



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
November 16, 2011**

TO: Mayor and City Council

FROM: Alan H. Shear, Asst. City Manager
Cathy Spinella, Finance Manager

SUBJECT: Approve the Sale of Pension Obligation Bonds to Refinance Outstanding Side Fund Obligations of the California Public Employees' Retirement System
Short and to the point

DATE: November 10, 2011

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution authorizing the issuance of pension obligation bonds to refinance the outstanding Side Fund obligations of the City to the California Public Employees' Retirement System (CalPERS); approving the forms of and authorizing the execution and delivery of an Indenture of Trust with US Bank; directing the filing of a Judicial Validation Action; and utilizing the professional services of Jones Hall for Bond Counsel and Brandis Tallman as Placement Agent.

BACKGROUND:

In September 2003, CalPERS combined the retirement plans for public agencies with groups with 100 employees or less in an attempt to reduce the volatility of employer contribution rates. These agencies were put in a risk pool. Actuarial risk and the normal employer rate are calculated based on the entire pool rather than by individual entity. In addition to the normal rate, each entity that had an unfunded liability upon entering the pool was additionally assessed. CalPERS created a "Side Fund" to amortize each agency's June 30, 2003 unfunded liability over a fixed term at a fixed interest rate.

The City's unfunded liability increased significantly with the enhancement of the safety pension benefit from 2% at 50 to 3% at 50 in January 2004. Since then, the City has continued to pay down the Side Fund, which now stands at \$6.8 million. The City has paid off the Miscellaneous Plan's Side Fund, but due to the cost of the Safety Plan, the City does not have the resources available to pay off the balance. Therefore, staff is looking to refinance the Side Fund obligation at a lower rate than the current 7.75% charged by CalPERS. The 7.75% rate is equivalent to what CalPERS believes their investment return rate would have been had they had the funds to invest. Specifically, the investment return rate represents what a pension fund believes it can realistically earn from its investments on an annual basis when averaged over twenty years or more.

At the City Council meeting of October 19, 2011, Council adopted a resolution directing staff to prepare the proceedings for the issuance of the bonds to refinance the outstanding Side Fund obligation. Staff is now requesting authorization to issue said bonds.

DISCUSSION:

The City has been presented with an opportunity to pay off the Side Fund obligation by issuing a pension obligation bond to interested investors. Over the past nine months, the bond market has provided interest rates for pension obligation bonds much lower than the 7.75% that CalPERS is charging on its Side Fund. The City's Side Fund obligation currently has a term of 10.5 years. Due to the current interest rate environment, the City can shorten the term to approximately 9 + years and pay off the Side Fund obligation more quickly without an increase in its annual debt service. Based on today's interest rates, the City can realize savings of approximately \$1,480,000 and approximately \$893,000 in net present value savings. While the industry standard for a refunding is 3% net present value savings, the City could realize net present value savings of 13.07%.

The City has assembled a Finance Team to evaluate and, if so directed, implement a refinancing of the Side Fund obligation. The team consists of: Jones Hall, Bond Counsel; Brandis Tallman, Placement Agent; US Bank, Trustee. Included in the Resolution that Council is being asked to adopt is the authorization for staff to enter into agreements for consulting services.

In order to issue pension obligation bonds in California and render a final legal opinion regarding the validity of the bonds, Bond Counsel will require a judicial validation process be undertaken and completed prior to issuance. The judicial validation process is available to pension obligation bond issuers under State Law (Government Code Section 53589.5 and Code of Civil Procedure Sections 860 and following), and results in a binding judgment rendered by the local superior court supporting the legal theory under which the bonds are issued. The legal theory relies on the interpretation of State Law that the refunding of any unfunded liability owed to CalPERS constitutes an obligation imposed by law and therefore is exempt from the voter approval requirement of the California Constitution's debt limitation provision (Article XVI, Section 18). The legal arguments supporting this theory are briefed to the court, and, following an opportunity for the public to respond, a judgment is rendered which becomes forever binding and conclusive, and cannot be challenged.

A summary of the steps in the validation process are:

- Action Triggered - Issuer adopts resolution approving issuance of bonds and authorizing Bond Counsel to commence validation proceedings.
- Initial Court Filing - Complaint is filed in local superior court; Summons is issued simultaneously.
- Publication of Summons - Summons is directed at "All Interested Persons" and the full text is published in an adjudicated publication in the jurisdiction of the issuer once a week for three consecutive weeks, offering any interested person an opportunity to file an answer in the action.
- Request to Court for Entry of Default Judgment and Court Judgment – If no person has filed an answer in the action by the legal deadline, then Bond Counsel seeks a default judgment in the issuer's favor. Bond Counsel also files a Memorandum of Points and Authorities briefing its legal argument in favor of the issuance of the bonds, and supporting the judgment. The court will then consider and render the judgment in the issuer's favor.

- Statutory Appeal Period – The judgment can be appealed for 30 days following entry of the judgment. If there is no answer to the action, the basis of appeal can only relate to issues of jurisdiction of the court to enter the judgment.

Typically, a period of at least 60 days runs from the initial court filing to the entry of judgment, and then prior to the bond issuance, a 30 day appeal process must pass. Therefore, the most realistic timeframe from approval to bond issuance is 60 – 90 days.

Schedule of Key Actions

- October 19, 2011 – City Council approved to proceed with refunding.
- November 16, 2011 - City Council to approve the issuance of Pension Obligation Bonds to refinance; approve the directing of the filing of a Judicial Validation Action (a 60-90 day process); authorize the execution and delivery of an Indenture of Trust; engagement of professional services.
- January 18, 2012 – City Council to approve Bond Purchase Agreement.
- Early/Mid January 2012 – Validation Judgement is anticipated. 30-day appeal process begins.
- Late January/Early February 2012 – Appeal period ends; validation complete and close transaction.

FISCAL IMPACT:

Fees associated with the cost of issuance are estimated at approximately \$138,000, payable on completion of the refinancing. The fees will be paid from the bond proceeds. One cost, \$7,500 for the validation action, is not contingent on the bond issuance, and would be payable whether or not the refinancing is successfully completed.

ACTION:

Motion adopting a resolution approving the issuance of pension obligation bonds to refinance the outstanding Side Fund obligations of the City to the California Public Employees' Retirement System (CalPERS); approve the forms of and authorizing the execution and delivery of an Indenture of Trust with US Bank; direct the filing of a Judicial Validation Action; and utilize the professional services of Jones Hall for Bond Counsel and Brandis Tallman as Placement Agent.

Attachments
Resolution
Indenture of Trust

APPROVED BY:


City Manager

RESOLUTION NO. -11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARTINEZ AUTHORIZING THE ISSUANCE OF PENSION OBLIGATION BONDS TO REFINANCE OUTSTANDING SIDE FUND OBLIGATIONS OF THE CITY TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM, APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, DIRECTING THE FILING OF A JUDICIAL VALIDATION ACTION WITH RESPECT THERETO AND PROVIDING OTHER MATTERS RELATING THERETO

WHEREAS, the City of Martinez (the "City") is a contracting member of the California Public Employees' Retirement System ("PERS"), and the City is obligated to make certain payments to PERS in respect of retired public safety employees under the Side Fund program of PERS which amortizes such obligations over a fixed period of time (the "PERS Side Fund Obligations"); and

WHEREAS, the City is authorized under the provisions of Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code (the "Bond Law"), to issue its bonds for the purpose of refunding certain outstanding obligations of the City, including the PERS Side Fund Obligations; and

WHEREAS, in order to refund the PERS Side Fund Obligations and thereby realize interest savings in respect of the PERS Side Fund Obligations, the City proposes at this time to authorize the issuance of its bonds under the Bond Law for the purpose of refinancing the PERS Side Fund Obligations; and

WHEREAS, the City Council of the City wishes at this time to approve the forms of and authorize the execution and delivery of the documents relating to the issuance and sale of such bonds, and to approve official actions relating to the delivery of such bonds, subject to the City Council's final approval of the Sale of such bonds; and

WHEREAS, the sale and delivery of such bonds by the City is subject, also, to a prior judicial determination of the validity of such bonds and the City Council also wishes at this time to authorize the institution of judicial proceedings to determine the validity of such bonds.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Martinez (the "City Council") as follows:

Section 1. Approval of Issuance of Bonds. The City Council hereby authorizes and approves the issuance of the City of Martinez 2011 Taxable Pension Obligation Bonds (the "Bonds") under the Bond Law in the aggregate principal amount of not to exceed \$7,000,000. The City Council hereby authorizes the Mayor to execute the Bonds and the City Clerk to attest Mayor's signature to the Bonds and to cause the Bonds to be authenticated and delivered in accordance with the Indenture (defined below). The Bonds shall be in substantially the form set forth in the Indenture, with such changes therein, deletions therefrom and additions thereto as the Mayor shall approve, such approval to be conclusively evidenced by the execution and delivery of the Bonds. The proceeds of the Bonds shall be applied to refund the unfunded accrued actuarial liability represented by the PERS Side Fund Obligations, as reported to the City by PERS, plus an amount required to pay all costs of issuing the Bonds (including underwriter's discount and original issue discount, if any).

Section 2. Indenture of Trust. The City Council hereby approves the Indenture of Trust between the City and Union Bank, N.A. as trustee (the "Indenture"), prescribing the terms and provisions of the Bonds. Each of the Mayor or the City Manager (each, an "Authorized Officer") is hereby authorized and directed to execute and deliver, and the City Clerk is hereby authorized and directed to attest to, the Indenture for and in the name and on behalf of the City, in substantially the form on file with the City Clerk, with such changes therein, deletions therefrom and additions thereto as the Authorized Officer shall approve, such approval to be conclusively evidenced by the execution and delivery of the Indenture. The City Council hereby authorizes the delivery and performance of the Indenture.

Section 3. Sale of Bonds. The City Council proposes to sell the Bonds pursuant to a private placement of the Bonds with a banking institution. Accordingly, upon entry of an approving judgment in the judicial validation proceedings describe in Section 5, the City Staff shall, with the assistance of the Placement Agent engaged pursuant to Section 6, negotiate the sale of the Bonds by private placement and shall submit documentation providing for such sale to the City Council for final approval.

Section 4. Taxable Status of the Bonds. The City Council hereby determines that interest payable on the Bonds will be subject to federal income taxation, and that the provisions of Section 5900 et seq. of the California Government Code (the "Taxable Bond Act") apply to the Bonds. The City may take any action and exercise any power permitted to be taken by it under the Taxable Bond Act in connection with the issuance and sale of the Bonds.

Section 5. Institution of Judicial Validation Proceedings. The sale and delivery of the Bonds to the Purchaser is subject to a prior judicial determination of the validity of the Bonds, the Indenture and related matters and the City Council hereby authorizes the filing of an action to determine the validity of the Bonds, the Indenture and related matters in the Superior Court of Contra Costa County, under the provisions of Sections 860 et seq. of the Code of Civil Procedure of the State of California. The firm of Jones Hall, A Professional Law Corporation, as bond counsel to the City, is hereby directed, in concert with the City Attorney, to prepare and cause to be filed and prosecuted to completion all proceedings required for the judicial validation of the Bonds, the Indenture and related matters.

Section 6. Engagement of Professional Services. In connection with the issuance and sale of the Bonds and the implementation of the judicial validation proceedings, the City Council hereby appoints Jones Hall, A Professional Law Corporation, as Bond Counsel and Brandis Tallman as Placement Agent for the Bonds. Fees and expenses to be paid to the foregoing for services shall be as provided in agreements on file with the City Clerk or as approved by the City Manager or Finance Director upon delivery of the Bonds to the Purchaser.

Section 7. Official Actions. The Mayor, the Vice Mayor, the City Manager, the Assistant City Manager, the City Clerk, the City Attorney and any and all other officers of the City are hereby authorized and directed, for and in the name and on behalf of the City, 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 and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance, sale and delivery of the Bonds, the implementation of the authorized judicial validation proceedings and the consummation of the transactions approved herein. Whenever in this Resolution any officer of the City is directed 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 is absent or unavailable.

Section 8. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 16th day of November, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ROB SCHRODER, MAYOR
CITY OF MARTINEZ

(SEAL)

ATTEST:

By: _____
Deputy City Clerk

INDENTURE OF TRUST

Dated as of January 1, 2012

between the

CITY OF MARTINEZ

and

U.S. BANK NATIONAL ASSOCIATION
as Trustee

Relating to

**[\$Bond Amount]
City of Martinez
2012 Taxable Pension Obligation Bonds**

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APPROPRIATION OF DEBT SERVICE

INDENTURE OF TRUST

This INDENTURE OF TRUST (this "Indenture") dated as of January 1, 2012, is between the CITY OF MARTINEZ, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee").

BACKGROUND:

1. The City has previously elected to become a contracting member of the California Public Employees' Retirement System ("PERS"), and under its contract with PERS (the "PERS Contract") the City is obligated to make certain payments to PERS in respect of retired public safety employees under the Side Fund program of PERS which amortizes such obligations over a fixed period of time (the "PERS Side Fund Obligations").

2. The PERS Contract was first effective July 1, 1950 and was thereafter amended several times, including the most recent Amendment to Contract, effective January 1, 2008.

3. The City is authorized under the provisions of Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code (the "Bond Law"), to issue its bonds for the purpose of refunding certain outstanding indebtedness of the City, including the PERS Side Fund Obligations.

4. In order to refund the PERS Side Fund Obligations and thereby realize interest savings in respect of the PERS Side Fund Obligations, the City has determined to issue its \$[Bond Amount] aggregate principal amount of City of Martinez 2012 Taxable Pension Obligation Bonds (the "Bonds") under the Bond Law and this Indenture, and under a Resolution adopted by the Board of Directors of the City on November __, 2011.

5. The principal and redemption price of and interest on the Bonds are payable from any source of legally available funds of the City, including amounts on deposit in the general fund of the City.

6. The Bonds have been determined to be the legal, valid and binding obligations of the City by judgment of the Contra Costa County Superior Court rendered on _____, 2012 in *City of Martinez v. All Persons Interested, etc.*, Case No. _____.

7. The City has determined that all acts and proceedings required by law necessary to make the Bonds, when executed by the City, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal limited obligations of the City, 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 or taken.

AGREEMENT:

In order to secure the payment of the principal and redemption price of and the interest on all the Outstanding Bonds 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 Bonds are to be issued and received, and in consideration of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable consideration, the receipt of which is hereby acknowledged, the City and the Trustee hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.01. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms defined in Appendix A attached to this Indenture have the respective meanings specified in Appendix A when used in this Indenture.

SECTION 1.02. *Authorization.* Each of the parties represents and warrants that it has full legal authority and is duly empowered to enter into this Indenture, and has taken all actions necessary to authorize the execution hereof by the officers and persons signing it.

SECTION 1.03. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

AUTHORIZATION AND TERMS OF BONDS

SECTION 2.01. *Authorization and Purpose of Bonds.* The City has reviewed all proceedings heretofore taken 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 or be performed precedent to and in connection with the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the City is now duly empowered, under each and every requirement of law, to issue the Bonds in the manner and form provided in this Indenture.

The City hereby authorizes the issuance of the Bonds in the aggregate principal amount of \$[Bond Amount] under the Authorizing Resolution and the Bond Law for the purposes of providing funds to refinance the PERS Side Fund Obligations of the City as provided herein. The Bonds are designated the "City of Martinez 2012 Taxable Pension Obligation Bonds".

SECTION 2.02. *Terms of the Bonds.* The Bonds shall be issued in fully registered form without coupons in denominations of \$1,000 or any integral multiple thereof. The Bonds shall be dated as of the Closing Date. The Bonds shall mature on _____, 20__, and shall bear interest (calculated on the basis of a 360-day year comprised of twelve 30-day months) at the rate per annum of ____%; *provided, however,* that upon the occurrence and during the continuation of an Event of Default, the Bonds shall bear interest at the Default Rate.

Interest on the Bonds is payable from the Interest Payment Date immediately preceding the date of authentication thereof unless:

- (a) a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,
- (b) a Bond is authenticated on or before the first Record Date, in which event interest thereon will be payable from the Closing Date, or
- (c) interest on a Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

Interest is payable on each Interest Payment Date to the persons in whose names the ownership of the Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on a Bond which is not punctually paid or duly provided for on any Interest Payment Date is payable to the person in whose name the ownership of such Bond is registered on the Registration Books at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice of which is given to such Owner by first-class mail not less than ten days prior to such special record date.

The Trustee will pay interest on the Bonds by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date. At the written request of the Owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of any Record Date, the Trustee will pay interest on such Bonds on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as specified in such written request, which written request will remain in effect until rescinded in writing by the Owner.

The Trustee will pay principal of the Bonds in lawful money of the United States of America by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee.

Notwithstanding anything herein to the contrary, so long as Bonds are owned by the Original Purchaser, (a) the Bonds are not required to be presented and surrendered to the Trustee for payment at any time prior to the final maturity thereof, and (b) the Trustee will pay the principal of, including sinking fund payments, and interest on Bonds by wire transfer to the Original Purchaser in accordance with the following wire transfer instructions (which instructions may be changed from time to time by the Original Purchaser upon written notice to the Trustee):

JPMorgan Chase Bank, N.A.
Chase Bank, N.A.
One Chase Manhattan Plaza
New York NY 10005

ROUTING/TRANSIT/ABA# 021000021

ACCOUNT# _____

ACCOUNT NAME: Commercial Client Services

FOR CREDIT TO: City of Martinez

REFERENCE: (purpose – i.e., principal payment or interest payment or both)

SECTION 2.03. *Redemption of Bonds.*

(a) No Optional Redemption. The Bonds are not subject to optional redemption prior to their respective stated maturities.

(b) Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory redemption by lot at a redemption price equal to 100% of the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on _____ and _____ in the respective years as set forth in the following table.

**Sinking Fund
Redemption Date**

**Principal Amount
To Be Redeemed**

[To Come]

(c) Notice of Redemption. The Trustee on behalf and at the expense of the City will mail (by first class mail) notice of any redemption to the respective Owners of Bonds designated for redemption at their respective addresses appearing on the Registration Books, to the Municipal Securities Rulemaking Board, at least 30 but not more than 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 will affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. Such notice must state the date of the notice, the redemption date, the redemption place and the redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date. Notwithstanding the foregoing, so long as the Bonds are owned by the Original Purchaser, no notice of sinking fund redemption shall be given.

(d) Manner of Redemption. Whenever provision is made in this Section 2.03 for the redemption of less than all of the Bonds, the Trustee shall select the Bonds to be redeemed on by lot on a pro rata basis among Owners of the Bonds. For purpose of such selection, all Bonds will be deemed to be comprised of separate \$1,000 denominations and such separate denominations will be treated as separate Bonds which may be separately redeemed.

(e) Partial Redemption of Bonds. If only a portion of a Bond is called for redemption, then upon surrender of such Bond the City will execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the City, a new Bond or Bonds, 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 notice of redemption has been duly mailed and funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption 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. Unless otherwise directed in writing by the City, the Trustee shall pursuant to Section 9.08 cancel and destroy all Bonds redeemed under this Section 2.03.

SECTION 2.04. *Form and Execution of Bonds.* The Bonds will be initially delivered in the form of a separate single fully registered bond (which may be typewritten) in the aggregate principal amount of the Bonds, which shall be executed, authenticated and delivered to the Original Purchaser on the Closing Date. Upon initial delivery of Bonds to the Original Purchaser, the Trustee shall register the ownership of the Bonds on the Registration Books in the name of the Original Purchaser.

The Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, are set forth in Appendix B attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

The Mayor shall execute, and the City Clerk shall attest the Bonds. Any or all of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on a Bond ceases to be such officer before the Closing Date, such signature will nevertheless be as effective as if the officer had remained in office until the Closing Date. A Bond may be signed and attested on behalf of the City by such persons as at the actual date of the execution of that Bond are the proper officers of the City, duly authorized to execute debt instruments on behalf of the City, although on the date of that Bond any such person was not an officer of the City.

Only those Bonds bearing a certificate of authentication in the form set forth in Appendix B, manually executed and dated by the Trustee, are valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee is conclusive evidence that such Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.05. *Transfer and Exchange of Bonds.*

(a) Transfer. A 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 a duly authorized attorney of such person, upon surrender of that Bond to the Trustee at its Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. The Trustee shall collect any tax or other governmental charge on the transfer of any Bonds under this Section 2.05. Whenever any Bond or Bonds are surrendered for transfer, the City will execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of like interest rate, maturity and aggregate principal amount. The City will pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer of Bonds.

(b) Exchange. The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations. The Trustee shall collect any tax or other governmental charge on the exchange of Bonds under this subsection (b). The City will pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange of Bonds.

(c) Limitations. The Trustee may refuse to transfer or exchange, under the provisions of this Section 2.05, any Bonds selected by the Trustee for redemption under Section 2.03, or any Bonds during the period established by the Trustee for the selection of Bonds for redemption.

SECTION 2.06. *Registration Books*. The Trustee will keep or cause to be kept, at its Office, sufficient records for the registration and registration of transfer of the Bonds, which shall at all times during normal business hours, and upon reasonable notice, be open to inspection by the City. The Trustee will register the ownership and transfer of the Bonds on the Registration Books under such reasonable regulations as it may prescribe.

SECTION 2.07. *Bonds Mutilated, Lost, Destroyed or Stolen*. If a Bond is mutilated, the City, at the expense of the Owner of that Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange

and substitution for the Bond so mutilated, upon surrender to the Trustee of the Bond so mutilated. The Trustee shall cancel every mutilated Bond surrendered to it and deliver such mutilated Bond to or upon the order of the City. If a Bond is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence is satisfactory to the Trustee and if indemnity satisfactory to the Trustee is given, the City, at the expense of the Owner, will execute, and the Trustee will thereupon authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the Trustee in connection therewith. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen will constitute an original additional contractual obligation on the part of the City whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and are equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued under this Indenture.

Notwithstanding any other provision of this Section 2.07, in lieu of delivering a new Bond for which principal has become due for a Bond which has been mutilated, lost, destroyed or stolen, the Trustee may make payment of such Bond in accordance with its terms upon receipt of indemnity satisfactory to the Trustee.

ARTICLE III

DEPOSIT AND APPLICATION OF PROCEEDS OF BONDS

SECTION 3.01. *Issuance of Bonds.* Upon the execution and delivery of this Indenture, the City shall execute and deliver Bonds in the aggregate principal amount of \$[Bond Amount] to the Trustee and the Trustee shall authenticate and deliver the Bonds to the Original Purchaser upon receipt of a Request of the City therefor.

SECTION 3.02. *Deposit and Application of Proceeds.* Upon receipt of the proceeds of the Bonds on the Closing Date, the Trustee shall deposit the proceeds into a special fund to be held by the Trustee and known as the Bond Proceeds Account which the Trustee shall establish and hold in trust hereunder, to be applied as follows:

- (a) The Trustee shall transfer the amount of \$_____ to the Costs of Issuance Fund.
- (b) The Trustee shall apply the amount of \$_____, constituting the remainder of the proceeds of sale of the Bonds, to the satisfaction of the City's obligations under the PERS Contract with respect to the Safety Plan PERS Side Fund Obligations, by effecting a wire transfer of such proceeds to PERS, in accordance with a Request of the City.

After making the foregoing transfers, the Trustee shall close the Bond Proceeds Account.

SECTION 3.03. *Costs of Issuance Fund.* There is hereby established a separate fund to be known as the "Costs of Issuance Fund," to be held by the Trustee. The Trustee shall disburse moneys in the Costs of Issuance Fund from time to time to pay

Costs of Issuance upon submission of a Request of the City stating (a) the person to whom payment is to be made, (b) the amounts to be paid, (c) the purpose for which the obligation was incurred, (d) that such payment is a proper charge against the Costs of Issuance Fund, and (e) that such amounts have not been the subject of a prior Request of the City; in each case together with a statement or invoice for each amount requested thereunder. On _____ 30, 2012, the Trustee shall transfer any amounts remaining in the Costs of Issuance Fund to the Debt Service Fund.

SECTION 3.04. *Validity of Bonds.* The recital contained in the Bonds that the same are issued pursuant to the Bond Law and pursuant hereto shall be conclusive evidence of their validity and of regularity of their issuance, and all Bonds shall be incontestable from and after definitive Bonds (or temporary Bonds exchangeable therefor) shall have been delivered to the Original Purchaser and the proceeds of sale thereof received by the Trustee as provided herein.

ARTICLE IV

SECURITY OF BONDS; FLOW OF FUNDS; INVESTMENTS

SECTION 4.01. *Security of Bonds; Equal Security.* The City shall be obligated to satisfy its obligations with respect to the Bonds from any legally available funds of the City. The obligations of the City under the Bonds, including the obligation to make all payments of principal and redemption price of and interest on the Bonds when due and the obligation of the City to make the deposits required hereunder for the security of the Bonds, are obligations of the City imposed by law and are absolute and unconditional, without any right of set-off or counterclaim. The Bonds do not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation. Neither the Bonds nor the obligations of the City to make payments on the Bonds constitute an indebtedness of the City, the State of California, or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction.

In consideration of the acceptance of the Bonds by those who hold the same from time to time, this Indenture constitutes a contract between the City and the Owners from time to time of the Bonds, and the covenants and agreements herein set forth to be performed on behalf of the City are for the equal and proportionate benefit, security and protection of all Owners of the Bonds without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reason of the number or date thereof or the time of sale, execution and delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

SECTION 4.02. *Debt Service Fund; Transfer of Amounts to Trustee.* There is hereby established a separate fund to be known as the "Debt Service Fund" which shall be held by the Trustee in trust for the benefit of the Owners. The Trustee will hold the Debt Service Fund for the uses and purposes set forth herein, so long as any of the Bonds remain Outstanding. The City will transfer an amount of legally available funds to the Trustee in the following amounts at the following times, for deposit by the Trustee in the following respective special accounts within the Debt Service Fund, which accounts are hereby established with the Trustee with respect to the Bonds, in the following order of priority:

- (a) Interest Account. On or before the 5th Business Day preceding each Interest Payment Date, the City will transfer to the Trustee for deposit in the Interest Account an amount which, when added to the amount then on deposit in the Interest Account, equals the aggregate amount of the interest coming due and payable on the Outstanding Bonds on such Interest Payment Date. The Trustee will apply amounts in the Interest Account solely for the purpose of paying the interest on the Bonds when due and payable.
- (b) Principal Account. On or before the 5th Business Day preceding each date on which principal of the Bonds is due and payable at maturity or upon mandatory sinking fund redemption under Section 2.03(b), the City will transfer to the Trustee for deposit in the Principal Account an amount which, when added to the amount then on deposit in the Principal Account, equals the amount of principal coming due and payable on that date on the Outstanding Bonds, including the principal amount of the Bonds which are subject to mandatory sinking fund redemption on that date under Section 2.03(b). The Trustee will apply amounts in the Principal Account solely for the purpose of paying the principal of the Bonds at the maturity thereof and the principal of the Bonds upon the mandatory sinking fund redemption thereof.

SECTION 4.03. *Investment of Moneys in Funds*. The Trustee shall invest moneys in the funds and accounts established and held by it hereunder in Permitted Investments specified in the Request of the City (which Request will be deemed to include a certification that the specified investment is a Permitted Investment) delivered to the Trustee at least two Business Days in advance of the making of such investments. In the absence of any direction from the City concerning the investment of amounts held by the Trustee hereunder, the Trustee shall invest any such amounts solely in Permitted Investments described in clause (f) of the definition thereof. The City shall ensure that all Permitted Investments mature not later than the date on which the funds invested therein are required to be expended.

Obligations purchased as an investment of moneys in any fund or account will be deemed to be part of such fund or account. Whenever in this Indenture the City is required to transfer any moneys to the Trustee, such transfer may be accomplished by transferring a like amount of Permitted Investments. All interest or gain derived from the investment of amounts in any of the funds or accounts held by the Trustee hereunder will be retained in the respective fund or account from which such investment was made. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder upon receipt by the Trustee of the Request of the City. The Trustee or an affiliate may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made under this Section.

The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will

furnish the City periodic 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.

ARTICLE V

OTHER COVENANTS OF THE CITY

SECTION 5.01. *Punctual Payment.* The City shall punctually pay or cause to be paid the principal and redemption price and interest to become due in respect of all the Bonds in strict conformity with the terms of this Indenture. The City shall faithfully observe and perform all of the conditions, covenants and requirements of this Indenture and all Supplemental Indentures.

SECTION 5.02. *Budget and Appropriation of Debt Service; Certification to Trustee.* The City covenants to take such action as may be necessary to include in each of its annual budgets the payments required to be made by the City under Section 4.02, and to make the necessary annual appropriations for all such payments. If any payment of debt service requires the adoption by the City of a supplemental budget or appropriation, the City will promptly adopt the same. This covenant to budget and appropriate shall apply to all legally available funds without regard to a specific fund. The covenants on the part of the City herein contained constitute duties imposed by law and it is the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Indenture agreed to be carried out and performed by the City.

Promptly following the adoption of an annual budget which includes the appropriations required by this Section, but in any event not later than July 15 in each Fiscal Year, the City shall execute and deliver to the Trustee a Certificate of the City in substantially the form attached hereto as Appendix C, which shall evidence the compliance by the City with the covenants set forth in this Section 5.02 with respect to such Fiscal Year.

SECTION 5.03. *Extension of Payment of Bonds.* The City may not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and if the maturity of any of the Bonds or the time of payment of any such claims for interest is extended, such Bonds or claims for interest are not 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 Outstanding Bonds and of all claims for interest thereon which have not been so extended. Nothing in this Section limits the right of the City to issue bonds for the purpose of refunding any Outstanding Bonds, and such issuance does not constitute an extension of maturity of the Bonds.

SECTION 5.04. *Books and Accounts; Financial Statements; Additional Information.* The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City. Such books of record and accounts shall at all times during business hours be subject, upon prior

written request, to the reasonable inspection of the Trustee (who has no duty to inspect), the Owners of not less than 10% in aggregate principal amount of the Bonds then Outstanding, or their representatives authorized in writing.

The City will cause to be prepared annually, within 180 days after the close of each Fiscal Year so long as any of the Bonds are Outstanding, complete audited financial statements with respect to such Fiscal Year in accordance with Section 2.17 of the Bond Purchase Agreement, as of the end of such Fiscal Year. The City will furnish a copy of such statements, upon reasonable request, to the Trustee and any Owner. The Trustee has no duty to review any such financial statement.

SECTION 5.05. *Protection of Security and Rights of Owners.* The City shall preserve and protect the security of the Bonds and the rights of the Owners. From and after the date of issuance of the Bonds, the City shall not contest the validity or enforceability of the Bonds or this Indenture.

SECTION 5.06. *Further Assurances.* The City shall 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 the rights and benefits provided in this Indenture.

SECTION 5.07. *Information to Original Purchaser.* The City shall provide the following items to the Original Purchaser, in each case in an electronic format which is acceptable to the Original Purchaser:

- (a) audited financial statements of the City pursuant to Section 5.04;
- (b) such additional information as the Original Purchaser shall reasonably request from time to time pursuant to written notice to the City.

SECTION 5.08. *Obligation of the City.* In the event the City fails to have deposited with the Trustee the full amount of money required to pay the principal or redemption price of or interest on the Bonds by the times required by Section 4.02, the City shall be obligated, to the extent permitted by law, to satisfy its obligations under the Bonds from any money lawfully available in any fund of the City, and the City shall be obligated to transfer from any money lawfully available in any such fund amounts necessary to make such payments to the Trustee to pay the principal, or redemption price of and the interest on the Bonds on such date.

ARTICLE VI

THE TRUSTEE

SECTION 6.01. *Duties, Immunities and Liabilities of Trustee.*

(a) The Trustee shall, prior to the occurrence of an Event of Default, and after the curing or waiving of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or duties will be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a reasonable corporate trustee would exercise or use.

(b) Prior to the occurrence and continuation of an Event of Default, the City may remove the Trustee at any time, and shall remove the Trustee (i) if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or (ii) if at any time (A) the Trustee ceases to be eligible in accordance with subsection (e) of this Section 6.01, (B) becomes incapable of acting, (C) is adjudged a bankrupt or insolvent, (D) a receiver of the Trustee or its property is appointed, or (E) any public officer takes control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation. The City may accomplish such removal by giving 30 days written notice to the Trustee, whereupon the City will appoint a successor Trustee by an instrument in writing, with a copy to the Original Purchaser.

(c) The Trustee may at any time resign by giving written notice of such resignation to the City, and by giving notice of such resignation by first class mail, postage prepaid, to the Owners at their respective addresses shown on the Registration Books. Upon receiving such notice of resignation, the City will promptly appoint a successor Trustee by an instrument in writing, with a copy to the Original Purchaser.

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee becomes effective upon acceptance of appointment by the successor Trustee. If no successor Trustee has been appointed and accepted appointment within 45 days following giving notice of removal or notice of resignation as aforesaid, the resigning Trustee, any Owner (on behalf of such Owner and all other Owners) may petition any federal or state court for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the City and to its predecessor Trustee a written acceptance thereof, and to the predecessor Trustee an instrument indemnifying the predecessor Trustee for any costs or claims arising during the time the successor Trustee serves as Trustee hereunder, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless, upon the receipt by the predecessor Trustee of the Request of the City or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other

things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the City will execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the City will mail or cause the successor Trustee to mail, by first class mail postage prepaid, a notice of the succession of such Trustee to the trusts hereunder to the Owners at the addresses shown on the Registration Books. If the City fails to mail such notice within 15 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the City.

(e) Any Trustee appointed under the provisions of this Section in succession to the Trustee shall (i) be a company or bank having trust powers, (ii) have a corporate trust office in the State of California, (iii) have (or be part of a bank holding company system whose bank holding company has) a combined capital and surplus of at least \$50,000,000, and (iv) be subject to supervision or examination by federal or state authority.

If such bank or company publishes a report of condition at least annually, under law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such bank or company is deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in subsection (c) of this Section.

SECTION 6.02. *Merger or Consolidation.* Any bank or company into which the Trustee may be merged or converted or with which either of them may be consolidated or any bank or company resulting from any merger, conversion or consolidation to which it shall be a party or any bank or company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank or company shall be eligible under subsection (e) of Section 6.01, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

SECTION 6.03. *Liability of Trustee.*

(a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the City, and the Trustee assumes no responsibility for the correctness of the same, nor does it have any liability whatsoever therefor, nor does it make any representations as to the validity or sufficiency of this Indenture or of the Bonds nor does it incur any responsibility in respect thereof, other than as expressly stated herein. The Trustee is, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee is not liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Trustee is not liable for the acts of any agents of the Trustee selected by it with due care. The Trustee may become the Owner of Bonds with the same rights it would have if they were not Trustee and, to the extent permitted by law, may act as 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 the Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding. The Trustee, either as principal or agent, may engage in or be entrusted in any financial or other transaction with the City.

(b) The Trustee is not liable with respect to 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 the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(c) The Trustee is not liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture, except for actions arising from the negligence or willful misconduct of the Trustee. The permissive right of the Trustee to do things enumerated hereunder shall not be construed as a mandatory duty.

(d) The Trustee will not be deemed to have knowledge of any Event of Default hereunder unless and until a responsible officer of the Trustee has actual knowledge thereof, or unless and until a responsible officer of the Trustee has received written notice thereof at its Office. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of an Event of Default hereunder or thereunder. The Trustee shall not be responsible for the City's payment of principal and interest on the Bonds, the City's observance or performance of any other covenants, conditions or terms contained herein, or the validity or effectiveness of any collateral given to or held by it. Without limiting the generality of the foregoing, and notwithstanding anything herein to the contrary, the Trustee is not responsible for reviewing the contents of any financial statements furnished to the Trustee under Section 5.05 and may rely conclusively on the Certificate of the City accompanying such financial statements to establish the City's compliance with its financial covenants hereunder.

(e) No provision in this Indenture requires the Trustee to risk or expend its own funds or otherwise incur any financial liability hereunder. The Trustee is entitled to receive interest on any moneys advanced by it hereunder, at the maximum rate permitted by law.

(f) The Trustee may establish additional accounts or subaccounts of the funds established hereunder as the Trustee deems necessary or prudent in furtherance of its duties under this Indenture.

(g) The Trustee has no responsibility or liability whatsoever with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds, nor shall the Trustee have any obligation to review any such material, and any such review by the Trustee will not be deemed to create any obligation, duty or liability on the part of the Trustee.

(h) Before taking any action under Article VIII hereof the Trustee may require indemnity satisfactory to the Trustee be furnished to it to hold the Trustee harmless from any expenses whatsoever and to protect it against any liability it may incur hereunder.

(i) The immunities extended to the Trustee also extend to its directors, officers, employees and agents.

(j) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty.

(k) The Trustee may execute any of the trusts or powers hereof and perform any of its duties through attorneys, agents and receivers and shall not be answerable for the conduct of the same if appointed by it with reasonable care.

SECTION 6.04. *Right to Rely on Documents.* The Trustee is protected in acting upon any notice, resolution, requisition, request, consent, order, certificate, report, opinion or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, including, without limitation, Bond Counsel or other counsel of or to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustee hereunder in accordance therewith.

The Trustee is not bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and such person's title thereto is established to the satisfaction of the Trustee.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee deems 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 City, 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 has no duty to), in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable. The Trustee may conclusively rely on any certificate or report of any Independent Accountant appointed by the City.

SECTION 6.05. *Preservation and Inspection of Documents.* The Trustee shall retain in its possession all documents received by it under the provisions of this Indenture, which are subject during normal business hours, and upon reasonable prior written notice, to the inspection of the City and any Owner, and their agents and representatives duly authorized in writing.

SECTION 6.06. *Compensation and Indemnification.* Absent any agreement to the contrary, the City shall pay to the Trustee from time to time compensation for all services rendered under this Indenture and also all expenses, charges, legal and consulting fees and other disbursements and those of its attorneys (including any allocated costs of internal counsel), agents and employees, incurred in and about the performance of its powers and duties under this Indenture.

The City further covenants to indemnify the Trustee and its officers, directors, agents and employees, against any loss, expense and liabilities, whether or not litigated, 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 and of enforcing any remedies hereunder and under any related documents, but excluding any and all losses, expenses and liabilities which are due to the negligence or willful misconduct of the Trustee, its officers, directors, agents or employees. The obligations of the City under this Section 6.06 shall survive resignation or removal of the Trustee under this Indenture and payment of the Bonds and discharge of this Indenture.

SECTION 6.07. *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 it relating to the proceeds of the Bonds and all funds and accounts established and held by the Trustee under this Indenture. Such books of record and account shall be available for inspection by the City at reasonable hours, during regular business hours, with reasonable prior notice and under reasonable circumstances. The Trustee shall furnish to the City, at least semiannually, an accounting (which may be in the form of its customary statements) of all transactions relating to the proceeds of the Bonds and all funds and accounts held by the Trustee under this Indenture.

ARTICLE VII

MODIFICATION OR AMENDMENT OF THIS INDENTURE

SECTION 7.01. *Amendments Permitted.*

(a) Amendment With Owner Consent. This Indenture and the rights and obligations of the City and of the Owners of the Bonds may be modified or amended by the City and the Trustee at any time by the execution of a Supplemental Indenture, with the written consents of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 9.05. Any such Supplemental Indenture becomes effective upon the execution and delivery thereof by the parties thereto and upon consent of the requisite Owners. No such modification or amendment may:

- (i) extend the maturity of a Bond or reduce the interest rate thereon, or otherwise alter or impair the obligation of the City to pay the principal thereof, or interest thereon, or any premium payable on the redemption thereof, at the time and place and at the rate and in the currency provided therein, without the written consent of the Owner of that Bond; or
- (ii) modify any of the rights or obligations of the Trustee without its written consent.

(b) Amendment Without Owner Consent. This Indenture and the rights and obligations of the City and of the Owners of the Bonds may also be modified or amended at any time by the execution of a Supplemental Indenture, without the consent of any Owners of the Bonds, for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City contained in this Indenture, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;
- (ii) to provide additional security for the Bonds; or
- (iii) to cure any ambiguity, or to cure, correct or supplement any defective provision contained in this Indenture, or in any other respect whatsoever as the City deems necessary or desirable, provided under any circumstances that such modifications or amendments do not materially adversely affect the interests of the Owners in the opinion of Bond Counsel filed with the City and the Trustee.

Notwithstanding the foregoing provisions of this subsection (b), so long as the Original Purchaser is the Owner of all of the Outstanding Bonds, no amendment shall be made under this subsection (b) without the prior written consent of the Original Purchaser.

SECTION 7.02. *Effect of Supplemental Indenture.* From and after the time any Supplemental Indenture becomes effective under 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, 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 Bonds After Amendment.* After the effective date of any amendment or modification hereof under this Article VII, the City may determine that any or all of the Bonds shall bear a notation, by endorsement in form approved by the City, as to such amendment or modification and in that case upon demand of the City the Owners of such Bonds shall present such Bonds for that purpose at the Office of the Trustee, and thereupon a suitable notation as to such action shall be made on such Bonds. In lieu of such notation, the City may determine that new Bonds shall be prepared and executed in exchange for any or all of the Bonds and in that case upon demand of the City the Owners of the Bonds shall present such Bonds for exchange at the Office of the Trustee without cost to such Owners.

SECTION 7.04. *Amendment by Mutual Consent.* The provisions of this Article VII do not prevent any Owner from accepting any amendment as to the particular Bond held by such Owner.

SECTION 7.05. *Trustee's Reliance.* The Trustee may conclusively rely, and is protected in relying, upon a Certificate of the City and an opinion of counsel stating that all requirements of this Indenture relating to the amendment or modification hereof have been satisfied.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.01. *Events of Default.* Each of the following events constitutes an Event of Default hereunder:

- (a) Failure to pay any installment of the principal of any Bonds when due, whether at maturity as therein expressed, by proceedings for redemption, including mandatory sinking fund redemption under Section 2.03(b), by acceleration, or otherwise.
- (b) Failure to pay any installment of interest on the Bonds when due.
- (c) Failure by the City to observe and perform any of the other covenants, agreements or conditions on its part contained in this Indenture or in the Bonds, if such failure has continued for a period of 30 days after written notice thereof, specifying such failure and requiring the same to be remedied, has been given to the City by the Trustee; *provided, however*, if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30-day period, such failure will not constitute an Event of Default if corrective action is instituted by the City within such 30-day period and thereafter diligently and in good faith cures the failure in a reasonable period of time, such period to be no longer than 180 days from the date of the default notice without the prior written consent of the Original Purchaser to a longer period.
- (d) The City commences a voluntary case under Title 11 of the United States Code or any substitute or successor statute.

Upon the occurrence and during the continuation of an Event of Default interest on the Bonds shall accrue at the Default Rate.

SECTION 8.02. *Remedies on Default.* If an Event of Default occurs under Section 8.01 and is continuing, the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding the Trustee must, (a) declare the principal of the Bonds, together with the accrued interest thereon, to be due and payable immediately, and upon any such declaration the same will become immediately due and payable, anything in this Indenture or in the Bonds to the contrary notwithstanding, and (b) subject to the provisions of Sections 8.07 and 8.09, exercise any other remedies available to the Trustee and the Owners in law or at equity to enforce the rights of the Owners under this Indenture. Without limiting the generality of the foregoing, the Trustee shall have the right by mandamus, suit, action or proceeding, to compel the City and its members, officers, agents or employees to perform each and every term, provision and covenant contained in this Indenture and in the Bonds, and to require the carrying out of any or all such covenants and agreements of the City and the fulfillment of all duties imposed upon it. Upon the occurrence and during the continuation of an Event of Default, interest on the Bonds shall accrue at the Default Rate.

SECTION 8.03. *Notice of Event of Default.* Immediately upon having knowledge of the occurrence of an Event of Default the Trustee shall promptly give notice of such Event of Default to the City and the Original Purchaser by telephone confirmed in writing. Such notice must also state whether the principal of the Bonds has been declared to be or have immediately become due and payable as provided in Section 8.02. With respect to any Event of Default described in Section 8.01(a) or (b), the Trustee shall, and with respect to any Event of Default described in Section 8.01(c) the Trustee in its sole discretion may, also give such notice to the Owners in the same manner as provided herein for notices of redemption of the Bonds, which must include the statement that interest on the Bonds will cease to accrue from and after the date, if any, on which the Trustee declares the Bonds to become due and payable under Section 8.02 (but only to the extent that principal and any accrued, but unpaid, interest on the Bonds is actually paid on such date).

SECTION 8.04. *Application of Funds Upon Event of Default.* All of the sums in the funds and accounts established and held by the Trustee hereunder upon the occurrence of an Event of Default, and all sums thereafter received by the Trustee hereunder, shall be applied by the Trustee as follows and in the following order:

- (a) *First*, to the payment of any fees, costs and expenses incurred by the Trustee to protect the interests of the Owners of the Bonds; payment of the fees, costs and expenses of the Trustee (including fees and expenses of its counsel, including any allocated costs of internal counsel) incurred in and about the performance of its powers and duties under this Indenture and the payment of all fees, costs and expenses owing to the Trustee under Section 6.06, together with interest on all such amounts advanced by the Trustee at the maximum rate permitted by law.
- (b) *Second*, to the payment of the whole amount then owing and unpaid upon the Bonds for interest and principal, with interest on such overdue amounts at the respective rates of interest borne by those Bonds, and in case such moneys are insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such interest, principal and interest on overdue amounts without preference or priority among such interest, principal and interest on overdue amounts ratably to the aggregate of such interest, principal and interest on overdue amounts.
- (c) *Third*, to the payment of any other amounts then due and owing the Original Purchaser under the Bond Purchase Agreement.

SECTION 8.05. *Power of Trustee to Control Proceedings.* If the Trustee, upon the happening of an Event of Default, takes any action, by judicial proceedings or otherwise, in the performance of its duties hereunder, whether upon its own discretion, with the consent or upon the request of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, it has full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action. The Trustee may 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 principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

SECTION 8.06. *Limitation on Owners' Right to Sue.* No Owner of a Bond has the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless:

- (a) said Owner has 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 Bonds then Outstanding have requested the Trustee in writing to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name;
- (c) said Owners 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; and
- (d) the Trustee has failed to comply with such request for a period of 60 days after such written request has been received by, and said tender of indemnity has been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of any remedy hereunder; it being understood and intended that no one or more Owners has 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 premium, if any, and interest on such Bond as herein provided, 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 8.07. *Non-waiver.* Nothing in this Article VIII or in any other provision of this Indenture or in the Bonds, affects or impairs the obligation of the City, which is absolute and unconditional, to pay from any source of legally available funds of the City, the principal of and interest and redemption premium (if any) on the Bonds to the Owners when due and payable as herein provided, or affects or impairs the right of action, which is also absolute and unconditional, of the Owners to institute suit to enforce such payment by virtue of the contract embodied in the Bonds.

A waiver of any default by any Owner does not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of the Owner or any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the 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 Owners.

If a suit, action or proceeding to enforce any right or exercise any remedy is abandoned or determined adversely to the Owners, the City, the Owners will be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

SECTION 8.08. *Actions by Trustee as Attorney-in-Fact.* Any suit, action or proceeding which any Owner has 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 similarly situated and the Trustee is hereby appointed (and the successive respective Owners by taking and holding the Bonds shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners 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 as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact, subject to the provisions of Article VI. Notwithstanding the foregoing provisions of this Section 8.08, the Trustee has no duty to enforce any such right or remedy unless it has been indemnified to its satisfaction for any additional fees, charges and expenses of the Trustee related thereto, including without limitation, fees and charges of its attorneys and advisors.

SECTION 8.09. *Remedies Not Exclusive.* No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by the Bond Law or any other law.

SECTION 8.10. *Control of Remedies by Original Purchaser.* Notwithstanding anything herein to the contrary, for so long as a majority in aggregate principal amount of the Outstanding Bonds are owned by the Original Purchaser, the Trustee shall act only as directed in writing by the Original Purchaser in connection with any actions relating to events of default or waivers thereof, or remedies or consents or the exercise of any other rights granted to the Trustee hereunder. Any time the consent of, or notice to, the Original Purchaser is required under this Indenture, such consent or notice is only required if the Original Purchaser shall own at least a majority in aggregate principal amount of the Outstanding Bonds. All provisions herein relating to the rights of the Original Purchaser shall be of no force and effect if the Original Purchaser no longer owns a majority in principal amount of Outstanding Bonds. In such event, all references to the Original Purchaser shall have no force or effect.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. *Benefits Limited to Parties.* Nothing in this Indenture, expressed or implied, gives any person other than the City, the Trustee and the Owners, including the Original Purchaser, any right, remedy, claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the City are for the sole and exclusive benefit of the Trustee and the Owners, including the Original Purchaser.

SECTION 9.02. *Successor is Deemed Included in All References to Predecessor.* Whenever in this Indenture or any Supplemental Indenture either the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the City or the Trustee binds and inures to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 9.03. *Defeasance of Bonds.* If the City pays and discharges the entire indebtedness on any Bonds in any one or more of the following ways:

- (a) by paying or causing to be paid the principal of and interest 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, an amount of cash which, together with the available amounts then on deposit in the funds and accounts established under this Indenture, in the opinion or report of an Independent Accountant delivered to the Trustee and the Original Purchaser is fully sufficient to pay such Bonds, including all principal, interest and redemption premium, if any;
- (c) by irrevocably depositing with the Trustee, in trust, at or before maturity, Federal Securities, which, together with the interest to accrue thereon and available amounts then on deposit in the funds and accounts established under this Indenture, in the opinion or report of an Independent Accountant delivered to the Trustee and the Original Purchaser is fully sufficient to pay and discharge the indebtedness on such Bonds including all principal, interest and redemption premium, if any; or
- (d) by purchasing such Bonds prior to maturity and tendering such Bonds to the Trustee for cancellation;

and provided further that (i) no obligations are then due and owing by the City to the Original Purchaser under the Bond Purchase Agreement, as evidenced by a Certificate of the City to such effect filed with the Original Purchaser and the Trustee, and (ii) if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption has been duly given or provision satisfactory to the Trustee has been made for the giving of such notice, then, at the election of the City, and notwithstanding that any such Bonds have not been surrendered for payment, all obligations of the Trustee and the City under this Indenture with respect to such Bonds shall cease and terminate, except only:

- (a) the obligation of the Trustee to transfer and exchange Bonds hereunder,
- (b) the obligation of the City to pay or cause to be paid to the Owners of such Bonds, from the amounts so deposited with the Trustee, all sums due thereon, and
- (c) the obligations of the City to compensate and indemnify the Trustee under Section 6.06.

The City must file notice of such election with the Trustee and the Original Purchaser. The Trustee shall pay any funds thereafter held by it, which are not required for said purpose, to the City.

To accomplish defeasance, the City shall cause to be delivered to the Trustee and the Original Purchaser (i) a report of an Independent Accountant verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity or redemption date ("Verification"), (ii) an Escrow Deposit Agreement, (iii) an opinion of Bond Counsel to the effect that the Bonds are no longer Outstanding and (iv) a certificate of discharge of the Trustee with respect to the Bonds. Each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the City and the Trustee and the Original Purchaser.

In the case of a defeasance or payment of all of the Bonds Outstanding in accordance with this Section 9.03, the Trustee shall pay all amounts held by it in any funds or accounts hereunder, which are not required for said purpose or for payment of amounts due the Trustee under Section 6.06, to the City.

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

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

The ownership of Bonds and the amount, maturity, number and date of ownership thereof are conclusively proved by the Registration Books.

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

SECTION 9.05. *Disqualified Bonds.* In determining whether the Owners of the requisite aggregate principal amount of 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 City shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. The Trustee will not be deemed to have knowledge that any Bond is owned or held by the City unless the Trustee has received written notice to that effect.

SECTION 9.06. *Waiver of Personal Liability.* No member, officer, agent or employee of the City is individually or personally liable for the payment of the principal of or interest or any premium on the Bonds. However, nothing contained herein relieves any such member, officer, agent or employee from the performance of any official duty provided by law.

SECTION 9.07. *Waiver of Jury Trial; Agreement for Judicial Reference; No Sovereign Immunity.* To the fullest extent permitted by law, the City hereby waives its right to trial by jury in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, the Bonds, this Indenture or any documents relating to the Bonds or this Indenture, or the enforcement of any remedy under any law, statute, or regulation. To the extent such waiver is not enforceable, the City hereby consents to the adjudication of any and all such matters pursuant to Judicial Reference as provided in Section 638 of the California Code of Civil Procedure, and the judicial referee shall be empowered to hear and determine any and all issues in such Reference whether fact or law. The City hereby represents that it does not possess and will not invoke a claim of sovereign immunity for disputes arising out of contractual claims relating to the Bonds or this Indenture.

SECTION 9.08. *Destruction of Canceled Bonds.* Whenever in this Indenture provision is made for the surrender to the City of any Bonds which have been paid or canceled under the provisions of this Indenture, a certificate of destruction duly executed by the Trustee shall be deemed to be the equivalent of the surrender of such canceled Bonds and the City is entitled to rely upon any statement of fact contained in any certificate with respect to the destruction of any such Bonds therein referred to. The City will pay all costs of any microfilming of Bonds to be destroyed.

SECTION 9.09. *Notices.* All written notices 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 at such address as the party may provide to the other party in writing from time to time. Notice is effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) upon actual receipt after deposit in the United States mail, postage prepaid, or (c) in any other case, upon actual receipt. The City, the Trustee or the Original Purchaser may, by written notice to the other parties, from time to time modify the address or number to which communications are given hereunder.

If to the City:

City of Martinez
525 Henrietta Street
Martinez, California 94553
Attention: City Manager
Fax: (925) 372-3500

If to the Trustee: U.S. Bank National Association
One California Street, Suite 2100
San Francisco, California 94111
Corporate Trust Department
Fax: (____) _____

If to the Original Purchaser: JPMorgan Chase Bank, N.A.
[To Come]

Attention:
Fax:

SECTION 9.10. *Partial Invalidity.* If any Section, paragraph, sentence, clause or phrase of this Indenture is for any reason held illegal, invalid or unenforceable, such holding will not affect the validity of the remaining portions of this Indenture. The City and the Trustee hereby declare that they would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid or unenforceable.

SECTION 9.11. *Unclaimed Moneys.* Anything contained herein to the contrary notwithstanding, any money held by the Trustee in trust for the payment and discharge of the interest or premium (if any) on or principal of the Bonds which remains unclaimed for two years after the date when the payments of such interest, premium and principal have become payable, if such money was held by the Trustee at such date, or for two years after the date of deposit of such money if deposited with the Trustee after the date when the interest and premium (if any) on and principal of such Bonds have become payable, shall be repaid by the Trustee to the City as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Owners shall look only to the City for the payment of the principal of and interest and redemption premium (if any) on such Bonds.

SECTION 9.12. *Execution in Counterparts.* This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 9.13. *Governing Law.* This Indenture shall be construed and governed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the CITY OF MARTINEZ has caused this Indenture to be signed in its name by its Mayor and attested to by the City Clerk, and U.S. BANK NATIONAL ASSOCIATION, in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

CITY OF MARTINEZ

By _____
Mayor

Attest:

City Clerk

U.S. BANK NATIONAL ASSOCIATION as
Trustee

By _____
Authorized Officer

APPENDIX A

DEFINITIONS

“Authorizing Resolution” means the Resolution adopted by the City Council of the City on November __, 2011, authorizing the issuance of the Bonds.

“Bond Counsel” means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the City of nationally-recognized experience in the issuance of obligations issued by public agencies.

“Bond Law” means the provisions of Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code, as in effect on the Closing Date or as thereafter amended.

“Bond Purchase Agreement” means the Bond Purchase Agreement dated as of _____, 2012, between the City and the Original Purchaser, relating to the purchase of the Bonds by the Original Purchaser from the City.

“Bonds” means the City of Martinez 2012 Taxable Pension Obligation Bonds issued by the City in the aggregate principal amount of \$[Bond Amount] under the Bond Law, the Authorizing Resolution and this Indenture.

“Business Day” means a day of the year (other than a Saturday or Sunday) on which banks in California are not required or permitted to be closed.

“Certificate of the City” means a certificate in writing signed by the Mayor, the City Manager, the Assistant City Manager, the City Clerk or any other officer of the City duly authorized by the City for that purpose.

“City” means the City of Martinez, a municipal corporation duly organized and existing under the laws of the State of California.

“Closing Date” means _____, 2012, being the date on which the Bonds are delivered by the City to the Original Purchaser.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City relating to the authorization, issuance, sale and delivery of the Bonds, including but not limited to: printing expenses; filing and recording fees; initial fees, expenses and charges of the Trustee and its counsel, including the Trustee’s first annual administrative fee; fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals, including fees of Original Purchaser’s Counsel; and any other cost, charge or fee in connection with the original issuance of the Bonds.

“Debt Service Fund” means the fund by that name established and held by the Trustee under Section 4.02.

“Default Rate” means the rate of _____% per annum.

“Event of Default” means any of the events described in Section 8.01.

"Federal Securities" means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; or (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

"Fiscal Year" means any twelve-month period beginning on July 1 in any year and extending to the next succeeding June 30, both dates inclusive, or any other twelve-month period selected and designated by the City as its official fiscal year period under a Certificate of the City filed with the Trustee.

"Indenture" means this Indenture of Trust between the City and the Trustee, as amended or supplemented from time to time under any Supplemental Indenture entered into under the provisions hereof.

"Independent Accountant" means any accountant or firm of such accountants duly licensed or registered or entitled to practice and practicing as such under the laws of the State of California, appointed by or acceptable to the City, and who, or each of whom: (a) is in fact independent and not under domination of the City; (b) does not have any substantial interest, direct or indirect, with the City; and (c) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

"Interest Account" means the account by that name established and held by the Trustee under Section 4.02(a).

"Interest Payment Date" means _____, 2012, and each _____ and _____ thereafter so long as any of the Bonds remain unpaid.

"Office" means, with respect to the Trustee, the corporate trust office of the Trustee at the address set forth in Section 9.09, or at such other or additional offices as may be specified by the Trustee in writing to the City and the Original Purchaser.

"Original Purchaser" means JPMorgan Chase Bank, N.A., as original purchasers of the Bonds upon the negotiated sale thereof, or its successors or assigns.

"Outstanding", when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 9.05) all Bonds except: (a) Bonds theretofore canceled 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; and (c) Bonds in lieu of or in substitution for which other Bonds have been authorized, executed, issued and delivered by the City hereunder.

"Owner" means, with respect to any Bond, the person in whose name the ownership of such Bond is 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 of California for the moneys proposed to be invested therein:

- (a) Federal Securities;
- (b) Obligations of any agency, department or instrumentality of the United States of America which are rated A or better by S&P.
- (c) Interest-bearing deposit accounts (including certificates of deposit) in federal or State of California chartered savings and loan associations or in federal or State of California banks (including the Trustee), provided that: (i) the unsecured obligations of such commercial bank or savings and loan association are rated A or better by S&P; or (ii) such deposits are fully insured by the Federal Deposit Insurance Corporation.
- (d) Commercial paper rated "A-1+" or better by S&P.
- (e) Federal funds or bankers acceptances with a maximum term of one year of any bank which an unsecured, uninsured and unguaranteed obligation rating of "A-1+" or better by S&P.
- (f) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of at least AAAm-G, AAAm or AAm, which funds may include funds for which the Trustee, its affiliates, parent or subsidiaries provide investment advisory or other management services.
- (g) Obligations the interest on which is excludable from gross income pursuant to Section 103 of the Internal Revenue Code of 1986, as amended, and which are either (a) rated A or better by S&P, or (b) fully secured as to the payment of principal and interest by Permitted Investments described in clauses (a) or (b).
- (h) Bonds or notes issued by any state or municipality which are rated A or better by S&P.
- (i) The Local Agency Investment Fund of the State of California, created pursuant to Section 16429.1 of the California Government Code, to the extent the Trustee is authorized to register such investment in its name.

"PERS" means the California State Public Employees' Retirement System.

"PERS Contract" means the contract, as amended from time to time, entered into by the City and PERS pursuant to the Retirement Law obligating the City to make contributions to PERS in exchange for PERS providing retirement benefits to certain City employees. The PERS Contract was first effective July 1, 1950, and was thereafter amended several times, including the most recent Amendment to Contract, effective January 1, 2008.

"PERS Side Fund Obligations" means the obligation of the City under the Retirement Law and the PERS Contract to make payments to PERS under the Side

Fund program of PERS with respect to benefits accruing to retired public safety employees and certain other employees of the City under the Safety Plan.

“Principal Account” means the account by that name established and held by the Trustee under Section 4.02(b).

“Record Date” means, with respect to any Interest Payment Date, the close of business on the ___ calendar day of the month in which such Interest Payment Date occurs, whether or not such 1st calendar day is a Business Day.

“Registration Books” means the records maintained by the Trustee under Section 2.06 for the registration and transfer of ownership of the Bonds.

“Request of the City” means a request in writing signed by the Mayor, the City Manager, the Assistant City Manager, the City Clerk or any other officer of the City duly authorized by the City for that purpose.

“Retirement Law” means the Public Employees’ Retirement Law set forth in Sections 20000 et seq. of the Government Code.

“S&P” means Standard & Poor’s Corporation, of New York, New York, and its successors.

“Safety Plan” means the obligation of the City to make payments pursuant to the PERS Contract with respect to the City’s public safety employees.

“Supplemental Indenture” means any indenture, agreement or other instrument which amends, supplements or modifies this Indenture and which has been duly entered into between the City and the Trustee; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

“Trustee” means U.S. Bank National Association, as Trustee hereunder, or any successor thereto appointed as Trustee hereunder in accordance with the provisions of Article VI.

APPENDIX B
FORM OF BOND

No. R - 1

\$[Bond Amount]

UNITED STATES OF AMERICA
STATE OF CALIFORNIA

CITY OF MARTINEZ
2012 TAXABLE PENSION OBLIGATION BOND

RATE OF INTEREST: MATURITY DATE: ORIGINAL ISSUE DATE:
 ___% _____, 20__ _____, 2012

REGISTERED OWNER: JPMORGAN CHASE BANK, N.A.

PRINCIPAL AMOUNT:

The CITY OF MARTINEZ, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), for value received, hereby promises to pay 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 lawful money from the date hereof, which date shall be 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 first calendar day of the month in which such Interest Payment Date occurs (a "Record Date"), in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or before _____, 2012, 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 _____ and _____ in each year, commencing _____, 2012 (the "Interest Payment Dates") until payment of such Principal Amount in full.

Notwithstanding the foregoing paragraph, upon the occurrence and during the continuation of an Event of Default, this Bond shall bear interest at the Default Rate. As used herein, the term "Default Rate" means the Rate of Interest identified above plus 3.00%.

The Principal Amount hereof is payable upon presentation hereof at the corporate 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 of the Trustee mailed by first class mail on each Interest Payment Date to the Registered Owner hereof at the address of such Registered Owner as it appears on the registration books of the Trustee as of the preceding Record Date; provided that at the written request of the owner of at least \$1,000,000 aggregate principal amount of Bonds which written request is on file with the Trustee prior to the Record Date immediately preceding any Interest Payment Date, interest on such Bonds shall be paid on such Interest Payment Date by wire transfer to such account within the United States of America as shall be specified in such written request.

Notwithstanding anything herein or in the Indenture to the contrary, so long as this Bond is owned by JPMorgan Chase Bank, N.A., (the "Original Purchaser"), (a) this Bond is not required to be presented and surrendered to the Trustee for payment at any time prior to the final maturity thereof, and (b) the Trustee will pay the principal of, including sinking fund payments, and interest on this Bond by wire transfer to the Original Purchaser in accordance with the wire transfer instructions set forth in the Indenture; provided that principal on this Bond which is payable at maturity shall be made only upon presentation and surrender hereof at the designated corporate trust office of the Trustee as set forth in the preceding paragraph.

This Bond is one of a duly authorized issue of bonds of the City designated as the "City of Martinez 2012 Taxable Pension Obligation Bonds" (the "Bonds") of an aggregate principal amount of \$[Bond Amount], all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities or interest rates) and all issued under the provisions of Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code (the "Bond Law") and under an Indenture of Trust, dated as of January 1, 2012, between the City and the Trustee (the "Indenture"). The Bonds have been authorized to be issued by the City under a resolution adopted by the Board of Directors of the City on November __, 2011. Reference is hereby made to the Indenture (copies of which are on file at the office of the City) and all supplements thereto and to the Bond Law for a description of the terms on which the Bonds are issued, and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the City thereunder, to all of the provisions of which the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued by the City to refinance obligations of the City owing to the Public Employees Retirement System of the State of California. This Bond and the interest hereon are payable from any source of legally available funds of the City.

The rights and obligations of the City and the owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall permit a change in the terms of maturity of the principal of any outstanding Bond or of any installment of interest thereon or a reduction in the rate of interest thereon without the consent of the owner of such Bond, or shall reduce the percentages of the owners required to effect any such modification or amendment.

The Bonds are not subject to optional redemption prior to its stated maturity.

The Bonds are subject to mandatory redemption at a redemption price equal to 100% of the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on _____ and _____ in the years as set forth in the following table.

**Sinking Fund
Redemption Date**

**Principal Amount
To Be Redeemed**

[To Come]

As provided in the Indenture, the Trustee is required to mail notice of redemption of any Bonds by first class mail, postage prepaid, not less than 30 nor more than 60 days before the redemption date, to the registered owners of the Bonds to be redeemed, but neither failure to receive such notice nor any defect in the notice so mailed affects the sufficiency of the proceedings for prepayment or the cessation of accrual of interest thereon. Notwithstanding the foregoing, so long as the Bonds are owned by the Original Purchaser, no notice of sinking fund redemption shall be given. If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest hereon will cease to accrue from and after the date fixed for redemption.

Whenever provision is made in the Indenture for the redemption of less than all of the Bonds, the Trustee will select the Bonds to be redeemed by lot in any manner which the Trustee in its sole discretion deems appropriate. For purpose of such selection, all Bonds will be deemed to be comprised of separate \$1,000 denominations and such separate denominations will be treated as separate Bonds which may be separately redeemed.

If an Event of Default occurs under and as defined in the Indenture, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture, but such declaration and its consequences may be rescinded and annulled as further provided in the Indenture. Upon the occurrence and during the continuation of an Event of Default, the Bonds shall bear interest at the Default Rate defined above.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at said corporate trust office of the Trustee in San Francisco, California, 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 registration of 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 City and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the City and the Trustee shall not be affected by any notice to the contrary.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the laws of the State of California and that the amount of this

Bond, together with all other indebtedness of the City, does not exceed any limit prescribed by any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond is not entitled to any benefit under the Indenture and is not valid or obligatory for any purpose until the certificate of authentication hereon endorsed has been signed by the Trustee.

IN WITNESS WHEREOF, the CITY OF MARTINEZ has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its Mayor and to be attested to by the facsimile signature of City Clerk, all as of the Original Issue Date specified above.

CITY OF MARTINEZ

By _____
Mayor

Attest:

City Clerk

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Dated:

U.S. BANK NATIONAL ASSOCIATION
as Trustee

By _____
Authorized Signatory

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto _____ whose address and social security or other tax identifying number is _____, the within-mentioned Bond and hereby _____ irrevocably _____ constitute(s) _____ and _____ appoint(s) _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

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

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

APPENDIX C

FORM OF ANNUAL CITY CERTIFICATION REGARDING BUDGET AND APPROPRIATION OF DEBT SERVICE

The undersigned hereby states and certifies that:

(i) I am the duly appointed, qualified and acting _____ of the City of Martinez, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), and as such, I am familiar with the facts herein certified and am authorized and qualified to certify the same;

(ii) the City has previously issued its City of Martinez 2012 Taxable Pension Obligation Bonds in the aggregate principal amount of \$_____ (the "Bonds") under an Indenture of Trust dated as of January 1, 2012 (the "Indenture"), between the City and U.S. Bank National Association, as trustee;

(iii) during the fiscal year commencing July 1, 20__ (the "Ensuing Fiscal Year"), the aggregate amount of principal and interest coming due on the Bonds is \$_____;

(iv) on _____, 20__, the City Council of the City duly adopted its Resolution No. ___ at a meeting which was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting at the time of adoption, adopting a budget for the City (the "Adopted Budget") with respect to the Ensuing Fiscal Year;

(v) pursuant to the Adopted Budget, the City has budgeted the payment of principal and interest coming due during the Ensuing Fiscal Year on the Bonds; and

(vi) attached hereto is an extract from the Adopted Budget showing a line item for payment of principal and interest coming due during the Ensuing Fiscal Year on the Bonds.

Capitalized terms used herein and not otherwise defined have the meanings given them in the Indenture.

Dated:

CITY OF MARTINEZ

By: _____
Name:
Title: