



# FAIRFAX FINANCING AUTHORITY

## STAFF REPORT

April 6, 2016

**TO:** Chair & Board of Directors

**FROM:** Garrett Toy, Executive Director (Town Manager) GT  
Michael Vivrette, Finance Director

**SUBJECT:** Adopt a resolution of the Board of Directors of the Fairfax Financing Authority authorizing the issuance and sale of Revenue Bonds for the Purpose of Financing the Acquisition of Town of Fairfax, California, 2016 General Obligation Refunding Bonds and for Other Purposes and Approving Related Agreements & Actions

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### RECOMMENDATION

Adopt a resolution of the Board of Directors of the Fairfax Financing Authority (the "FFA") authorizing the issuance and sale of revenue bonds (the "2016 Authority Bonds") for the purpose of financing the acquisition of Town of Fairfax, California, 2016 General Obligation Refunding Bonds and for other purposes and approving related agreements & actions

### BACKGROUND

The FFA is a Joint Powers Agreement ("JPA") between the Town of Fairfax ("Town") and the California Municipal Finance Authority. Its purpose is to assist with the financing or refinancing of certain public capital facilities within the Town. The FFA has the power to purchase bonds issued by any local agency at public or negotiated sale and may sell such bonds to public or private purchasers at public or negotiated sale. The FFA is controlled by the Town and has the same governing body as the Town (i.e., the Town Council "sits" as the FFA Board with the Mayor as the chair). The Town also performs all accounting and administrative functions for the FFA.

### DISCUSSION

Please refer to the Town Council staff report (Agenda Item #12) regarding the 2016 General Obligation Refunding Bonds (the "2016 GO Bonds") to be issued to refund the Town's 2006 General Obligation Bonds ("2006 GO Bonds") for the details pertaining to the refinancing. The Town is using the FFA because the Town is intending to refinance the bonds and pull money out for street improvements.

To proceed with the refunding of the 2006 GO Bonds, the FFA Board must approve a resolution authorizing the sale of the 2016 Authority Bonds to purchase the 2016 GO Bonds and refund the 2006 GO bonds of the Town. The 2016 Authority Bonds are "revenue bonds," a special type of municipal bond distinguished by its guarantee of repayment solely from revenues generated by a specific revenue generating entity associated with the purpose of the bonds, rather than from a tax. The specific bond revenue is a special assessment based on the assessed value of a property and is paid as part of the property tax bill for the property.

AGENDA ITEM # 13

The resolution provides that the Executive Director (Town Manager) execute:

- 1) A Bond Purchase Contract with the Town to purchase the 2016 GO Bonds.
- 2) A Bond Purchase Agreement between the FFA and the purchaser of the 2016 Authority Bonds

The Executive Director will also execute (with the Secretary (Town Clerk)) an Indenture of Trust to set up U.S. Bank as the trustee for the 2016 Authority Bonds once sold. Payments to the 2016 Authority Bond investor are paid by the Trustee on behalf of the FFA, which in turn, as owner of the 2016 GO Bonds issued by the Town, receives principal and interest payments on the 2016 GO Bonds. The cash flow on the 2016 Authority Bonds and 2016 GO Bonds are structured to tie closely with each other.

For information purposes, the FFA has been provided with:

- The form of the final opinion of the Bond Counsel for the 2016 Authority Bonds.
- Financing schedule for the 2016 refunding of the 2006 GO Bonds

#### **ATTACHMENTS**

- 1) Resolution 2016-1 of the Board of Directors of the Fairfax Financing Authority Authorizing the Issuance and Sale of Revenue Bonds for the Purpose of Financing the Acquisition of Town of Fairfax General Obligation Refunding Bond and for Other Purposes and Approving Related Agreements and Actions
- 2) Bond Purchase Contract by and between the Town of Fairfax and the Fairfax Financing Authority
- 3) Bond Purchase Agreement by and between the Fairfax Financing Authority and the purchaser of the 2016 Authority Bonds
- 4) Indenture of Trust by and between the Fairfax Financing Authority and the U.S. Bank National Association, as Trustee
- 5) Form of Final Opinion of Bond Counsel for the 2016 Authority Bonds
- 6) Financing schedule

**FAIRFAX FINANCING AUTHORITY**

**RESOLUTION NO. 2016-1**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE FAIRFAX  
FINANCING AUTHORITY AUTHORIZING THE ISSUANCE AND SALE OF  
REVENUE BONDS FOR THE PURPOSE OF FINANCING THE  
ACQUISITION OF TOWN OF FAIRFAX, CALIFORNIA, GENERAL  
OBLIGATION REFUNDING BONDS AND FOR OTHER PURPOSES AND  
APPROVING RELATED AGREEMENTS AND ACTIONS**

RESOLVED, by the Board of Directors (the "Board") of the Fairfax Financing Authority (the "Authority"), as follows:

WHEREAS, the Authority was formed by the Town of Fairfax (the "Town") and the California Municipal Financing Authority for the purpose of establishing a vehicle to reduce local borrowing costs and promote the greater use of existing and new financial instruments and mechanisms;

WHEREAS, more than two-thirds of the qualified voters in the Town, voting at a municipal election on November 2, 1999, approved the issuance of up to \$6,830,000 of general obligation bonds to finance the acquisition and construction of capital improvements to various streets and storm drains within the Town and to the Town's community facilities;

WHEREAS, pursuant to the authorization received at such election, and the authorization contained in Chapter 4 (commencing with section 43600) of Division 4 of Title 4 of the California Government Code and Article 3.7 (commencing with section 53720) of Chapter 4 of Part 1 of Division 2 of Title 5 of the California Government Code (collectively, the "Act"), the Town has heretofore issued three series of general obligation bonds authorized as described above in an aggregate principal amount of \$6,830,000, including its General Obligation Bonds, Series 2006, issued in an initial principal of \$1,765,000 (the "Prior Town Bonds");

WHEREAS, the Town Council of the Town (the "Town Council") has determined to issue its Town of Fairfax 2016 General Obligation Refunding Bonds in the aggregate principal amount of not to exceed \$1,500,000 (the "Town Refunding Bonds") for the purpose of refunding all or a portion of the outstanding Prior Town Bonds and thereby realizing financial savings to the Town;

WHEREAS, the Town Council is authorized to provide for the issuance and sale of the Town Refunding Bonds under the provisions of Articles 9 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (collectively, the "Refunding Law");

WHEREAS, the Authority has determined to issue its Fairfax Financing Authority Revenue Bonds, Series 2016 (Town of Fairfax General Obligation Bond Refinancing Program) (the "Authority Bonds"), under the provisions of Article 4 (commencing with section 6584) of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Bond Law"), the proceeds of which will be applied to (a) the purchase of the Town Refunding Bonds, and (b) the financing the acquisition and construction of capital improvements to various streets and storm drains within the Town and to the Town's community facilities; and

WHEREAS, the Board has duly considered such transactions and wishes at this time to approve said transactions and the documents to which the Authority is a party related thereto, in the public interests of the Authority.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED by the Board of Directors of the Fairfax Financing Authority as follows:

*Section 1. Findings and Determinations.* Pursuant to the Bond Law, the Board hereby finds and determines that the issuance of the Authority Bonds will result in savings in effective interest rates, bond underwriting costs and bond issuance costs and thereby result in significant public benefits to the Town within the contemplation of section 6586 of the Bond Law.

*Section 2. Issuance of Authority Bonds; Approval of Indenture.* The Board hereby authorizes the issuance of the Authority Bonds under and pursuant to the Bond Law, in the maximum principal amount of not to exceed \$1,500,000. The Authority Bonds shall be issued pursuant to an indenture of trust, by and between the Authority and U.S. Bank National Association, as trustee (the "Indenture"). The Board hereby approves the Indenture in the form on file with the Secretary. The Board hereby authorizes and directs the Executive Director or the Treasurer to execute and deliver, and the Secretary to attest and affix the seal of the Authority to, the Indenture in such form, together with any changes therein or additions thereto deemed advisable by the Executive Director or the Treasurer upon consultation with Bond Counsel, the execution by the Executive Director or the Treasurer of the Indenture to constitute conclusive evidence of his approval of any such changes or additions. The Board hereby authorizes the delivery and performance of the Indenture.

*Section 3. Approval of Placement Agent Agreement.* The Board hereby approves a placement agent agreement (the "Placement Agent Agreement"), by and between the Authority and Brandis Tallman LLC, as placement agent (the "Placement Agent") in the form on file with the Secretary. The Board hereby authorizes and directs the Executive Director or the Treasurer to execute and deliver, the Placement Agent Agreement in such form, together with any changes therein or additions thereto deemed advisable by the Executive Director or the Treasurer upon consultation with Bond Counsel, the execution by the Executive Director or the Treasurer of the Placement Agent Agreement to constitute conclusive evidence of his approval of any such changes or additions. The Board hereby authorizes the delivery and performance of the Placement Agent Agreement.

*Section 4. Sale of the Authority Bonds.* The Board hereby authorizes and approves the sale of the Authority Bonds by the Authority to a purchaser identified by the Placement Agent to the Authority following a competitive process (the "Purchaser"), pursuant to and in accordance with the provisions of a bond purchase contract by and between the Authority and the Purchaser (the "Authority Bond Purchase Contract") in the form on file with the Secretary. The Board hereby authorizes and directs the Executive Director to execute said form of the Authority Bond Purchase Contract together with any changes therein or additions thereto deemed advisable by such officer upon consultation with Bond Counsel and legal counsel to the Authority, the execution by such officer of the Authority Bond Purchase Contract to constitute conclusive evidence of his approval of any such changes or additions. The Board hereby authorizes the delivery and performance of the Authority Bond Purchase Contract.

*Section 5. Purchase of Town Refunding Bonds.* The Board hereby authorizes and approves the purchase of the Town Refunding Bonds by the Authority from the Town pursuant to and in accordance with the provisions of a bond purchase contract by and

between the Town and the Authority (the "Town Bond Purchase Contract") in the form on file with the Secretary. The Board hereby authorizes and directs the Executive Director to execute said form of the Town Bond Purchase Contract together with any changes therein or additions thereto deemed advisable by such officer upon consultation with Bond Counsel and legal counsel to the Authority, the execution by such officer of the Town Bond Purchase Contract to constitute conclusive evidence of his approval of any such changes or additions. The Board hereby authorizes the deliver and performance of the Town Bond Purchase Contract.

*Section 6. Official Actions.* The Executive Director, the Treasurer, the Secretary and any and all other officers of the Authority are hereby authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions, including execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the issuance and sale of the Authority Bonds and any of the other transactions contemplated by the documents approved pursuant to this Resolution. Whenever in this Resolution any officer of the Authority is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer shall be absent or unavailable.

*Section 7. Effective Date.* This Resolution shall take effect from and after the date of its adoption.

Passed, approved and adopted this 6th day of April, 2016.

By \_\_\_\_\_  
Chair,  
Fairfax Financing Authority

ATTEST:

\_\_\_\_\_  
Secretary,  
Fairfax Financing Authority

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**BOND PURCHASE CONTRACT**

by and between the

**TOWN OF FAIRFAX**

and the

**FAIRFAX FINANCING AUTHORITY**

Dated \_\_\_\_\_, 2016

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Relating to:  
\$ \_\_\_\_\_  
Town of Fairfax  
(Marin County, California)  
2016 General Obligation Refunding Bonds

**ATTACHMENT 2**

## BOND PURCHASE CONTRACT

THIS BOND PURCHASE CONTRACT (this "Bond Purchase Contract"), dated \_\_\_\_\_, 2016, is by and between the FAIRFAX FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California (the "Authority"), and the TOWN OF FAIRFAX, a municipal corporation and general law city duly organized and existing under the laws of the State of California (the "Town"):

### WITNESSETH:

WHEREAS, the Authority is a joint exercise of powers authority duly organized and existing under the provisions of Articles 1 through 4 (commencing with section 6500) of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Act"), and is authorized pursuant to Article 4 of the Act (the "Bond Law") to borrow money for, among other purposes, the financing of bonds, notes and other obligations to provide financing for public capital improvements within the State of California;

WHEREAS, the Town has authorized the issuance of its \$\_\_\_\_\_ principal amount of Town of Fairfax, (Marin County, California) 2016 General Obligation Refunding Bonds (the "Town Refunding Bonds"), pursuant to a resolution of the Town, adopted on April 6, 2016 (the "Town Bond Resolution"), to refund, on a current basis, the Town's outstanding General Obligation Bonds, Series 2006 (the "Prior Town Bonds");

WHEREAS, the Authority has authorized the issuance of its bonds, designated as the Fairfax Financing Authority Revenue Bonds, Series 2016 (Town of Fairfax General Obligation Refunding Bond Program), in the aggregate principal amount of \$\_\_\_\_\_ (the "Authority Bonds"), to be issued under an Indenture of Trust, dated as of May 1, 2016 (the "Authority Indenture"), by and between the Authority and U.S. Bank National Association, as trustee (the "Trustee"), and under the Bond Law, the proceeds of which will be applied to (a) the purchase of the Town Refunding Bonds, and (b) the financing of capital improvements within the geographic boundaries of the Town;

WHEREAS, the Authority and the Town have found and determined that the sale of the Town Refunding Bonds to the Authority will result in substantial public benefits to the Town;

WHEREAS, the Authority and the Town desire to enter into this Bond Purchase Contract providing for the sale of the Town Refunding Bonds by the Town to the Authority and containing the other agreements herein set forth.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Authority and the Town agree as follows:

1. All terms not herein defined shall have the meanings given such terms in the Authority Indenture or in the Town Bond Resolution.

2. Upon the terms and conditions and upon the basis of the representations, warranties and agreements hereinafter set forth, the Town hereby commits to sell to the Authority and hereby sells to the Authority, and the Authority hereby commits to purchase from the Town and does hereby purchase from the Town with the proceeds of the Authority Bonds deposited

in the Program Fund, all of the Town Refunding Bonds at a purchase price of \$\_\_\_\_\_. The Town Refunding Bonds will be in the principal amounts and be subject to redemption as set forth in Exhibit A attached hereto and hereby made a part hereof.

3. The Town confirms that there are no substantial conditions precedent to the issuance by the Town and to the sale (as provided herein) and the delivery to the Authority of the Town Refunding Bonds.

4. The Town hereby specifies May 4, 2016, as the date of closing of the purchase of the Town Refunding Bonds hereunder (the "Closing Date"). The Town Refunding Bonds shall be registered in the name of the Trustee, as assignee of the Authority and in its capacity as trustee for the Authority Bonds pursuant to the Authority Indenture. On the Closing Date, the Town shall issue and deliver the Town Refunding Bonds to the Trustee upon payment by the Trustee, on behalf of the Authority, to the Town or its order of the purchase price of the Town Refunding Bonds in the aggregate amount of \$\_\_\_\_\_. Said purchase price shall be paid by the Trustee, on behalf of the Authority, solely from the proceeds of sale of the Authority Bonds pursuant to the terms of the Authority Indenture.

5. The Town Refunding Bonds shall be issued and secured under the provisions of the Town Bond Resolution and related proceedings authorizing the issuance of the Town Refunding Bonds (the "Proceedings"). The Town Refunding Bonds and interest thereon will be payable from ad valorem taxes in accordance with the Town Bond Resolution and the Proceedings. Proceeds of the Town Refunding Bonds will be used to refund the Prior Town Bonds.

The interest rate on the Town Refunding Bonds shall not exceed 12% per annum and shall be as set forth in the Town Bond Resolution.

6. Any action under this Bond Purchase Contract taken by the Authority, including payment for and acceptance of the Town Refunding Bonds, and delivery and execution of any receipt for the Town Refunding Bonds and any other instruments in connection with the closing on the Closing Date, shall be valid and sufficient for all purposes and binding upon the Authority, provided that any such action shall not impose any obligation or liability upon the Authority other than as may arise as expressly set forth in this Bond Purchase Contract.

7. It is a condition to the Town's sale of the Town Refunding Bonds and the obligation of the Town to deliver the Town Refunding Bonds to the Authority, and to the Authority's purchase of the Town Refunding Bonds and the obligations of the Authority to accept delivery of and to pay for the Town Refunding Bonds, that the entire aggregate principal amount of the Town Refunding Bonds authorized to be issued by the Town Bond Resolution shall be delivered by the Town, and accepted and paid for by the Authority, on the Closing Date.

8. The Town represents and warrants to the Authority that:

(a) The Town is a municipal corporation and general law city, duly organized and existing under the laws of the State of California, and has, and on the Closing Date will have, full legal right, power and authority (i) to enter into this Bond Purchase Contract and that certain escrow agreement, to be dated the Closing Date, by and between the Town and U.S. Bank National Association, as escrow bank, providing for the defeasance of the Prior Town Bonds (the "Escrow Agreement"), (ii) to adopt or enter into the Proceedings, (iii) to issue, sell and deliver the Town Refunding Bonds to the Authority as provided herein, and (iv) to carry out and consummate the transactions on its part contemplated by this Bond Purchase Contract, the Escrow Agreement and the Proceedings;

(b) The Town has complied, and will on the Closing Date be in compliance in all respects, with the Proceedings;

(c) By official action of the Town prior to or concurrently with the acceptance hereof, the Town has duly adopted the Town Bond Resolution, has duly authorized and approved the execution and delivery by the Town of, and the performance by the Town of the obligations on its part contained in, the Town Bond Resolution, the Town Refunding Bonds, this Bond Purchase Contract and the Escrow Agreement, and has duly authorized and approved the performance by the Town of its obligations contained in the Town Bond Resolution and the other Proceedings;

(d) The execution and delivery of this Bond Purchase Contract, the Escrow Agreement and the Town Refunding Bonds, the adoption of the Town Bond Resolution and the adoption or entering into of the other Proceedings, and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or a default under any applicable law or administrative regulation of the State of California or the United States, or any applicable judgment, decree, agreement or other instrument to which the Town is a party or is otherwise subject;

(f) There is no action, suit, proceeding or investigation before or by any court, public board or body pending or, to the knowledge of the Town, threatened, wherein an unfavorable decision, ruling or finding would: (i) affect the creation, organization, existence or powers of the Town or the titles of its members and officers to their respective offices, (ii) enjoin or restrain the issuance, sale and delivery of the Town Refunding Bonds, the property tax revenues which secure the Town Refunding Bonds, or the pledge thereof under the Town Bond Resolution, (iii) in any way question or affect any of the rights, powers, duties or obligations of the Town with respect to the moneys pledged or to be pledged to pay the principal of, premium, if any, or interest on the Town Refunding Bonds, (iv) in any way question or affect any authority for the issuance of the Town Refunding Bonds, or the validity or enforceability of the Town Refunding Bonds, the Town Bond Resolution or the other Proceedings, or (v) in any way question or affect this Bond Purchase Contract or the transactions contemplated by this Bond Purchase Contract, the Town Bond Resolution or any other agreement or instrument to which the Town is a party relating to the Town Refunding Bonds;

(g) The issuance and sale of the Town Refunding Bonds is not subject to any transfer or other documentary stamp taxes of the State of California or any political subdivision thereof;

(h) Any certificate signed by any official of the Town authorized to do so shall be deemed a representation and warranty by the Town to the Authority as to the statements made therein.

10. At 8:00 A.M., Pacific Time, on the Closing Date, or at such other time or on such other date as is mutually agreed by the Town and the Authority, the Town will deliver the Town Refunding Bonds to the Trustee, on behalf of the Authority, in definitive form, duly executed, together with the other documents hereinafter mentioned, and, subject to the terms and conditions hereof, the Authority will accept such delivery and pay the purchase price of the Town Refunding Bonds, as referenced in paragraph 2 hereof, but solely from the available proceeds referenced in paragraph 4 hereof, by wire transfer or other funds which are good funds on the Closing Date payable to the order of U.S. Bank National Association, as paying agent Delivery and payment, as aforesaid, shall be made at such place as shall have been mutually agreed upon by the Town and the Authority.

11. The Authority has entered into this Bond Purchase Contract in reliance upon the representations, warranties and agreements of the Town contained herein and to be contained

in the documents and instruments to be delivered on the Closing Date, and upon the performance by the Town of its obligations hereunder, both as of the date hereof and as of the Closing Date. Accordingly, the Authority's obligations under this Bond Purchase Contract to purchase, to accept delivery of and to pay for the Town Refunding Bonds shall be subject to the performance by the Town of its obligations to be performed hereunder and under such documents and instruments at or prior to the Closing Date, and shall also be subject to the following conditions:

(a) The representations and warranties of the Town contained herein shall be true and correct on the date hereof and on and as of the Closing Date, as if made on the Closing Date;

(b) On the Closing Date the Proceedings shall be in full force and effect, and shall not have been amended, modified or supplemented, except as may have been agreed to by both the Town and the Authority;

(c) As of the Closing Date, all official actions of the Town relating to the Proceedings shall be in full force and effect, and there shall have been taken all such actions as, in the opinion of Quint & Thimmig LLP, bond counsel ("Bond Counsel"), shall be necessary or appropriate in connection therewith, with the issuance of the Authority Bonds and the Town Refunding Bonds, and with the transactions contemplated hereby;

(d) The Authority shall have the right to terminate the Authority's obligations under this Bond Purchase Contract to purchase, to accept delivery of and to pay for the Town Refunding Bonds by notifying the Town of its election to do so if, after the execution hereof and prior to the Closing Date: (i) either the marketability of the Authority Bonds or the market price of the Authority Bonds, in the opinion of the Authority, has been materially and adversely affected by any decision issued by a court of the United States (including the United States Tax Court) or of the State of California, by any ruling or regulation (final, temporary or proposed) issued by or on behalf of the Department of the Treasury of the United States, the Internal Revenue Service, or other governmental agency of the United States, or any governmental agency of the State of California, or by a tentative decision with respect to legislation reached by a committee of the House of Representatives or the Senate of the Congress of the United States, or by legislation enacted by, pending in, or favorably reported to either the House of Representatives or the Senate of the Congress of the United States or either house of the Legislature of the State of California, or formally proposed to the Congress of the United States by the President of the United States or to the Legislature of the State of California by the Governor of the State of California in an executive communication, affecting the tax status of the Authority or the Town, their property or income, their bonds (including the Authority Bonds) or the interest thereon, or any tax exemption granted or authorized by the Bond Law; (ii) the United States shall have become engaged in: hostilities which have resulted in a declaration of war or national emergency, or there shall have occurred any other outbreak of hostilities, or a local, national or international calamity or crisis, financial or otherwise, the effect of such outbreak, calamity or crisis being such as, in the reasonable opinion of the Authority, would affect materially and adversely the ability of the Authority to market the Authority Bonds (it being agreed by the Authority that there is no outbreak, calamity or crisis of such a character as of the date hereof); (iii) there shall have occurred a general suspension of trading on the New York Stock Exchange or the declaration of a general banking moratorium by the United States, New York State or California State authorities; (iv) there shall have occurred a withdrawal or downgrading of any rating assigned to any securities of the Town by a national municipal bond rating agency; or (v) any Federal or California court, authority or regulatory body shall take action materially and adversely affecting the ability of the Town to receive property tax revenues; and

(e) On or prior to the Closing Date, the Authority shall have received each of the following documents:

(1) Opinion or opinions, in form and substance satisfactory to Bond Counsel, dated as of the Closing Date, of Bond Counsel to the Town approving the validity of the Town Refunding Bonds;

(2) A letter or letters of Bond Counsel, dated the date of the Closing and addressed to the Authority, to the effect that the opinion referred to in the preceding subparagraph (1) may be relied upon by the Authority to the same extent as if such opinion were addressed to it;

(3) A supplementary opinion or opinions, dated the date of the Closing and addressed to the Authority, of Bond Counsel to the effect that (i) this Bond Purchase Contract and the Escrow Agreement have been duly authorized, executed and delivered by, and, assuming due authorization, execution and delivery by the other parties thereto, constitute the legal, valid and binding agreements of the Town enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy and insolvency proceedings or by the application of equitable principles if equitable remedies are sought; and (ii) the Town Refunding Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Town Bond Resolution is exempt from qualification under the Trust Indenture Act of 1939, as amended;

(4) A certificate or certificates dated the Closing Date, addressed to the Authority, signed by a Town official having knowledge of the facts to the effect that:

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

(ii) There is no action, suit, proceeding or investigation before or by any court, public board or body pending or threatened, wherein an unfavorable decision, ruling or finding would: (A) affect the creation, organization, existence or powers of the Town, or the titles of its members and officers to their respective offices, (B) enjoin or restrain the issuance, sale and delivery of the Town Refunding Bonds, the property tax revenues or any other moneys or property pledged or to be pledged under the Town Bond Resolution, or the pledge thereof, (C) in any way question or affect any of the rights, powers, duties or obligations of the Town with respect to the moneys and assets pledged or to be pledged to pay the principal of, premium, if any, or interest on the Town Refunding Bonds, (D) in any way question or affect any authority for the issuance of the Town Refunding Bonds, or the validity or enforceability of the Town Refunding Bonds or the Proceedings, or (E) in any way question or affect this Bond Purchase Contract, the Escrow Agreement or the transactions on the part of the Town contemplated by this Bond Purchase Contract or the Proceedings; and

(iii) The Town has complied with all agreements, covenants and arrangements, and satisfied all conditions, on its part to be complied with or satisfied hereunder, under the Town Bond Resolution on or prior to the Closing Date;

(5) Such additional legal opinions, certificates, instruments and documents as the Authority may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the Town's representations and warranties contained herein.

In addition to the foregoing, the Town shall on the Closing Date provide the Proceedings, certified by authorized officers of the Town as true copies and as having been adopted or executed (as applicable), with only such amendments, modifications or supplements as may have been agreed to by the Authority.

All of the opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Bond Purchase Contract shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Authority, but the approval of the Authority shall not be unreasonably withheld. Receipt of, and payment for, the Town Refunding Bonds shall constitute evidence of the satisfactory nature of such as to the Authority. The performance of any and all obligations of the Town hereunder and the performance of any and all conditions contained herein for the benefit of the Authority may be waived by the Executive Director of the Authority in his sole discretion.

If the Town shall be unable to satisfy the conditions to the obligations of the Authority to purchase, accept delivery of and pay for the Town Refunding Bonds contained in this Bond Purchase Contract, or if the obligations of the Authority to purchase, accept delivery of and pay for the Authority Bonds shall be terminated for any reason permitted by this Bond Purchase Contract, this Bond Purchase Contract shall terminate, and neither the Authority nor the Town shall be under further obligation hereunder, except that the respective obligations of the Town and the Authority set forth in paragraphs 13 and 14 hereof shall continue in full force and effect.

12. The Authority shall be under no obligation to pay, and the Town shall pay all expenses of the Town and the Authority incident to the performance of the Town's and the Authority's obligations hereunder including, but not limited to: (i) the cost of the preparation of, and all other costs of issuance of, the Town Refunding Bonds and the Authority Bonds; (ii) the fees and disbursements of Bond Counsel; and (iii) the fees and disbursements of accountants, advisers and of any other experts or consultants retained by the Town or the Authority.

13. The Authority and the Town hereby confirm that the purchase of the Town Refunding Bonds by the Authority hereunder will not violate any of the restrictions set forth in section 6592.5 of the Bond Law.

14. The Town hereby agrees to pay all costs of administration of the Authority and the Trustee related to the Authority Bonds.

15. This Bond Purchase Contract is made solely for the benefit of the Town and the Authority (including their successors and assigns), and no other person shall acquire or have any right hereunder or by virtue hereof. All of the Town's representations, warranties and agreements contained in this Bond Purchase Contract shall remain operative and in full force and effect regardless of: (i) any investigations made by or on behalf of the Authority or the Trustee, or (ii) delivery of and payment for the Town Refunding Bonds pursuant to this Bond Purchase Contract. The agreements contained in this paragraph and in paragraph 13 hereof shall survive any termination of this Bond Purchase Contract.

16. This Bond Purchase Contract may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

17. In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof.

18. The validity, interpretation and performance of this Bond Purchase Contract shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the Authority and the Town have each caused this Bond Purchase Contract to be executed by their duly authorized officers all as of the date first above written.

FAIRFAX FINANCING AUTHORITY

By \_\_\_\_\_  
Garrett Toy  
Executive Director

TOWN OF FAIRFAX

By \_\_\_\_\_  
Garrett Toy  
Town Manager

**EXHIBIT A**

\$ \_\_\_\_\_  
Town of Fairfax  
(Marin County, California)  
2016 General Obligation Refunding Bonds

Maturity Date: August 1, 2027

Interest rate: \_\_\_\_\_% per annum

**REDEMPTION PROVISIONS**

*Optional Redemption.* The Bonds are subject to redemption by the Town, subject to the receipt of consent by the Authority. The Authority shall not consent to the optional redemption of any of the Bonds unless it shall first have obtained a certificate of an Independent Financial Consultant (as defined in the Indenture) which:

(i) specifies (A) the premium, if any, to be paid by the Town in connection with such optional redemption, and (B) the principal amount and redemption date and price of any Authority Bonds to be redeemed as a result of the optional redemption of the Bonds; and

(ii) concludes that, based upon the information supplied in clauses (i)(A) and (B) above, and in reliance upon the Trustee, the Paying Agent, the Town and the Authority implementing the redemption of the Bonds and the Authority Bonds in a manner consistent with such information, the aggregate of the scheduled principal and interest due on the Bonds which remain Outstanding (as defined in the Town Resolution) following such redemption will be sufficient in time and amount to timely pay the principal and interest due on the Authority Bonds which will remain Outstanding following any redemption of the Bonds to occur as a result of the optional redemption of the Bonds.

*Mandatory Sinking Fund Redemption.* The Bonds are subject to mandatory sinking fund redemption prior to their stated maturity date, at the principal amount thereof without premium on each August 1, commencing August 1, 2016, to and including August 1, 2027, in the principal amounts as set forth in the following table:

<u>Date of Sinking Fund Redemption</u>	<u>Sinking Fund Installment Amount</u>
8/1/16	
8/1/17	
8/1/18	
8/1/19	
8/1/20	
8/1/21	
8/1/22	
8/1/23	
8/1/24	
8/1/25	
8/1/26	
8/1/27	

† Maturity

\$ \_\_\_\_\_  
**FAIRFAX FINANCING AUTHORITY**  
**Revenue Bonds, Series 2016**  
**(Town of Fairfax General Obligation Bond Refinancing Program)**

**BOND PURCHASE AGREEMENT**

\_\_\_\_\_, 2016

Fairfax Financing Authority  
 142 Bolinas Road  
 Fairfax, California 94930

Ladies and Gentlemen:

\_\_\_\_\_ (the "Purchaser"), offers to enter into this Bond Purchase Agreement (the "Bond Purchase Agreement") with the Fairfax Financing Authority (the "Authority") which, upon your acceptance hereof, will be binding upon the Authority and the Purchaser. This offer is made subject to the written acceptance of this Bond Purchase Agreement by the Authority and delivery of such acceptance to us at or prior to 11:59 P.M., California time, on the date hereof.

1. Purchase and Sale of the Authority Bonds. Upon the terms and conditions and in reliance upon the representations, warranties and agreements herein set forth, the Purchaser hereby agrees to purchase from the Authority, and the Authority hereby agrees to sell to the Purchaser, all (but not less than all) of the Authority's \$\_\_\_\_\_ Revenue Bonds, Series 2016 (Town of Fairfax General Obligation Bond Refinancing Program) (the "Authority Bonds").

The purchase price for the Authority Bonds shall be \$\_\_\_\_\_ (being equal to the aggregate initial principal amount of the Authority Bonds).

The Authority acknowledges and agrees that: (a) the purchase and sale of the Authority Bonds pursuant to this Bond Purchase Agreement is an arm's-length commercial transaction between the Authority and the Purchaser, (b) in connection with such transaction, the Purchaser is acting solely as a principal and not as an advisor (including, without limitation, a Municipal Advisor (as such term is defined in section 975(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act)), agent or a fiduciary of the Authority, (c) the Purchaser has not assumed a fiduciary responsibility in favor of the Authority with respect to its purchasing of the Authority Bonds or the process leading thereto (whether or not the Purchaser, or any affiliate of the Purchaser, has advised or is currently advising the Authority on other matters) or any other obligation to the Authority except the obligations expressly set forth in this Bond Purchase Agreement, (d) the Purchaser has financial and other interests that differ from those of the Authority, and (e) the Authority has consulted with its own legal and municipal advisors to the extent it deemed appropriate in connection with the sale of the Authority Bonds.

2. The Authority Bonds. Except as hereinafter described, the Authority Bonds shall be as described in, and shall be issued and secured pursuant to the provisions of (a) an Indenture of Trust, dated as of May 1, 2016 (the "Indenture"), between the Authority and U.S. Bank National Association, as trustee (the "Trustee"); and (b) the provisions of Article 4 (commencing with section 6584) of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Bond Law"). The Authority Bonds shall be issued, authenticated and delivered under and in accordance with the provisions of this Bond Purchase Agreement, the Indenture and Resolution No. \_\_\_\_ of the Authority, adopted by the Board of Directors of the Authority on April 6, 2016 (the "Resolution").

The Authority Bonds are being issued to (a) purchase the Town of Fairfax, California, 2016 General Obligation Refunding Bonds (the "Town Refunding Bonds"), issued by the Town of Fairfax (the "Town"), (b) finance the acquisition and construction of public capital improvements in the Town and (c) pay the costs of issuance of the Authority Bonds. The Town Refunding Bonds are being issued by the Town to refinance an existing series of general obligation bonds of the Town issued in 2006.

The Authority Bonds will be dated the date of delivery and accrue interest at the rate of \_\_\_\_% per annum from such date, payable semiannually on February 1 and August 1 of each year, commencing on August 1, 2016. The Authority Bonds will mature August 1, 2027, will be subject to mandatory sinking payment redemption as provided in the Indenture, and will be subject to optional redemption on any date on or after August 1, \_\_\_\_\_, from any available funds at the principal amount thereof together with accrued interest to the date of redemption, without premium.

The Authority Bonds will be issued as fully registered bonds, without coupons, in integral multiples of \$1.

3. Private Placement; Authority Bonds Constitute Investment of Purchaser.

(a) The Purchaser has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other obligations of a nature similar to the Authority Bonds to be able to evaluate the risks and merits of the investment represented by the purchase of the Authority Bonds.

(b) The Purchaser is acquiring the Authority Bonds for its own account and not with a view to, or for sale in connection with, any distribution thereof or any part thereof. The Purchaser has not offered to sell, solicited offers to buy, or agreed to sell the Authority Bonds or any part thereof, and the Purchaser has no current intention of reselling or otherwise disposing of the Authority Bonds *provided, however*, such representation shall not preclude the Purchaser from transferring or selling of the Authority Bonds in accordance with the provisions of the Indenture. The Purchaser is not acting in a broker-dealer capacity in connection with its purchase of the Authority Bonds. The Purchaser has required, as a condition to the purchase of the Authority Bonds, that no application be made for the assignment of CUSIP numbers or to make the Authority Bonds DTC eligible. The Purchaser intends to book and hold the Authority Bonds as a loan in its loan portfolio.

(c) As a sophisticated investor, the Purchaser has made its own credit inquiry and analysis with respect to the Authority and the Authority Bonds and has made an independent credit decision based upon such inquiry and analysis and in reliance on the truth, accuracy, and completeness of the representations and warranties of the Authority set forth in the Indenture and this Bond Purchase Agreement and in the information set forth in any materials submitted to the Purchaser by the Authority. The Authority has furnished to the Purchaser all the information which the Purchaser, as a reasonable investor, has requested of the Authority

as a result of the Purchaser having attached significance thereto in making its investment decision with respect to the Authority Bonds and the Purchaser has had the opportunity to ask questions of and receive answers from knowledgeable individuals concerning the Authority, the Town Refunding Bonds (as defined in the Indenture), and the Authority Bonds. The Purchaser is able and willing to bear the economic risk of the purchase and ownership of the Authority Bonds.

(d) The Purchaser understands that the Authority Bonds have not been registered under the United States Securities Act of 1933 (the "Securities Act") or under any state securities laws. The Purchaser agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any disposition of the Authority Bonds by it, and further acknowledges that any current exemption from registration of the Authority Bonds does not affect or diminish such requirements.

(e) The Purchaser has authority to purchase the Authority Bonds and to execute this Bond Purchase Agreement and any other instruments and documents required to be executed by the Purchaser in connection with its purchase of the Authority Bonds. The undersigned is a duly appointed, qualified, and acting officer of the Purchaser and is authorized to cause the Purchaser to make the representations and warranties contained herein by execution of this Bond Purchase Agreement on behalf of the Purchaser.

(f) The Purchaser has been informed that the Authority Bonds (i) have not been and will not be registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any jurisdiction, and (ii) will not be listed on any stock or other securities exchange.

(g) The Purchaser acknowledges that the Authority Bonds are exempt from the requirements of Rule 15c2-12 of the Securities and Exchange Commission and that the Authority has not undertaken to provide any continuing disclosure with respect to the Authority Bonds, except as may be provided in the Indenture.

6. Closing. At 8:00 A.M., California time, on May 4, 2016, or at such other time or on such other date as shall have been mutually agreed upon by you and us (the "Closing"), you will deliver to us the Authority Bonds in fully registered form, duly executed and registered, and you will deliver in the offices of Quint & Thimmig LLP, Bond Counsel, in Larkspur, California, the other documents hereinafter mentioned; and we will accept such delivery and pay the purchase price thereof in immediately available funds by wire transfer to or upon the order of the Trustee, on behalf of the Authority.

7. Representations, Warranties and Agreements of the Authority. The Authority hereby represents, warrants and agrees with the Purchaser that:

(a) *Due Organization*. The Authority is a joint exercise of powers agency duly organized and validly existing under the laws of the State of California, with the power to issue Bonds pursuant to the Bond Law and the Refunding Law.

(b) *Due Authorization*. At or prior to the Closing, (i) the Authority will have taken all action required to be taken by it to authorize the issuance and delivery of the Authority Bonds; (ii) the Authority will have full legal right, power and authority to enter into the Indenture, this Bond Purchase Agreement and that certain bond purchase agreement, dated the date hereof, by and between the Town and the Authority, pursuant to which the Authority agrees to purchase, and the Town agrees to sell, the Town Refunding Bonds to the Authority (the "Town Bond Purchase Agreement"), to adopt the Resolution, to execute and deliver this Bond Purchase Agreement, the Town Bond Purchase Agreement and the Indenture, to perform its obligations under each such document or instrument, and to carry out and effectuate the

transactions on its part contemplated by this Bond Purchase Agreement, the Town Bond Purchase Agreement and the Indenture; (iii) the execution and delivery by the Authority of, and the performance by the Authority of the obligations on its part contained in the Authority Bonds, the Indenture, this Bond Purchase Agreement and the Town Bond Purchase Agreement will have been duly authorized and such authorization shall be in full force and effect at the time of the Closing; (iv) this Bond Purchase Agreement, the Town Bond Purchase Agreement and the Indenture will constitute valid and legally binding obligations of the Authority; and (v) the Authority will have duly authorized the consummation by it of all transactions on its part contemplated by this Bond Purchase Agreement, the Town Bond Purchase Agreement and the Indenture. The Authority will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of the Indenture, this Bond Purchase Agreement or the Town Bond Purchase Agreement without the prior written consent of the Purchaser prior to the Closing Date.

(c) *Consents.* Other than the adoption of the Resolution, no consent, approval, authorization, order, filing, registration, qualification, election or referendum of or by any court or governmental agency or public body whatsoever is required in connection with the issuance, delivery or sale of the Authority Bonds or the consummation of the other transactions on the part of the Authority contemplated herein or hereby, except for such actions as may be necessary to qualify the Authority Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and jurisdictions of the United States as the Purchaser may reasonably request, or which have been taken or obtained prior to the date hereof; *provided, however*, that the Authority shall not be required to subject itself to service of process in any jurisdiction in which it is not so subject as of the date hereof.

(d) *Internal Revenue Code.* The Authority has covenanted in the Indenture to comply with the Internal Revenue Code of 1986, as amended, as it pertains to the tax-exempt nature of the interest on the Authority Bonds.

(e) *No Conflicts.* To the best knowledge of the Authority, the issuance of the Authority Bonds, and the execution, delivery and performance of this Bond Purchase Agreement, the Town Bond Purchase Agreement, the Indenture and the Authority Bonds, and the compliance by the Authority with the provisions hereof do not conflict with or constitute on the part of the Authority a violation of or default under the Constitution of the State of California or any existing law, charter, ordinance, regulation, decree, order or resolution and do not conflict with or result in a violation or breach of, or constitute a default under, any agreement, indenture, mortgage, lease or other instrument to which the Authority is a party or by which it is bound or to which it is subject.

(f) *Litigation.* As of the time of acceptance hereof by the Authority, there is no action, suit, proceeding, hearing or investigation pending with respect to which the Authority has been served with process or, to the best knowledge of the Authority, threatened against the Authority: (i) in any way affecting the existence of the Authority or in any way challenging the respective powers of the several officers of the Authority; or (ii) seeking to restrain or enjoin the sale, issuance or delivery of any of the Authority Bonds, the application of the proceeds of the sale of the Authority Bonds, or the collection of revenues pledged or to be pledged or available to pay the principal and interest on the Authority Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Authority Bonds, this Bond Purchase Agreement, the Town Bond Purchase Agreement or the Indenture or contesting the powers of the Authority or its authority with respect to the Authority Bonds, the Indenture, this Bond Purchase Agreement or the Town Bond Purchase Agreement; or (iii) in which a final adverse decision could (A) materially adversely affect the operations of the Authority or the consummation of the transactions on its part contemplated by this Bond Purchase Agreement, the Town Bond Purchase Agreement or the Indenture, (B) declare this Bond Purchase

Agreement or the Town Bond Purchase Agreement to be invalid or unenforceable in whole or in material part, or (C) adversely affect the exclusion of the interest paid on the Authority Bonds from gross income of the owner of the Authority Bonds for federal income tax purposes and the exemption of such interest from California personal income taxation.

(g) *No Other Debt.* Between the date hereof and the Closing, without the prior written consent of the Purchaser, the Authority will not have issued any bonds or notes, or have delivered any certificates of participation.

(h) *Arbitrage Certificate.* the Authority has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the Authority is a bond issuer whose arbitrage certificates may not be relied upon.

(i) *Certificates.* Any certificate signed by any officer of the Authority and delivered to the Purchaser shall be deemed a representation by the Authority to the Purchaser, but not by the person signing the same, as to the statements made therein.

8. Covenants of the Authority. The Authority covenants and agrees with the Purchaser that:

(a) *Securities Laws.* The Authority will furnish such information, execute such instruments, and take such other action in cooperation with the Purchaser if and as the Purchaser may reasonably request in order to qualify the Authority Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and jurisdictions, *provided, however,* that the Authority shall not be required to consent to service of process in any jurisdiction in which they are not so subject as of the date hereof; and

(b) *Application of Proceeds.* The Authority will apply the proceeds from the sale of the Authority Bonds for the purposes specified in the Indenture.

9. Conditions to Closing. The Purchaser has entered into this Bond Purchase Agreement in reliance upon the representations and warranties of the Authority contained herein and the performance by the Authority of its obligations hereunder, both as of the date hereof and as of the date of Closing. The Purchaser's obligations under this Bond Purchase Agreement are and shall be subject at the option of the Purchaser, to the following further conditions at the Closing:

(a) *Representations True.* The representations and warranties of the Authority contained herein shall be true and correct in all material respects at the date hereof and at and as of the Closing as if made at and as of the Closing, and the statements made in all certificates and other documents delivered to the Purchaser at the Closing pursuant hereto shall be true and correct in all material respects on the date of the Closing; and the Authority shall be in compliance with each of the agreements made by it in this Bond Purchase Agreement.

(b) *Obligations Performed.* At the time of the Closing, (i) this Bond Purchase Agreement, the Town Bond Purchase Agreement and the Indenture shall be in full force and effect and shall not have been amended, modified or supplemented except as may have been agreed to in writing by the Purchaser; (ii) all actions under the Bond Law and the Refunding Law which, in the opinion of Bond Counsel, shall be necessary in connection with the transactions contemplated hereby shall have been duly taken and shall be in full force and effect; and (iii) the Authority shall perform or have performed all of its obligations required under or specified in the Indenture, this Bond Purchase Agreement or the Town Bond Purchase Agreement to be performed at or prior to the Closing.

(c) *Adverse Rulings.* No decision, ruling or finding shall have been entered by any court or governmental authority since the date of this Bond Purchase Agreement (and not reversed on appeal or otherwise set aside), or to the best knowledge of the Authority, shall be pending or threatened, which has any of the effects described in Section 7(f) hereof.

(d) *Marketability.* Between the date hereof and the Closing, the market price of the Authority Bonds, at the sale price of the Authority Bonds, shall not have been materially adversely affected in the judgment of the Purchaser (evidenced by a written notice to the Authority terminating the obligation of the Purchaser to accept delivery of and pay for the Authority Bonds) by reason of any of the following:

(1) legislation enacted or introduced in the Congress or recommended for passage by the President of the United States, or a decision rendered by a court established under Article III of the Constitution of the United States or by the United States Tax Court, or an order, ruling, regulation (final, temporary or proposed) or official statement issued or made:

(i) by or on behalf of the United States Treasury Department, or by or on behalf of the Internal Revenue Service, with the purpose or effect, directly or indirectly, of causing inclusion in gross income for purposes of federal income taxation of the interest received by the owners of the Authority Bonds; or

(ii) by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction over the subject matter thereof, to the effect that the Authority Bonds, or obligations of the general character of the Authority Bonds, including any and all underlying arrangements, are not exempt from registration under the Securities Act of 1933, as amended;

(2) legislation enacted by the legislature of the State of California (the "State"), or a decision rendered by a court of the State, or a ruling, order, or regulation (final or temporary) made by State authority, which would have the effect of changing, directly or indirectly, the State tax consequences of interest on obligations of the general character of the Authority Bonds in the hands of the owners thereof;

(3) the declaration of war or engagement in major military hostilities by the United States, any outbreak or escalation of hostilities or the occurrence of any other national emergency or calamity relating to the effective operation of the government or the financial community in the United States;

(4) the declaration of a general banking moratorium by federal, New York or California authorities, or the general suspension of trading on any national securities exchange;

(5) the imposition by the New York Stock Exchange, other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the Authority Bonds, or obligations of the general character of the Authority Bonds, or securities generally, or the material increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of, the Purchaser; or

(6) an order, decree or injunction of any court of competent jurisdiction, or order, filing, regulation or official statement by the Securities and Exchange Commission, or any other governmental agency having jurisdiction over the subject matter thereof, issued or made to the effect that the issuance, offering or sale of

obligations of the general character of the Authority Bonds, or the issuance, offering or sale of the Authority Bonds, as contemplated hereby, is or would be in violation of the federal securities laws, as amended and then in effect.

(e) *Delivery of Documents.* At or prior to the date of the Closing, Bond Counsel shall deliver to the Purchaser at least two copies of the following documents, in each case dated as of the date of the Closing and satisfactory in form and substance to the Purchaser:

(1) **Bond Opinion.** An approving opinion of Bond Counsel as to the validity and tax-exempt status of the interest on the Authority Bonds, dated the date of the Closing, addressed to the Authority;

(2) **Reliance Letter.** A reliance letter from Bond Counsel to the effect that the Purchaser can rely upon the approving opinion described in (e)(1) above;

(3) **Supplemental Opinion.** A supplemental opinion of Bond Counsel, dated the date of the Closing, addressed to the Purchaser to the effect that:

(i) this Bond Purchase Agreement and the Town Bond Purchase Agreement have been duly executed and delivered by the Authority and, assuming due authorization, execution and delivery by and validity against the other respective party thereto, are valid and binding agreements of the Authority, subject to bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent conveyance and other laws relating to or affecting creditors' rights, to the application of equitable principles and to the exercise of judicial discretion in appropriate cases; and

(ii) the Authority Bonds are not subject to the registration requirements of the Securities Act and the Indenture is exempt from qualification under the Trust Indenture Act of 1939;

(4) **Certificates.** A certificate signed by an appropriate official of the Authority to the effect that (i) such official is authorized to execute this Bond Purchase Agreement, the Town Bond Purchase Agreement and the Indenture, (ii) the representations, agreements and warranties of the Authority herein are true and correct in all material respects as of the date of Closing, (iii) the Authority has complied with all the terms of the Resolution, the Indenture, the Town Bond Purchase Agreement and this Bond Purchase Agreement which are necessary to be complied with prior to or concurrently with the Closing and such documents are in full force and effect, and (iv) the Authority Bonds being delivered on the date of the Closing to the Purchaser under this Bond Purchase Agreement substantially conform to the description thereof contained in the Indenture;

(5) **Arbitrage.** A non-arbitrage certificate of the Authority in a form satisfactory to Bond Counsel;

(6) **Resolution.** A certificate, together with a fully executed copy of the Resolution, of the Secretary of the Authority to the effect that: (i) such copy is a true and correct copy of the Resolution; and (ii) that the Resolution was duly adopted and has not been modified, amended, rescinded or revoked and is in full force and effect on the date of the Closing;

(7) **Indenture and Town Bond Purchase Agreement.** Fully executed copies of the Indenture and of the Town Bond Purchase Agreement Agreement;

(8) **Purchaser's Certifications.** At or before Closing, and contemporaneously with the acceptance of delivery of the Authority Bonds and the payment of the purchase price thereof, the Purchaser will provide (or cause to be provided) to the Authority the receipt of the Purchaser, in form satisfactory to the Authority and signed by an authorized officer of the Purchaser, confirming delivery of the Authority Bonds to the Purchaser, receipt of all documents required by the Purchaser, and the satisfaction of all conditions and terms of this Bond Purchase Agreement by the Authority and confirming to the Authority that as of the Closing Date all of the representations of the Purchaser contained in this Bond Purchase Agreement are true and correct in all material respects; and

(9) **Other Documents.** Such additional legal opinions, certificates, proceedings, instruments and other documents as the Purchaser may reasonably request to evidence (i) compliance by the Authority with applicable legal requirements, (ii) the truth and accuracy, as of the time of Closing, of the representations of the Authority herein contained, and (iii) the due performance or satisfaction by the Authority at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Authority hereunder.

(f) *Termination.* Notwithstanding anything to the contrary herein contained, if for any reason whatsoever the Authority Bonds shall not have been delivered by the Authority to the Purchaser prior to the close of business, Pacific Daylight Savings Time, on May 4, 2016, then the obligation to purchase Bonds hereunder shall terminate and be of no further force or effect except with respect to the obligations of the Authority and the Purchaser under Section 11 hereof.

If the Authority shall be unable to satisfy the conditions to the Purchaser's obligations contained in this Bond Purchase Agreement or if the Purchaser's obligations shall be terminated for any reason permitted by this Bond Purchase Agreement, this Bond Purchase Agreement may be canceled by the Purchaser at, or at any time prior to, the time of Closing. Notice of such cancellation shall be given to the Authority in writing, or by telephone or telegraph, confirmed in writing. Notwithstanding any provision herein to the contrary, the performance of any and all obligations of the Authority hereunder and the performance of any and all conditions contained herein for the benefit of the Purchaser may be waived by the Purchaser in writing in its sole discretion.

10. Conditions to Obligations of the Authority. The performance by the Authority of its obligations hereunder is conditioned upon (a) the performance by the Purchaser of its obligations hereunder; and (b) receipt by the Authority and the Purchaser of opinions and certificates being delivered at the Closing by persons and entities other than the Authority.

11. Costs and Expenses. All out-of-pocket expenses of the Purchaser, including the California Debt and Investment Advisory Commission fee applicable to the Authority Bonds, and the fees of any Purchaser's counsel and other expenses incurred by the Purchaser, shall be paid by the Purchaser.

12. Notices. Any notice or other communication to be given under this Bond Purchase Agreement (other than the acceptance hereof as specified in the first paragraph hereof) may be given by delivering the same in writing if to the Authority, to its Treasurer at its address above, or if to the Purchaser to \_\_\_\_\_, \_\_\_\_\_, Attention: \_\_\_\_\_.

13. Parties in Interest; Survival of Representations and Warranties. This Bond Purchase Agreement, when accepted by the Authority in writing, shall constitute the entire agreement between the Authority and the Purchaser with respect to the subject matter hereof. This Bond

Purchase Agreement is made solely for the benefit of the Authority and the Purchaser (including the successors or assigns of the Purchaser). No other person shall acquire or have any rights hereunder or by virtue hereof. All representations, warranties and agreements of the Authority in this Bond Purchase Agreement shall survive regardless of (a) any investigation or any statement in respect thereof made by or on behalf of the Purchaser, (b) delivery of and payment by the Purchaser for the Authority Bonds hereunder, and (c) any termination of this Bond Purchase Agreement.

14. Execution in Counterparts. This Bond Purchase Agreement may be executed in several counterparts each of which shall be regarded as an original and all of which shall constitute but one and the same document.

15. Applicable Law. This Bond Purchase Agreement shall be interpreted, governed and enforced in accordance with the laws of the State of California applicable to contracts made and performed in such State.

Very truly yours,

\_\_\_\_\_, as Purchaser

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

The foregoing is hereby agreed to and accepted as of the date first above written:

FAIRFAX FINANCING AUTHORITY

By \_\_\_\_\_  
Garrett Toy  
Executive Director

[Signature page to Bond Purchase Agreement for the Fairfax Financing Authority Revenue Bonds, Series 2016 (Town of Fairfax General Obligation Bond Refinancing Program)]

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**INDENTURE OF TRUST**

**by and between the**

**FAIRFAX FINANCING AUTHORITY**

**and**

**U.S. BANK NATIONAL ASSOCIATION, as Trustee**

**Dated as of May 1, 2016**

**Relating to:**

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

**Fairfax Financing Authority**

**Revenue Bonds, Series 2016**

**(Town of Fairfax General Obligation Refunding Bond Program)**

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EXHIBIT A – FORM OF AUTHORITY BONDS

## INDENTURE OF TRUST

THIS INDENTURE OF TRUST (this "Indenture"), made and entered into and dated as of May 1, 2016, is by and between the FAIRFAX FINANCING AUTHORITY, a joint powers authority organized and existing under the laws of the State of California (the "Authority"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America having a corporate trust office in San Francisco, California, and being qualified to accept and administer the trusts hereby created (the "Trustee").

### RECITALS:

WHEREAS, the Authority is a joint powers authority duly organized and existing under the laws of the State and is entitled to purchase personal and real property and to sell or lease such property, to contract for construction and improvements, to execute operating agreements regarding such property and to finance and refinance such projects, including financing in the form of the Authority issuing revenue obligations to finance acquisition of a client municipal corporation and general law city's obligations;

WHEREAS, the Authority was formed by the Town of Fairfax (the "Town") and the California Municipal Finance Authority to assist the Town with the issuance of taxable and tax-exempt financing

WHEREAS, the Town of Fairfax (the "Town") has heretofore issued its Town of Fairfax (Marin California, California) General Obligation Bonds, Series 2006, dated June 1, 2006, in the principal amount of \$1,765,000, of which \$1,255,000 is currently outstanding (the "Prior Town Bonds");

WHEREAS, pursuant to Article 9 of Chapter 3 (commencing with section 53550) of Division 2 of Title 5 of the California Government Code, the Town is empowered to issue general obligation refunding bonds, and the Town has determined to issue its Town of Fairfax (Marin County, California) 2016 General Obligation Bonds (the "Town Refunding Bonds") to refund the Prior Town Bonds;

WHEREAS, the Authority has determined to issue its Fairfax Financing Authority Revenue Bonds, 2016 Series A (Town of Fairfax General Obligation Refunding Bond Program) (the "Authority Bonds"), under the provisions of Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Bond Law"), the proceeds of which will be applied to (a) the purchase of the Town Refunding Bonds, and (b) the financing of capital improvements within the geographic boundaries of the Town; and

WHEREAS, the Authority Bonds are to be secured by a pledge of and first lien on the revenues to be derived from the Town Refunding Bonds, which revenues are designed to be sufficient in time and amount to pay the principal of and interest and premium (if any) on the Authority Bonds as it becomes due and payable; and

WHEREAS, the Town Council of the Town held a public hearing, after due public notice, pursuant to section 6586.5(a)(2) of the Bond Law with respect to the public improvements to be financed with the proceeds of the Authority Bonds, all of which improvements are or will be located in the Town; and

WHEREAS, in order to provide for the authentication and delivery of the Authority Bonds, to establish and declare the terms and conditions upon which the Authority Bonds are to be issued and to secure the payment of the principal thereof, premium (if any) and interest thereon, the Authority has authorized the execution and delivery of this Indenture; and

WHEREAS, the Authority has found and determined, and hereby affirms, that all acts and proceedings required by law necessary to make the Authority Bonds, when executed by the Authority, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Authority, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Indenture have been in all respects duly authorized.

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

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of and the interest and premium (if any) on all Bonds at any time issued and Outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Authority Bonds are to be issued and repaid, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Authority Bonds by the Owners thereof, and for other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Authority does hereby covenant and agree with the Trustee, for the benefit of the respective Owners from time to time of the Authority Bonds, as follows:

## ARTICLE I

### DEFINITIONS; AUTHORIZATION AND PURPOSE OF AUTHORITY BONDS; EQUAL SECURITY

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section 1.01 shall for all purposes of this Indenture and of any Supplemental Indenture and of the Authority Bonds and of any certificate, opinion, request or other documents herein mentioned have the meanings herein specified.

*"Act"* means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code, as in existence on the Closing Date or as thereafter amended from time to time.

*"Authority"* means the Fairfax Financing Authority, a joint powers authority duly organized and existing under the laws of the State and a joint exercise of powers agreement, by and between the Town and the California Municipal Finance Authority.

*"Board"* means the Board of Directors of the Authority.

*"Bond Counsel"* means (a) Quint & Thimmig LLP, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Town of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Tax Code.

*"Bond Law"* means the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 of the Act (commencing with Section 6584), as in existence on the Closing Date or as thereafter amended from time to time.

*"Bond Year"* means each twelve-month period extending from August 2 in one calendar year to August 1 of the succeeding calendar year, both dates inclusive; except that the first Bond Year shall begin on the Closing Date and end on August 1, 2016.

*"Bonds"* means the \$\_\_\_\_\_ aggregate principal amount of Fairfax Financing Authority Revenue Bonds, Series 2016 (Town of Fairfax General Obligation Refunding Bond Program), Series 2016, authorized by and at any time Outstanding pursuant to the Bond Law and this Indenture.

*"Business Day"* means a day of the year, other than a Saturday or Sunday, or legal holiday on which banks in the State of California are required or authorized to remain closed.

*"Certificate of the Authority"* means a certificate in writing signed by the Chairman, Executive Director, Secretary or Treasurer of the Authority, or by any other officer of the Authority duly authorized by the Board for that purpose, written notice of which shall be given to the Trustee.

*"Closing Date"* means May 4, 2016, being the date of delivery of the Authority Bonds to the original purchaser thereof.

*"Costs of Issuance"* means all items of expense directly or indirectly payable by or reimbursable to the Authority or the Town relating to the authorization, issuance, sale and delivery of the Authority Bonds and the Town Refunding Bonds and the refunding and

prepayment of the Prior Town Bonds (as defined in the recitals hereto), including but not limited to printing expenses, operating expenses, rating agency fees, filing and recording fees, initial fees and charges and first annual administrative fee of the Trustee and fees and expenses of its counsel, Escrow Bank fees and those of its counsel, fees, charges and disbursements of attorneys, financial advisors, fiscal consultants, accounting firms, consultants and other professionals, fees and charges for preparation, execution and safekeeping of the Authority Bonds and any other cost, charge or fee in connection with the issuance of the Authority Bonds and the refunding and prepayment of the Prior Town Bonds.

*"Costs of Issuance Fund"* means the fund by that name established and held by the Trustee pursuant to Section 3.05.

*"County"* means the County of Marin, a political subdivision organized and existing under the laws of the State.

*"Excess Investment Earnings"* means the amount of excess investment earnings determined to be subject to rebate to the United States of America with respect to the investment of the gross proceeds of the Authority Bonds, determined pursuant to Section 148(f) of the Tax Code.

*"Event of Default"* means any of the events described in Section 8.01.

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

*"Federal Securities"* means direct and general obligations of the United States of America, or those which are unconditionally guaranteed as to principal and interest by the same.

*"Fiscal Year"* means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the Authority as its official fiscal year period.

*"Indenture"* means this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture pursuant to the provisions hereof.

*"Independent Accountant"* means any certified public accountant or firm of certified public accountants appointed and paid by the Authority, and who, or each of whom (a) is in fact independent and not under domination of the Authority or the Town; (b) does not have

any substantial interest, direct or indirect, in the Authority or the Town; and (c) is not connected with the Authority or the Town as an officer or employee of the Authority or the Town but who may be regularly retained to make annual or other audits of the books of or reports to the Authority or the Town.

*"Independent Financial Consultant"* means any financial consultant or firm of such consultants appointed and paid by the Town, and who, or each of whom: (a) is in fact independent and not under domination of the Authority or the Town; (b) does not have any substantial interest, direct or indirect, in the Authority or the Town; and (c) is not an officer or employee of the Authority or the Town.

*"Interest Account"* means the account by that name established and held by the Trustee pursuant to Section 4.02(b)(i).

*"Interest Payment Date"* means February 1 and August 1 in each year, beginning August 1, 2016, and continuing thereafter so long as any Bonds remain Outstanding.

*"Maximum Annual Debt Service"* means, as of the date of calculation, the maximum amount obtained by totaling, for the current or any future Bond Year, the sum of: (a) the principal amount of all Outstanding Bonds maturing in such Bond Year; and (b) the interest which would be due during such Bond Year on the aggregate principal amount of Authority Bonds which would be Outstanding in such period if the Authority Bonds are retired as scheduled, but deducting and excluding from such aggregate principal amount the aggregate principal amount of Authority Bonds no longer Outstanding.

*"Moody's"* means Moody's Investors Service, its successors and assigns.

*"Outstanding"*, when used as of any particular time with reference to Bonds, means all Bonds theretofore executed, issued and delivered by the Authority under this Indenture except (a) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation, (b) Bonds paid or deemed to have been paid within the meaning of Section 9.03 (but subject to the last paragraph of Section 9.03), and (c) Bonds in lieu of or in substitution for which other Bonds shall have been executed, issued and delivered pursuant to this Indenture or any Supplemental Indenture.

*"Owner"*, when used with respect to any Bond, means the person in whose name the ownership of such Bond shall be registered on the Registration Books.

*"Permitted Investments"* means any of the following which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein, but only to the extent that the same are acquired at Fair Market Value (provided the Trustee may rely upon the Request of the Authority directing investment hereunder as a determination that such investment is a Permitted Investment):

*"Permitted Investments"* means:

(a) Federal Securities.

(b) Notes, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. U.S. Export-Import Bank (Eximbank)

Direct obligations or fully guaranteed certificates of beneficial ownership

2. U.S. Farmers Home Administration (FmHA)  
Certificates of Beneficial Ownership
3. Federal Financing Bank
4. Federal Housing Administration Debentures (FHA)
5. General Services Administration  
Participation Certificates
6. Government National Mortgage Association (GNMA or Ginnie Mae)  
GNMA—guaranteed mortgage-backed bonds  
GNMA—guaranteed pass-through obligations
7. U.S. Maritime Administration  
Guaranteed Title XI financing
8. U.S. Department of Housing and Urban Development (HUD)  
Project Notes  
Local Agency Notes  
New Communities Debentures - U.S. government guaranteed debentures  
U.S. Public Housing Notes and 2010 Notes - U.S. government guaranteed public housing notes and bonds

(c) Notes, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies which are not backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. Federal Home Loan Bank System  
Senior debt obligations
2. Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac)  
Participation Certificate  
Senior debt obligations
3. Federal National Mortgage Association (FNMA or Fannie Mae)  
Mortgage-backed securities and senior debt obligations
4. Student Loan Marketing Association (SLMA or Sallie Mae)  
Senior debt obligations
5. Resolution Funding Corp. (REFCORP) obligations
6. Farm Credit System  
Consolidated systemwide bonds and notes

(d) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, which, if rated by S&P, are rated in the highest rating category; and, if rated by Moody's, are rated in the highest rating category, including funds for which the Trustee, its parent holding company, if any, or any affiliates or subsidiaries provide investment advisory or other management services.

(e) Unsecured certificates of deposit, time deposits, demand deposits and bankers' acceptances of any bank (including those of the Trustee, its parent and its affiliates) the short-term obligations of which are rated on the date of purchase "A-1" or better by S&P and "P-1" by Moody's.

(f) Certificates of deposit secured at all times by collateral described in (a) and/or (b) above. Such certificates must be issued by commercial banks or savings and loan associations (including the Trustee or its affiliates). The collateral must be held by a third party and the Owners must have a perfected first security interest in the collateral.

(g) Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC and, to the extent such deposits are in excess of the amounts protected by FDIC insurance, secured at all times by collateral described in (a) and/or (b) above.

(h) Commercial paper rated, at the time of purchase, "Prime-1" by Moody's and "A-1" or better by S&P.

(i) Federal funds or bankers acceptances with a maximum term of 180 days of any bank which has an unsecured, uninsured and unguaranteed obligation rating at the time of investment of "Prime-1" or better by Moody's and "A-1" or better by S&P.

(j) The Local Agency Investment Fund of the State, created pursuant to 16429.1 of the California Government Code.

(k) The County pooled investment fund.

(l) Municipal obligations rated "A" or higher by S&P.

(m) Other forms of investments that satisfy the Town's Statement of Investment Policy as of the time of investment.

*"Principal Account"* means the account by that name established and held by the Trustee pursuant to Section 4.02(b)(ii).

*"Principal Prepayments"* means any amounts received by the Trustee representing (a) a redemption of any of the Town Refunding Bonds pursuant to the Town Bond Resolution, consisting of the principal amount of the Town Refunding Bonds being redeemed and any premium paid upon such redemption, or (b) the amount due upon acceleration of Town Refunding Bonds following a default under the terms of the Town Bond Resolution; but excluding in any event the amount of any regularly scheduled payments of principal of and interest on the Town Refunding Bonds paid concurrent therewith.

*"Project Fund"* means the fund by that name established and held by the Trustee pursuant to Section 3.04.

*"Purchase Fund"* means the fund by that name established and held by the Trustee pursuant to Section 3.03.

*"Rebate Account"* means the account established and held by the Trustee pursuant to Section 4.02(c).

*"Record Date"* means, with respect to any Interest Payment Date, the fifteenth (15th) calendar day of the month immediately preceding such Interest Payment Date, whether or not such day is a Business Day.

*"Registration Books"* means the records maintained by the Trustee pursuant to Section 2.07 for the registration and transfer of ownership of the Authority Bonds.

*"Request of the Authority"* means a request in writing signed by the Chair, Executive Director, Secretary or Treasurer of the Authority, or by any other officer of the Authority duly authorized by the Board for that purpose, written notice of which shall be given to the Trustee.

*"Revenue Fund"* means the fund by that name established and held by the Trustee pursuant to Section 4.02(a).

*"Revenues"* means: (a) all amounts derived from or with respect to the Town Refunding Bonds, including but not limited to all Principal Prepayments and other payments of principal thereof and interest thereon; (b) all moneys deposited and held from time to time by the Trustee in the funds and accounts established hereunder, other than the Rebate Account; and (c) income and gains with respect to the investment of amounts on deposit in the funds and accounts established hereunder, other than the Rebate Account.

*"S&P"* means Standard & Poor's Ratings Services, its successors and assigns.

*"State"* means the State of California.

*"Supplemental Indenture"* means any indenture, agreement or other instrument hereafter duly executed by the Authority and the Trustee in accordance with the provisions of Section 7.01.

*"Tax Code"* means the Internal Revenue Code of 1986, as amended. Any reference to a provision of the Tax Code shall include the applicable Tax Regulations with respect to such provision.

*"Tax Regulations"* means temporary and permanent regulations promulgated under or with respect to Section 103 and Sections 141 through 150, inclusive, of the Tax Code.

*"Town"* means the Town of Fairfax, a municipal corporation and general law city organized under the laws of the State, and any successor thereto.

*"Town Bond Resolution"* means that Resolution No. \_\_\_\_, adopted by the Town Council of the Town on April 6, 2016, pursuant to which the Town authorized the issuance of the Town Refunding Bonds, as such resolution may hereafter be amended and supplemented.

*"Town Refunding Bonds"* means the \$\_\_\_\_\_ Town of Fairfax (Marin County, California) 2016 General Obligation Refunding Bonds, all of which are to be purchased with amounts in the Purchase Fund pursuant to Section 3.03 hereof.

*"Town Paying Agent"* means U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America or any other entity designated in accordance with the Town Bond Resolution as paying agent for the Town Refunding Bonds.

*"Trust Office"* means the corporate trust office of the Trustee at the address set forth in Section 9.13, and such office as the Trustee may designate in writing to the Authority from time to time as the place for transfer, exchange or payment of the Authority Bonds.

*"Trustee"* means U.S. Bank National Association and its successors and assigns, and any other corporation or association which may at any time be substituted in its place as provided in Article VI.

Section 1.02. Rules of Construction. All references in this Indenture 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.

Section 1.03. Authorization and Purpose of Authority Bonds. The Authority has reviewed all proceedings heretofore taken relative to the authorization of the Authority Bonds and has found, as a result of such review, and hereby finds and determines that all things, conditions, and acts required by law to exist, happen and be performed precedent to and in the issuance of the Authority Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now authorized under the Bond Law and each and every requirement of law, to issue the Authority Bonds in the manner and form provided in this Indenture. Accordingly, the Authority hereby authorizes the issuance of the Authority Bonds pursuant to the Bond Law and this Indenture for the purpose of providing funds purchase the Town Refunding Bonds.

Section 1.04. Equal Security. In consideration of the acceptance of the Authority Bonds by the Owners thereof, this Indenture shall be deemed to be and shall constitute a contract among the Authority, the Trustee and the Owners from time to time of the Authority Bonds; and the covenants and agreements herein set forth to be performed on behalf of the Authority shall be for the equal and proportionate benefit, security and protection of all Owners of the Authority Bonds without preference, priority or distinction as to security or otherwise of any of the Authority Bonds over any of the others by reason of the number or date thereof or the time of sale, execution or delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

## ARTICLE II

### ISSUANCE OF THE AUTHORITY BONDS

Section 2.01. Terms of the Authority Bonds. The Authority Bonds authorized to be issued by the Authority under and subject to the Bond Law and the terms of this Indenture shall be designated the "Fairfax Financing Authority Revenue Bonds, Series 2016 (Town of Fairfax General Obligation Refunding Bond Program), Series 2016" and shall be issued in the original aggregate principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_).

The Authority Bonds shall be issued in fully registered form without coupons in integral multiples of \$1. The Authority Bonds shall be dated the Closing Date, and shall mature on August 1, 2027, and shall bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rate of \_\_\_% per annum.

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

Each Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (i) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (ii) it is authenticated on or before July 15, 2016, in which event it shall bear interest from the Closing Date for such Bonds; *provided, however*, that if, as of the date of authentication of any Bond, interest thereon is in default, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

#### Section 2.02. Redemption of the Authority Bonds.

(a) *Optional Redemption.* The Authority Bonds are subject to redemption, at the option of the Town, on any date on or after August 1, \_\_\_\_, as a whole or in part, among such maturity or maturities as directed by the Authority (or in the absence of such direction, pro rata by maturity) and by lot within a maturity, from any available moneys, including from the optional redemption by the Town of Town Refunding Bonds, at a redemption price equal to the principal amount of the Authority Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

In the event the Authority determines to redeem Bonds, the Town or the Authority will immediately inform the Trustee of such redemption and the Trustee will concurrently mail notice of the redemption of such Bonds as provided in Section 2.02(b). In the event that the Town or the Authority receives notice of the redemption or acceleration of any Town Refunding Bonds, the Town or the Authority will immediately inform the Trustee of such redemption and the Trustee will concurrently mail notice of the redemption of Authority Bonds, such redemption to occur on the date fixed for such redemption of the Town Refunding Bonds. The proceeds of any such redemption of the Town Refunding Bonds will be applied by the Trustee

to pay the redemption price of the Authority Bonds. The redemption price of redeemed Town Refunding Bonds will be equal to the redemption price of a like amount of Authority Bonds.

(b) *Mandatory Sinking Fund Redemption.* The Authority Bonds are subject to mandatory sinking fund redemption prior to their stated maturity date, at the principal amount thereof without premium on each August 1, commencing August 1, 2016, to and including August 1, 2027, in the principal amounts as set forth in the following table:

<u>Date of Sinking Fund Redemption</u>	<u>Sinking Fund Installment Amount</u>
8/1/16	
8/1/17	
8/1/18	
8/1/19	
8/1/20	
8/1/21	
8/1/22	
8/1/23	
8/1/24	
8/1/25	
8/1/26	
8/1/27	

---

† Maturity

(c) *Notice of Redemption.* The Trustee on behalf and at the expense of the Authority shall mail (by first class mail) notice of any redemption to the respective Owners of any Bonds designated for redemption at their respective addresses appearing on the Registration Books, at least thirty (30) but not more than sixty (60) days prior to the date fixed for redemption; *provided, however,* that neither failure to receive any such notice so mailed nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. Such notice shall state the date of the notice, the redemption date, the redemption place and the redemption price and shall designate the Bond numbers (but only if less than all of the Outstanding Bonds are to be redeemed) and the maturity or maturities (in the event of redemption of all of the Authority Bonds of such maturity or maturities in whole) of the Authority Bonds to be redeemed, and shall require that such Bonds be then surrendered at the Trust Office of the Trustee for redemption at the redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

Notwithstanding the foregoing, in the case of any optional redemption of the Authority Bonds under Section 2.02(a) above, the notice of redemption shall state that the redemption is conditioned upon receipt by the Trustee of sufficient moneys to redeem the Authority Bonds on the anticipated redemption date, and that the optional redemption shall not occur if by no later than the scheduled redemption date sufficient moneys to redeem the Authority Bonds have not been deposited with the Trustee. In the event that the Trustee does not receive sufficient funds by the scheduled optional redemption date to so redeem the Authority Bonds to be optionally redeemed, the Trustee shall send written notice to the owners of the Authority Bonds to the effect that the redemption did not occur as anticipated, and the Authority Bonds for which notice of optional redemption was given shall remain Outstanding for all purposes of this Indenture.

(d) *Selection of Authority Bonds for Redemption.* Whenever provision is made in this Indenture for the redemption of less than all of the Authority Bonds of any maturity, the

Trustee shall select the Authority Bonds to be redeemed from all Bonds of such maturity not previously called for redemption, by lot in any manner which the Trustee in its sole discretion shall deem appropriate and fair.

(e) *Partial Redemption of Authority Bonds.* In the event only a portion of any Bond is called for redemption, then upon surrender of such Bond the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of the same series and maturity date, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond to be redeemed.

(f) *Effect of Redemption.* From and after the date fixed for redemption, if funds available for the payment of the principal of and interest (and premium, if any) on the Authority Bonds so called for redemption shall have been duly provided, 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 from and after the redemption date specified in such notice.

Section 2.03. Form of the Authority Bonds. The Authority Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, shall be substantially in the respective forms 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.

Section 2.04. Execution of Authority Bonds. The Authority Bonds shall be signed in the name and on behalf of the Authority with the manual or facsimile signatures of its Chairman and attested with the manual or facsimile signature of its Secretary or any assistant duly appointed by the Board, under the printed seal of the Authority, and shall be delivered to the Trustee for authentication by it. In case any officer of the Authority who shall have signed any of the Authority Bonds shall cease to be such officer before the Authority Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the Authority, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Authority as though the individual who signed the same had continued to be such officer of the Authority. Also, any Bond may be signed on behalf of the Authority by any individual who on the actual date of the execution of such Bond shall be the proper officer although on the nominal date of such Bond such individual shall not have been such officer.

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

Section 2.05. Transfer of Authority Bonds. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, 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 written instrument of transfer in a form approved by the Trustee, duly executed. Whenever any Bond or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of like maturity and aggregate principal amount. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer shall be paid by the Town. The Trustee shall not be required to transfer, pursuant to this Section, either

(a) all Bonds during the period established by the Trustee for the selection of Authority Bonds for redemption, or (b) any Bonds selected for redemption pursuant to Section 2.02.

Section 2.06. Exchange of Authority Bonds. The Authority Bonds may be exchanged at the Trust Office of the Trustee for a like aggregate principal amount of Authority Bonds of other authorized denominations and of the same maturity. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange shall be paid by the Town. The Trustee shall not be required to exchange, pursuant to this Section, either (a) all Bonds during the period established by the Trustee for the selection of Authority Bonds for redemption, or (b) any Bonds selected for redemption pursuant to Section 2.02.

Section 2.07. Registration Books. The Trustee will keep or cause to be kept at its Trust Office sufficient records for the registration and transfer of the Authority Bonds which shall at all reasonable times during regular business hours be open to inspection by the Authority with reasonable prior 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 records Bonds as hereinbefore provided.

Section 2.08. 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 thereupon authenticate and deliver, a new Bond of like series, tenor and authorized denomination 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 cancelled by it and destroyed. If any Bond issued hereunder 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 the Trustee and indemnity for the Trustee and the Authority satisfactory to the Trustee shall be given, the Authority, at the expense of the Bond Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like series and tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been called for redemption, instead of issuing a substitute Bond the Trustee may pay the same without surrender thereof upon receipt of indemnity satisfactory to the Trustee). The Trustee may require payment of a reasonable fee for each new Bond issued under this Section and of the expenses which may be incurred by the Authority and the Trustee. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original contractual obligation on the part of the Authority whether or not the Bond alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds secured by this Indenture.

## ARTICLE III

### DEPOSIT AND APPLICATION OF PROCEEDS OF AUTHORITY BONDS

Section 3.01. Issuance of Authority Bonds. Upon the execution and delivery of this Indenture, the Authority shall execute and deliver the Authority Bonds in the aggregate principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), and the Authority shall deliver the Authority Bonds to the Trustee for authentication and delivery to the original purchaser thereof upon the Request of the Authority.

Section 3.02. Application of Proceeds of Sale of Authority Bonds. Upon the receipt of payment for the Authority Bonds on the Closing Date, the Trustee shall deposit the net proceeds of sale thereof of \$\_\_\_\_\_, being equal to the aggregate principal amount thereof, as follows:

- (a) \$\_\_\_\_\_ shall be deposited in the Purchase Fund;
- (b) \$\_\_\_\_\_ shall be deposited in the Project Fund; and
- (c) \$\_\_\_\_\_ shall be deposited in the Costs of Issuance Fund; and

Section 3.03. Purchase Fund. The Trustee shall establish and maintain a separate fund to be known as the "Purchase Fund" into which shall be deposited the proceeds of sale of the Authority Bonds pursuant to Section 3.02(a). On the Closing Date, the Trustee shall withdraw all amounts on deposit in the Purchase Fund and transfer such sum to the Town Paying Agent as the purchase price for the Town Refunding Bonds.

Section 3.04. Project Fund. The Trustee shall establish and maintain a separate fund to be known as the "Project Fund" into which shall be deposited a portion of the proceeds of the Authority Bonds pursuant to Section 3.02(b). The moneys in the Project Fund shall be used from time to time to pay or reimburse the costs of public capital improvements, upon receipt of a Request of the Town stating (a) the person to whom payment is to be made, (b) the amount to be paid, (c) the purpose for which the obligation was incurred, (d) that such payment is in respect of a public capital improvement, and (e) that such amount has not been the subject of a prior disbursement from the Project Fund. On May 1, 2019, amounts (if any) remaining in the Project Fund shall be withdrawn therefrom by the Trustee and transferred to the Interest Account and the Project Fund shall be closed.

Section 3.05. Costs of Issuance Fund. The Trustee shall establish and maintain a separate fund to be known as the "Costs of Issuance Fund" into which shall be deposited a portion of the proceeds of the Authority Bonds pursuant to Section 3.02(c). The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Trustee from time to time to pay the Costs of Issuance upon submission of a Written Request of the Authority stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. Each such Written Request of the Authority 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. On August 4, 2016, or upon the earlier Written Request of the Authority, any moneys remaining on deposit in the Costs of Issuance Fund shall be withdrawn therefrom by the Trustee and transferred to the Project Fund and the Costs of Issuance Fund shall be closed.

Section 3.06. Validity of Authority Bonds. The validity of the authorization and issuance of the Authority Bonds shall not be affected in any way by any proceedings taken by the Town with respect to the application of the proceeds of any of the Town Refunding Bonds, and the recital contained in the Authority Bonds that the same are issued pursuant to the Bond Law shall be conclusive evidence of their validity and of the regularity of their issuance.

## ARTICLE IV

### REVENUES; FLOW OF FUNDS

Section 4.01. Pledge of Revenues; Assignment of Rights. Subject to the provisions of Section 6.03, the Authority Bonds shall be secured by a first lien on and pledge (which shall be effected in the manner and to the extent hereinafter provided) of all of the Revenues and a pledge of all of the moneys in the Revenue Fund, the Interest Account and the Principal Account, including all amounts derived from the investment of such moneys. The Authority Bonds shall be equally secured by a pledge, charge and lien upon the Revenues and such moneys without priority for number, date of Authority Bonds, date of execution or date of delivery; and the payment of the interest on and principal of the Authority Bonds and any premiums upon the redemption of any thereof shall be and are secured by an exclusive pledge, charge and lien upon the Revenues and such moneys. So long as any of the Authority Bonds are Outstanding, the Revenues and such moneys shall not be used for any other purpose; except that out of the Revenues there may be apportioned such sums, for such purposes, as are expressly permitted by Section 4.02.

The Authority hereby transfers in trust and assigns to the Trustee, for the benefit of the Owners from time to time of the Authority Bonds, all of the Revenues and all of the right, title and interest of the Authority (but not the obligations) in the Town Refunding Bonds. The Trustee shall be entitled to and shall receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. The Trustee also shall be entitled to and, subject to the provisions hereof, shall take all steps, actions and proceedings reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the Town under the Town Refunding Bonds.

#### Section 4.02. Receipt, Deposit and Application of Revenues.

(a) *Deposit of Revenues; Revenue Fund.* All Revenues described in clause (a) of the definition thereof in Section 1.01 shall be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the "Revenue Fund" which the Trustee shall establish, maintain and hold in trust hereunder.

(b) *Application of Revenues: Special Accounts.* On or before each date on which interest on the Authority Bonds becomes due and payable, the Trustee shall transfer from the Revenue Fund and deposit into the following respective accounts (each of which the Trustee shall establish and maintain within the Revenue Fund), the following amounts in the following order of priority, the requirements of each such account (including the making up of any deficiencies in any such account resulting from lack of Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any transfer is made to any account subsequent in priority:

(i) **Interest Account.** On or before each date on which interest on the Authority Bonds becomes due and payable, the Trustee shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to equal the amount of interest becoming due and payable on such date on all Outstanding Bonds. No deposit need be made into the Interest Account if the amount contained therein is at least equal to the interest becoming due and payable upon all Outstanding Bonds on such date. All moneys in the Interest Account shall be used and

withdrawn by the Trustee solely for the purpose of paying the interest on the Authority Bonds as it shall become due and payable (including accrued interest on any Bonds redeemed prior to maturity). All amounts on deposit in the Interest Account on any Interest Payment Date, to the extent not required to pay any interest then having come due and payable on the Outstanding Bonds, shall be withdrawn therefrom by the Trustee and transferred to the Town to be used for any lawful purposes of the Town.

(ii) **Principal Account.** On or before each date on which the principal of the Authority Bonds shall be payable, the Trustee shall deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the aggregate amount of principal coming due and payable on such date on the Authority Bonds pursuant to Section 2.01, or the redemption price of the Authority Bonds (consisting of the principal amount thereof and any applicable redemption premiums) required to be redeemed on such date pursuant to any of the provisions of Section 2.02. All moneys in the Principal Account shall be used and withdrawn by the Trustee solely for the purpose of (A) paying the principal of the Authority Bonds at the maturity thereof, or (B) paying the principal of and premium (if any) on any Bonds upon the redemption thereof pursuant to Section 2.02(a). All amounts on deposit in the Principal Account on the first day of any Bond Year, to the extent not required to pay the principal of any Outstanding Bonds then having come due and payable, shall be withdrawn therefrom and transferred to the Town to be used for any lawful purposes of the Town.

(iii) **Surplus.** On August 1 of each year, after making the deposits required on such August 1 pursuant to the preceding clause (i) and (ii) of this Section 4.02(b), the Trustee shall transfer any amount remaining on deposit in the Revenue Fund to the Town, free and clear of the lien of this Indenture, to be used for any lawful purpose of the Town.

(c) *Rebate Account.* The Trustee shall deposit in the Rebate Account from time to time, from payments made by the Town for such purpose pursuant to the Town Bond Resolution, an amount determined by the Authority to be subject to rebate to the United States of America in accordance with Section 5.08. Amounts in the Rebate Account shall be applied and disbursed by the Trustee solely for the purposes and at the times set forth in Requests of the Authority filed with the Trustee pursuant to Section 5.08.

Section 4.03. Investments. All moneys in any of the funds or accounts established with the Trustee pursuant to this Indenture or the Town Bond Resolution (other than the Purchase Fund and the moneys deposited in the Interest Account from the proceeds of the Authority Bonds) shall be invested by the Trustee solely in Permitted Investments, as directed in writing by the Town two (2) Business Days prior to the making of such investment. Permitted Investments may be purchased at such prices as the Town shall determine. All Permitted Investments shall be acquired subject to any limitations or requirements as may be established by the Written Request of the Town (as defined in the Town Bond Resolution) filed with the Trustee. Moneys in all funds and accounts shall be invested in Permitted Investments maturing not later than the date on which it is estimated that such moneys will be required for the purposes specified in this Indenture. Absent timely written direction from the Town, the Trustee shall invest any funds held by it in Permitted Investments described in clause (d) of the definition thereof.

All interest, profits and other income received from the investment of moneys in any fund or account established pursuant to this Indenture shall be deposited in the Revenue Fund, except that such interest, profits and other income (i) on amounts in the Project Fund shall be retained therein to be used for the purposes thereof, and (ii) on amounts in the Purchase Fund

shall be retained therein to be used for the purposes thereof. Permitted Investments acquired as an investment of moneys in any fund established under this Indenture shall be credited to such fund.

The Trustee or any of its affiliates may act as principal or agent in the making or disposing of any investment. The Trustee shall sell or present for redemption, any Permitted Investments so purchased whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investments is credited, and the Trustee shall not be liable or responsible for any loss resulting from any investment made or sold pursuant to this Section 4.03. For purposes of investment, the Trustee may commingle moneys in any of the funds and accounts established hereunder.

The Authority acknowledges that to the extent regulations of the Comptroller of the Currency 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 shall furnish the Authority periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder.

Section 4.04. Valuation and Disposition of Investments. Subject to the provisions of the next paragraph (which shall prevail in the event of any conflict with the provisions of this paragraph), all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Authority Bonds (within the meaning of Section 148 of the Tax Code), shall be acquired and disposed of and valued at Fair Market Value; *provided, however*, that investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code, shall be valued at their present value (within the meaning of Section 148 of the Tax Code). The Trustee shall have no duty in connection with the determination of Fair Market Value other than to follow (1) its normal practices in the purchase, sale and determining the value of Permitted Investments; and (2) the investment directions of the Town.

## ARTICLE V

### COVENANTS OF THE AUTHORITY

Section 5.01. Punctual Payment. The Authority shall punctually pay or cause to be paid the principal, interest and premium (if any) to become due in respect of all the Authority Bonds, in strict conformity with the terms of the Authority Bonds and of this Indenture, according to the true intent and meaning thereof, but only out of Revenues and other assets pledged for such payment as provided in this Indenture.

Section 5.02. Extension of Payment of Authority Bonds. The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Authority Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Authority Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Authority Bonds then Outstanding and of all claims for interest thereon which shall not have been so extended. Nothing in this Section shall be deemed to limit the right of the Authority to issue Bonds for the purpose of refunding any Outstanding Bonds, and such issuance shall not be deemed to constitute an extension of maturity of the Authority Bonds.

Section 5.03. Against Encumbrances. The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under this Indenture while any of the Authority Bonds are Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, including other programs under the Bond Law, and reserves the right to issue other obligations for such purposes.

Section 5.04. Power to Issue Bonds and Make Pledge and Assignment. The Authority is duly authorized pursuant to law to issue the Authority Bonds and to enter into this Indenture and to pledge and assign the Revenues, the Town Refunding Bonds and other assets purported to be pledged and assigned, respectively, under this Indenture in the manner and to the extent provided in this Indenture. The Authority Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee shall at all times, to the extent permitted by law, defend, preserve and protect said pledge and assignment of Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

Section 5.05. Accounting Records and Financial Statements. The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with industry standards, in which complete and accurate entries shall be made of all transactions made by the Trustee relating to the proceeds of Authority Bonds, the Revenues and all funds and accounts established pursuant to this Indenture. Such books of record and account shall be available for inspection by the Authority and the Town, during regular business hours with reasonable prior notice.

Section 5.06. No Parity Debt. Except for the Authority Bonds, the Authority covenants that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part.

Section 5.07. Tax Covenants Relating to Bonds.

(a) *Private Business Use Limitation.* The Authority shall assure that the proceeds of the Authority Bonds (and the proceeds of the Town Refunding Bonds) are not used in a manner which would cause the Authority Bonds to become "private activity bonds" within the meaning of Section 141(a) of the Tax Code.

(b) *Private Loan Limitation.* The Authority shall assure that no more than five percent (5%) of the net proceeds of the Authority Bonds (and of the Town Refunding Bonds) are used, directly or indirectly, to make or finance a loan (other than loans constituting nonpurpose obligations as defined in the Tax Code or constituting assessments) to persons other than state or local government units.

(c) *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 Authority Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(d) *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 Bond proceeds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Authority Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Tax Code.

(f) *Small Issuer Exemption from Bank Nondeductibility Restriction.* The Authority hereby determines that the aggregate face amount of all tax-exempt obligations issued by the Town (including all subordinate entities of the Town and all entities which may issue obligations on behalf of the Town) during the calendar year 2016 will not exceed \$10,000,000, excluding, however, private activity bonds, as defined in section 141 of the Code (other than qualified 501(c)(3) bonds as defined in section 145 of the Code) and current refunding obligations having a principal amount not in excess of the refunded obligation, and hereby designates the Authority Bonds for purposes of paragraph (3) of section 265(b) of the Code. The Authority hereby covenants that the Authority Bonds do not constitute private activity bonds as defined in section 141 of the Code.

Section 5.08. Rebate of Excess Investment Earnings to United States.

(a) *Obligation to Calculate Excess Investment Earnings.* The Authority shall comply with all applicable provisions of the Tax Code relating to the calculation of Excess Investment Earnings and shall provide or cause to be provided written notice to the Trustee of the amount so calculated. Such calculations shall be made by or on behalf of the Authority at such times, and in such manner, as shall be required pursuant to all applicable provisions of the Tax Code. Promptly upon the making of any such calculation by or on behalf of the Authority, the Authority shall give written notice thereof to the Trustee. The Authority shall make written demand on the Town from time to time for any amounts owed by the Town in respect to amounts owing to the United States under the Town Bond Resolution.

(b) *Rebate to United States.* The Authority shall pay to the Trustee from time to time, in accordance with the Tax Code, all excess investment earnings required to be paid to the United States of America pursuant to the Tax Code for deposit to the Rebate Account. Amounts in the Rebate Account shall be applied by the Trustee, at the written direction of the Authority, solely to make payments from time to time, when due, of excess investment earnings to the United States of America; *provided, however,* that any amounts on deposit in the Rebate Account in excess of the amount required to be paid to the United States of America shall be

withdrawn therefrom by the Trustee at the written direction of the Authority and paid to the Town. Payments to the United States of America shall be made to the address prescribed by the Tax Regulations, together with such reports and statements as may be prescribed by the Tax Regulations all as provided by the Authority in writing to the Trustee.

(c) *Investment Transactions.* The Authority shall assure that excess investment earnings on the Authority Bonds are not paid or disbursed except as required in this Section 5.08. To that end the Authority shall assure that investment transactions are on an arm's length basis. In the event that Nonpurpose Investments consist of certificates of deposit or investment contracts, investment in such Nonpurpose Investments shall be made in accordance with the procedures described in applicable Tax Regulations as from time to time in effect.

(d) *Maintenance of Records.* The Authority shall keep, and retain for a period of six (6) years following the retirement of the Authority Bonds, records of the determinations made pursuant to this Section 5.08.

(e) *Engagement of Professional Services.* In order to provide for the administration of this Section 5.08, the Authority may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Authority may deem appropriate.

(f) *Trustee's Reliance on Authority.* The Trustee shall conclusively be entitled to rely upon all calculations and directions made and furnished by the Authority under this Section 5.08, and the Trustee shall not incur any liability whatsoever in acting upon and as instructed by such calculations and directions, or for failing to take any action in the absence of such directions.

#### Section 5.09. Covenants With Respect to Town Refunding Bonds.

(a) *Sale of Town Refunding Bonds.* The Authority may sell the Town Refunding Bonds or any portion of the principal thereof upon written direction of the Authority to the Trustee specifying the principal amount and purchase price of the Town Refunding Bonds to be sold, accompanied by: (i) cash and a written direction of the Authority as to any investment of such cash in Defeasance Obligations, (ii) a certificate of the Authority specifying the maturity or maturities and principal amounts of the Authority Bonds to be defeased (in the manner contemplated by Section 9.03(c)) with such cash and any Defeasance Obligations specified pursuant to the preceding clause (i), (iii) a written certificate of an Independent Financial Consultant to the effect that the aggregate of the principal and interest due on the portion, if any, of such Town Refunding Bonds to be retained by the Trustee following such sale will be sufficient in time and amount to timely pay the principal and interest due on the Authority Bonds which will remain Outstanding following such sale, and (iv) an opinion of Authority Bond Counsel to the effect that such sale, in itself, will not adversely affect the exclusion from the gross incomes of the Owners of the interest on the Authority Bonds. Upon receipt of such documents, the Trustee shall invest such cash as specified by the Authority pursuant to clause (i) above and hold such investments and any uninvested cash in an escrow fund to be used solely for payment of the Authority Bonds defeased therewith, and shall cooperate with the Authority in the transfer of such Town Refunding Bonds so sold to the purchaser thereof. Upon the discharge of all of the Authority Bonds pursuant to Article IX, the Trustee shall thereupon convey all of its right, title and interest in and to the Town Refunding Bonds to the Town.

(b) *Amendment of Town Refunding Bonds.* Neither the Trustee nor the Authority shall consent or agree to consent to any amendment or modification of the Town Bond Resolution unless the Authority shall have obtained, and caused to be filed with the Trustee, (a) the report

of an Independent Financial Consultant stating that such amendment or modification will not cause a reduction in the amount of Revenues required to pay debt service on the Authority Bonds, and (b) an opinion of Bond Counsel stating that such amendment or modification will not materially adversely impair the interests of the Bond Owners hereunder, and will not cause interest on the Authority Bonds to be includable in gross income of the Bond Owners for federal income tax purposes. The Trustee and the Authority may conclusively rely on such report of the Independent Financial Consultant and Opinion of Bond Counsel and shall, in each case, be protected in relying thereon.

(c) *Collection of Revenues.* The Trustee shall collect and cause to be paid to it all Revenues promptly as such Revenues become due and payable, and, subject to the provisions of this Indenture, shall enforce and cause to be enforced all rights of the Trustee under and with respect to the Town Refunding Bonds. Enforcement of the rights of the Trustee under and with respect to the Town Refunding Bonds shall be subject to the provisions of subsection (e) of this Section.

(d) *Notification of Town Refunding Bonds Default.* Upon receiving actual knowledge of either (i) the failure to pay when due any installment of principal of or interest or premium (if any) on any of the Town Refunding Bonds, or (ii) the occurrence of any other default under the Town Bond Resolution, the Trustee shall promptly notify the Authority of such failure or event of default by telephone, fax or other form of telecommunication, promptly confirmed in writing. Such notice shall identify the nature of the default.

(e) *Exercise of Remedies With Respect to Town Refunding Bonds.* Subject to Section 9.01 hereof, upon the occurrence of a default with respect to any of the Town Refunding Bonds, the Trustee may, and if requested in writing by the Owners of a majority in aggregate principal amount of the Authority Bonds then Outstanding the Trustee shall, subject to the provisions of this Indenture, exercise any and all remedies granted to the Trustee as registered owner of the Town Refunding Bonds.

(f) *Optional Redemption of Town Refunding Bonds.* The Authority shall not consent to the optional redemption of any of the Town Refunding Bonds unless it shall first have obtained a certificate of an Independent Financial Consultant which: (i) specifies (A) the premium, if any, to be paid by the Town in connection with such optional redemption, and (B) the principal amount and redemption date and price of any Bonds to be redeemed pursuant to Section 2.02(a) as a result of the optional redemption of the Town Refunding Bonds; and (ii) concludes that, based upon the information supplied in clauses (i)(A) and (B) above, and in reliance upon the Trustee, the Town Paying Agent, the Town and the Authority implementing the redemption of the Town Refunding Bonds and the Authority Bonds in a manner consistent with such information, the aggregate of the scheduled principal and interest due on the Town Refunding Bonds which remain Outstanding (as defined in the Town Bond Resolution) following such redemption will be sufficient in time and amount to timely pay the principal and interest due on the Authority Bonds which will remain Outstanding following any redemption of the Authority Bonds to occur under Section 2.02(a) as a result of the optional redemption of the Town Refunding Bonds. The Authority and the Trustee may conclusively rely upon any such certificate of an Independent Financial Consultant in connection with the redemption of the Authority Bonds under Section 2.02(a) as a consequence of such optional redemption.

The consent of the Authority to any such optional redemption of the Town Refunding Bonds may be executed and delivered by the Executive Director of the Authority, who is hereby authorized to so execute and deliver any such consent following receipt of the certificate of an Independent Financial Consultant described in the preceding paragraph, without the need for any further action by the Board of Directors of the Authority. No officer of the

Authority shall be subject to any personal liability by reason of his execution and delivery of any such consent.

Section 5.10. Waiver of Laws. The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Authority Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the Authority to the extent permitted by law.

Section 5.11. 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 Authority Bonds the rights and benefits provided in this Indenture.

## ARTICLE VI

### THE TRUSTEE

Section 6.01. Appointment of Trustee. U.S. Bank National Association is hereby appointed Trustee by the Authority for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Indenture. The Authority agrees that it will maintain a Trustee having a corporate trust office in the State, with a combined capital and surplus of at least fifty million dollars (\$50,000,000), and subject to supervision or examination by federal or State authority, so long as any Bonds are Outstanding. 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 purpose of this Section 6.01 the combined capital and surplus of such bank, corporation 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 is hereby authorized to pay the principal of and interest and redemption premium (if any) on the Authority Bonds when duly presented for payment at maturity, or on redemption or purchase prior to maturity, and to cancel all Bonds upon payment thereof. The Trustee shall keep accurate records of all funds administered by it and of all Bonds paid and discharged.

Section 6.02. Acceptance of Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an Event of Default and after curing or waiver of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default hereunder has occurred (which has not been cured or waived), the Trustee may exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill and diligence in their exercise, as a prudent person would use in the conduct of its own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder. The Trustee may conclusively rely on an opinion of counsel as full and complete protection for any action taken or suffered by it hereunder.

(c) The Trustee shall not be responsible for any recital herein or in the Authority Bonds, or for any of the supplements hereto or thereto or instruments of further assurance, or for the sufficiency of the security for the Authority Bonds issued hereunder or intended to be secured hereby and the Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, conditions or agreements on the part of the Authority hereunder.

(d) The Trustee may become the Owner of Authority Bonds secured hereby with the same rights which it would have if not the Trustee; may acquire and dispose of other bonds or evidences of indebtedness of the Authority with the same rights it would have if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the

rights of Owners of Authority Bonds, whether or not such committee shall represent the Owners of the majority in aggregate principal amount of the Authority Bonds then Outstanding.

(e) The Trustee shall be protected in acting, in good faith, upon any notice, request, consent, certificate, order, affidavit, letter, telegram, facsimile or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken or omitted to be taken by the Trustee in good faith pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Bond, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof. The Trustee shall not be bound to recognize any person as an Owner of any Bond or to take any action at his request unless the ownership of such Bond by such person shall be reflected on the Registration Books.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a Certificate of the Authority as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default hereunder of which the Trustee has been given notice or is deemed to have notice, as provided in Section 6.02(h) hereof, shall also be at liberty to accept a Certificate of the Authority to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed by it to be necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its negligence or willful default. The immunities and exceptions from liability of the Trustee shall extend to its officers, directors, employees and agents.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder except failure by the Town to make any of the payments to the Trustee required to be made by the Town on any of the Town Refunding Bonds or failure by the Authority or the Town to file with the Trustee any document required by this Indenture or the Town Bond Resolution to be so filed subsequent to the issuance of the Authority Bonds, unless the Trustee shall be specifically notified in writing of such default by the Authority or by the Owners of at least twenty-five percent (25%) in aggregate principal amount of the Authority Bonds then Outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the Trust Office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Event of Default hereunder except as aforesaid.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, accountants and representatives, shall have the right (but not any duty) fully to inspect all books, papers and records of the Authority pertaining to the Authority Bonds, and to make copies of any of such books, papers and records such as may be desired but which is not privileged by statute or by law.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises hereof.

(k) Notwithstanding anything elsewhere in this Indenture with respect to the execution of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, the Trustee shall have the right, but shall not be required, to demand any showings, certificates, opinions, appraisals or other information, or

corporate action or evidence thereof, as may be deemed desirable for the purpose of establishing the right of the Authority to the execution of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Before taking the action referred to in Section 8.02 or this Article, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default in connection with any such action.

(m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law.

(n) Whenever in the administration of the trusts imposed upon it by 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 be deemed to be conclusively proved and established by a Certificate of the Authority, which shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Certificate, but in its discretion the Trustee may (but shall have no duty to), in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

(o) The Trustee shall have no responsibility or liability with respect to any information, statements or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Authority Bonds.

Section 6.03. Fees, Charges and Expenses of Trustee. The Trustee shall be entitled to payment and reimbursement from the Authority for reasonable fees for its services rendered hereunder and all advances, counsel fees (including expenses) and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. Any compensation of the Trustee shall be limited to the amounts specified in the bid letter provided by the Trustee prior to the issuance of the Authority Bonds, except as may otherwise be approved by the Authority. Upon the occurrence of an Event of Default hereunder, but only upon an Event of Default, the Trustee shall have a first lien with right of payment prior to payment of any Bond upon the amounts held hereunder for the foregoing fees, charges and expenses incurred by it respectively.

Section 6.04. Notice to Bond Owners of Default. If an Event of Default hereunder occurs with respect to any Bonds of which the Trustee has been given or is deemed to have notice, as provided in Section 6.02(h) hereof, then the Trustee shall promptly give written notice thereof by first-class mail to the Owner of each such Bond, unless such Event of Default shall have been cured before the giving of such notice; *provided, however,* that unless such Event of Default consists of the failure by the Authority to make any payment when due, the Trustee may elect not to give such notice to the Bond Owners if and so long as the Trustee in good faith determines that such Event of Default does not materially adversely affect the interests of the Bond Owners or that it is otherwise not in the best interests of the Bond Owners to give such notice.

Section 6.05. Intervention by Trustee. In any judicial proceeding to which the Authority is a party which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners of any of the Authority Bonds, the Trustee may intervene on behalf of such Bond Owners, and subject to Section 6.02(l) hereof, shall do so if requested in writing by the Owners of a majority in aggregate principal amount of such Bonds then Outstanding.

Section 6.06. Removal of Trustee. The Owners of a majority in aggregate principal amount of the Outstanding Bonds may at any time, or the Authority may (and the Authority, at the request of the Town shall) so long as no Event of Default shall have occurred and then be continuing, remove the Trustee initially appointed, and any successor thereto, by an instrument or concurrent instruments in writing delivered to the Trustee at least thirty (30) days prior to the effective date of each removal, whereupon the Authority or such Owners, as the case may be, shall appoint a successor or successors thereto; provided that any such successor shall be a bank or trust company meeting the requirements set forth in Section 6.01.

Section 6.07. Resignation by Trustee. The Trustee and any successor Trustee may at any time give thirty (30) days' written notice of its intention to resign as Trustee hereunder, such notice to be given to the Authority and the Town by registered or certified mail. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee.

Section 6.08. Appointment of Successor Trustee. In the event of the removal or resignation of the Trustee pursuant to Sections 6.06 or 6.07, respectively, with the prior written consent of the Town, the Authority shall promptly appoint a successor Trustee. In the event the Authority shall for any reason whatsoever fail to appoint a successor Trustee within ninety (90) days following the delivery to the Trustee of the instrument described in Section 6.06 or within ninety (90) days following the receipt of notice by the Authority pursuant to Section 6.07, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee meeting the requirements of Section 6.01 hereof. Any such successor Trustee appointed by such court shall become the successor Trustee hereunder notwithstanding any action by the Authority purporting to appoint a successor Trustee following the expiration of such ninety-day period.

Any resignation or removal of the Trustee pursuant to Section 6.06 or Section 6.07 and appointment of a successor Trustee shall become effective upon written acceptance of appointment by the successor Trustee. Upon such acceptance, the Authority shall cause notice thereof to be given by first class mail, postage prepaid, to the Bond Owners at their respective addresses set forth on the Registration Books.

Section 6.09. Merger or Consolidation. 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 that such company shall meet the requirements set forth in Section 6.01, shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

Section 6.10. Concerning any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Authority an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the Request of the Authority, or of the Trustee's successor, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Should any instrument in writing from the Authority be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested

or intended to be vested in the predecessor Trustee, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority.

Section 6.11. Appointment of Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in the case of litigation under this Indenture, and in particular in case of the enforcement of the rights of the Trustee on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate co-trustee. The following provisions of this Section 6.11 are adopted to these ends.

In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Should any instrument in writing from the Authority be required by the separate trustee or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority. In case any separate trustee or co-trustee, or a successor to either, shall become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate trustee or co-trustee.

Section 6.12. Indemnification; Limited Liability of Trustee. The Authority further covenants and agrees to indemnify and save the Trustee and its officers, directors, agents and employees, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, expenses and liabilities which are due to the negligence or intentional misconduct of the Trustee, its officers, directors, agents or employees. No provision in this Indenture shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability hereunder if it is not assured to its satisfaction that repayment of such funds or adequate indemnity against such liability or risk is not assured to it. The Trustee shall not be liable for any action taken or omitted to be taken by it in accordance with the direction of the Owners of a majority in aggregate principal amount of Authority Bonds Outstanding relating to the time, method and place of conducting any proceeding or remedy available to the Trustee under this Indenture. The obligations of the Authority under this paragraph shall survive the resignation or removal of the Trustee under this Indenture or any defeasance of the Authority Bonds.

## ARTICLE VII

### MODIFICATION AND AMENDMENT OF THE INDENTURE

Section 7.01. Amendment Hereof. This Indenture and the rights and obligations of the Authority and of the Owners of the Authority Bonds may be modified or amended at any time by a Supplemental Indenture which shall become binding upon adoption, without consent of any Bond Owners, to the extent permitted by law but only for any one or more of the following purposes-

(a) to add to the covenants and agreements of the Authority contained in this Indenture, other covenants and agreements hereafter to be observed, to pledge or assign additional security for the Authority Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Authority;

(b) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Indenture, or in any other respect whatsoever, as the Authority may deem necessary or desirable, provided that such modification or amendment does not materially adversely affect the interests of the Bond Owners in the opinion of Bond Counsel;

(c) to modify, amend or supplement the Indenture in such manner as to permit the qualification of this Indenture under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute;

(d) to amend any provision hereof relating to the Tax Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest on any of the Authority Bonds under the Tax Code, in the opinion of Bond Counsel; or

(e) to facilitate the issuance of additional obligations of the Town pursuant to the Town Bond Resolution.

Except as set forth in the preceding paragraph of this Section 7.01, this Indenture and the rights and obligations of the Authority and of the Owners of the Authority Bonds may only be modified or amended at any time by a Supplemental Indenture which shall become binding when the written consents of the Owners of a majority in aggregate principal amount of the Authority Bonds then Outstanding are filed with the Trustee. No such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Authority to pay the principal, interest or premiums (if any) at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the Owner of such Bond, (b) reduce the percentage of Authority Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

Section 7.02. Effect of Supplemental Indenture. From and after the time any Supplemental Indenture becomes effective pursuant to this Article VII, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners of Outstanding Bonds, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects

to such modification and amendment, and all the terms and conditions of any Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 7.03. Endorsement or Replacement of Authority Bonds After Amendment. After the effective date of any action taken as hereinabove provided, the Authority may determine that the Authority Bonds shall bear a notation, by endorsement in form approved by the Authority, as to such action, and 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 Trust Office of the Trustee, a suitable notation as to such action shall be made on such Bond. If the Authority shall so determine, new Bonds so modified as, in the opinion of the Authority, shall be necessary to conform to such Bond Owners' action shall be prepared and executed, and in that case upon demand of the Owner of any Bond Outstanding at such effective date such new Bonds shall be exchanged at the Trust Office of the Trustee, without cost to each Bond Owner, for Bonds then Outstanding, upon surrender of such Outstanding Bonds.

Section 7.04. Amendment by Mutual Consent. The provisions of this Article VII shall not prevent any Bond Owner from accepting any amendment as to the particular Bond held by him, provided that due notation thereof is made on such Bond.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. The following events shall be Events of Default hereunder:

(a) Default in the due and punctual payment of the principal of 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) Default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable.

(c) Failure by the Authority to observe and perform any of the covenants, agreements or conditions on its part in this Indenture or in the Authority Bonds contained, other than as referred to in the preceding clauses (a) and (b), for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied has been given to the Authority by the Trustee; *provided, however*, that if in the reasonable opinion of the Authority the failure stated in such notice can be corrected, but not within such sixty (60) day period, such failure shall not constitute an Event of Default if corrective action is instituted by the Authority within such sixty (60) day period and diligently pursued until such failure is corrected.

(d) The filing by the Authority of a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the Authority, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Authority or of the whole or any substantial part of its property.

Section 8.02. Remedies Upon Event of Default. Subject to the provisions of Section 9.02, if any Event of Default shall occur, then, and in each and every such case during the continuance of such Event of Default, the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Authority Bonds at the time Outstanding shall, upon notice in writing to the Authority and the Town, pursue any available remedy at law or in equity to enforce the payment of the principal of and interest and premium (if any) on the Authority Bonds, and to enforce any rights of the Trustee under or with respect to this Indenture. Notice of the occurrence of any Event of Default shall be given by the Trustee to the Bond Owners if and to the extent required pursuant to Section 6.04 and indemnification is provided to the Trustee pursuant to Section 6.12 hereof.

Subject to the provisions of Section 9.02, if an Event of Default shall have occurred and be continuing and if requested so to do by the Owners of a majority in aggregate principal amount of Outstanding Bonds and indemnified as provided in Section 6.02(I), the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article VIII, as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bond Owners.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bond Owners) is intended to be exclusive of any other remedy, but each and every such

remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bond Owners hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein; such right or power may be exercised from time to time as often as may be deemed expedient.

Section 8.03. Application of Revenues and Other Funds After Default. All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of this Indenture shall be applied by the Trustee in the following order upon presentation of the several Bonds, and the stamping thereon of the amount of the payment if only partially paid, or upon the surrender thereof if fully paid -

*First*, to the payment of the fees, costs and expenses of the Trustee in declaring such Event of Default and in carrying out the provisions of this Article VIII, including reasonable compensation to its agents, attorneys and counsel and any outstanding fees and expenses of the Trustee; and

*Second*, to the payment of the whole amount of interest on and principal of the Authority Bonds then due and unpaid, with interest on overdue installments of principal and interest to the extent permitted by law at the net effective rate of interest then borne by the Outstanding Bonds; *provided, however*, that in the event such amounts shall be insufficient to pay in full the full amount of such interest and principal, then such amounts shall be applied in the following order of priority:

(a) to the payment of all installments of interest on the Authority Bonds then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full,

(b) to the payment of principal of the Authority Bonds then due and payable, such that the unpaid principal reflects, to the furthest extent possible, the unpaid portion of the Town Refunding Bonds, in the event that the available amounts are insufficient to pay all such principal in full, and

(c) to the payment of interest on overdue installments of principal and interest, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full.

Section 8.04. Power of Trustee to Control Proceedings. Subject to the provisions of Section 9.02, 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 request of the Owners of at least a majority in aggregate principal amount of the Authority Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Authority 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, 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 Owners of a majority in aggregate principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation. Any suit, action or proceeding which any Owner of Authority Bonds shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners of Authority

Bonds similarly situated and the Trustee is hereby appointed (and the successive respective Owners of the Authority Bonds issued hereunder, by taking and holding the same, shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners of the Authority Bonds for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners of the Authority Bonds as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact.

Section 8.05. Appointment of Receivers. Upon the occurrence of an Event of Default hereunder, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bond Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Revenues and other amounts pledged hereunder, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 8.06. Non-Waiver. Nothing in this Article VIII or in any other provision of this Indenture, or in the Authority Bonds, shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the interest on and principal of the Authority Bonds to the respective Owners of the Authority Bonds at the respective dates of maturity, as herein provided, out of the Revenues and other moneys herein pledged for such payment.

A waiver of any default or breach of duty or contract by the Trustee or any Bond Owners shall not affect any subsequent default or breach of duty or contract, or impair any rights or remedies on any such subsequent default or breach. No delay or omission of the Trustee or any Owner of any of the Authority Bonds to exercise any right or power accruing upon any default or breach shall impair any such right or power or shall be construed to be a waiver of any such default or breach or an acquiescence therein; and every power and remedy conferred upon the Trustee or Bond Owners by the Bond Law or by this Article VIII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee or the Bond Owners, as the case may be.

Section 8.07. Rights and Remedies of Authority Bond Owners. No Owner 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 Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Authority 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 Owners shall have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee; and (e) no direction inconsistent with such written request has been given to the Trustee during such sixty (60) day period by the Owners of a majority in aggregate principal amount of the Authority Bonds then Outstanding.

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 Owner of Authority Bonds of any remedy hereunder; it being understood and intended that no one or more Owners of Authority Bonds shall have any right in any manner whatever by his 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 Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of and interest and premium (if any) on such Bond as herein provided or to institute suit for the enforcement of any such payment, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

Section 8.08. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case, the Authority, the Trustee and the Bond Owners shall be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 8.09. Parties Interested Herein. Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Authority, the Trustee and the Town, their officers, employees and agents, and the Owners any right, remedy or claim under or by reason of this Indenture, or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the Authority, the Trustee and the Town, their officers, employees and agents, and the Owners.

ARTICLE IX  
MISCELLANEOUS

Section 9.01. Limited Liability of Authority. Notwithstanding anything in this Indenture contained, the Authority shall not be required to advance any moneys derived from any source of income other than the Revenues for the payment of the principal of or interest on the Authority Bonds, or any premiums upon the redemption thereof, or for the performance of any covenants herein contained (except to the extent any such covenants are expressly payable hereunder from the Revenues). The Authority may, however, advance funds for any such purpose, provided that such funds are derived from a source legally available for such purpose and may be used by the Authority for such purpose without incurring indebtedness.

The Authority Bonds shall be revenue bonds, payable exclusively from the Revenues and other funds as in this Indenture provided. The general fund of the Authority is not liable, and the credit of the Authority is not pledged, for the payment of the interest and premium (if any) on or principal of the Authority Bonds. The Owners of the Authority Bonds shall never have the right to compel the forfeiture of any property of the Authority. The principal of and interest on the Authority Bonds, and any premiums upon the redemption of any thereof, shall not be a legal or equitable pledge, charge, lien or encumbrance upon any property of the Authority or upon any of its income, receipts or revenues except the Revenues and other funds pledged to the payment thereof as in this Indenture provided.

Section 9.02. 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 Town and the Owners of the Authority Bonds, any right, remedy or 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 Trustee, the Town and the Owners of the Authority Bonds.

Section 9.03. Discharge of Indenture. If the Authority shall pay and discharge any or all of the Outstanding Bonds in any one or more of the following ways:

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

(b) by irrevocably depositing with the Trustee, in trust, at or before maturity, money which, together with the available amounts then on deposit in the funds and accounts established with the Trustee pursuant to this Indenture, is fully sufficient to pay such Bonds, including all principal, interest and premiums (if any); or

(c) by irrevocably depositing with the Trustee or any other fiduciary, in trust, non-callable Defeasance Obligations in such amount as an Independent Accountant or Bond Counsel shall determine will, together with the interest to accrue thereon and available moneys then on deposit in the funds and accounts established with the Trustee pursuant to this Indenture 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;

and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption shall have been mailed pursuant to Section 2.02(b) or provision satisfactory to the Trustee shall have been made for the mailing of such notice, then, at the Request of the Authority, and notwithstanding that any of such Bonds shall not have been surrendered for payment, the

pledge of the Revenues and other funds provided for in this Indenture with respect to such Bonds, and all other pecuniary obligations of the Authority under this Indenture with respect to all such Bonds, shall cease and terminate, except only the obligation of the Authority to pay or cause to be paid to the Owners of such Bonds not so surrendered and paid all sums due thereon from amounts set aside for such purpose as aforesaid, and all expenses and costs of the Trustee. Any funds held by the Trustee following any payment or discharge of the Outstanding Bonds pursuant to this Section 9.03, which are not required for said purposes, shall be paid over to the Authority.

Section 9.04. Successor Is Deemed Included in All References to Predecessor. Whenever in this Indenture or any Supplemental Indenture the Authority is named or referred to, such reference shall be deemed to include the successor to the powers, duties and functions, with respect to the management, administration and control of the affairs of the Authority, that are presently vested in the Authority, and all the covenants, agreements and provisions contained in this Indenture by or on behalf of the Authority shall bind and inure to the benefit of its successors whether so expressed or not.

Section 9.05. Content of Certificates. Every certificate with respect to compliance with a condition or covenant provided for in this Indenture made or given by an officer of the Authority may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate may be based are erroneous, or in the exercise of reasonable care should have known that the same were erroneous. Any such certificate or opinion or representation made or given by counsel may be based, insofar as it relates to factual matters, on information with respect to which is in the possession of the Authority, or upon the certificate or opinion of or representations by an officer or officers of the Authority, unless such counsel knows that the certificate or opinion or representations with respect to the matters upon which his certificate, opinion or representation may be based are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

Section 9.06. Execution of Documents by Bond Owners. Any request, consent or other instrument required by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent writings of substantially similar tenor and may be signed or executed by such Bond Owners in person or by their agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and of the Authority if made in the manner provided in this Section 9.06.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument or writing acknowledged to him the execution thereof.

The ownership of Authority Bonds shall be proved by the Registration Books. Any request, consent or vote of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of any Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in pursuance of such request, consent or vote. In lieu of obtaining any demand, request, direction, consent or waiver in writing, the Trustee may call and hold a meeting of the Bond Owners upon such notice and in accordance with such rules and obligations as the Trustee considers fair and reasonable for the purpose of obtaining any such action.

Section 9.07. Disqualified Bonds. In determining whether the Owners of the requisite aggregate principal amount of Authority Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the Town or the Authority (but excluding Bonds held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, *provided, however*, that for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver, only Bonds which the Trustee knows to be so owned or held shall be disregarded. Upon request of the Trustee, the Town and the Authority shall specify to the Trustee those Bonds disqualified pursuant to this Section and the Trustee may conclusively rely on such Certificates.

Section 9.08. Waiver of Personal Liability. No officer, agent or employee of the Authority shall be individually or personally liable for the payment of the interest on or principal of the Authority Bonds; but nothing herein contained shall relieve any such officer, agent or employee from the performance of any official duty provided by law.

Section 9.09. Partial Invalidity. If any one or more of the covenants or agreements, or portions thereof, provided in this Indenture on the part of the Authority (or of the Trustee) to be performed should be contrary to law, then such covenant or covenants, such agreement or agreements, or such portions thereof, shall be null and void and shall be deemed separable from the remaining covenants and agreements or portions thereof and shall in no way affect the validity of this Indenture or of the Authority Bonds; but the Bond Owners shall retain all rights and benefits accorded to them under the Bond Law or any other applicable provisions of law. The Authority hereby declares that it would have entered into this Indenture and each and every other section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized the issuance of the Authority Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Indenture or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 9.10. Destruction of Cancelled Bonds. Whenever in this Indenture provision is made for the surrender to the Authority of any Bonds which have been paid or cancelled pursuant to the provisions of this Indenture, at the Request of the Authority the Trustee shall destroy such Bonds and furnish to the Authority a certificate of such destruction.

Section 9.11. Funds and Accounts. Any fund or account required by this Indenture to be established and maintained by the Authority or the Trustee may be established and maintained in the accounting records of the Authority or the Trustee, as the case may be, either as a fund or an account, and may, for the purpose of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account. All such records with respect to all such funds and accounts held by the Authority shall at all times be maintained in accordance with generally accepted accounting principles and all such records with respect to all such funds and accounts held by the Trustee shall be at all times maintained in accordance with industry practices; in each case with due regard for the protection of the security of the Authority Bonds and the rights of every Owner thereof. Any fund or account required by this Indenture to be established and maintained by the Authority or the Trustee may be established and maintained in the form of multiple funds, accounts or sub-accounts therein. The Trustee may establish additional accounts as the trustee shall deem necessary and prudent in furtherance of its duties under this Indenture.

Section 9.12. Payment on Business Days. Whenever in this Indenture any amount is required to be paid on a day which is not a Business Day, such payment shall be required to be

made on the Business Day immediately following such day, provided that interest shall not accrue from and after such day.

Section 9.13. Notices. Any notice, request, complaint, demand or other communication under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopy or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by telecopy or other form of telecommunication, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the Town or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the Authority:	Fairfax Financing Authority c/o Town of Fairfax 142 Bolinas Road Fairfax, CA 94930 Attention: Executive Director Telephone: (415) 458-2350 Fax: (415) 453-1618
If to the Town:	Town of Fairfax 142 Bolinas Road Fairfax, CA 94930 Attention: Town Manager Telephone: (415) 458-2350 Fax: (415) 453-1618
If to the Trustee:	U.S. Bank National Association One California Street, Suite 1000 San Francisco, CA 94111 Attention: Corporate Trust Services Telephone: 677-3600 Fax: (415) 677-3769

Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 9.14. Unclaimed Moneys. Anything in this Indenture to the contrary notwithstanding, subject to the laws of the State, any moneys held by the Trustee in trust for the payment and discharge of any of the Authority Bonds which remain unclaimed for two (2) years after the date when such Bonds have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Trustee at such date, or for two (2) years after the date of deposit of such moneys if deposited with the Trustee after said date when such Bonds become due and payable, shall be repaid by the Trustee to the Authority, as its absolute property and free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Bond Owners shall look only to the Authority for the payment of such Bonds; *provided, however*, that before being required to make any such payment to the Authority, the Trustee shall, at the expense of the Authority, cause to be mailed to the Owners of all such Bonds, at their respective addresses appearing on the Registration Books, a notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall not be less than thirty (30) days after the date of mailing of such notice, the balance of such moneys then unclaimed will be returned to the Authority.

Section 9.15. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the FAIRFAX FINANCING AUTHORITY has caused this Indenture to be signed in its name and U.S. BANK NATIONAL ASSOCIATION, in token of its acceptance of the trust created hereunder, has caused this Indenture to be signed in its corporate name by its officer identified below, all as of the day and year first above written.

FAIRFAX FINANCING AUTHORITY

By \_\_\_\_\_  
Garrett Toy  
Executive Director

ATTEST:

\_\_\_\_\_  
Michele Gardner  
Secretary

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By \_\_\_\_\_  
Francine Rockett,  
Vice President

EXHIBIT A

FORM OF AUTHORITY BONDS

FAIRFAX FINANCING AUTHORITY  
REVENUE BOND, Series 2016  
(Town of Fairfax General Obligation Refunding Bond Program)

RATE OF INTEREST	MATURITY DATE	ORIGINAL ISSUE DATE
_____ %	August 1, 2027	May 4, 2016

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

The FAIRFAX FINANCING AUTHORITY, a joint powers authority organized and existing under the laws of the State of California (the "Authority"), for value received, hereby promises to pay (but only out of the Revenues and other moneys and securities hereinafter referred to) to the Registered Owner identified above or registered assigns (the "Registered Owner"), on the Maturity Date identified above, the Principal Amount identified above in lawful money of the United States of America; and to pay interest thereon at the Rate of Interest identified above in like money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond (unless this Bond is authenticated on or before an Interest Payment Date and after the fifteenth calendar day of the month preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or prior to July 15, 2016, in which event it shall bear interest from the Original Issue Date identified above; *provided, however*, that if, at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest hereon has previously been paid or made available for payment), payable semiannually on February 1 and August 1 in each year, commencing August 1, 2016 (each, an "Interest Payment Date") until payment of such Principal Amount in full. The Principal Amount hereof is payable upon presentation hereof at the principal corporate trust office (the "Trust Office") of U.S. Bank National Association, as trustee (the "Trustee"), in San Francisco, California or such other place as designated by the Trustee. Interest hereon is payable by check or draft of the Trustee mailed by first class mail on each Interest Payment Date to the Registered Owner hereof at the address of the Registered Owner as it appears on the Registration Books of the Trustee as of the fifteenth calendar day of the month preceding such Interest Payment Date; except that at the written request of the owner of at least \$1,000,000 in aggregate principal amount of outstanding Bonds filed with the Trustee prior to the fifteenth calendar day of the month preceding any Interest Payment Date, interest on such Bonds shall be paid to such owner on such Interest Payment Date by wire transfer of immediately available funds to an account in the continental United States designated in such written request.

This Bond is one of a duly authorized issue of bonds of the Authority designated the "Fairfax Financing Authority Revenue Bonds, Series 2016 (Town of Fairfax General Obligation Refunding Bond Program)" (the "Bonds"), limited in principal amount to \$\_\_\_\_\_, secured by an Indenture of Trust dated as of May 1, 2016 (the "Indenture"), by and between the Authority and the Trustee. Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the rights thereunder of the owners of the Authority Bonds, of the nature and extent of the Revenues (as that term is defined in the Indenture), of

the rights, duties and immunities of the Trustee and of the rights and obligations of the Authority thereunder; and all of the terms of the Indenture are hereby incorporated herein and constitute a contract between the Authority and the Registered Owner hereof, and to all of the provisions of which Indenture the Registered Owner hereof, by acceptance hereof, assents and agrees.

The Authority Bonds are authorized to be issued pursuant to the provisions of the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"). The Authority Bonds are special obligations of the Authority and, as and to the extent set forth in the Indenture, are payable solely from and secured by a first lien and pledge of the Revenues and certain other moneys and securities held by the Trustee as provided in the Indenture. All of the Authority Bonds are equally secured by a pledge of, and charge and lien upon, all of the Revenues and such other moneys and securities, and the Revenues and such other moneys and securities constitute a trust fund for the security and payment of the principal of and interest and premium (if any) on the Authority Bonds. The full faith and credit of the Authority is not pledged for the payment of the principal of or interest or redemption premiums (if any) on the Authority Bonds. The Authority Bonds are not secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the property of the Authority or any of its income or receipts, except the Revenues and such other moneys and securities as provided in the Indenture.

The Authority Bonds have been issued to provide funds to purchase a bond issue (the "Town Refunding Bonds") of the Town of Fairfax (the "Town") and to finance capital improvements for the Town, all as more particularly described in the Indenture. The Town Refunding Bonds have been issued by the Town pursuant to a resolution (the "Town Bond Resolution"), adopted by the Board of Education of the Town on April 6, 2016. The Town Refunding Bonds have been assigned to the Trustee under the Indenture, and the payments by the Town on the Town Refunding Bonds constitute the principal source of Revenues which are pledged to the payment of the Authority Bonds. The Town has incurred indebtedness, and may in the future issue its bonds, notes or other obligations on a parity with some of the Town Refunding Bonds, subject to the terms and conditions of the Town Bond Resolution.

The Authority Bonds are subject to redemption, at the option of the Town, on any date on or after August 1, \_\_\_\_, as a whole or in part, among such maturity or maturities as directed by the Authority (or in the absence of such direction, pro rata by maturity) and by lot within a maturity, from any available moneys, including from the optional redemption by the Town of Town Refunding Bonds, at a redemption price equal to the principal amount of the Authority Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

The Authority Bonds are subject to mandatory sinking fund redemption prior to their stated maturity date, at the principal amount thereof without premium on each August 1, commencing August 1, 2016, to and including August 1, 2027, in the principal amounts as set forth in the following table:

<u>Date of Sinking Fund Redemption</u>	<u>Sinking Fund Installment Amount</u>
8/1/16	
8/1/17	
8/1/18	
8/1/19	
8/1/20	
8/1/21	
8/1/22	
8/1/23	
8/1/24	
8/1/25	
8/1/26	
8/1/27	

The Trustee on behalf and at the expense of the Authority shall mail (by first class mail) notice of any redemption to the respective owners of any Bonds designated for redemption, at their respective addresses appearing on the registration books maintained by the Trustee, at least thirty (30) but not more than sixty (60) days prior to the redemption; provided, however, that neither failure to receive any such notice so mailed nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest on the Authority Bonds to be redeemed from and after the date fixed for redemption. Such notice shall state the date of the notice, the redemption date, the redemption place and the redemption price and shall designate the CUSIP numbers, the serial numbers of each maturity or maturities (except that in the event of redemption of all of the Authority Bonds of any maturity, the Trustee shall designate such maturity without referencing each individual Bond number) of the Authority Bonds to be redeemed, and shall require that such Bonds be then surrendered at the Trust Office of the Trustee for redemption at the redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

The Authority Bonds are issuable as fully registered Bonds without coupons in integral multiples of \$1. Subject to the limitations and upon payment of the charges, if any, provided in the Indenture, Bonds may be exchanged at the Trust Office of the Trustee for a like aggregate principal amount and maturity of Authority Bonds of other authorized denominations.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office of the Trustee or such other place as designated by the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. The Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority and the Trustee shall not be affected by any notice to the contrary.

The Indenture and the rights and obligations of the Authority and of the owners of the Authority Bonds and of the Trustee may be modified or amended from time to time and at

any time in the manner, to the extent, and upon the terms provided in the Indenture; provided that no such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Authority to pay the principal, interest or redemption premiums at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the owner of such Bond, (b) reduce the percentage of Authority Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee, all as more fully set forth in the Indenture.

It is hereby certified that all things, conditions and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State of California and by the Act, and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Constitution or statutes of the State of California or by the Act.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon shall have been signed by the Trustee.

THE AUTHORITY BONDS HAVE BEEN DESIGNATED AS "QUALIFIED TAX EXEMPT BONDS" UNDER THE SMALL ISSUER EXCEPTION PROVIDED UNDER SECTION 265(B)(3) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED

IN WITNESS WHEREOF, the Authority has caused this Bond to be executed in its name and on its behalf by the facsimile signatures of its Chairman and Secretary, all as of the Original Issue Date identified above.

FAIRFAX FINANCING AUTHORITY

Attest \_\_\_\_\_  
Secretary

By \_\_\_\_\_  
Chairman

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Authority Bonds described in the within-mentioned Indenture and registered on the registration books of the Trustee.

Dated: May 1, 2016

U.S. BANK NATIONAL  
ASSOCIATION, *as Trustee*

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

**FORM OF 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 a member firm of the New York Stock Exchange or any national stock exchange or a commercial bank or trust company.

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

**FORM OF FINAL OPINION OF BOND COUNSEL—AUTHORITY BONDS**

[Letterhead of Quint &amp; Thimmig LLP]

May 4, 2016

Fairfax Financing Authority  
142 Bolinas Road  
Fairfax, California 94930

OPINION: \$\_\_\_\_\_ Fairfax Financing Authority (Marin County, California) Revenue Bonds, Series 2016 (Town of Fairfax General Obligation Bond Refinancing Program)

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Members of the Authority:

We have acted as bond counsel to the Fairfax Financing Authority (the "Authority") in connection with the delivery by the Authority of \$\_\_\_\_\_ aggregate principal amount of its bonds designated the "Fairfax Financing Authority (Marin County, California) Revenue Bonds, Series 2016 (Town of Fairfax General Obligation Bond Refinancing Program)" (the "Authority Bonds"), issued pursuant to the provisions of the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 (commencing with section 6584) of Chapter 5, Division 7, Title 1 of the California Government Code (the "Bond Law"), and pursuant to an Indenture of Trust, dated as of May 1, 2016 (the "Indenture"), by and between the Authority and U.S. Bank National Association, as trustee, and a resolution adopted by the board of directors of the Authority on April 6, 2016. We have examined the Bond Law, the Indenture and such certified proceedings and other papers as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon representations of the Authority contained in the Indenture and in the certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation.

Based upon our examination we are of the opinion, under existing law, that:

1. The Authority is a joint exercise of powers authority duly organized and existing under the laws of the State of California, with power to enter into the Indenture, to perform the agreements on its part contained therein and to issue the Authority Bonds.
2. The Authority Bonds have been duly authorized, executed and delivered by the Authority and are legal, valid and binding obligations of the Authority, payable solely from the sources provided therefor in the Indenture.
3. The Indenture has been duly approved by the Authority and constitutes a legal, valid and binding obligation of the Authority enforceable against the Authority in accordance with its terms.

4. The Indenture establishes a valid first and exclusive lien on and pledge of the Revenues (as such term is defined in the Indenture) and other funds pledged thereby for the security of the Authority Bonds, in accordance with the terms of the Indenture.

5. It is our opinion that, subject to compliance by the Authority and the Town of Fairfax (the "Town") with certain covenants, under present law, interest on the Authority Bonds is excludable from gross income of the owners thereof for federal income tax purposes and is not included as an item of tax preference in computing the alternative minimum tax for individuals and corporations under the Internal Revenue Code of 1986, as amended (the "Code"), but is taken into account in computing an adjustment used in determining the federal alternative minimum tax for certain corporations. Failure to comply with certain of such Authority and Town covenants could cause the interest on the Authority Bonds to be includable in gross income for federal income tax purposes retroactively to the date of issuance of the Authority Bonds. It is also our opinion that the Authority Bonds are "qualified tax-exempt obligations" under section 265(b)(3) of the Code.

6. Interest on the Authority Bonds is exempt from personal income taxation imposed by the State of California.

Ownership of the Authority Bonds may result in other tax consequences to certain taxpayers, and we express no opinion regarding any such collateral consequences arising with respect to the Authority Bonds.

In rendering this opinion, we have relied upon certifications of the Authority and the Town with respect to certain material facts within the Authority's and the Town's knowledge. Our opinion represents our legal judgment based upon our review of the law and the facts that we deem relevant to render such opinion, and is not a guarantee of a result. This opinion is given as of the date hereof and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

The rights of the owners of the Authority Bonds and the enforceability of the Authority Bonds and the Indenture may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and also may be subject to the exercise of judicial discretion in accordance with general principles of equity.

Respectfully submitted,

**TOWN OF FAIRFAX**  
**2016 Refunding of 2006 General Obligation Bonds**  
**FINANCING SCHEDULE**

**2016**

March						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

April						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

May						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

<b>Date</b>	<b>Action</b>
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**2016**

- |        |  |
|--------|--|
| Mar 30 | Staff selects Investor and commences discussions re sale and bond structure  |
| Mar 31 | Resolution and Legal documents to Town for agenda  |
| Apr 6  | Public Hearing – discuss refunding options<br>- Savings to property owners – approximately \$0.31 savings / \$100,000 AV<br>- Monetize savings = \$80-100M for more improvements |
| Apr 14 | Municipal Advisor receives pricing proposal and reviews with Town  |
| Apr 20 | Price Bonds  |
| May 3  | Pre-close  |
| May 4  | Close  |