consent of the Authority, such claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have so extended or funded.

Section 5.04. Against Encumbrances. The Authority will not encumber, pledge or place any charge or lien upon any of the Special Tax Revenues or other amounts pledged to the Bonds superior to or on a parity with the pledge and lien herein created for the benefit of the Bonds, except as permitted by this Indenture.

Section 5.05. Books and Records. The Authority will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Authority, in which complete and correct entries shall be made of all transactions relating to the Special Tax Revenues. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Trustee and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

The Trustee will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Trustee, in which complete and correct entries shall be made of all transactions relating to the expenditure of amounts disbursed from the Bond Fund (including the Special Tax Prepayments Account and the Capitalized Interest Account therein), the Reserve Fund, the Special Tax Fund, the Improvement Fund, the Administrative Expense Fund and the Costs of Issuance Fund. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Authority and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing upon reasonable prior notice.

Section 5.06. Protection of Security and Rights of Owners. The Authority will preserve and protect the security of the Bonds and the rights of the Owners, and will warrant and defend their rights against all claims and demands of all persons. From and after the delivery of any of the Bonds by the Authority, the Bonds shall be incontestable by the Authority.

Section 5.07. Compliance with Law. The Authority will comply with all applicable provisions of the Act and law in administering the District and completing the funding of the Project.

Section 5.08. Collection of Special Tax Revenues. The Authority shall comply with all requirements of the Act so as to assure the timely collection of Special Tax Revenues, including without limitation, the enforcement of delinquent Special Taxes.

On or within five (5) Business Days of each June 1, the Trustee shall provide the Chief Financial Officer with a notice stating the amount then on deposit in the Bond Fund, the Capitalized Interest Account and the Reserve Fund, and informing the Authority that the Special Taxes may need to be levied pursuant to the Ordinance as necessary to provide for the debt service to become due on the Bonds in the calendar year that commences in the Fiscal Year for which the levy is to be made, and Administrative Expenses and replenishment (if necessary) of the Reserve Fund so that the balance therein equal the Reserve Requirement. The receipt of or failure to receive such notice by the Chief Financial Officer shall in no way affect the obligations of the Chief Financial Officer under the following two paragraphs. Upon receipt of such notice, the Chief Financial Officer shall communicate with the Auditor to ascertain the relevant parcels on which the Special Taxes are to be levied, taking into account any parcel splits during the preceding and then current year.

The Chief Financial Officer shall effect the levy of the Special Taxes each Fiscal Year in accordance with the Ordinance by each July 15 that the Bonds are outstanding, or otherwise such that the computation of the levy is complete before the final date on which Auditor will accept the transmission of the Special Tax amounts for the parcels within the District for inclusion on the next real property tax roll. Upon the completion of the computation of the amounts of the levy, the Chief Financial Officer shall prepare or cause to be prepared, and shall transmit to the Auditor, such data as the Auditor requires to include the levy of the Special Taxes on the next real property tax roll.

The Chief Financial Officer shall fix and levy the amount of Special Taxes within the District required for the payment of principal of and interest on any outstanding Bonds of the District becoming due and payable during the ensuing year, including any necessary replenishment or expenditure of the Reserve Fund for the Bonds and an amount estimated to be sufficient to pay the Administrative Expenses (including amounts necessary to discharge any obligation under Section 5.13) during such year, taking into account the balances in such funds and in the Special Tax Fund. The Special Taxes so levied shall not exceed the authorized amounts as provided in the proceedings pursuant to the Resolution of Formation.

The Special Taxes shall be payable and be collected in the same manner and at the same time and in the same installment as the general taxes on real property are payable, and have the same priority, become delinquent at the same time and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the ad valorem taxes on real property; provided that, pursuant to and in accordance with the Ordinance, the Special Taxes may be collected by means of direct billing of the property owners within the District, in which event the Special Taxes shall become delinquent if not paid when due pursuant to said billing.

Section 5.09. Covenant to Foreclose. Pursuant to Section 53356.1 of the Act, the Authority hereby covenants with and for the benefit of the Owners of the Bonds that it will order, and cause to be commenced as hereinafter provided, and thereafter diligently prosecute to judgment (unless such delinquency is theretofore brought current), an action in the superior court to foreclose the lien of any Special Tax or installment thereof not paid when due as provided in the following paragraph. The Chief Financial Officer shall notify the Authority

Attorney of any such delinquency of which it is aware, and the applicable Authority Attorney shall commence, or cause to be commenced, such proceedings.

On or about February 15 and June 15 of each Fiscal Year, the Chief Financial Officer shall compare the amount of Special Taxes theretofore levied in the District to the amount of Special Tax Revenues theretofore received by the Authority, and:

(A) Individual Delinquencies. If the Chief Financial Officer determines that any single parcel subject to the Special Tax in the District is delinquent in the payment of Special Taxes in the aggregate amount of \$3,000.00 or more, then the Chief Financial Officer shall send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner within 45 days of such determination, and (if the delinquency remains uncured) foreclosure proceedings shall be commenced by the Authority within 90 days of such determination. Notwithstanding the foregoing, the Chief Financial Officer may defer such action if the amount in the Reserve Fund is at least equal to the Reserve Requirement.

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

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

Section 5.10. Further Assurances. The Authority will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Owners of the rights and benefits provided in this Indenture.

Section 5.11. Private Activity Bond Limitations. The Authority shall assure that the proceeds of the 2006A Bonds are not so used as to cause the 2006A Bonds to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

Section 5.12. Federal Guarantee Prohibition. The Authority shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the 2006A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

Section 5.13. Rebate Requirement. The Authority shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the 2006A Bonds.

If necessary, the Authority may use amounts in the Reserve Fund, amounts on deposit in the Administrative Expense Fund, and any other funds available to the District, including amounts advanced by the Authority, in its sole discretion, to be repaid by the District as soon as practicable from amounts described in the preceding clauses, to satisfy its obligations under this Section 5.13. The Chief Financial Officer shall take note of any investment of monies hereunder in excess of the yield on the 2006A Bonds, and shall take such actions as are necessary to ensure compliance with this Section 5.13, such as increasing the portion of the Special Tax levy for Administration Expenses as appropriate to have funds available in the Administrative Expense Fund to satisfy any rebate liability under this Section 5.13.

Section 5.14. No Arbitrage. The Authority shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the 2006A Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the 2006A Bonds would have caused the 2006A Bonds to be "arbitrage bonds" within the meaning of section 148 of the Code.

Section 5.15. Yield of the Bonds. In determining the yield of the 2006A Bonds to comply with Section 5.13 and 5.14 hereof, the Authority will take into account redemption (including premium, if any) in advance of maturity based on the reasonable expectations of the Authority, as of the Closing Date, regarding prepayments of Special Taxes and use of prepayments for redemption of the Bonds, without regard to whether or not prepayments are received or 2006A Bonds redeemed.

Section 5.16. Maintenance of Tax-Exemption. The Authority shall take all actions necessary to assure the exclusion of interest on the 2006A Bonds from the gross income of the Owners of the 2006A Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the 2006A Bonds.

Section 5.17. Continuing Disclosure to Owners. In addition to its obligations under Section 9.07, the Authority hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Indenture, failure of the Authority to comply with the Continuing Disclosure Agreement shall not be considered a default hereunder; however, any Participating Underwriter or any holder or Beneficial Owner (as defined in Section 2.13) of the Bonds may take such actions as may be necessary and appropriate to compel performance by the Authority of its obligations thereunder, including seeking mandate or specific performance by court order.

An owner of real property in the District as of the Closing Date has also executed a continuing disclosure certificate for the benefit of the holders and beneficial owners of the Bonds. Any Participating Underwriter or holder or beneficial owner may take such actions as may be necessary and appropriate directly against such landowner to compel performance by it of its obligations thereunder, including seeking mandate or specific performance by court order; however the Authority shall have no obligation whatsoever to enforce any obligations under any such certificate.

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

Section 5.19. Limits on Special Tax Waivers and Bond Tenders. The Authority covenants not to exercise its rights under the Act to waive delinquency and redemption penalties related to the Special Taxes or to declare Special Tax penalties amnesty program if to do so would materially and adversely affect the interests of the owners of the Bonds and further covenants not to permit the tender of Bonds in payment of any Special Taxes except upon receipt of a certificate of an Independent Financial Consultant that to accept such tender will not result in the Authority having insufficient Special Tax revenues to pay the principal of and interest on the Bonds remaining Outstanding following such tender.

Section 5.20. Authority Bid of Foreclosure Sale. The Authority will not bid at a foreclosure sale of property in respect of delinquent Special Taxes, unless it expressly agrees to take the property subject to the lien for Special Taxes imposed by the District.

## ARTICLE VI

### INVESTMENTS, DISPOSITION OF INVESTMENT PROCEEDS, LIABILITY OF THE AUTHORITY

Section 6.01. Deposit and Investment of Moneys in Funds. Moneys in any fund or account created or established by this Indenture and held by the Trustee shall be invested by the Trustee in Permitted Investments, as directed pursuant to an Officer's Certificate (by a certificate of an authorized representative of the City with respect to the Rincon Hill Community Improvements Account and the SOMA Community Stabilization Account (and the City Subaccount, the Redevelopment Agency Subaccount and the School District Subaccount therein) of the Improvement Fund) filed with the Trustee at least two (2) Business Days in advance of the making of such investments. In the absence of any such Officer's Certificate (or certificate of an authorized representative of the City with respect to the Rincon Hill Community Improvements Account and the SOMA Community Stabilization Account (and the City Subaccount, the Redevelopment Agency Subaccount and the School District Subaccount therein) of the Improvement Fund), the Trustee shall invest, to the extent reasonably practicable, any such moneys in Permitted Investments described in clause (g) of the definition thereof in Section 1.03, which by their terms mature prior to the date on which such moneys are required to be paid out hereunder. The Chief Financial Officer shall make note of any investment of funds hereunder in excess of the yield on the Bonds, so that appropriate actions can be taken to assure compliance with Section 5.13.

Moneys in any fund or account created or established by this Indenture and held by the Chief Financial Officer shall be invested by the Chief Financial Officer in any lawful investment for Authority funds or in any Permitted Investment, which in any event by its terms matures prior to the date on which such moneys are required to be paid out hereunder. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account, subject, however, to the requirements of this Indenture for transfer of interest earnings and profits resulting from investment of amounts in funds and accounts. Whenever in this Indenture any moneys are required to be transferred by the Authority to the Trustee, such transfer may be accomplished by transferring a like amount of Permitted Investments.

The Trustee and its affiliates or the Chief Financial Officer may act as sponsor, advisor, depository, principal or agent in the acquisition or disposition of any investment. Neither the Trustee nor the Chief Financial Officer shall incur any liability for losses arising from any investments made pursuant to this Section. The Trustee shall not be required to determine the legality of any investments.

Except as otherwise provided in the next sentence, all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Indenture or the Code) at Fair Market Value. The Trustee shall have no duty in connection with the determination of Fair Market Value other than to follow the investment direction of an Authorized Officer in any written direction of any Authorized Officer. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under the applicable provisions of the Code and (unless valuation is undertaken at least annually) investments in the subaccounts within the Reserve Fund shall be valued at their present value (within the meaning of section 148 of the Code). The Trustee shall not be liable for verification of the application of such sections of the Code.

Investments in any and all funds and accounts may be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular funds or accounts of amounts received or held by the Trustee or the Chief Financial Officer hereunder, provided that the Trustee or the Chief Financial Officer, as applicable, shall at all times account for such investments strictly in accordance with the funds and accounts to which they are credited and otherwise as provided in this Indenture.

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

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

Section 6.02. Limited Obligation. The Authority's obligations hereunder are limited obligations of the Authority on behalf of the District and are payable solely from and secured solely by the Trust Estate.

Section 6.03. Liability of Authority. The Authority shall not incur any responsibility in respect of the Bonds or this Indenture other than in connection with the duties or obligations explicitly herein or in the Bonds assigned to or imposed upon it, and then only to the extent of the Trust Estate. The Authority shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful default. The Authority shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions covenants or agreements of the Trustee herein or of any of the documents executed by the Trustee in connection with the Bonds, or as to the existence of a default or Event of Default thereunder.

In the absence of bad faith, the Authority, including the Chief Financial Officer, may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Authority and conforming to the requirements of this Indenture. The Authority, including the Chief Financial Officer, shall not be liable for any error of judgment made in good faith unless it shall be proved that it was negligent in ascertaining the pertinent facts.

No provision of this Indenture shall require the Authority to expend or risk its own general funds or otherwise incur any financial liability (other than with respect to the Trust Estate) in the performance of any of its obligations hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The Authority and the Chief Financial Officer may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Authority may consult with counsel, who may be the Authority Attorney, with regard to legal questions, and the opinion of such

counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

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

Whenever in the administration of its duties under this Indenture the Authority or the Chief Financial Officer shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the Authority, be deemed to be conclusively proved and established by a certificate of the Trustee, an appraiser, an Independent Financial Consultant or a Tax Consultant, and such certificate shall be full warrant to the Authority and the Chief Financial Officer for any action taken or suffered under the provisions of this Indenture or any Supplemental Indenture upon the faith thereof, but in its discretion the Authority or the Chief Financial Officer may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Section 6.04. Employment of Agents by Authority. In order to perform its duties and obligations hereunder, the Authority and/or the Chief Financial Officer may employ such persons or entities as it deems necessary or advisable. The Authority shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations and directions of such persons or entities.

## ARTICLE VII

### THE TRUSTEE

Section 7.01. Appointment of Trustee. Union Bank of California, N.A. is hereby appointed Trustee and paying agent for the Bonds. The Trustee undertakes to perform such duties, and only such duties, as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee.

Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under the following paragraph of this Section, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

The Authority may at any time remove the Trustee initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank, corporation or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least Fifty Million Dollars (\$50,000,000), and subject to supervision or examination by federal or state authority. If such bank, corporation or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 7.01, combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Trustee may at any time resign by giving written notice to the Authority and by giving to the Owners notice by mail of such resignation. Upon receiving notice of such resignation, the Authority shall promptly appoint a successor Trustee by an instrument in writing. Any resignation or removal of the Trustee shall become effective upon acceptance of appointment by the successor Trustee.

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

If, by reason of the judgment of any court, or reasonable agency, the Trustee is rendered unable to perform its duties hereunder, all such duties and all of the rights and powers of the Trustee hereunder shall be assumed by and vest in the Chief Financial Officer of the Authority in trust for the benefit of the Owners. The Authority covenants for the direct benefit of the Owners that its Chief Financial Officer in such case shall be vested with all of the rights and powers of the Trustee hereunder, and shall assume all of the responsibilities and perform all of the duties of the Trustee hereunder, in trust for the benefit of the Owners of the Bonds. In such event, the Chief Financial Officer may designate a successor Trustee qualified to act as Trustee hereunder.

Section 7.02. Liability of Trustee. The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the Authority, and the Trustee assumes no responsibility for the correctness of the same, or makes

any representations as to the validity or sufficiency of this Indenture or of the Bonds, or shall incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon it. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Trustee assumes no responsibility or liability for any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

In the absence of bad faith, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions by which any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the same to determine whether or not they conform to the requirements of this Indenture. Except as provided above in this paragraph, Trustee shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Indenture, upon any resolution, order, notice, request, consent or waiver, certificate, statement, affidavit, or other paper or document which it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper person or to have been prepared and furnished pursuant to any provision of this Indenture, and the Trustee shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

The Trustee shall not be liable for any error of judgment made in good faith unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Owners pursuant to this Indenture unless such Owners shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

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

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

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

Section 7.03. Information. The Trustee shall provide to the Authority such information relating to the Bonds and the funds and accounts maintained by the Trustee hereunder as the Authority shall reasonably request, including but not limited to quarterly statements reporting funds held and transactions by the Trustee.

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

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

Whenever in the administration of its duties under this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate, and such certificate shall be full warrant to the Trustee for any action taken or suffered under the provisions of this Indenture or any Supplemental Indenture upon the faith thereof, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Section 7.05. Compensation, Indemnification. The Authority shall pay to the Trustee from time to time reasonable compensation for all services rendered as Trustee under this Indenture, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of their attorneys, agents and employees, incurred in and about the performance of their powers and duties under this Indenture, but the Trustee shall not have a lien therefor on any funds at any time held by it under this Indenture. The Authority further agrees, to the extent permitted by applicable law, to indemnify and save the Trustee, its officers, employees, directors and agents harmless against any costs, expenses, claims or liabilities whatsoever, including without limitation fees and expenses of its attorneys, which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or willful misconduct. The obligation of the Authority under this Section shall survive resignation or removal of the Trustee under this Indenture and payment of the Bonds and discharge of this Indenture, but any monetary obligation of the Authority arising under this Section shall be limited solely to amounts on deposit in the Administrative Expense Fund.

## ARTICLE VIII

### MODIFICATION OR AMENDMENT OF THIS INDENTURE

Section 8.01. Amendments Permitted. This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Indenture pursuant to the affirmative vote at a meeting of Owners, or with the written consent without a meeting, of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 8.04. No such modification or amendment shall (i) extend the maturity of any Bond or reduce the interest rate thereon, or otherwise alter or impair the obligation of the Authority to pay the principal of, and the interest and any premium on, any Bond, without the express consent of the Owner of such Bond, or (ii) permit the creation by the Authority of any pledge or lien upon the Special Taxes superior to or on a parity with the pledge and lien created for the benefit of the Owners of the Bonds (except as otherwise permitted by the Act, the laws of the State of California or this Indenture), or (iii) reduce the percentage of Bonds required for the amendment hereof. Any such amendment may not modify any of the rights or obligations of the Trustee without its written consent.

This Indenture and the rights and obligations of the Authority and of the Owners may also be modified or amended at any time by a Supplemental Indenture, without the consent of any Owners, only to the extent permitted by law and only for any one or more of the following purposes:

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

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

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

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

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

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

Section 8.03. Procedure for Amendment with Written Consent of Owners. The Authority and the Trustee may at any time adopt a Supplemental Indenture amending the provisions of the Bonds or of this Indenture or any Supplemental Indenture, to the extent that such amendment is permitted by Section 8.01, to take effect when and as provided in this

Section. A copy of such Supplemental Indenture, together with a request to Owners for their consent thereto, shall be mailed by first class mail, by the Trustee to each Owner of Bonds Outstanding, but failure to mail copies of such Supplemental Indenture and request shall not affect the validity of the Supplemental Indenture when assented to as in this Section provided.

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

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

Section 8.04. Disqualified Bonds. Bonds owned or held for the account of the Authority, excepting any pension or retirement fund, shall not be deemed Outstanding for the purpose of any vote, consent or other action or any calculation of Outstanding Bonds provided for in this Article VIII, and shall not be entitled to vote upon, consent to, or take any other action provided for in this Article VIII; provided, however, that the Trustee shall not be deemed to have knowledge that any Bond is owned or held by the Authority unless the Authority is the registered Owner or the Trustee has received written notice that any other registered Owner is an Owner for the account of the Authority.

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

Section 8.06. Endorsement or Replacement of Bonds Issued After Amendments. The Authority may determine that Bonds issued and delivered after the effective date of any action taken as provided in this Article VIII shall bear a notation, by endorsement or otherwise, in form

approved by the Authority, as to such action. In that case, upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for that purpose at the Principal Office of the Trustee or at such other office as the Authority may select and designate for that purpose, a suitable notation shall be made on such Bond. The Authority may determine that new Bonds, so modified as in the opinion of the Authority is necessary to conform to such Owners' action, shall be prepared, executed and delivered. In that case, upon demand of the Owner of any Bonds then Outstanding, such new Bonds shall be exchanged at the Principal Office of the Trustee without cost to any Owner, for Bonds then Outstanding, upon surrender of such Bonds.

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

## ARTICLE IX

### DEFAULT

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" hereunder:

(A) failure to pay the principal of or premium (if any) on any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise;

(B) failure to pay any installment of interest on any Bond when such interest installment shall become due and payable; and

(C) failure by the Authority to perform or observe any other of the covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, and the continuation of such failure for a period of sixty (60) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the Authority by the Trustee, or to the Authority and the Trustee by the holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds at the time outstanding.

No default specified in (C) above shall constitute an Event of Default unless the Authority shall have failed to correct such default within the applicable period; provided, however, that if the default shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Authority within the applicable period and diligently pursued until the default is corrected.

Section 9.02. Institution of Legal Proceedings by Trustee. If one or more of the Events of Default shall occur and be continuing, the Trustee in its discretion may, and upon the written request of the holders of a majority in principal amount of the Bonds then outstanding and upon being indemnified to its satisfaction therefor the Trustee shall, proceed to protect or enforce its rights or the rights of the holders of Bonds under the Act or under this Indenture, by a suit in equity or action at law, either for the specific performance of any covenant or agreement contained herein or therein, or in aid of the execution of any power herein or therein granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Trustee shall deem most effectual in support of any of its rights or duties hereunder; provided that any such request from the Bondholders shall not be in conflict with any rule of law or with this Indenture, expose the Trustee to personal liability or be unduly prejudicial to Bondholders not joining therein.

Section 9.03. Application of Moneys Collected by Trustee. Any moneys held by the Trustee, or collected by the Trustee pursuant to Section 7.02 shall be applied in the order following, at the date or dates fixed by the Trustee and, in the case of distribution of such moneys on account of principal (or premium, if any) or interest, upon presentation of the Bonds and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First: For payment of all amounts due to the Trustee under Section 9.06.

Second: For deposit in the Bond Fund to be applied to payment of the principal of all Bonds then due and unpaid and the premium, if any, and interest thereon; ratably to the persons entitled thereto without discrimination or preference; except that no

payment of principal, premium or interest shall be made with respect to any Bonds registered in the name of the Authority, or known by the Trustee to be registered in the name of any nominee of the Authority, until all amounts due on all Bonds not so registered have been paid.

Third: For payment of all other amounts due to any person hereunder.

Section 9.04. Effect of Delay or Omission to Pursue Remedy. No delay or omission of the Trustee or of any holder of Bonds to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every power and remedy given by this Article IX to the Trustee or to the holders of Bonds may be exercised from time to time and as often as shall be deemed expedient. In case the Trustee shall have proceeded to enforce any right under this Indenture, and such proceedings shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the Authority, the Trustee and the holders of the Bonds, severally and respectively, shall be restored to their former positions and rights hereunder in respect to the Trust Estate; and all remedies, rights and powers of the Authority, the Trustee and the holders of the Bonds shall continue as though no such proceedings had been taken.

Section 9.05. Remedies Cumulative. No remedy herein conferred upon or reserved to the Trustee or to any holder of the Bonds is intended to be exclusive of any other remedy, but each and 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.

Section 9.06. Covenant to Pay Bonds in Event of Default. The Authority covenants that, upon the happening of any Event of Default, the Authority will pay to the Trustee upon demand, but only out of Special Tax Revenues, for the benefit of the holders of the Bonds, the whole amount then due and payable thereon for interest or for principal and premium, or both, as the case may be, and all other sums which may be due hereunder or secured hereby, including reasonable compensation to the Trustee, its agents and counsel, and any expenses or liabilities incurred by the Trustee hereunder. In case the Authority shall fail to pay the same forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, and upon being indemnified to its satisfaction shall be entitled to institute proceedings at law or in equity in any court of competent jurisdiction to recover judgment for the whole amount due and unpaid, together with costs and reasonable attorneys' fees, subject, however, to the condition that such judgment, if any, shall be limited to, and payable solely out of, Special Tax Revenues and any other assets pledged, transferred or assigned to the Trustee under this Indenture as herein provided and not otherwise. The Trustee shall be entitled to recover such judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of this Indenture, and the right of the Trustee to recover such judgment shall not be affected by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture.

Section 9.07. Trustee Appointed Agent for Bondholders. The Trustee is hereby appointed the agent and attorney of the holders of all Bonds outstanding hereunder for the purpose of filing any claims relating to the Bonds.

Section 9.08. Power of Trustee to Control Proceedings. In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the written request of the holders of a majority in principal amount of the Bonds then outstanding, it shall have full power, in the exercise of its discretion for the best interests of the holders of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or

other disposal of such action; provided, however, that the Trustee shall not, unless there no longer continues an Event of Default hereunder, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the holders of at least a majority in principal amount of the Bonds outstanding hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

Section 9.09. Limitation on Bondholders' Right to Sue. No holder of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless (a) such holder shall have previously given to the Trustee written notice of the occurrence of an Event of Default hereunder; (b) the holders of at least a majority in aggregate principal amount of all the Bonds then outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said holders shall have tendered to the Trustee indemnity satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee shall have refused or omitted to comply with such request for a period of thirty (30) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any holder of Bonds of any remedy hereunder; it being understood and intended that no one or more holders of Bonds shall have any right in any manner whatever by its or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of the outstanding Bonds.

The right of any holder of any Bond to receive payment of the principal of (and premium, if any) and interest on such Bond out of Special Tax Revenues, as herein and therein provided, on and after the respective due dates expressed in such Bond, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, notwithstanding the foregoing provisions of this Section or Section 9.08 or any other provision of this Indenture.

Section 9.10. Limitation of Liability to Trust Estate. Notwithstanding anything in this Indenture contained, the Authority shall not be required to advance any moneys derived from the proceeds of taxes collected by the Authority, by the State of California or by any political subdivision thereof or from any source of income of any of the foregoing other than the Special Tax Revenues, for any of the purposes in this Indenture mentioned, whether for the payment of the principal of or interest on the Bonds or for any other purpose of this Indenture. The Bonds are limited obligations of the Authority for the District, and are payable from and secured only by the Trust Estate.

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Benefits of Indenture Limited to Parties. Nothing in this Indenture, expressed or implied, is intended to give to any person other than the Authority, the Trustee, the Owners and, as to Sections 4.02 and 6.01, the City, the Redevelopment Agency and the School District, any right, remedy, claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the Owners, the Trustee and, as to Sections 4.02 and 6.01, the City, the Redevelopment Agency and the School District.

Section 10.02. Successor is Deemed Included in All References to Predecessor. Whenever in this Indenture or any Supplemental Indenture either the Authority or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Authority or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 10.03. Discharge of Indenture. The Authority shall have the option to pay and discharge the entire indebtedness on all or any portion of the Bonds Outstanding in any one or more of the following ways:

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

(B) by depositing with the Trustee, in trust, at or before maturity, money which, together with the amounts then on deposit in the funds and accounts provided for in Sections 4.04 and 4.05 is fully sufficient to pay such Bonds Outstanding, including all principal, interest and redemption premiums; or

(C) by irrevocably depositing with the Trustee, in trust, cash and Federal Securities in such amount as the Authority shall determine as confirmed by Bond Counsel or an independent certified public accountant will, together with the interest to accrue thereon and moneys then on deposit in the fund and accounts provided for in Sections 4.04 and 4.05, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates.

If the Authority shall have taken any of the actions specified in (A), (B) or (C) above, and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption shall have been given as in this Indenture provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, then, at the election of the Authority, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Trust Estate provided for in this Indenture and all other obligations of the Authority under this Indenture with respect to such Bonds Outstanding shall cease and terminate. Notice of such election shall be filed with the Trustee. Notwithstanding the foregoing, the obligation of the Authority to pay or cause to be paid to the Owners of the Bonds not so surrendered and paid all sums due thereon, all amounts owing to the Trustee pursuant to Section 7.05, and otherwise to assure that no action is taken or failed to be taken if such action or failure adversely affects the exclusion of interest on the Bonds from gross income for federal income tax purposes, shall continue in any event.

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

Section 10.04. Execution of Documents and Proof of Ownership by Owners. Any request, declaration or other instrument which this Indenture may require or permit to be executed by Owners may be in one or more instruments of similar tenor, and shall be executed by Owners in person or by their attorneys appointed in writing.

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

Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number and date of holding the same shall be proved by the registry books.

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

Section 10.05. Waiver of Personal Liability. No Boardmember, member of the Executive Committee of the Board of Directors, officer, official, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of, or interest or any premium on, the Bonds; but nothing herein contained shall relieve any such Boardmember, member of the Executive Committee of the Board of Directors, officer, official, agent or employee from the performance of any official duty provided by law.

Section 10.06. Notices to and Demands on Authority and Trustee. Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee to or on the Authority may be given or served by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the Authority with the Trustee) as follows:

ABAG Finance Authority For Nonprofit Corporations  
101 Eighth Street  
Oakland, CA 94607-4756  
Attn: Chief Financial Officer

Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Authority to or on the Trustee may be given or served by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the Trustee with the Authority) as follows (provided that any such notice shall not be effective until actually received by the Trustee):

Union Bank of California, N.A.  
350 California Street, 11<sup>th</sup> Floor  
San Francisco, CA 94104  
Attention: Corporate Trust Department

Section 10.07. State Reporting Requirements. The following requirements shall apply to the Bonds, in addition to those requirements under Section 5.17:

(A) Annual Reporting. Not later than October 30 of each calendar year, beginning with the October 30 first succeeding the date of the Bonds, and in each calendar year thereafter until the October 30 following the final maturity of the Bonds, the Chief Financial Officer shall cause the following information to be supplied to CDIAC: (i) the principal amount of the Bonds Outstanding; (ii) the balance in the Reserve Fund; (iii) the balance, if any, in the Capitalized Interest Account; (iv) the number of parcels in the District which are delinquent in the payment of Special Taxes, the amount of each delinquency, the length of time delinquent and when foreclosure was commenced for each delinquent parcel; (v) the balance, if any, in the Improvement Fund; and (vi) the assessed value of all parcels in the District subject to the levy of the Special Taxes as shown in most recent equalized roll. The annual reporting shall be made using such form or forms as may be prescribed by CDIAC.

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

(C) Special Tax Reporting. The Chief Financial Officer shall file a report with the Authority no later than January 1, 2007, and at least once a year thereafter, which annual report shall contain: (i) the amount of Special Taxes collected and expended with respect to the District, (ii) the amount of Bond proceeds collected and expended with respect to the District, and (iii) the status of the Project. It is acknowledged that the Special Tax Fund and the Special Tax Prepayments Account are the accounts into which Special Taxes collected on the District will be deposited for purposes of Section 50075.1(c) of the California Government Code, and the funds and accounts listed in Section 4.01 are the funds and accounts into which Bond proceeds will be deposited for purposes of Section 53410(c) of the California Government Code, and the annual report described in the preceding sentence is intended to satisfy the requirements of Sections 50075.1(d), 50075.3(d) and 53411 of the California Government Code.

(D) Amendment. The reporting requirements of this Section 9.07 shall be amended from time to time, without action by the Authority or the Trustee (i) with respect to subparagraphs (A) and (B) above, to reflect any amendments to Section 53359.5(b) or Section 53359.5(c) of the Act, and (ii) with respect to subparagraph (C) above, to reflect any amendments to Section 50075.1, 50075.3, 53410 or 53411 of the California Government Code. Notwithstanding the foregoing, any such amendment shall not, in itself, affect the Authority's obligations under the Continuing Disclosure Agreement. The Authority shall notify the Trustee in writing of any such amendments which affect the reporting obligations of the Trustee under this Indenture.

(E) No Liability. None of the Authority and its officers, agents and employees, the Chief Financial Officer or the Trustee shall be liable for any inadvertent error in reporting the information required by this Section 10.07.

The Chief Financial Officer shall provide copies of any of such reports to any Bondowner upon the written request of a Bondowner and payment by the person requesting the information of the cost of the Authority to produce such information and pay any postage or other delivery cost to provide the same, as determined by the Chief Financial Officer. The term "Bondowner" for purposes of this Section 10.07 shall include any beneficial owner of the Bonds.

Section 10.08. Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Indenture shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Indenture. The Authority hereby declares that it would have adopted this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid or unenforceable.

Section 10.09. Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any moneys held by the Trustee in trust for the payment and discharge of the principal of, and the interest and any premium on, the Bonds which remains unclaimed for two (2) years after the date when the payments of such principal, interest and premium have become payable, if such moneys was held by the Trustee at such date, shall be repaid by the Trustee to the Authority as its absolute property free from any trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Owners shall look only to the Authority for the payment of the principal of, and interest and any premium on, such Bonds.

Section 10.10. Applicable Law. This Indenture shall be governed by and enforced in accordance with the laws of the State of California applicable to contracts made and performed in the State of California.

Section 10.11. Conflict with Act. In the event of a conflict between any provision of this Indenture with any provision of the Act as in effect on the Closing Date, the provision of the Act shall prevail over the conflicting provision of this Indenture.

Section 10.12. Conclusive Evidence of Regularity. Bonds issued pursuant to this Indenture shall constitute conclusive evidence of the regularity of all proceedings under the Act relative to their issuance and the levy of the Special Taxes.

Section 10.13. Payment on Business Day. In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds or the date fixed for redemption of any Bonds or the date any action is to be taken pursuant to this Indenture is other than a Business Day, the payment of interest or principal (and premium, if any) or the action need not be made on such date but may be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period from and after such date.

Section 10.14. Counterparts. This Indenture may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Authority caused this Indenture to be executed all as of June 1, 2006.

ABAG FINANCE AUTHORITY FOR  
NONPROFIT CORPORATIONS, for and  
on behalf of  
ABAG FINANCE AUTHORITY FOR  
NONPROFIT CORPORATIONS  
COMMUNITY FACILITIES DISTRICT  
NO. 2006-1 (SAN FRANCISCO RINCON  
HILL)

By:  \_\_\_\_\_  
Chief Financial Officer

UNION BANK OF CALIFORNIA, N.A.,  
as Trustee

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

IN WITNESS WHEREOF, the Authority caused this Indenture to be executed all as of June 1, 2006.

ABAG FINANCE AUTHORITY FOR  
NONPROFIT CORPORATIONS, for and  
on behalf of  
ABAG FINANCE AUTHORITY FOR  
NONPROFIT CORPORATIONS  
COMMUNITY FACILITIES DISTRICT  
NO. 2006-1 (SAN FRANCISCO RINCON  
HILL)

By: \_\_\_\_\_  
Chief Financial Officer

UNION BANK OF CALIFORNIA, N.A.,  
as Trustee

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

01009.29:j8714

EXHIBIT A

FORM OF 2004 BOND

UNITED STATES OF AMERICA  
STATE OF CALIFORNIA

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

\$ \_\_\_\_\_

ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS  
COMMUNITY FACILITIES DISTRICT NO. 2006-1  
(SAN FRANCISCO RINCON HILL)  
SPECIAL TAX BOND, SERIES 2006A

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP
	September 1, _____	June 8, 2006	

REGISTERED OWNER:

PRINCIPAL AMOUNT:

DOLLARS

The ABAG Finance Authority For Nonprofit Corporations (the "Authority") for and on behalf of the ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) (the "District"), for value received, hereby promises to pay solely from the Special Tax Revenues (as hereinafter defined) to be collected in the District or amounts in the funds and accounts held under the Indenture (as hereinafter defined), to the registered owner named above, or registered assigns, on the maturity date set forth above, unless redeemed prior thereto as hereinafter provided, the principal amount set forth above, and to pay interest on such principal amount from the Bond Date set forth above, or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on March 1 and September 1, commencing September 1, 2006, at the interest rate set forth above, until the principal amount hereof is paid or made available for payment. The principal of this Bond is payable to the registered owner hereof in lawful money of the United States of America upon presentation and surrender of this Bond at the Principal Office (as defined in the Indenture referred to below) of Union Bank of California, N.A. (the "Trustee"). Interest on this Bond shall be paid by check of the Trustee mailed on each interest payment date to the registered owner hereof as of the close of business on the 15th day of the month preceding the month in which the interest payment date occurs (the "Record Date") at such registered owner's address as it appears on the registration books maintained by the Trustee, or (i) if the Bonds are in book-entry-only form, or (ii) otherwise upon written request filed with the Trustee prior to any Record Date by a registered owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to the depository for the Bonds or to an account in the United States designated by such registered owner in such written request, respectively.

This Bond is one of a duly authorized issue of bonds approved by the qualified electors of the District pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Sections 53311, *et seq.*, of the California Government Code (the "Mello-Roos Act") for the purpose of financing certain public facilities within and in the vicinity of the District (the "Project"), and is one of the first series of such bonds designated "ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon

Hill) Special Tax Bonds, Series 2006A" (the "Bonds") in the aggregate principal amount of \$5,825,000. The creation of the Bonds and the terms and conditions thereof are provided for by resolution adopted by the Board of Directors of the Authority on May 12, 2006 (the "Resolution"), and the Indenture, dated as of June 1, 2006, between the Authority and the Trustee (the "Indenture") and this reference incorporates the Resolution and the Indenture herein, and by acceptance hereof the owner of this Bond assents to said terms and conditions. The Indenture permits the issuance of Parity Bonds (as defined therein) secured on a parity basis with the Bonds under the Indenture, subject to compliance by the Authority with the applicable provisions of the Indenture. The Resolution is adopted and the Indenture is entered into under and this Bond is issued under, and all are to be construed in accordance with, the laws of the State of California.

Pursuant to the Mello-Roos Act, the Indenture and the Resolution, the principal of and interest on this Bond are payable solely from the Trust Estate, as such term is defined in and as more particularly set forth in the Indenture. Any tax for the payment hereof shall be limited to the Special Tax Revenues (as defined in the Indenture), except to the extent that provision for payment has been made by the Authority, as may be permitted by law. The Bonds do not constitute obligations of the Authority for which the Authority is obligated to levy or pledge, or has levied or pledged, general or special taxation other than described hereinabove. Neither the faith, nor the general credit of the Authority is pledged to secure or repay the Bonds. In no event shall any member or associate member of the Authority have any obligation whatsoever with respect to the Bonds, the Indenture or the District.

Interest on this Bond shall be payable from the interest payment date next preceding the date of authentication hereof, unless (i) it is authenticated on an interest payment date, in which event it shall bear interest from such date of authentication, or (ii) it is authenticated prior to an interest payment date and after the close of business on the Record Date preceding such interest payment date, in which event it shall bear interest from such interest payment date, or (iii) it is authenticated prior to the Record Date preceding the first interest payment date, in which event it shall bear interest from the Bond Date set forth above; provided, however, that if at the time of authentication of this Bond, interest is in default hereon, this Bond shall bear interest from the interest payment date to which interest has previously been paid or made available for payment hereon.

The Bonds maturing on and after September 1, 2017 are subject to redemption prior to their stated maturity on any interest payment date on or after September 1, 2016, as a whole or in part among maturities as provided in the Indenture, at a redemption price equal to the principal amount of the Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.

The Bonds maturing on September 1, 2026, are subject to mandatory sinking payment redemption in part on September 1, 2022 and on each September 1 thereafter to maturity, by lot, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, from sinking payments as follows:

<u>Redemption Date</u> <u>(September 1)</u>	<u>Sinking Payments</u>
2022	\$165,000
2023	180,000
2024	200,000
2025	220,000
2026 (maturity)	240,000

The Bonds maturing on September 1, 2036, are subject to mandatory sinking payment redemption in part on September 1, 2027 and on each September 1 thereafter to maturity, by lot, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, from sinking payments as follows:

<u>Redemption Date</u> <u>(September 1)</u>	<u>Sinking Payments</u>
2027	\$260,000
2028	285,000
2029	305,000
2030	335,000
2031	360,000
2032	390,000
2033	420,000
2034	450,000
2035	485,000
2036 (maturity)	525,000

The Bonds are also subject to redemption from the proceeds of Special Tax Prepayments and any corresponding transfers from the Reserve Fund pursuant to the Indenture, on any Interest Payment Date, among maturities as specified in the Indenture and by lot within a maturity, at a redemption price (expressed as a percentage at the principal amount of the Bonds to be redeemed), as set forth below, together with accrued interest to the date fixed for redemption:

<u>Redemption Dates</u>	<u>Redemption Prices</u>
any interest payment date from September 1, 2006 to and including March 1, 2016	103%
September 1, 2016 and any interest payment date thereafter	100

Notice of redemption with respect to the Bonds to be redeemed shall be given to the registered owners thereof, in the manner, to the extent and subject to the provisions of the Indenture.

This Bond shall be registered in the name of the owner hereof, as to both principal and interest.

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

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

Exchanges may only be made for Bonds in authorized denominations, as provided in the Indenture.

The Indenture and the rights and obligations of the Authority thereunder may be modified or amended as set forth therein.

The Indenture contains provisions permitting the Authority to make provision for the payment of the interest on, and the principal and premium, if any, of the Bonds so that such Bonds shall no longer be deemed to be outstanding under the terms of the Indenture.

The Bonds are not general obligations of the Authority, but are limited obligations payable solely from the revenues and funds pledged therefor under the Indenture. Neither the faith and credit of the Authority or the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

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

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

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

IN WITNESS WHEREOF, ABAG Finance Authority For Nonprofit Corporations has caused this Bond to be dated the Bond Date set forth above, to be signed by the facsimile signature of its Chief Financial Officer and countersigned by the facsimile signature of its Secretary.

ABAG FINANCE AUTHORITY FOR  
NONPROFIT CORPORATIONS

---

Chief Financial Officer

ATTEST

---

Secretary

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Bonds described in the Resolution and in the Indenture which has been authenticated on \_\_\_\_\_.

Union Bank of California, N.A., *as Trustee*

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

**ASSIGNMENT**

For value received the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
\_\_\_\_\_  
(Name, Address and Tax Identification or Social Security Number of Assignee)  
the within-registered Bond and hereby irrevocably constitute(s) and appoints(s) \_\_\_\_\_ attorney,  
to transfer the same on the registration books of the Trustee with full power of substitution in  
the premises.

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

Signature Guaranteed:

Signature:

Note: Signature(s) must be guaranteed by an eligible guarantor.

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

ATTACHMENT C

ABAG Resolution

**RESOLUTION NO. 14-15  
ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS  
EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS**

**A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A  
FIRST SUPPLEMENT TO INDENTURE WITH RESPECT TO THE ABAG  
FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS  
COMMUNITY FACILITIES DISTRICT NO. 2006-1 (SAN FRANCISCO  
RINCON HILL) SPECIAL TAX BONDS, SERIES 2006A**

**RESOLVED**, by the Executive Committee of the Board of Directors of ABAG Finance Authority For Nonprofit Corporations (the "Authority"), as follows:

**WHEREAS**, pursuant to the provisions of the Joint Powers Act, comprising Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, certain California cities and counties entered into a joint exercise of powers agreement, dated as of April 1, 1990, pursuant to which the Authority was organized;

**WHEREAS**, the Board of Directors of the Authority formed the ABAG Finance Authority for Nonprofit Corporations Community Facilities District 2006-1 (Rincon Hill) (the "District") under the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (Section 5331, et seq. of the California Government Code) (the "Act") and Resolution No. 06-16 of the Executive Committee of the Board of Directors of the Authority adopted on May 12, 2006;

**WHEREAS**, in order to pay for various public improvements of the District, the Authority issued on behalf of the District \$5,825,000 ABAG Finance Authority for Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) Special Tax Bonds, Series 2006A (the "Bonds") in accordance with the provisions of the Act, an Indenture, dated as of June 1, 2006 (the "Indenture"), between the Authority and the Trustee and Resolution No. 06-20 of the Executive Committee of the Board of Directors of the Authority adopted on May 12, 2006; and

**WHEREAS**, the Indenture established an Improvement Fund, and within such Improvement Fund, separate accounts known as the Rincon Hill Community Improvements Account and the SOMA Community Stabilization Account, and within the SOMA Community

**RESOLUTION NO. 14-15**  
**ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS**

**SUPPLEMENT TO INDENTURE**  
**(SAN FRANCISCO RINCON HILL)**

Stabilization Account, a separate subaccount known as the City Subaccount, and disbursements from such City Subaccount were to be governed by a Joint Community Facilities Agreement dated as of May 1, 2006 (the "City JCFA"), by and between the Authority and the City and County of San Francisco; and

**WHEREAS**, pursuant to Section 6 of the City JCFA, the City JCFA terminated on December 31, 2011, and by virtue of its termination, the City JCFA no longer governs the disbursement of Bond proceeds remaining in the City Subaccount; and

**WHEREAS**, the Authority has been asked by Urban West Rincon Developers, LLC to supplement the Indenture to provide for the disbursement of Bond proceeds remaining in the Rincon Hill Community Improvements Account and the City Subaccount pursuant to a certificate of the Authority provided to the Trustee; and

**WHEREAS**, the Board desires to supplement the Indenture pursuant to a First Supplement to Indenture (the "First Supplement") to provide a mechanism for disbursing unspent Bond proceeds remaining in the Rincon Hill Community Improvements Account and the City Subaccount;

**NOW THEREFORE, BE IT RESOLVED** by the Executive Committee of the Board of the ABAG Finance Authority for Nonprofit Corporations, that:

1. The Authority hereby finds and declares that the above recitals are true and correct.
2. The First Supplement, in the form presented at this meeting, is hereby approved. The President, Chief Financial Officer and Secretary of the Authority (each an "Authorized Officer"), each acting alone, are hereby authorized to execute the First Supplement, with such changes and insertions therein as may be necessary to cause the same to carry out the intent of this Resolution and as are approved by such Authorized Officer and counsel to the Authority, such approval to be conclusively evidenced by the delivery thereof.
3. The Authorized Officers of the Authority are hereby authorized and directed, jointly and severally, to do any and all things which they may deem necessary or advisable in order to consummate the transactions herein authorized and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution.

**RESOLUTION NO. 14-15  
ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS**

**SUPPLEMENT TO INDENTURE  
(SAN FRANCISCO RINCON HILL)**

4. All actions heretofore taken by the officers and agents of the Authority with respect to the transactions set forth above are hereby approved, confirmed and ratified.

5. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 16th day of July, 2014.

ABAG FINANCE AUTHORITY FOR NONPROFIT  
CORPORATIONS

By: \_\_\_\_\_

Charles Lomeli, Chair  
ABAG Finance Authority for  
Nonprofit Corporations

ATTEST:

\_\_\_\_\_  
Clarke J. Howatt, Secretary of ABAG  
Finance Authority For Nonprofit Corporations

ATTACHMENT D

ABAG Staff Report

**AGENDA ITEM No. 6**

**ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS  
A Joint Powers Authority of Cities and Counties**

**Meeting of 16 July 2014**

**Amendment to SF Rincon Hill Financing Documents**

In May of 2006, the Authority conducted proceedings pursuant to the Mello-Roos Community Facilities Act to form its ABAG Finance Authority For Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) (the "District"), to authorize the levy of special taxes on the land (essentially, the condominiums in one 390-unit, 60-story, nearly \$300 million property, One Rincon Hill) within the District, and issued \$5,825,000 in bonds secured by the special taxes to fund a portion of the City's public capital improvements related to the project. For more about the successfully completed project visit: <http://onerinconhill.com>.

Under the original transaction, expenditure of the bond proceeds had been managed solely by the City under a Joint Facilities Agreement but that Agreement expired several years ago and now some funds remain in the Authority's Trustee accounts without a mechanism for disbursement.

The Developer has submitted appropriate documentation and is now seeking reimbursement from approximately \$1.3 million in remaining bond proceeds for a portion of the project-related public infrastructure costs (principally fees of public agencies) not originally intended to be funded by the bonds. The Resolution enclosed authorizes amendment to the District bond documents, prepared by Authority Bond Counsel, to allow and direct reimbursement to the Developer for additional qualified costs.

Staff respectfully recommend approval of **Resolution 14-15** authorizing amendment to the Rincon Hill bond documents (indenture).

# ATTACHMENT E

## First Supplemental Indenture



---

FIRST SUPPLEMENTAL INDENTURE



by and between

ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS,  
as Authority,

and

MUFG UNION BANK, N.A., as Trustee

Relating to

\$5,825,000  
ABAG Finance Authority for Nonprofit Corporations  
Community Facilities District No. 2006-1  
(San Francisco Rincon Hill)  
Special Tax Bonds, Seris 2006A

Dated as of July 1, 2014

---

## FIRST SUPPLEMENTAL INDENTURE

THIS FIRST SUPPLEMENTAL INDENTURE, dated as of July 1, 2014 (this "First Supplemental Indenture"), by and between the ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS (the "Authority"), a joint exercise of powers authority organized and existing under and by virtue of the laws of the State of California (the "State"), for and on behalf of the ABAG Finance Authority for Nonprofit Corporations Community Facilities District 2006-1 (Rincon Hill) (the "District") and MUFG UNION BANK, N.A., a national banking association duly organized and existing under the laws of the United States of America, as trustee, formerly known as Union Bank of California, N.A. (together with its successors and assigns hereunder herein called the "Trustee"), is supplemental and amendatory to that certain Indenture, dated as of June 1, 2006 (the "Indenture"), between the Authority and Union Bank of California, N.A., now known as MUFG Union Bank, N.A. (all capitalized terms used but not otherwise defined herein shall have the respective meanings given to such terms in the Indenture).

### WITNESSETH:

WHEREAS, the Board of Directors of the Authority formed the District under the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (Section 5331, et seq. of the California Government Code) (the "Act") and Resolution No. 06-16 of the Executive Committee of the Board of Directors of the Authority adopted on May 12, 2006;

WHEREAS, in order to pay for various public improvements of the District, the Authority has heretofore issued \$5,825,000 of ABAG Finance Authority for Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill) Special Tax Bonds, Series 2006A (the "Bonds") in accordance with the provisions of the Act, the Indenture and Resolution No. 06-20 of the Executive Committee of the Board of Directors of the Authority adopted on May 12, 2006; and

WHEREAS, the Indenture established an Improvement Fund, and within such Improvement Fund, separate accounts known as the Rincon Hill Community Improvements Account and the SOMA Community Stabilization Account, and within the SOMA Community Stabilization Account, a separate subaccount known as the City Subaccount and disbursements from such City Subaccount were governed by the Joint Community Facilities Agreement dated as of May 1, 2006 (the "City JCFA"), by and between the Authority and the City and County of San Francisco (the "City"); and

\* WHEREAS, pursuant to Section 6 of the City JCFA, the City JCFA terminated on December 31, 2011; and

WHEREAS, the Authority and the Trustee desire to supplement the Indenture in order to provide for the disbursement of amounts representing proceeds of the Bonds remaining in the Rincon Hill Community Improvements Account and the City Subaccount, which disbursement is no longer governed by the City JCFA; and

WHEREAS, Section 8.01(C) of the Indenture provides for amendments to the Indenture without the consent of the Owners of the Bonds to cure any ambiguity of a provision which amendments are not inconsistent with the Indenture and which do not adversely affect the rights of the Owners of the Bonds; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

## ARTICLE I AUTHORITY

Section 1.01. Supplemental Indenture. This First Supplemental Indenture is supplemental and amendatory to the Indenture.

Section 1.02: Authority for the First Supplemental Indenture. This First Supplemental Indenture is executed and delivered pursuant to and in accordance with Section 8.01(C) of the Indenture.

## ARTICLE II AMENDMENTS TO THE INDENTURE

Section 2.01. Amendments to the Indenture. The provisions of the Indenture shall be amended, modified and supplemented as follows:

(a) The following definition contained in Section 4.02(B) of the Indenture is hereby amended by the addition of the following paragraph:

“Following termination of the Joint Community Facilities Agreement - City on December 31, 2011, disbursements from the Rincon Hill Community Improvements Account and the City Subaccount shall be made by the Trustee upon receipt of a certificate executed by the Authority, which certificate shall set forth the amount required to be disbursed, the payee for such disbursement, a statement that such amount is for payment or reimbursement of a cost that relates to the Project and a statement that no portion of the amount requested to be disbursed was set forth in any prior request for withdrawal from the Rincon Hill Community Improvements Account or the City Subaccount, as applicable, by the Authority or by the City pursuant to the Joint Community Facilities Agreement - City.”

### ARTICLE III MISCELLANEOUS

Section 3.01. Governing Law. This First Supplemental Indenture shall be governed and construed in accordance with the laws of the State of California.

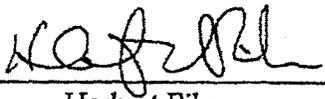
Section 3.02. Headings. The headings herein are for purposes of reference only and shall not otherwise affect the meaning or interpretation of any provision hereof.

Section 3.03. Confirmation of Indenture. Except as amended hereby, the Indenture shall remain in full force and effect and is hereby ratified and confirmed in all respects. This First Supplemental Indenture shall be deemed to be an amendment to the Indenture and a supplemental indenture within the meaning of Article VIII of the Indenture. All references in the Indenture to "this Indenture," "hereunder," "hereof," "herein," or other words of like import, and all references to the Indenture in any other agreement or document shall hereafter be deemed to refer to the Indenture as amended hereby.

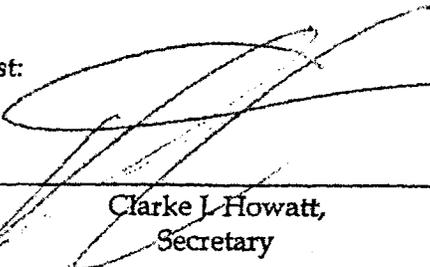
Section 3.04. Execution in Several Counterparts. This First Supplemental Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Authority and the Trustee have caused this First Supplemental Indenture to be executed and delivered by duly authorized officers thereof, all as of the date first above written.

ABAG FINANCE AUTHORITY FOR  
NONPROFIT CORPORATIONS

By:   
Herbert Pike,  
Chief Financial Officer

Attest:

  
Clarke J. Howatt,  
Secretary

MUFG UNION BANK, N.A.,  
as Trustee

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

IN WITNESS WHEREOF, the Authority and the Trustee have caused this First Supplemental Indenture to be executed and delivered by duly authorized officers thereof, all as of the date first above written.

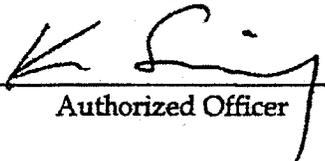
ABAG FINANCE AUTHORITY FOR  
NONPROFIT CORPORATIONS

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

Attest:

\_\_\_\_\_  
Secretary

MUFG UNION BANK, N.A.,  
as Trustee

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

# ATTACHMENT F

## Requests for Disbursement of Funds

# ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area

## ABAG Finance Authority for Nonprofit Corporations

11 August 2014

Alison Braunstein, Vice President  
MUFG Union Bank N.A., Corporate Trust  
120 South San Pedro Street, Suite 400  
MC 4-102-080  
Los Angeles, CA 90012  
213.972.5674  
213.972.5694 (Fax)  
alison.braunstein@unionbank.com

RE: Disbursement of Funds: ABAG Finance Authority for Nonprofit Corporations  
Community Facilities District No. 2006-1  
(San Francisco Rincon Hill)  
Special Tax Bonds, Series 2006 A

Dear Alison:

Please make the following redemptions, transfers, and disbursements, as soon as possible:

1. From your account numbered, 6711784407 (Improvement Fund) with a current balance of approximately \$371,174, please redeem all investments in the account to cash and transfer the entire then current balance to your account numbered 6711784410 (City Sub Account).
2. In and from your account numbered 6711784410 (City Sub Account) with a current balance of approximately \$925,166.66, and an approximate aggregate balance after the transfer described above of \$1,296,340.66, please redeem all investments in the account to cash and make the following disbursement:

Please wire exactly **\$1,296,340.66**

for reimbursable costs, fees, and expenses submitted to the ABAG Finance Authority by Urban West for Rincon Developers, LLC, the Developer of the San Francisco Rincon Hill Project.



**Disbursement of Funds, ABAG Finance Authority for Nonprofit Corporations  
(San Francisco Rincon Hill)**

Page 2

Wire instructions for this disbursement are as follows:

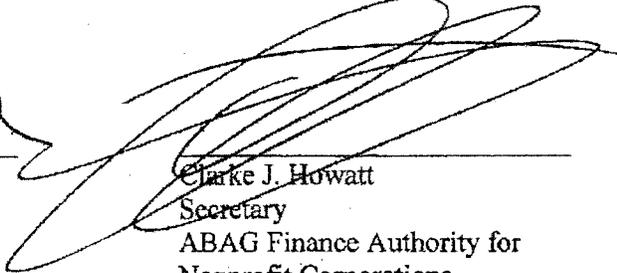
Bank: Citibank  
Bank Address: La Jolla-Downtown  
7900 Herschel Ave  
La Jolla, CA 92037  
Bank Phone: 858-997-0166  
Account No: 205845662  
Routing No: 322271724  
Advice/Notation: Rincon Developers, LLC

*Please refer any questions about this request for disbursement to Clarke J. Howatt, ABAG Public Finance Director, 510-464-7932. Please refer any questions regarding the wire to David Kaiser at Urban West, 858-263-2780. Please refer any questions regarding the amended governing legal documents for this financing to Julie Wunderlich, Jones Hall, 415-391-5780.*

Thank you for your prompt attention to this matter.

Very Truly Yours,

  
\_\_\_\_\_  
Herbert Pike  
Chief Financial Officer  
ABAG Finance Authority for  
Nonprofit Corporations

  
\_\_\_\_\_  
Clarke J. Howatt  
Secretary  
ABAG Finance Authority for  
Nonprofit Corporations

cc: Keith Sevigny

# ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



## ABAG Finance Authority for Nonprofit Corporations

12 August 2014

Alison Braunstein, Vice President  
MUFG Union Bank N.A., Corporate Trust  
120 South San Pedro Street, Suite 400  
MC 4-102-080  
Los Angeles, CA 90012  
213.972.5674  
213.972.5694 (Fax)  
alison.braunstein@unionbank.com

RE: Disbursement of Funds: ABAG Finance Authority for Nonprofit Corporations  
Community Facilities District No. 2006-1  
(San Francisco Rincon Hill)  
Special Tax Bonds, Series 2006 A

Dear Alison:

This request is hereby revised, as discussed. Please make the following redemptions, transfers, and disbursements, as soon as possible:

1. From your account numbered, 6711784407 (Improvement Fund) with a current balance of approximately \$371,174, please redeem all investments in the account to cash and transfer the entire then current balance to your account numbered 6711784410 (City Sub Account).
2. In and from your account numbered 6711784410 (City Sub Account) with a current balance of approximately \$925,166.66, and an approximate aggregate balance after the transfer described above of \$1,296,340.66, please redeem all investments in the account to cash and make the following disbursement:

Please wire exactly **\$1,296,340.66**

for reimbursable costs, fees, and expenses submitted to the ABAG Finance Authority by Urban West for Rincon Developers, LLC, the Developer of the San Francisco Rincon Hill Project. Based on submission of documentation submitted to the Authority by the Developer, The Authority hereby certifies, as required by the Supplemented Governing Documentation for the financing, that the above amount is for reimbursement of costs that relate to the Rincon Hill



**Disbursement of Funds, ABAG Finance Authority for Nonprofit Corporations  
(San Francisco Rincon Hill)**

**Page 2**

Project and that no portion of the amount requested was set forth in any prior request for withdrawal from either the Rincon Hill Community Improvements Account or the City Subaccount, by either the Authority or by the City pursuant to the Joint Community Facilities Agreement.

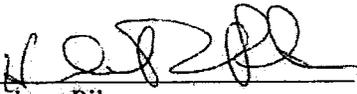
Wire instructions for this disbursement are as follows:

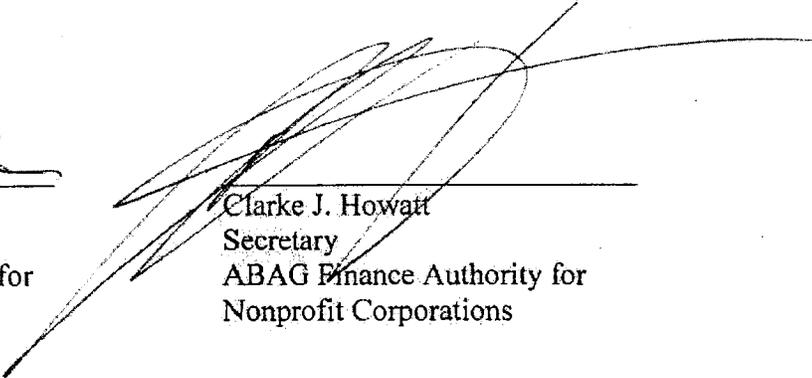
Bank: Citibank  
Bank Address: La Jolla-Downtown  
7900 Herschel Ave  
La Jolla, CA 92037  
Bank Phone: 858-997-0166  
Account No: 205845662  
Routing No: 322271724  
Advice/Notation: Rincon Developers, LLC

*Please refer any questions about this request for disbursement to Clarke J. Howatt, ABAG Public Finance Director, 510-464-7932. Please refer any questions regarding the wire to David Kaiser at Urban West, 858-263-2780. Please refer any questions regarding the amended governing legal documents for this financing to Julie Wunderlich, Jones Hall, 415-391-5780.*

Thank you for your prompt attention to this matter.

Very Truly Yours,

  
Herbert Pike  
Chief Financial Officer  
ABAG Finance Authority for  
Nonprofit Corporations

  
Clarke J. Howatt  
Secretary  
ABAG Finance Authority for  
Nonprofit Corporations

cc: Keith Sevigny

## ATTACHMENT G

### San Francisco Demand Letter

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
City Attorney

BEN ROSENFELD  
Controller

January 28, 2015

Herbert Pike, Chief Financial Officer  
Ezra Rapport, Executive Director  
Brad Paul, Deputy Director  
Clarke J. Howatt, Secretary  
ABAG Finance Authority for Nonprofit Corporations  
101 Eighth Street  
Oakland, California 94607-4756

Re: Demand for Reimbursement of Unauthorized Disbursement of Funds  
from MUFJ Union Bank, N.A. Account #6711784407 (Improvement Fund) and  
Account #6711784410 (City Subaccount) (collectively, the "Accounts")

Gentlemen:

We write to demand the immediate return of \$1,296,340.66 in funds withdrawn on August 12, 2014 from the above-referenced accounts (the "Accounts"). The Funds were withdrawn without the knowledge or approval of the City and County of San Francisco (the "City"), violating the terms of that Indenture dated as of June 1, 2006 (the "Original Indenture"), between the ABAG Finance Authority for Nonprofit Corporations (the "Authority") and Union Bank of California, as trustee (the "Trustee"). The Original Indenture is attached to this letter as Exhibit A.

Under the Original Indenture, the bond proceeds allocated to the Improvement Fund were deposited into the Accounts (see Section 4.02 of the Original Indenture), and such Accounts were to be held in trust for the City's benefit. The Original Indenture requires prior written approval by the Mayor's Office of Public Finance of the City (the "Office of Public Finance") or other authorized representative of the City for all disbursements from the Accounts. To our knowledge, all disbursements before August 12, 2014 from the Accounts were authorized through written request forms executed by the Office of Public Finance or an authorized City representative.

The City has recently become aware that the Authority, without the City's knowledge or approval, entered into a First Supplemental Indenture of Trust (the "First Supplemental Indenture"), dated as of July 1, 2014. That document unlawfully divested the City of its authority to approve disbursements from the Accounts. The First Supplemental Indenture was executed by the Authority, over the signatures of Herbert Pike, Chief Financial Officer, and Clarke J. Howatt, Secretary of the Authority, on the basis that it was curing a defect or ambiguity under the Original Indenture. But no such ambiguity or defect existed, so there was no legitimate basis for that document. Section 10.01 of the Original Indenture states that the City has a beneficial interest in the funds created under Section 4.02 of the Original Indenture. Also, Section 4.02 of the Original Indenture states that the funds in the Accounts are to be held by the Trustee in trust for the City's benefit. Nonetheless, no one in the Office of Public Finance, the Mayor's Office of Housing and Community Development ("MOHCD"), the City's Planning

Letter to Herbert Pike, Ezra Rapport, Brad Paul, and Clarke J. Howatt  
Page 2  
January 28, 2015

Department, the Controller's Office or the City Attorney's Office was notified of, or consulted, with respect to execution of the First Supplemental Indenture or the disbursement of funds purportedly made under it.

Under the First Supplemental Indenture, on August 12, 2014 the Authority requested that the Trustee wire \$1,296,340.66 to an entity named "Urban West for Rincon Developers, LLC, the Developer of the San Francisco Rincon Hill Project". The transmittal to the Trustee is attached hereto as Exhibit B. That entity is not the developer that would have been entitled to the money, and it is unclear who now has the funds. And again, no one at the Office of Public Finance, MOHCD, the City's Planning Department, the Controller's Office or the City Attorney's Office was notified about, or approved, the requisition for this disbursement. Also, contrary to a statement made in the San Francisco Chronicle (dated January 27, 2014), the City Attorney's Office did not consult with the Authority or the Trustee about the propriety of this disbursement before it was made, and if it were consulted the City Attorney's Office would have advised that the disbursement was not permitted. Like all other City officials, the City Attorney's Office only recently learned of this disbursement.

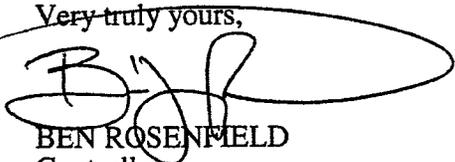
Because the disbursement was not authorized under the terms of the Original Indenture, and the First Supplemental Indenture is not legitimate and therefore void, the City demands an immediate return of all funds disbursed under the August 12, 2014 requisition. Also, the City demands a full accounting of all funds and accounts under the Original Indenture. Finally, the City demands that the Authority immediately take or cause to be taken such actions to formally rescind the First Supplemental Indenture as that document was not executed in accordance with the terms of the Original Indenture.

We demand return of the funds no later than Friday, January 30, 2015. The funds must be wired to the Trustee.

We also demand a completion of the audit with respect to the Accounts no later than February 13, 2015.

Should you have any questions, please feel free to contact Ben Rosenfield at (415) 554-7500 or Jesse Smith at (415) 554-4700.

Very truly yours,



BEN ROSENFELD  
Controller

Very truly yours,



DENNIS J. HERRERA  
City Attorney

#### Attachments

cc: (w/o attachments)  
Olson Lee, Director, Mayor's Office of Housing  
John Rahaim, Director, Planning Department  
Nadia Sesay, Director of the Office of Public Finance  
Michael Kriozere, Urban West Associates of San Diego  
Steve Vettel, Farella Braun & Martel LLP  
Julie Wunderlich, Jones Hall  
Steve Melikian, Jones Hall  
Chris Lynch, Jones Hall

Letter to Herbert Pike, Ezra Rapport, Brad Paul, and Clarke J. Howatt

Page 3

January 28, 2015

Keith Sevigny, MUFG Union Bank N.A.

# ATTACHMENT H

## U.S. District Court Information

**DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**

BY:  COMPLAINT  INFORMATION  INDICTMENT  
 SUPERSEDING

**OFFENSE CHARGED**

Count One: 18 U.S.C. § 1343 - Wire Fraud  Petty  
Forfeiture allegation  Minor  
 Misdemeanor  
 Felony  
PENALTY: 20 years' imprisonment; \$250,000 fine or twice gross gain or gross loss, whichever is greater; 3 years' supervised release; \$100 special assessment; restitution; forfeiture

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

FEB 13 2015

DEFENDANT - U.S.

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT

CLARKE J. HOWATT

NORTHERN DISTRICT OF CALIFORNIA

DISTRICT COURT NUMBER

**CR 15 101**

DEFENDANT

**PROCEEDING**

Name of Complainant Agency, or Person (& Title, if any)

Federal Bureau of Investigation

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

this is a re prosecution of charges previously dismissed which were dismissed on motion of:

U.S. ATTORNEY  DEFENSE

SHOW DOCKET NO.

this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person

Furnishing Information on this form MELINDA HAAG

U.S. Attorney  Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned)

Kyle Waldinger/D. Countryman

**IS NOT IN CUSTODY**

Has not been arrested, pending outcome this proceeding.

1)  If not detained give date any prior summons was served on above charges

2)  Is a Fugitive

3)  Is on Bail or Release from (show District)

**IS IN CUSTODY**

4)  On this charge

5)  On another conviction

Federal  State

6)  Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

Has detainer been filed?  Yes  No

If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY

Month/Day/Year

This report amends AO 257 previously submitted

**ADDITIONAL INFORMATION OR COMMENTS**

**PROCESS:**

SUMMONS  NO PROCESS\*  WARRANT

Bail Amount: \_\_\_\_\_

If Summons, complete following:

Arraignment  Initial Appearance

\* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Defendant Address: \_\_\_\_\_

Date/Time: \_\_\_\_\_ Before Judge: \_\_\_\_\_

Comments: \_\_\_\_\_

1 MELINDA HAAG (CABN 132612)  
United States Attorney

**FILED**

FEB 13 2015

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**CRB**

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

**CR 15 101**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 CLARKE J. HOWATT,

15 Defendant.

) No.

) VIOLATIONS: 18 U.S.C. § 1343 – Wire Fraud; 18

) U.S.C. § 981(a)(1)(C) & 28 U.S.C. § 2461(c) –

) Criminal Forfeiture

) SAN FRANCISCO VENUE

17 INFORMATION

18 The United States Attorney charges:

19 INTRODUCTORY ALLEGATIONS

20 At all times relevant to this Information, with all dates being approximate and all date ranges  
21 both approximate and inclusive:

22 1. The defendant, Clarke J. HOWATT, resided in the Northern District of California.

23 2. The Association of Bay Area Governments (“ABAG”) was formed in the 1960s as a Joint  
24 Powers Agency. ABAG’s primary function is to provide its members planning and advice on land-use  
25 issues.

26 3. The ABAG Finance Authority for Nonprofit Corporations (“FAN”) was formed as a  
27 separate legal entity in approximately 1990. Among other reasons, FAN was formed to act as a conduit  
28 issuer of debt instruments, or bonds.

INFORMATION

1 4. The defendant HOWATT served as the Public Finance Director for ABAG.

2 5. On June 1, 2006, FAN approved an indenture and issued a series of bonds on behalf of a  
3 Community Facilities District formed to pursue public works projects in the South of Market  
4 neighborhood of San Francisco that would offset the impact of a high-rise building to be built on Rincon  
5 Hill. Proceeds from the bond issuances were placed in an account at Union Bank. That Union Bank  
6 account included several sub-accounts, one of which was numbered ending -4410 (“-4410 Account”).

7 6. On July 1, 2014, HOWATT presented FAN’s Executive Board with a supplement to the  
8 indenture referenced above. The supplement sought to assign disbursement authority over the funds still  
9 remaining in the -4410 Account to FAN. The Executive Board approved the supplement.

10 7. On August 12, 2014, HOWATT submitted a request for reimbursement to the trustee of  
11 the -4410 Account. Among other things, the request sought the wire transfer of \$1,296,340.66 from the  
12 -4410 Account to a Citibank account numbered ending -5662 (“-5662 Account”), which HOWATT had  
13 opened in the name of a limited liability company he had formed the prior month. The request  
14 explained that these funds were “for reimbursable costs, fees, and expenses submitted to the ABAG  
15 Finance Authority [FAN]” by the developer of the Rincon Hill project.

16 8. On August 12, 2014, Union Bank sent a wire transfer of \$1,296,340.66 from the -4410  
17 Account to the -5662 Account. This wire transfer was sent through the Federal Reserve Bank’s Fedwire  
18 system and was processed by computer servers outside of California.

19  
20 COUNT ONE: (18 U.S.C. § 1343 – Wire Fraud)

21 9. The factual allegations in paragraphs 1 through 8 are realleged and incorporated as if  
22 fully set forth here.

23 10. Beginning on a date unknown to the United States Attorney and continuing to January  
24 2015, in the Northern District of California and elsewhere, the defendant,

25 **CLARKE J. HOWATT,**

26 did knowingly and with the intent to defraud devise a scheme and artifice to defraud FAN as to a  
27 material matter, and to obtain money and property by means of materially false and fraudulent pretenses,  
28 representations, and promises, and by means of concealment of material facts. In sum and substance,

1 the scheme and artifice consisted of HOWATT obtaining unused development project funds and surplus  
2 cash from bond accounts by making material misrepresentations to FAN.

3 EXECUTION OF THE SCHEME AND ARTIFICE

4 11. Among other acts, on August 12, 2014, for the purpose of advancing, furthering, and  
5 executing the scheme and artifice to defraud, and attempting to do so, the defendant knowingly  
6 transmitted and caused to be transmitted by means of wire communication in interstate commerce  
7 certain writings and signals, specifically, a wire transfer of \$1,296,340.66 from the -4410 Account to the  
8 -5662 Account.

9 All in violation of Title 18, United States Code, Section 1343.

10  
11 FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C) & 28 U.S.C. § 2461(c) – Criminal  
12 Forfeiture)

13 12. All of the allegations contained in this Information are realleged and by this reference  
14 fully incorporated for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United  
15 States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

16 13. Upon a conviction for the offense alleged in Count One of this Information, the  
17 defendant,

18 CLARKE J. HOWATT,

19 shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) all  
20 property constituting, and derived from, proceeds the defendant obtained directly and indirectly, as the  
21 result of that violation, including, but not limited to, the following real property or personal property:

22 a. The real property and improvements located at 33875 Rip Tide Drive, Pacific City,  
23 Oregon;

24 b. The real property and improvements located at 126 Ascot Court, Apt A, Moraga,  
25 California; and

26 c. All funds up to \$1,296,340.66 in the -5662 Account.

27 14. If any of the aforementioned property, as a result of any act or omission of the  
28 defendant –

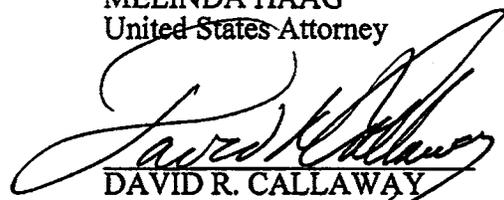
- 1 a. cannot be located upon the exercise of due diligence;
- 2 b. has been transferred or sold to, or deposited with, a third person;
- 3 c. has been placed beyond the jurisdiction of the Court;
- 4 d. has been substantially diminished in value; or
- 5 e. has been commingled with other property that cannot be divided without difficulty;

6 any and all interest the defendant has in other property shall be vested in the United States and  
 7 forfeited to the United States pursuant to 21 U.S.C. § 853p, as incorporated by 18 U.S.C. § 982(b)(1).

8 All in violation of Title 18, United States Code, Section 981(a)(1)(C), Title 28, United States  
 9 Code, Section 2461(c), and Rule 32.2 of the Federal Rules of Criminal Procedure.

10  
 11 DATED: *2/12/2015*

MELINDA HAAG  
 United States Attorney



12  
 13  
 14 DAVID R. CALLAWAY  
 Chief, Criminal Division

15  
 16 (Approved as to form: *Waldinger*)  
 17 AUSAs WALDINGER/COUNTRYMAN

United States District Court  
Northern District of California

FILED

FEB 13 2015

CRIMINAL COVER SHEET

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Instructions:** Effective January 3, 2012, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case.

**CR 15 101** **CRB**  
Case Number:

Case Name:

USA v. Clarke J. Howatt

Total Number of Defendants:

1  2-7  8 or more

Is This Case Under Seal?

Yes  No

Does this case involve ONLY charges under 8 U.S.C. § 1325 and/or 1326?

Yes  No

Venue (Per Crim. L.R. 18-1):

SF  OAK  SJ  EUR  MON

Is any defendant charged with a death-penalty-eligible crime?

Yes  No

Assigned AUSA (Lead Attorney):

Kyle Waldinger/D. Countryman

Is this a RICO Act gang case?

Yes  No

Date Submitted:

2/12/2015

Comments:

[Empty box for comments]

Save Print Clear Form

AO 455 (Rev. 01/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT  
for the  
Northern District of California

United States of America

v.

CLARKE J. HOWATT

*Defendant*

)  
)  
)  
)  
)

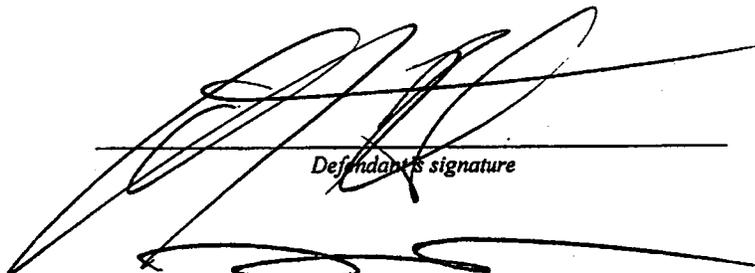
Case No. CR 15-0101 CRB

WAIVER OF AN INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: 02/13/2015

  
\_\_\_\_\_

*Defendant's signature*

  
\_\_\_\_\_

*Signature of defendant's attorney*

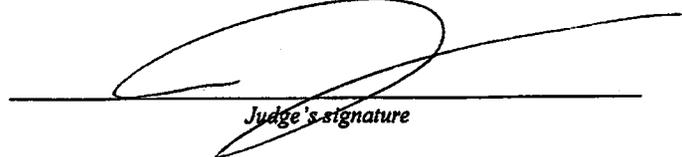
Mary McNamara

*Printed name of defendant's attorney*

**FILED**

FEB 13 2015

**RICHARD W. WIEKING**  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

  
\_\_\_\_\_

*Judge's signature*

Joseph C. Spero, U.S. Magistrate Judge

*Judge's printed name and title*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

United States of America,

Plaintiff,

v.

CLARKE J. HOWATT

Defendant.

Case No. CR 15-0101 CRB

STIPULATED ORDER EXCLUDING TIME  
UNDER THE SPEEDY TRIAL ACT

FILED

FEB 13 2015

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

For the reasons stated by the parties on the record on 2/13, 2015, the Court excludes time under the Speedy Trial Act from 2/13, 2015 to 3/18, 2015 and finds that the ends of justice served by the continuance outweigh the best interest of the public and the defendant in a speedy trial. See 18 U.S.C. § 3161(h)(7)(A). The Court makes this finding and bases this continuance on the following factor(s):

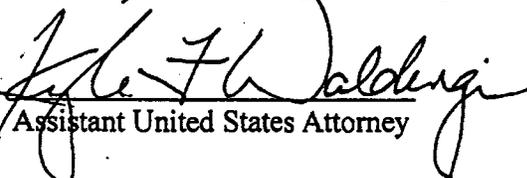
- Failure to grant a continuance would be likely to result in a miscarriage of justice. See 18 U.S.C. § 3161(h)(7)(B)(i).
- The case is so unusual or so complex, due to [*check applicable reasons*] \_\_\_\_\_ the number of defendants, \_\_\_\_\_ the nature of the prosecution, or \_\_\_\_\_ the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or the trial itself within the time limits established by this section. See 18 U.S.C. § 3161(h)(7)(B)(ii).
- Failure to grant a continuance would deny the defendant reasonable time to obtain counsel, taking into account the exercise of due diligence. See 18 U.S.C. § 3161(h)(7)(B)(iv).
- Failure to grant a continuance would unreasonably deny the defendant continuity of counsel, given counsel's other scheduled case commitments, taking into account the exercise of due diligence. See 18 U.S.C. § 3161(h)(7)(B)(iv).
- Failure to grant a continuance would unreasonably deny the defendant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. See 18 U.S.C. § 3161(h)(7)(B)(iv).

IT IS SO ORDERED.

DATED: 2/13/15

  
JOSEPH C. SPERO  
United States Chief Magistrate Judge

STIPULATED: \_\_\_\_\_  
Attorney for Defendant

  
Assistant United States Attorney

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