

In the opinion of Orrick, Herrington & Sutcliffe LLP and Lofton & Jennings, Co-Bond Counsel to the District, based upon an analysis of existing laws, regulations, rulings and court decisions and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series 2010 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the opinion of Co-Bond Counsel, interest on the Series 2010 Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Co-Bond Counsel observe that such interest is included in adjusted current earnings in calculating corporate alternative minimum taxable income. Co-Bond Counsel express no opinion regarding any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Series 2010 Bonds. See "TAX MATTERS" herein.



**\$129,595,000**  
**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
**SALES TAX REVENUE BONDS, REFUNDING SERIES 2010**

Dated: Date of Delivery

Due: July 1, as shown below

The San Francisco Bay Area Rapid Transit District Sales Tax Revenue Bonds, Refunding Series 2010 (the "Series 2010 Bonds") are being issued by the San Francisco Bay Area Rapid Transit District (the "District") to, along with other District funds, provide sufficient funds to (i) refund \$143,825,000 aggregate principal amount of the San Francisco Bay Area Rapid Transit District Sales Tax Revenue Bonds, Series 1998, (ii) fund a deposit to the Bond Reserve Fund, and (iii) fund costs of issuance associated with the Series 2010 Bonds. See "PLAN OF FINANCE" herein. The Series 2010 Bonds are deliverable in fully registered form and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). Individual purchases of Series 2010 Bonds will be made in principal amounts of \$5,000 and integral multiples thereof and will be in book-entry form only. Purchasers of Series 2010 Bonds will not receive bonds representing their beneficial ownership in the Series 2010 Bonds but will receive a credit balance on the books of their respective DTC Direct Participants or DTC Indirect Participants. The Series 2010 Bonds will not be transferable or exchangeable except for transfer to another nominee of DTC or as otherwise described herein.

Interest on the Series 2010 Bonds is payable on January 1 and July 1 of each year, commencing January 1, 2011, and principal of the Series 2010 Bonds is payable July 1 in the amounts and the years set forth below by U.S. Bank National Association, as trustee, to Cede & Co., and such interest and principal payments are to be disbursed to the beneficial owners of the Series 2010 Bonds through their respective DTC Direct Participants or DTC Indirect Participants.

The Series 2010 Bonds are subject to optional redemption prior to maturity as described herein.

The Series 2010 Bonds are special obligations of the District, payable from and secured by a pledge of Sales Tax Revenues derived from a transaction and use tax levied by the District in Alameda and Contra Costa Counties and the City and County of San Francisco, as more fully described herein. The Series 2010 Bonds are issued on a parity with certain other bonds issued by the District and currently outstanding. See "SECURITY FOR THE SERIES 2010 BONDS" herein.

**This cover page contains certain information for reference only. It is not a summary of this issue. Investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision.**

**MATURITY SCHEDULE**

Maturity Date (July 1)	Principal Amount	Interest Rate	Yield	CUSIP <sup>†</sup> (797669)	Maturity Date (July 1)	Principal Amount	Interest Rate	Yield	CUSIP <sup>†</sup> (797669)
2011	\$ 415,000	3.00%	0.550%	TK4	2020	\$11,020,000	5.00%	3.160%	TU2
2012	3,385,000	3.00	0.750	TL2	2021	17,065,000	5.00	3.270 <sup>c</sup>	TV0
2013	1,530,000	3.00	1.160	TM0	2022	17,920,000	5.00	3.350 <sup>c</sup>	TW8
2014	1,580,000	3.00	1.560	TN8	2023	18,815,000	5.00	3.500 <sup>c</sup>	TX6
2015	1,620,000	4.00	1.900	TP3	2024	6,630,000	5.00	3.580 <sup>c</sup>	TY4
2016	2,925,000	4.00	2.310	TQ1	2025	6,955,000	5.00	3.650 <sup>c</sup>	TZ1
2017	3,045,000	4.00	2.600	TR9	2026	7,305,000	5.00	3.730 <sup>c</sup>	UA4
2018	3,165,000	4.00	2.790	TS7	2027	7,675,000	5.00	3.800 <sup>c</sup>	UB2
2019	10,490,000	5.00	2.970	TT5	2028	8,055,000	5.00	3.900 <sup>c</sup>	UC0

<sup>c</sup> Priced to call date of July 1, 2020 at par.

The Series 2010 Bonds were awarded to J.P. Morgan Securities Inc. (the "Underwriter") pursuant to the terms of a public sale on May 5, 2010 at an adjusted true interest cost of 3.636652%. The Series 2010 Bonds will be offered when, as and if issued by the District and received by the Underwriter, subject to the approval of validity by Orrick, Herrington & Sutcliffe LLP, San Francisco, California, and Lofton & Jennings, San Francisco, California, Co-Bond Counsel to the District. Certain legal matters will be passed upon for the District by its General Counsel, Matthew Burrows, Esq. The Series 2010 Bonds in book-entry only form are expected to be delivered through the facilities of DTC on or about May 19, 2010.

**J.P. MORGAN SECURITIES INC.**

**The date of this Official Statement is May 5, 2010.**

<sup>†</sup> Copyright 2010, American Bankers Association. CUSIP data provided by Standard & Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc. CUSIP Numbers are provided for convenience of reference only. Neither the District nor the Underwriter take any responsibility for the accuracy of such numbers. The CUSIP numbers are subject to being changed after the issuance of the Series 2010 Bonds as a result of various subsequent actions, including, but not limited to, a refunding, in whole or in part of the Series 2010 Bonds.

[BART System Map to be inserted]

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

**300 Lakeside Drive, 23rd Floor  
Oakland, California 94612  
(510) 464-6000**

**BOARD OF DIRECTORS**

James Fang  
*President*

Bob Franklin  
*Vice President*

Carole Ward Allen  
Thomas M. Blalock  
Joel Keller  
Gail Murray

John McPartland  
Tom Radulovich  
Lynette Sweet

**OFFICERS**

Dorothy W. Dugger – General Manager  
Scott L. Schroeder – Controller/Treasurer  
Kenneth A. Duron – District Secretary

**GENERAL COUNSEL**

Matthew Burrows, Esq.

**TRUSTEE**

U.S. Bank National Association  
San Francisco, California

**CO-BOND COUNSEL**

Orrick, Herrington & Sutcliffe LLP  
San Francisco, California

Lofton & Jennings  
San Francisco, California

**FINANCIAL ADVISOR**

KNN Public Finance  
A Division of Zions First National Bank  
Oakland, California

**VERIFICATION AGENT**

Causey Demgen & Moore, Inc.  
Denver, Colorado

IN CONNECTION WITH THE OFFERING OF THE SERIES 2010 BONDS, THE UNDERWRITER MAY OVER-ALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2010 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITER MAY OFFER AND SELL THE SERIES 2010 BONDS TO CERTAIN DEALERS AND DEALER BANKS AND BANKS ACTING AS AGENT AT PRICES LOWER THAN THE PUBLIC OFFERING PRICES STATED ON THE COVER PAGE HEREOF, AND SAID PUBLIC OFFERING PRICES MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITER.

This Official Statement does not constitute an offer to sell the Series 2010 Bonds in any jurisdiction to any person to whom it is unlawful to make such offer in such jurisdiction. No dealer, broker, salesman or other person has been authorized by the San Francisco Bay Area Rapid Transit District (the "District") or the Underwriter identified on the cover page of this Official Statement (the "Underwriter") to give any information or to make any representation other than that contained herein and, if given or made, such other information or representation must not be relied upon as having been authorized. This Official Statement does not constitute an offer to sell or solicitation of an offer to buy, nor shall there be any offer or solicitation or sale of the Series 2010 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. Neither the delivery of this Official Statement nor the sale of any of the Series 2010 Bonds implies that the information herein is correct as of any time subsequent to the date hereof. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create the implication that there has been no change in the matters described herein since the date hereof.

This Official Statement is not to be construed as a contract with the purchasers of the Series 2010 Bonds. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as representations of facts. All summaries of statutes and documents are made subject to the provisions of such statutes and documents, respectively, and do not purport to be complete statements of any or all of such provisions.

The information set forth herein has been obtained from sources that are believed to be reliable, but it is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Underwriter. No representation, warranty or guarantee is made by the Financial Advisor as to the accuracy or completeness of any information in this Official Statement, including, without limitation, the information contained in the appendices hereto, and nothing contained in this Official Statement is or shall be relied upon as a promise or representation by the Financial Advisor.

This Official Statement contains forecasts, projections and estimates that are based on current expectations or assumptions. When included in this Official Statement, the words "expects," "forecasts," "projects," "intends," "anticipates," "estimates," "assumes" and analogous expressions are intended to identify forward-looking statements which speak only as of the date of this Official Statement. Any such statements inherently are subject to a variety of risks and uncertainties which could cause actual results to differ materially from those that have been projected. Such risks and uncertainties include, among others, changes in economic conditions, federal, state and local statutory and regulatory initiatives, litigation, seismic events, and various other events, conditions and circumstances, many of which are beyond the control of the District. The inclusion in this Official Statement of such forecasts, projections and estimates should not be regarded as a representation by the District that such forecasts, projections and estimates will occur. Such forecasts, projections and estimates are not intended as representations of fact or guarantees of results. The District disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement contained herein to reflect any changes in the District's expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. THE DISTRICT DOES NOT PLAN TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS IF OR WHEN ANY OF ITS EXPECTATIONS, OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR, OTHER THAN AS DESCRIBED UNDER "CONTINUING DISCLOSURE" HEREIN.

This Official Statement is submitted in connection with the sale of securities referred to herein and may not be reproduced or be used, as a whole or in part, for any other purpose.

The Series 2010 Bonds have not been registered under the Securities Act of 1933, as amended, in reliance upon an exemption contained therein, and have not been registered or qualified under the securities laws of any state.

The District maintains a website. Unless specifically indicated otherwise, the data and information presented on that website is not incorporated by reference as part of this Official Statement and should not be relied upon in making investment decisions with respect to the Series 2010 Bonds.

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## OFFICIAL STATEMENT

**\$129,595,000**

### **SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT Sales Tax Revenue Bonds, Refunding Series 2010**

#### INTRODUCTION

##### **General**

The purpose of this Official Statement, which includes the cover page and appendices hereto, is to set forth certain information in connection with the issuance by the San Francisco Bay Area Rapid Transit District (the “District” or “BART”) of \$129,595,000 principal amount of San Francisco Bay Area Rapid Transit District Sales Tax Revenue Bonds, Refunding Series 2010 (the “Series 2010 Bonds”).

The District was created in 1957 pursuant to the laws of the State of California (the “State”) to provide rapid transit service in the San Francisco Bay area. The District is composed of all of the area in the Counties of Alameda and Contra Costa and the City and County of San Francisco and owns additional property and extends service in the County of San Mateo. The District is governed by an elected board of directors consisting of nine members. For additional information concerning the District, see APPENDIX A - “SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT FINANCIAL AND OPERATING INFORMATION.”

##### **Authority for Issuance and Purpose and Application of Proceeds**

The Series 2010 Bonds are to be issued pursuant to the laws of the State of California, including Article 2, Chapter 7, Part 2, Division 10 of the California Public Utilities Code, as amended from time to time, and applicable portions of the Revenue Bond Law of 1941, as amended from time to time (collectively, the “Act”) and pursuant to an Indenture, dated as of July 1, 1990, between the District and U.S. Bank National Association, successor by merger to U.S. Bank Trust National Association, formerly known as First Trust of California, National Association, successor to Bank of America National Trust and Savings Association, successor by merger to Security Pacific National Bank, as trustee (the “Trustee”), as supplemented and amended by the First Supplemental Indenture, dated as of August 7, 1990, the Second Supplemental Indenture, dated as of August 29, 1991, the Third Supplemental Indenture, dated as of June 7, 1995, the Fourth Supplemental Indenture, dated as of April 1, 1997, the Fifth Supplemental Indenture, dated as of March 12, 1998, the Sixth Supplemental Indenture, dated as of October 7, 1999, the Seventh Supplemental Indenture, dated as of July 12, 2001, the Eighth Supplemental Indenture, dated as of September 7, 2005, the Ninth Supplemental Indenture, dated as of June 29, 2006, the Tenth Supplemental Indenture, dated as of November 30, 2006 (collectively, the “Original Indenture”), and the Eleventh Supplemental Indenture, dated as of May 19, 2010, each between the District and the Trustee. The Original Indenture, as so supplemented and as further supplemented and amended from time to time, is hereinafter collectively referred to as the “Indenture.”

##### **Security**

*General.* The Series 2010 Bonds are special obligations of the District, payable from and secured by a pledge of sales tax revenues derived from a seventy-five percent (75%) portion of a transactions and use tax levied by the District in Alameda and Contra Costa Counties and the City and County of San Francisco in an amount equal to one-half of one percent (0.5%) of gross retail receipts, as more fully described herein. See “SECURITY FOR THE SERIES 2010 BONDS.”

*Outstanding Bonds.* The Series 2010 Bonds are issued on a parity with the San Francisco Bay Area Rapid Transit District Sales Tax Revenue Refunding Bonds, Series 1990 (the “Series 1990 Bonds”) issued in the principal amount of \$158,478,429.95, of which \$28,775,000 are Outstanding, the San Francisco Bay Area Rapid Transit District Sales Tax Revenue Bonds, Series 1998 (the “Series 1998 Bonds”) issued in the principal amount of \$348,510,000, of which \$145,450,000 are Outstanding, the San Francisco Bay Area Rapid Transit District Sales Tax Revenue Bonds, Series 2001 (the “Series 2001 Bonds”) issued in the principal amount of \$168,650,000, of which \$43,765,000 are Outstanding, the San Francisco Bay Area Rapid Transit District Sales Tax Revenue Bonds, Refunding Series 2005 A (the “Series 2005 A Bonds”) issued in the principal amount of \$352,095,000, of which \$296,530,000 are Outstanding, the San Francisco Bay Area Rapid Transit District Sales Tax Revenue Bonds, Series 2006 (the “Series 2006 Bonds”) issued in the principal amount of \$64,915,000, all of which are Outstanding, and the San Francisco Bay Area Rapid Transit District Sales Tax Revenue Bonds, Refunding Series 2006 A (the “Series 2006 A Bonds”) issued in the principal amount of \$108,110,000, of which \$107,545,000 are Outstanding. The Series 1990 Bonds, the Series 1998 Bonds, the Series 2001 Bonds, the Series 2005 A Bonds, the Series 2006 Bonds, the Series 2006 A Bonds and the Series 2010 Bonds, together with any future series of parity Bonds, are hereinafter collectively referred to as the “Bonds.”

## **References**

This Introduction is not a summary of this Official Statement. It is only a brief description of and guide to the entire contents of this Official Statement, including the cover page and appendices hereto, and the documents summarized or described herein, a full review of which should be made by potential investors. All descriptions and summaries of various documents hereinafter set forth do not purport to be comprehensive or definitive, and reference is made to each document for complete details of all terms and conditions. All statements herein are qualified in their entirety by reference to each document. The offering of the Series 2010 Bonds is made only by means of this entire Official Statement and is subject in all respects to the information contained herein. All capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE– Definitions” or, if not defined therein, in the Indenture.

## **PLAN OF FINANCE**

The District intends to apply the proceeds of the Series 2010 Bonds, together with other funds of the District, to refund \$143,825,000 aggregate principal amount of the Series 1998 Bonds currently outstanding (the “Refunded Series 1998 Bonds”), to fund a deposit to the Series 2010 Reserve Account in the Bond Reserve Fund and to pay costs of issuance of the Series 2010 Bonds. The Series 1998 Bonds that will be defeased upon issuance of the Series 2010 Bonds are listed below and include all Series 1998 Bonds other than Series 1998 Bonds maturing July 1, 2010. The resolution authorizing the Series 2010 Bonds authorizes refunding Refunded Series 1998 Bonds such that such refunding shall provide present value debt service savings in an amount not less than 4% of the principal amount of the Bonds to be refunded. See “ESTIMATED SOURCES AND USES OF FUNDS” and “VERIFICATION OF MATHEMATICAL ACCURACY.”

The moneys required to refund the Refunded Series 1998 Bonds will be derived from the net proceeds of the Series 2010 Bonds and other available funds. The District expects to fund the deposit to the Bond Reserve Fund from District funds. Pursuant to an Escrow Agreement to be entered into between the District and the U.S. Bank National Association, as trustee and escrow agent (the “Escrow Agent”), such moneys will be deposited in an escrow fund (the “Escrow Fund”) and applied to purchase direct obligations of the United States of America (the “Government Securities”). The Government Securities will be purchased and held by the Trustee and Escrow Agent in an amount sufficient to redeem the Refunded Series 1998 Bonds on July 1, 2010, at a redemption price equal to the principal amount of the



Refunded Series 1998 Bonds to be refunded, plus interest thereon. See “VERIFICATION OF MATHEMATICAL ACCURACY.”

The Refunded Series 1998 Bonds that will be defeased in whole upon issuance of the Series 2010 Bonds are set forth below.

**San Francisco Bay Area Rapid Transit District  
Sales Tax Revenue Bonds, Series 1998  
Redemption Date: July 1, 2010  
Redemption Price: 100%**

Maturity Date (July 1)	Interest Rate	Principal Amount	CUSIP <sup>†</sup> (797669)
2011	5.25%	\$ 3,325,000	PA0
2012	5.25	3,675,000	PB8
2013	5.25	1,910,000	PC3
2014	5.25	2,015,000	PD4
2015	5.25	2,115,000	PE2
2016	5.25	3,465,000	PF9
2017	5.25	3,650,000	PG7
2018	5.25	3,840,000	PH5
2023	4.75	79,105,000	GD4
2028	5.00	40,725,000	PJ1

<sup>†</sup> Copyright, American Bankers Association. CUSIP data provided by Standard & Poor’s CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc. CUSIP Numbers are provided for convenience of reference only. Neither the District nor the Underwriter take any responsibility for the accuracy of such numbers.

**DESCRIPTION OF THE SERIES 2010 BONDS**

**General**

The Series 2010 Bonds will be dated as of their date of issuance and mature at the times and in the principal amounts as set forth on the cover page of the Official Statement. Interest on the Series 2010 Bonds shall be payable on January 1 and July 1 of each year, commencing January 1, 2011. Interest on the Series 2010 Bonds shall be computed on the basis of a 360-day year of twelve 30-day months.

The Series 2010 Bonds will be delivered in fully registered form only and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). DTC will act as securities depository for the Series 2010 Bonds. Ownership interests in the Series 2010 Bonds may be purchased by or through a DTC Participant (as described below) in book-entry form only in denominations of \$5,000 or any integral multiple thereof. See APPENDIX F – “BOOK-ENTRY-ONLY SYSTEM.”

**Optional Redemption**

The Series 2010 Bonds maturing on or before July 1, 2020 are not subject to redemption prior to their stated maturities. The Series 2010 Bonds maturing on or after July 1, 2021 will be subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part, on any date on or after July 1, 2020, at the principal amount of Series 2010 Bonds called for redemption plus interest accrued thereon to the date fixed for redemption without premium.

## **Purchase In Lieu of Redemption**

Pursuant to the Indenture, the District has the option to purchase the Series 2010 Bonds, at any time the Series 2010 Bonds are subject to optional redemption as provided in the Indenture at a purchase price equal to the redemption price then applicable to such Series 2010 Bonds in which case such Series 2010 Bonds purchased in lieu of redemption may be remarketed and will remain outstanding after such purchase. See APPENDIX D — “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”

Notwithstanding the foregoing, the District always retains the right to purchase the Series 2010 Bonds in the open market, at market rates, for cancellation.

## **Notice of Redemption**

Notice of any redemption of Series 2010 Bonds will be mailed by the Trustee by first class mail to the Owner of any Series 2010 Bonds designated for redemption at least 30 but not more than 60 days prior to the redemption date (but failure to receive any such notice or any defect therein shall not affect the sufficiency of the redemption proceedings).

With respect to any notice of optional redemption of Series 2010 Bonds delivered pursuant to the Indenture, unless, upon the giving of such notice, such Series 2010 Bonds shall be deemed to have been paid within the meaning of the Indenture, such notice shall state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of amounts sufficient to pay the principal of, and premium, if any, and interest on, such Series 2010 Bonds to be redeemed, and that if such amounts shall not have been so received said notice shall be of no force and effect and the District shall not be required to redeem such Series 2010 Bonds. In the event that such notice of redemption contains such a condition and such amounts are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice to the Owners to the effect that such amounts were not so received and such redemption was not made, such notice to be given by the Trustee in the same manner and to the same parties, as notice of such redemption was given pursuant to the Indenture.

Any notice of optional redemption of the Series 2010 Bonds may be conditional and if any condition stated in the notice of redemption is not satisfied on or prior to the redemption date, said notice will be of no force and effect and the Authority will not redeem such Series 2010 Bonds. The Trustee will within a reasonable time thereafter give notice, to the persons and in the manner in which the notice of redemption was given, that such condition or conditions were not met and that the redemption was cancelled.

Any notice given pursuant to the Indenture (other than a notice given in connection with a mandatory sinking account redemption) may be rescinded by written notice given to the Trustee by the District no later than the date specified for redemption. The Trustee shall give notice of such rescission as soon thereafter as practicable in the same manner, and to the same parties, as notice of such redemption was given pursuant to the Indenture.

## **Book-Entry-Only System**

As noted above, DTC will act as securities depository for the Series 2010 Bonds. See APPENDIX F – “BOOK-ENTRY ONLY SYSTEM.”

Payments of interest on, principal of and premium, if any, on the Series 2010 Bonds will be made to DTC or its nominee, Cede & Co., as registered owner of the Series 2010 Bonds. Each such payment to DTC or its nominee will be valid and effective to fully discharge all liability of the District or the Trustee

with respect to the principal, redemption price of or interest on the Series 2010 Bonds to the extent of the sum or sums so paid.

The District and the Trustee cannot and do not give any assurances that DTC Participants or DTC Indirect Participants will distribute to the Beneficial Owners (i) payments of interest and principal with respect to the Series 2010 Bonds, (ii) confirmation of ownership interests in the Series 2010 Bonds, or (iii) redemption or other notices sent to DTC or Cede & Co., its nominee, as Owner of the Series 2010 Bonds, or that they will do so on a timely basis.

#### **Payments Upon Abandonment of Book-Entry-Only System**

In the event that the book-entry-only system ceases to be used with respect to the Series 2010 Bonds, payment of interest on the Series 2010 Bonds will be made by check mailed by first class mail on each interest payment date to the Owners thereof as of the close of business on the fifteenth (15th) day of the calendar month immediately preceding such interest payment date; provided, however, that Owners of at least \$1,000,000 aggregate principal amount of Series 2010 Bonds may, at any time prior to the fifteenth day of the calendar month immediately preceding such interest payment date, give the Trustee written instructions for payment of such interest on each succeeding interest payment date by wire transfer. Principal of, and premium, if any, on the Series 2010 Bonds will be payable at the corporate trust office of the Trustee designated for such purpose. The Series 2010 Bonds will be in the form of fully registered Bonds and will be issued in denominations of \$5,000 or any integral multiple thereof.

#### **Transfers and Exchanges Upon Abandonment of Book-Entry-Only System**

The book-entry system for registration of the ownership of the Series 2010 Bonds in book-entry form may be discontinued at any time if: (1) after notice to the District and the Trustee, DTC determines to resign as securities depository for the Series 2010 Bonds; or (2) after notice to DTC and the Trustee, the District determines that a continuation of the system of book-entry transfers through DTC (or through a successor securities depository) is not in the best interests of the District. In each of such events (unless, in the case described in clause (1) above, the District appoints a successor securities depository), the Series 2010 Bonds shall be delivered in such denominations and registered in the names of such persons as are requested in a certificate of the District, but without any liability on the part of the District or the Trustee for the accuracy of such designation. Whenever DTC requests the District and the Trustee to do so, the District and the Trustee shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of or to print bonds evidencing the Series 2010 Bonds. Thereafter, all Series 2010 Bonds are transferable or exchangeable as described in the Indenture.

## ESTIMATED SOURCES AND USES OF FUNDS

Set forth below are the estimated sources and uses of funds:

**Sources of Funds:**

Principal Amount of Series 2010 Bonds	\$129,595,000.00
Plus: Net Original Issue Premium	16,065,129.95
Equity Deposit	14,201,636.38
Interest Fund Transfer	2,353,461.54
	<hr/>

Total Sources: \$162,215,227.87

**Uses of Funds:**

Deposit to Escrow Fund <sup>(1)</sup>	\$147,327,438.56
Costs of Issuance <sup>(2)</sup>	686,152.93
Deposit to 2010 Reserve Account	14,201,636.38
	<hr/>

Total Uses: \$162,215,227.87

<sup>(1)</sup> See "PLAN OF FINANCE."

<sup>(2)</sup> Includes Underwriter's compensation, rating agency fees, trustee fees, trustee counsel fees, escrow agent fees and expenses, verification agent fees, printing costs, Co-Bond Counsel and Financial Advisor fees and expenses and other miscellaneous expenses.

## DEBT SERVICE REQUIREMENTS

The debt service requirements for the Outstanding Series 1990 Bonds, the Series 2001 Bonds, the Series 2005 A Bonds, the Series 2006 Bonds, the Series 2006 A Bonds and the Series 2010 Bonds are shown in the following table.

Calendar Year	Outstanding Bonds <sup>(1), (2)</sup>	Refunded Series 1998 Bonds	Series 2010 Refunding Bonds			Total Bond Debt Service <sup>(2)</sup>
			Principal	Interest	Total <sup>(2)</sup>	
2010	\$ 55,813,886	\$ 3,526,737.50				\$ 52,287,148.50
2011	58,686,849	10,378,475.00	\$ 415,000	\$6,961,300	\$ 7,376,300	55,684,674.00
2012	51,011,549	10,553,912.50	3,385,000	6,221,500	9,606,550	50,064,186.50
2013	48,344,411	8,595,975.00	1,530,000	6,120,000	7,650,000	47,398,436.00
2014	48,492,505	8,600,700.00	1,580,000	6,074,100	7,654,100	47,545,905.00
2015	48,779,440	8,594,912.50	1,620,000	6,026,700	7,646,700	47,831,227.50
2016	49,059,853	9,833,875.00	2,925,000	5,961,900	8,886,900	48,112,878.00
2017	49,335,975	9,836,962.50	3,045,000	5,844,900	8,889,900	48,388,912.50
2018	49,623,181	9,835,337.50	3,165,000	5,723,100	8,888,100	48,675,943.50
2019	49,635,739	17,033,737.50	10,490,000	5,596,500	16,086,500	48,688,501.50
2020	49,739,451	17,039,837.50	11,020,000	5,072,000	16,092,000	48,791,613.50
2021	49,842,614	22,535,287.50	17,065,000	4,521,000	21,586,000	48,893,326.50
2022	49,937,806	22,533,125.00	17,920,000	3,667,750	21,587,750	48,992,431.00
2023	50,057,131	22,535,825.00	18,815,000	2,771,750	21,586,750	49,108,056.00
2024	50,162,769	9,406,250.00	6,630,000	1,831,000	8,461,000	49,217,519.00
2025	50,265,269	9,402,750.00	6,955,000	1,499,500	8,454,500	49,317,019.00
2026	50,400,519	9,406,000.00	7,305,000	1,151,750	8,456,750	49,451,269.00
2027	50,530,394	9,409,750.00	7,675,000	786,500	8,461,500	49,582,144.00
2028	50,668,669	9,408,000.00	8,055,000	402,750	8,457,750	49,718,419.00
2029	24,635,094					24,635,094.00
2030	24,768,131					24,768,131.00
2031	24,912,894					24,912,894.00
2032	25,060,456					25,060,456.00
2033	25,218,450					25,218,450.00
2034	25,376,294					25,376,294.00
2035	16,571,263					16,571,263.00
2036	16,728,750					16,728,750.00
<b>TOTAL<sup>(2)</sup></b>	<b>\$1,143,659,342</b>	<b>\$228,467,450.00</b>	<b>\$129,595,000</b>	<b>\$76,234,050</b>	<b>\$205,829,050</b>	<b>\$1,121,020,942.00</b>

<sup>(1)</sup> Outstanding Bonds include the Series 1990 Bonds, the Series 2001 Bonds, the Series 2005 A Bonds, the Series 2006 Bonds, and the Series 2006 A Bonds. See "INTRODUCTION – Security – Outstanding Bonds."

<sup>(2)</sup> Totals may not add due to rounding.

## SECURITY FOR THE SERIES 2010 BONDS

### General

The Series 2010 Bonds are special obligations of the District payable from and secured by a pledge of sales tax revenues, comprised of seventy-five percent (75%) of the amounts derived from a one-

half of one percent (0.5%) transactions and use tax (the “Sales Tax” or the “District Sales Tax”) imposed within Alameda and Contra Costa Counties and the City and County of San Francisco (collectively, the “Three BART Counties”) pursuant to Section 29140 of the California Public Utilities Code, after deduction by the California State Board of Equalization (the “State Board of Equalization”) of its fee for administering the Sales Tax (such sales tax revenues being hereinafter referred to as the “Sales Tax Revenues”). See “— Sales Tax Revenues.”

Only Sales Tax Revenues are pledged by the District for the payment of principal of, redemption premiums, if any, and interest on the Series 2010 Bonds and no other revenues of the District are pledged to repayment of the Bonds, including the Series 2010 Bonds. The payment of principal of, redemption premiums, if any, and interest on the Series 2010 Bonds is on a parity with the payment of principal of, redemption premiums, if any, and interest on all Bonds Outstanding under the Indenture and any Additional Bonds and Parity Debt hereafter issued by the District. Currently, the District has \$686,980,000 principal amount of Bonds Outstanding.

“Parity Debt” means any indebtedness, installment sale obligation, lease obligation or other obligation of the District for borrowed money or interest rate swap agreement having an equal lien and charge upon the Sales Tax Revenues and therefore payable on a parity with the Bonds (whether or not any Bonds are Outstanding). The District currently has no Parity Debt outstanding and all its outstanding issues of Bonds bear interest at fixed rates.

The District has covenanted in the Indenture not to create any pledge, lien or charge on Sales Tax Revenues having priority over the lien of the Bonds. The District has also covenanted in the Indenture not to create any pledge, lien or charge on Sales Tax Revenues on a parity with the lien of the Bonds and Parity Debt except as described under “SECURITY FOR THE SERIES 2010 BONDS – Additional Bonds; Refunding Bonds; Parity Debt; Subordinated Obligations.”

## **Sales Tax Revenues**

The District is authorized by Section 29140 of the California Public Utilities Code to levy, within the Three BART Counties, the Sales Tax, which is a transactions tax of one-half of one percent (0.5%) of the gross receipts of retailers from the sale of tangible personal property sold at retail in the Three BART Counties and a use tax at the same rate upon the storage, use or other consumption in the Three BART Counties of such property purchased from any retailer for storage, use or other consumption in the Three BART Counties, subject to certain limited exceptions.

Collection of the Sales Tax is administered by the State Board of Equalization. The State Board of Equalization is authorized to charge a fee for collection of the Sales Tax, and the fee is determined pursuant to State legislation. For Fiscal Year 2008-09, the State Board of Equalization fee was \$2,141,000. The State Board of Equalization fee for collection of the Sales Tax for Fiscal Year 2009-10 is estimated to be \$2,253,000.

After deducting its fee, the State Board of Equalization is required by statute to allocate seventy-five percent (75%) of the Sales Tax receipts to the District. The remaining twenty-five percent (25%) of the Sales Tax collected by the State Board of Equalization is allocated by the Metropolitan Transportation Commission (“MTC”), on the basis of regional priorities established by MTC, among the District, the City and County of San Francisco for the San Francisco Municipal Railway System, which includes buses, street cars, cable cars and electric trolley buses, and the Alameda-Contra Costa Transit District (“AC Transit”) for transit service.

In addition to the Sales Tax and other sales taxes levied at the county level or the city and county level, the State also imposes a 8.25% sales tax. The Series 2010 Bonds are secured only by Sales Tax Revenues and not other sales taxes levied by the State or counties. The current breakdown of the State's basic 8.25% rate imposed on a Statewide basis is as set forth below.

- 6.00% represents the State general fund tax rate (increased from 5.00% effective April 1, 2009).
- 1.0% is imposed under the State's uniform local sales and use tax law (decreased from 1.25% before July 1, 2004), with 0.75% dedicated to cities and counties and 0.25% dedicated to county transit systems.
- 0.5% is dedicated to local governments for health and welfare program realignment.
- 0.5% is dedicated to local governments for public safety employees.
- 0.25% is deposited into the State Fiscal Recovery Fund to repay the State's Economic Recovery Bonds (as described below).

Legislation in July 1991 raised the State sales tax rate by 1.25%. Of this amount, 0.25% was added to the State general fund tax rate, and the balance was dedicated to cities and counties. Of the amount dedicated to cities and counties, 0.5% was a permanent addition to counties, but such amount is earmarked for trust funds to pay for the administration of health and welfare programs transferred to counties. Another 0.5% of the State general fund tax rate that was scheduled to terminate after June 30, 1993, was extended until December 31, 1993, and allocated to local agencies for public safety programs. Subsequently, in a special election on November 2, 1993, voters approved a constitutional amendment to permanently extend this 0.5% State sales tax for local public safety programs.

Pursuant to State law, 0.25% of the State general fund tax rate may be suspended upon certification by the State's Director of Finance by November 1 in any year that: (i) the balance in the budget reserve (excluding revenues derived from the 0.25% sales and use tax rate) is expected to exceed 3% of general fund revenues in that fiscal year; and (ii) actual revenues for the period May 1 through September 30 equal or exceed the State's May revision to its January proposed budget for that year. The 0.25% rate can be reinstated if the Director of Finance subsequently determines that the reserve will not exceed 4% of general fund revenues. Pursuant to this law, a 0.25% cut in the State sales tax occurred on January 1, 2001 but was reinstated as of January 1, 2002.

The California Economic Recovery Bond Act ("Proposition 57") was approved by voters at a statewide primary election on March 2, 2004. Proposition 57 authorizes the issuance of up to \$15 billion in economic recovery bonds ("Economic Recovery Bonds") to finance the negative State General Fund reserve balance as of June 30, 2004, and other State General Fund obligations undertaken prior to June 30, 2004. Repayment of the economic recovery bonds is secured by a pledge of revenues from a one-quarter cent increase in the State's sales and use tax (through a one-quarter cent reduction in sales and use tax dedicated to cities and counties) starting July 1, 2004, as shown above.

Legislation in 2009 raised the State sales tax rate 1.00% to 6.00%. The 1.00% tax increase will cease July 1, 2011, unless the Director of Finance makes a notification, pursuant to Section 99040 of the California Government Code of the receipt of insufficient additional federal funds for State general fund expenditures, in which case the tax will expire July 1, 2012.

In addition to the sales tax levied Statewide and the 0.5% District Sales Tax, the Three BART Counties have local transportation authorities which each collect a 0.5% sales tax. Currently, the total sales tax levied in each of the Three BART Counties is as follows: City and County of San Francisco, 9.5% (including a 0.25% sales tax for school services); County of Alameda, 9.75% (including a 0.5% essential health care services transactions and use tax); County of Contra Costa, 9.25% (9.75% for the cities of El Cerrito, Pinole and Richmond).

In general, the Statewide sales tax applies to the gross receipts of retailers from the sale of tangible personal property and the statewide use tax is imposed on the storage, use or other consumption in the State of property purchased from a retailer for such storage, use or other consumption. The Statewide use tax does not apply to cases where the sale of the property is subject to the Statewide sales tax. Therefore, the Statewide use tax is generally applied to purchases made outside of the State for use within the State. The District Sales Tax is imposed upon the same transactions and items subject to the statewide sales tax and the statewide use tax (hereinafter collectively referred to as the "State Sales Tax"), with the same exceptions.

Many categories of transactions are exempt from the State Sales Tax and from the District Sales Tax. The most important are: sales of food products for home consumption; prescription medicine; edible livestock and their feed; seed and fertilizer used in raising food for human consumption; and gas, electricity and water when delivered to consumers through mains, lines, and pipes. In addition, "Occasional Sales" (i.e., sales of property not held or used by a seller in the course of activities for which he or she is required to hold a seller's permit) are generally exempt from the State Sales Tax and from the District Sales Tax; however, the "Occasional Sales" exemption does not apply to the sale of an entire business and other sales of machinery and equipment used in a business. Sales of property to be used outside the District which are shipped to a point outside the District, pursuant to the contract of sale, by delivery to such point by the retailer, or by delivery by the retailer to a carrier for shipment to a consignee at such point, are also exempt from the State Sales Tax and from the District Sales Tax.

Action by the State Legislature or by voter initiative could change the transactions and items upon which the State Sales Tax and the District Sales Tax are imposed. Such changes could have either an adverse or beneficial impact on the District Sales Tax Revenues. Senate Bill 671 which was adopted by the State Legislature in 1993 (1993 Reg. Session, Chapter 881), exempts from the State Sales Tax, but not the District Sales Tax, manufacturing equipment purchases of start-up firms.

Sales Tax revenues consist of amounts that the District actually receives from the State Board of Equalization, calculated on a cash basis. The Month of receipt reflects the estimated amount for sales tax transactions that occurred approximately two months prior. At the end of each quarter, an adjustment (i.e., increase or decrease) is made to those estimates and included by the quarter-end disbursement.

The following table shows the Sales Tax Revenues received by the District for Fiscal Years ended June 30, 1996 through June 30, 2009.



## SALES TAX REVENUES

<u>Fiscal Year Ended June 30</u>	<u>Sales Tax Revenues<sup>(1)</sup></u>	<u>Percentage Change</u>
1996	\$126,077,000	9.46%
1997	134,984,000	7.06
1998	144,675,000	7.18
1999	151,806,000	4.93
2000	170,911,000	12.58
2001	191,648,000	12.13
2002	172,774,000	(9.84)
2003	167,441,000	(3.08)
2004	170,566,000	1.86
2005	178,392,000	4.58
2006	191,680,000	7.44
2007	198,805,000	3.72
2008	202,632,000	1.93
2009	184,286,000	(9.05)
2010	162,500,000 <sup>(2)</sup>	(11.82)

Source: District.

<sup>(1)</sup> Sales Tax Revenues have been rounded to the nearest thousand.

<sup>(2)</sup> Estimated.

For the first eight months of the fiscal year ending June 30, 2010, the District has received \$113,265,000 in Sales Tax Revenues that are 13% less than Sales Tax Revenues received for the same period in the last fiscal year.

The District's imposition of the Sales Tax and the allocation of the Sales Tax receipts pursuant to Section 29140 of the California Public Utilities Code are subject to legislative review and amendment. Any repeal or amendment of the Sales Tax provisions of the California Public Utilities Code by the State Legislature would be an Event of Default under the Indenture unless the District determined that such repeal or amendment did not materially and adversely affect the rights of the holders of Bonds. See APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Events of Default and Remedies."

The District levies the Sales Tax pursuant to District Ordinance No. 1 adopted on November 20, 1969, as amended. The District has covenanted in the Indenture that, so long as any Bonds are outstanding, it will not amend, modify or alter such Ordinance in any manner which would reduce the amount of or timing of receipt of Sales Tax Revenues and that it will continue to levy and collect the Sales Tax to the full amount permitted by law.

### **Application of Sales Tax Revenues**

Pursuant to an agreement between the District and the State Board of Equalization, dated August 5, 1982, as amended, the State Board of Equalization remits all Sales Tax receipts directly to the Trustee on a monthly basis. The Indenture provides that Sales Tax Revenues remitted to the Trustee will be deposited in the Revenue Fund and will be applied by the Trustee to the following funds established by the Indenture in the following order of priority; provided that on a parity with such deposits the Trustee may set aside or transfer amounts with respect to outstanding Parity Debt (which shall be proportionate in

the event such amounts are insufficient to provide for all deposits required as of any date to be made with respect to the Bonds and such Parity Debt):

*Expense Account.* The Trustee shall set aside in the Expense Account amounts payable by the District to the State Board of Equalization for costs and for its services in connection with the collection of the transactions and use taxes (in excess of costs previously deducted by the State Board of Equalization) and all Trustee's and paying agent's fees.

*Interest Fund.* The Trustee shall set aside in the Interest Fund as soon as practicable in each month an amount equal to one-sixth of the aggregate half-yearly amount of interest becoming due and payable on the Outstanding Current Interest Bonds during the next ensuing six months, until the requisite half-yearly amount of interest on all such Outstanding Current Interest Bonds is on deposit in the Interest Fund; provided that from the date of delivery of the Current Interest Bonds until the first interest payment date with respect to the Current Interest Bonds the amounts so paid shall be sufficient on a monthly pro rata basis to pay the aggregate amount of interest becoming due and payable on said interest payment date. No deposit need be made into the Interest Fund if the amount contained therein is at least equal to the interest to become due and payable on the interest payment dates falling within the next six months upon all the Bonds then Outstanding and on July 1 of each year any excess amounts in the Interest Fund not needed to pay interest on such date shall be transferred to the District. See APPENDIX D — "SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE" for an explanation of how interest on Variable Rate Indebtedness is calculated.

*Principal Fund; Sinking Accounts.* The Trustee shall deposit in the Principal Fund as soon as practicable in each month an amount equal to at least one-twelfth of the aggregate yearly amount of Bond Obligation becoming due and payable on the Outstanding Serial Bonds having annual maturity dates within the next 12 months, plus one-twelfth of the aggregate of the Mandatory Sinking Account Payments to be paid during the next twelve-month period into the respective Sinking Accounts for the Term Bonds of all Series for which a Sinking Account shall have been created and for which annual mandatory redemption is required from such Sinking Account (See "DESCRIPTION OF THE SERIES 2010 BONDS – Mandatory Redemption"); provided that if the District certifies to the Trustee that any principal payments are expected to be refunded on or prior to their respective due dates or paid from amounts on deposit in the Bond Reserve Fund that would be in excess of the Bond Reserve Requirement upon such payment, no amounts need be set aside towards such principal to be so refunded or paid.

No deposit need be made into the Principal Fund so long as there shall be in such fund (i) moneys sufficient to pay the Bond Obligations of all Serial Bonds then Outstanding and maturing by their terms within the next twelve months plus (ii) the aggregate of all Mandatory Sinking Account Payments required to be made in such twelve-month period, but less any amounts deposited into the Principal Fund during such twelve month period and theretofore paid from the Principal Fund to redeem or purchase Term Bonds during such twelve-month period.

*Bond Reserve Fund.* The Trustee shall deposit as soon as possible in each month in the Bond Reserve Fund, upon the occurrence of any deficiency therein, the aggregate amount of each unreplenished prior withdrawal from the Bond Reserve Fund and the full amount of any deficiency due to any required valuations of the investments in the Bond Reserve Fund until the balance in the Bond Reserve Fund is at least equal to the Bond Reserve Requirement. In addition, the Trustee shall, on a pro rata basis with such deposits, reimburse to the provider of a letter of credit, insurance policy or surety bond satisfying a portion of the Bond Reserve Requirement the amount of any unreplenished prior withdrawal on such letter of credit, insurance policy or surety bond.

In addition to reimbursing the provider of an insurance policy or surety bond (a “Reserve Policy”) or letter of credit satisfying the Bond Reserve Requirement the amount of any unreplenished prior withdrawal on such Reserve Policy or letter of credit, the Trustee shall, on a subordinate basis with such deposits, pay to such provider any reasonable expenses (together with interest thereon), and interest on the amount of any unreplenished prior withdrawal, calculated as specified in the agreement relating to such Reserve Policy or letter of credit. Repayment of such expenses and accrued interest (collectively, “Policy Costs”) shall be made from and to the extent of available Sales Tax Revenues after the replenishment of the Bond Reserve Fund and such withdrawals. Any Sales Tax Revenues remaining in the Revenue Fund after the foregoing transfers shall be transferred on the same Business Day to the District. The District may use and apply the Sales Tax Revenues when received by it for any lawful purpose of the District.

If on any principal payment date, interest payment date or mandatory redemption date the amounts on deposit in the Interest Fund and Principal Fund, including the Sinking Accounts therein, with respect to the payments to be made on such date are insufficient to make such payments, the Trustee shall immediately notify the District, by telephone confirmed in writing, of such deficiency and direct that the District transfer the amount of such deficiency to the Trustee on such payment date. The District shall transfer to the Trustee from any Sales Tax Revenues in its possession the amount of such deficiency on or prior to the principal, interest or mandatory redemption date referenced in such notice.

### **Bond Reserve Fund**

*General.* Upon issuance of any additional series of Bonds, the Indenture requires the Trustee to deposit into the Bond Reserve Fund such amount as shall be necessary to increase the amount on deposit therein so that such amount will be equal to the Bond Reserve Requirement for the Bonds. The Bond Reserve Requirement is defined in the Indenture to mean as of any date of calculation, an amount equal to the lesser of (i) Maximum Annual Debt Service on all Bonds Outstanding; or (ii) 125% of average Annual Debt Service on all Bonds Outstanding; provided that with respect to a Series of Bonds consisting of Variable Rate Indebtedness, for which an Interest Rate Swap Agreement is not in place, the interest rate thereon for purposes of calculating the Bond Reserve Requirement, shall be assumed to be equal to the highest interest rate published in The Bond Buyer “25 Bond Revenue Bond Index” most recently published preceding the date of sale of such Series of Bonds; and provided further that with respect to the issuance of a Series of Bonds if the Bond Reserve Fund would have to be increased by an amount greater than ten percent (10%) of the stated principal amount of such Series of Bonds (or, if the Series has more than a de minimis amount of original issue discount or premium, of the issue price of such Series of Bonds) then the Bond Reserve Requirement shall be such lesser amount as is determined by a deposit of such ten percent (10%).

*The Series 2010 Reserve Account.* The Series 2010 Bonds shall have a separate reserve account within the Bond Reserve Fund (the “Series 2010 Reserve Account”). The Series 2010 Reserve Account will be funded in the amount of \$14,201,636.38 with funds provided by the District. All other amounts and instruments on deposit in the Bond Reserve Fund, including the Reserve Policies, will also be available for payments with respect to the Series 2010 Bonds. The Series 2010 Reserve Account will be available to pay only the principal of and interest on the Series 2010 Bonds until such time as the amount on deposit in the Bond Reserve Fund, excluding any Reserve Policies held therein issued by insurance companies that are not rated in one of the two highest rating categories of Moody’s or Standard & Poor’s, is equal to the Bond Reserve Requirement. At such time the Series 2010 Reserve Account will be combined with other cash deposits in the Reserve Fund and be available to pay principal of and interest on all Bonds as part of the Bond Reserve Fund. At all times other moneys and instruments in the Bond Reserve Fund are available to pay principal of and interest on the Series 2010 Bonds pursuant to Section

5.05 of the Indenture and such other amounts and Reserve Policies shall be used prior to amounts on deposit in the Series 2010 Reserve Account.

*Bond Reserve Requirement.* The Bond Reserve Requirement following issuance of the Series 2010 Bonds will be \$51,237,845.31 based on 125% of average Annual Debt Service on all Bonds Outstanding. No deposit to the Bond Reserve Fund will be required in connection with the issuance of the Series 2010 Bonds; however, the District has determined to increase cash holdings by making a deposit in the amount of \$14,201,636.38 to the Series 2010 Reserve Account within the Bond Reserve Fund. The District estimates that the Reserve Policies described below and the funds remaining in the Bond Reserve Fund will be sufficient, assuming such funds are maintained and no additional Bonds are issued, to satisfy the Bond Reserve Requirement for the term of the Series 2010 Bonds. The District is not required to maintain funds in the Bond Reserve Fund in excess of the Bond Reserve Requirement; provided that the District shall maintain the Series 2010 Reserve Account until the Bond Reserve Requirement is fully funded with cash and Reserve Policies issued by providers rated in one of the two highest rating categories by Moody's or Standard & Poor's.

Cash on deposit in the Bond Reserve Fund is currently invested in money market securities and is permitted to be invested in Investment Securities as defined in the Indenture. SEE APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Definitions."

*Reserve Policies.* The Indenture authorizes the District to obtain a letter of credit or a Reserve Policy in place of funding all or a portion of the Bond Reserve Fund. As of the date of issuance of the Series 2010 Bonds, there will be on deposit in the Bond Reserve Fund a surety bond issued by Ambac Assurance Corporation ("Ambac") in the principal amount of \$41,571,225.21 that reduces to \$26,163,250.00 after July 1, 2011 and expires on July 1, 2028 (the "Ambac Reserve Policy") issued in connection with the Series 1990 Bonds and the Series 1998 Bonds, which is available to pay debt service on any Bonds, a separate surety bond issued by Financial Guaranty Insurance Company, doing business in California as FGIC Insurance Company ("FGIC") in the principal amount of \$8,789,837.50 (the "FGIC Reserve Policy") issued in connection with the Series 1999 Bonds, which is available to pay debt service on any Bonds and expires on July 1, 2034, and a municipal bond debt service reserve insurance policy issued by Financial Security Assurance Inc. ("FSA") (now known as Assured Guaranty Municipal Corp.) in the principal amount of \$4,410,874 (the "FSA Reserve Policy") that was issued in connection with the issuance of the Series 2006 Bonds and expires on July 1, 2036 and is available to pay debt service on any Bonds. The reimbursement obligations of the District to Ambac with respect to the Ambac Reserve Policy, to FGIC with respect to the FGIC Reserve Policy and to FSA with respect to the FSA Reserve Policy, are subordinate to the District's obligations with respect to the Bonds.

At the time of issuance of the Reserve Policies, the issuer thereof was rated in the highest Rating Category of Moody's and Standard and Poor's. Currently, only FSA is rated in one of the two highest Rating Categories of Moody's or Standard & Poor's. Each of Moody's, Standard & Poor's and Fitch (collectively, the "Rating Agencies") has downgraded or withdrawn their respective ratings on the claims-paying ability and financial strength ratings of Ambac and FGIC. The Rating Agencies could announce changes in rating outlook, or a review for downgrade or further downgrades of bond insurers. For the current ratings, if any, of the issuers of the Reserve Policies, the holders should contact the Rating Agencies. In the event that a Reserve Policy lapses or expires, the District shall immediately replace such Reserve Policy or make the required deposits to the Bond Reserve Fund. SEE APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Establishment and Application of Funds and Accounts."

The Reserve Policies and current cash and securities expected to be on deposit in the Bond Reserve Fund following issuance of the Series 2010 Bonds are summarized as follows:

## BOND RESERVE FUND HOLDINGS<sup>(1)</sup>

Series 2010 Reserve Account <sup>(2)</sup>	\$14,201,636.38
Cash and Securities	13,385,947.29
Reserve Policies:	
FSA Reserve Policy <sup>(3)</sup>	4,410,874.00
Ambac Reserve Policy <sup>(4)</sup>	41,571,255.21
FGIC Reserve Policy <sup>(5)</sup>	<u>8,789,837.50</u>
Total	<u>\$82,359,520.38</u>

<sup>(1)</sup> Bond Reserve Requirement upon issuance of the Series 2010 Bonds will be \$51,237,845.31.

<sup>(2)</sup> To be funded in an amount approximately 125% of average annual debt service of 2010 Bonds.

<sup>(3)</sup> FSA Reserve Policy expires on July 1, 2036. FSA is now known as Assured Guaranty Municipal Corp.

<sup>(4)</sup> Ambac Reserve Policy amount reduces to \$26,163,250.00 after July 1, 2011, and the Policy expires on July 1, 2028.

<sup>(5)</sup> FGIC Reserve Policy expires on July 1, 2034.

### **Additional Bonds and Parity Debt**

Additional Bonds may be issued on a parity with the Bonds provided that, among other things: (1) Sales Tax Revenues and Associated Sales Tax Revenues relating to any recently annexed jurisdiction for any period of 12 consecutive months during the immediately preceding 18 months are at least equal to 1.5 times the Maximum Annual Debt Service (as defined below) for all Series of Bonds and Parity Debt then outstanding, including the Bonds to be issued; (2) Sales Tax Revenues estimated by the District for the Fiscal Year in which the additional Bonds are to be issued and for each of the next succeeding four Fiscal Years will equal at least 1.5 times the amount of Annual Debt Service on all Series of Bonds and Parity Debt, including the Bonds to be issued; and (3) Sales Tax Revenues for the Fiscal Year in which the additional Series of Bonds are to be issued under the laws then in existence at the time of the issuance of such additional Series of Bonds shall be at least 1.0 times the amount of the District's obligations with respect to repayment of any withdrawals under a Reserve Policy plus Policy Costs, if any, then due and owing to the Reserve Policy provider providing such Reserve Policy.

The District may, by Supplemental Indenture, establish one or more Series of Bonds and the District may issue, and the Trustee may authenticate and deliver to the purchasers thereof, Bonds of any Series so established, in such principal amount as shall be determined by the District, as well as Parity Debt, but only upon compliance by the District with certain provisions of the Indenture and subject to certain specific conditions precedent to the issuance of any series of Bonds set forth in the Indenture. Additional Bonds issued by the District for the purpose of refunding Bonds need not comply with the foregoing coverage test. See APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Additional Bonds; Refunding Bonds; Parity Debt; Subordinated Obligations.”

“Maximum Annual Debt Service” shall mean the greatest amount of principal and interest becoming due and payable on all Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year as set forth in a Certificate of the District; provided, however, that for the purposes of computing Maximum Annual Debt Service:

(a) if the Bonds or Parity Debt is Variable Rate Indebtedness for which an Interest Rate Swap Agreement is not in place, the interest rate on such debt shall be calculated at the greater per annum rate (not to exceed 12%) of: (i) the average of the BMA Index for the ten years preceding the date of calculation, and (ii) the highest interest rate listed in The Bond Buyer “25 Bond Revenue Bond Index” published one month preceding the date of sale of such Series of Bonds or Parity Debt.

(b) principal and interest payments on Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or other fiduciary in escrow specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Bonds or Parity Debt held by the Trustee or other fiduciary as capitalized interest specifically to pay such interest by the Trustee or other fiduciary;

(c) in determining the principal amount due in each Fiscal Year, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Bonds on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Bond or Combination Bond;

(d) if the Bonds or Parity Debt are debt, the principal of which the District determines (in a Supplemental Indenture or other document delivered on a date not later than the date of issuance of such Bonds or Parity Debt) that the District intends to pay with moneys which are not Revenues (such as commercial paper, balloon indebtedness or bond anticipation notes), but from future debt obligations of the District, grants received from the State or federal government, or any agency or instrumentality thereof, or any other source of funds of the District, the principal of such Bonds or Parity Debt will be treated as if such principal were due based upon a 30-year level amortization of principal from the date of calculation and the interest on such Bonds or Parity Debt shall be calculated as if such Bonds were Variable Rate Indebtedness;

(e) if any Bonds feature an option, on the part of the Bondowners or an obligation under the terms of such Bonds, to tender all or a portion of such Bonds to the District, the Trustee, or other fiduciary or agent and require that such Bonds or portion thereof be purchased if properly presented, then for purposes of determining the amounts of principal and interest due in any Fiscal Year on such Bonds, the options or obligations of the Owners of such Bonds to tender the same for purchase or payment prior to their stated maturity or maturities shall be treated as a principal maturity occurring on the first date on which Owners of such Bonds may or are required to tender such Bonds except that any such option or obligation to tender Bonds shall be ignored and not treated as a principal maturity, if (1) such Bonds are rated in one of the two highest long-term Rating Categories by Moody's and by Standard & Poor's or such Bonds are rated in the highest short-term, note or commercial paper Rating Categories by Moody's and by Standard & Poor's and (2) funds for the purchase price of such Bonds have been set aside by the District and pledged to such payment or are to be provided by a letter of credit or standby bond purchase agreement and the obligation of the District with respect to the provider of such letter of credit or standby bond purchase agreement, other than its obligations on such Bonds, shall be subordinated to the obligation of the District on the Bonds or, if not subordinate, shall be incurred (assuming such immediate tender) under the conditions and meeting the tests for the issuance of Parity Debt set forth in the Indenture, in which latter case, such repayment obligations of the District to the provider of such letter of credit or standby bond purchase agreement shall be included in the computation of the Maximum Annual Debt Service in accordance with the terms of such obligation.

(f) with respect to any Variable Rate Indebtedness for which an Interest Rate Swap Agreement is in place, if (i) the interest rate on such Variable Rate Indebtedness, plus (ii) the payments received and made by the District under an Interest Rate Swap Agreement with respect to such variable interest rate, are expected to produce a synthetic fixed rate to be paid by the District (e.g., an interest rate swap under which the District pays a fixed rate and receives a variable rate that is expected to equal or

approximate the rate of interest on such Variable Rate Indebtedness), the Variable Rate Indebtedness shall be treated as bearing such synthetic fixed rate for the duration of the synthetic fixed rate;

(g) if any Bonds or Parity Debt bear a fixed interest rate or the Bonds or Parity Debt proposed to be issued will bear a fixed interest rate and an Interest Rate Swap Agreement is entered into with respect to such Bonds or Parity Debt, if (i) the interest rate on such fixed rate Bonds or Parity Debt, plus (ii) the payments received and made by the District under an Interest Rate Swap Agreement with respect to such fixed rate Bonds or Parity Debt, are expected to produce a synthetic variable rate to be paid by the District (e.g., an interest rate swap under which the District pays a variable rate and receives a fixed rate that is expected to equal or approximate the rate of interest on such fixed interest rate debt), the fixed interest rate debt, shall be treated as bearing such synthetic variable rate for the duration of the Interest Rate Swap Agreement calculated as if such Bonds or Parity Debt were Variable Rate Indebtedness.

“Interest Rate Swap Agreement” means an interest rate swap agreement relating to a Series of Bonds or portion thereof or Parity Debt in which the party with which the District or the Trustee may contract is limited to: (i) entities the debt securities of which are rated in one of the two highest long-term debt Rating Categories by either Moody’s or Standard & Poor’s and the debt securities of which are rated not lower than the third highest long-term debt Rating Category by the other rating agency; (ii) entities the obligations of which under the interest rate swap agreement are either guaranteed or insured by an entity the debt securities or insurance policies of which are so rated; or (iii) entities the debt securities of which are rated in the third highest long-term debt Rating Categories by Moody’s and Standard & Poor’s or whose obligations are guaranteed or insured by an entity so rated and, in either case, the obligations of which under the interest rate swap agreement are continuously and fully secured by Investment Securities described in clauses (i) through (iv) of the definition thereof, which shall have a market value determined, by the party designated in such interest rate swap agreement, at least monthly (exclusive of accrued interest) at least equal to the termination value, if any, that would be payable by the provider of the interest rate swap agreement under such interest rate swap agreement and which shall be deposited with a custodian acceptable to the District.

The District currently has no Parity Debt, Variable Rate Indebtedness or Interest Rate Swap Agreement relating to any Bonds outstanding. All outstanding Bonds of the District bear interest at fixed rates to maturity.

### **Subordinate Obligations**

No provision of the Indenture limits the ability of the District to issue bonds or other obligations payable from Sales Tax Revenues which are junior and subordinate to the payment of principal, premium, interest and reserve fund requirements of the Bonds and all Parity Debt. See APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Additional Bonds; Refunding Bonds; Parity Debt; Subordinate Obligations – *Subordinate Obligations*.”

There are currently no outstanding obligations of the District payable from and secured on a subordinate basis with a lien upon Sales Tax Revenues.

### **Special Obligations**

The Series 2010 Bonds are special obligations of the District payable solely from Sales Tax Revenues and no other revenues of the District are pledged to the payment thereof. The Series 2010 Bonds are not a general obligation of the District, the State or any political subdivision thereof and the

District is not obligated to levy any form of taxation, other than the Sales Tax, for the payment of the Series 2010 Bonds.

## **INVESTMENT CONSIDERATIONS**

### **Economy of the Three BART Counties and the State**

The Series 2010 Bonds are secured by a pledge of Sales Tax Revenues, which consist primarily of the Sales Tax less an administrative fee paid to the State Board of Equalization. The level of Sales Tax Revenues collected at any time is dependent upon the level of retail sales within the Three BART Counties, which level of retail sales is, in turn, dependent upon the level of economic activity in the Three BART Counties and in the State generally.

The economy of the Three BART Counties has been in a recession as evidenced by a decrease in Sales Tax Revenues, an increased unemployment rate, a decrease in total personal income and taxable sales, a drop in residential and commercial building permits, a decline in the rate of home sales and the median price of single-family homes and condominiums, and an increase in foreclosures resulting from such defaults.

The domestic and international recession and financial crisis has had, and is expected to continue to have, significant negative repercussions upon District, State, national and global economies, including reduced revenues for government, increased unemployment, a scarcity of credit, lack of confidence in the financial sector, extreme volatility in the financial markets, increase in interest costs, reduced business activity, increased consumer bankruptcies, and increased business failures and bankruptcies.

Any further substantial deterioration in the level of economic activity within the Three BART Counties or in the State could have a material adverse impact upon the level of Sales Tax Revenues and therefore upon the ability of the District to pay principal of and interest on the Series 2010 Bonds. For information relating to current economic conditions within the Three BART Counties and the State see APPENDIX E – “THE ECONOMY OF THE THREE BART COUNTIES.”

### **Risk of Earthquake**

The Bay Area’s historical level of seismic activity and its proximity to a number of significant known earthquake faults (including most notably the San Andreas Fault and the Hayward Fault) increases the likelihood that an earthquake originating in the region could disrupt economic activity in the Three BART Counties and adversely affect Sales Tax Revenues for an undetermined period of time.

An earthquake originating outside the immediate Bay Area could have an impact on Sales Tax Revenues. On October 17, 1989, the San Francisco Bay Area experienced the effects of the Loma Prieta earthquake that registered 7.1 on the Richter Scale. The epicenter of the earthquake was located in Loma Prieta about 60 miles south of the City of San Francisco in the Santa Cruz Mountains.

Research conducted since the 1989 Loma Prieta earthquake by the United States Geological Survey concludes that there is a 70% probability of at least one magnitude 6.7 or greater earthquake, capable of causing wide-spread damage, striking the Bay Area before 2030. Major earthquakes may occur in any part, and at any time, of the Bay Area.

### **Other Force Majeure Events**

Operation of the BART System and amount of Sales Tax Revenues is also at risk from other events of force majeure, such as damaging storms, winds and floods, fires and explosions, spills of



hazardous substances, strikes and lockouts, sabotage, wars, blockades and riots. The District cannot predict the potential impact of such events on the financial condition of the District or the level of Sales Tax Revenues.

### **Threats and Acts of Terrorism**

BART police and other law enforcement authorities have undertaken security measures in an effort to reduce the probability that portions of the BART System could be attacked by terrorists. However, such measures are not guaranteed to prevent an attack on the BART System. The District cannot predict the likelihood of a terrorist attack on any portion of the BART System. Components of the BART System are not insured against terrorist attack. See APPENDIX A — “SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT FINANCIAL AND OPERATING INFORMATION — Security Enhancement Program.”

### **Changes in Taxable Items**

With limited exceptions, the Sales Tax is imposed upon the same transactions and items subject to the sales tax levied statewide by the State. The State Legislature or the voters within the State, through the initiative process, could change or limit the transactions and items upon which the State Sales Tax and the Sales Tax are imposed. Any such change or limitation could have an adverse impact on the Sales Tax Revenues collected. For a further description of the Sales Tax, see “SECURITY FOR THE SERIES 2010 BONDS – Sales Tax Revenues.” See also APPENDIX E – “THE ECONOMY OF THE THREE BART COUNTIES” for data relating to taxable transactions in the Three BART Counties.

### **Effect of Growth in Internet Commerce**

It is possible that collections of District Sales Tax in the future could be adversely impacted due to the growth of commerce over the internet. Goods purchased from out-of-state retailers for delivery to a customer within the District could displace sales from retailers located within the District. Even though such purchases are subject to California use tax and within the District Sales Tax, such sales often are unreported.

### **Constitutional Limitations on Appropriations**

State and local government agencies in California are each subject to annual “appropriations limits” imposed by Article XIII B of the Constitution of the State of California (“Article XIII B”). Article XIII B prohibits government agencies and the State from spending “appropriations subject to limitation” in excess of the appropriations limit imposed. “Appropriations subject to limitation” are authorizations to spend “proceeds of taxes,” which include all tax revenues and investment earnings thereon, certain state subventions and certain other funds, including proceeds received by an entity of local government from regulatory licenses, user charges or other user fees to the extent that such proceeds exceed “the cost reasonably borne by that entity in providing the regulation, product, or service.” “Appropriations subject to limitation” under Article XIII B do not include appropriations required to comply with mandates of courts or of the Federal government, appropriations for qualified outlay projects (as defined by the Legislature), or appropriations for debt service on indebtedness existing prior to the passage of Article XIII B or thereafter authorized by the voters.

As amended at the June 5, 1990 election by Proposition 111, Article XIII B provides that, in general terms, the District’s appropriations limit is based on the limit for the prior year adjusted annually to reflect changes in cost of living, population and, when appropriate, transfer of financial responsibility of providing services from one governmental unit to another. Proposition 111 liberalized the aforementioned adjustment factors as compared to the original provisions of Article XIII B. If revenues

from “proceeds of taxes” during any two consecutive Fiscal Years exceed the combined appropriations limits for those two years, the excess must be returned by a revision of tax rate or fee schedules within the two subsequent Fiscal Years.

Section 7900 et seq. of the Government Code of the State of California defines certain terms used in Article XIII B and sets forth the methods for determining the appropriations limits for local jurisdictions. The District’s appropriations limit for the Fiscal Year ending June 30, 2010 is \$465,684,000. Pursuant to the Fiscal Year 2010 budget, “appropriations subject to the limitation” are \$280,011,000, or \$185,673,000 under the limit. It is not anticipated that the District will ever reach its appropriations limit. However, if it were ever to reach such limit, it is arguable that amounts appropriated to pay debt service on the Bonds are appropriations for capital outlay projects and therefore not subject to the limit.

### **Proposition 218**

On November 5, 1996, California voters approved an initiative known as the Right to Vote on Taxes Act (“Proposition 218”). Proposition 218 added Articles XIII C and XIII D to the California Constitution. Article XIII C requires majority voter approval for the imposition, extension or increase of general taxes and two-thirds voter approval for the imposition, extension or increase of special taxes by a local government, which is defined to include local or regional governmental agencies such as the District. Article XIII C also removes limitations on the initiative power with regard to reducing or repealing previously authorized local taxes. In the opinion of the District, however, any attempt by the voters to use the initiative provisions under Proposition 218 to rescind or reduce the levy and collection of the Sales Tax in a manner which would prevent the payment of debt service on the Series 2010 Bonds would violate the Impairment Clause of the United States Constitution and, accordingly, would be precluded. However, it is likely that the interpretation and application of Proposition 218 will ultimately be determined by the courts.

### **Further Initiatives**

Article XIII B and Proposition 218 were each adopted as measures that qualified for the ballot pursuant to California’s initiative process. From time to time other initiative measures could be adopted, which may affect the District’s ability to levy and collect the Sales Tax.

### **No Acceleration Provision**

The Indenture does not contain a provision allowing for the acceleration of the Series 2010 Bonds in the event of a default in the payment of principal and interest on the Series 2010 Bonds when due. In the event of a default by the District, each Series 2010 Bondholder will have the rights to exercise the remedies, subject to the limitations thereon, set forth in the Indenture. See APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”

### **Loss of Tax Exemption**

As discussed under “TAX MATTERS,” interest on the Series 2010 Bonds could become includable in federal gross income, possibly from the date of issuance of the Series 2010 Bonds, as a result of acts or omissions of the District subsequent to the issuance of the Series 2010 Bonds. Should interest become includable in federal gross income, the Series 2010 Bonds are not subject to redemption by reason thereof and will remain outstanding until maturity or earlier redemption.

## LEGAL MATTERS

The validity of the Series 2010 Bonds and certain other legal matters are subject to the approving opinion of Orrick, Herrington & Sutcliffe LLP, San Francisco, California and Lofton & Jennings, San Francisco, California, Co-Bond Counsel to the District. A complete copy of the proposed form of the opinion to be delivered by Co-Bond Counsel is attached hereto as APPENDIX H. Compensation of Co-Bond Counsel is contingent upon the issuance of the Series 2010 Bonds. Co-Bond Counsel takes no responsibility for the accuracy, completeness or fairness of this Official Statement. Approval of certain other legal matters will be passed upon for the District by Matthew Burrows, Esq., General Counsel to the District.

## TAX MATTERS

In the opinion of Orrick, Herrington & Sutcliffe LLP and Lofton & Jennings (“Co-Bond Counsel”), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series 2010 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “Code”) and is exempt from State of California personal income taxes. Co-Bond Counsel are of the further opinion that interest on the Series 2010 Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Co-Bond Counsel observe that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. A complete copy of the proposed form of opinion of Co-Bond Counsel is set forth in APPENDIX H hereto.

To the extent the issue price of any maturity of the Series 2010 Bonds is less than the amount to be paid at maturity of such Series 2010 Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Series 2010 Bonds), the difference constitutes “original issue discount,” the accrual of which, to the extent properly allocable to each owner thereof, is treated as interest on the Series 2010 Bonds which is excluded from gross income for federal income tax purposes and State of California personal income taxes. For this purpose, the issue price of a particular maturity of the Series 2010 Bonds is the first price at which a substantial amount of such maturity of the Series 2010 Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of Underwriter, placement agents or wholesalers). The original issue discount with respect to any maturity of the Series 2010 Bonds accrues daily over the term to maturity of such Series 2010 Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such Series 2010 Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such Series 2010 Bonds. Owners of the Series 2010 Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Series 2010 Bonds with original issue discount, including the treatment of purchasers who do not purchase such Series 2010 Bonds in the original offering to the public at the first price at which a substantial amount of such Series 2010 Bonds is sold to the public.

Series 2010 Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) (“Premium Bonds”) will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of bonds, like the Premium Bonds, the interest on which is excluded from gross income for federal income tax purposes. However, the amount of tax-exempt interest received, and a purchaser’s basis in a Premium Bond, will be reduced by the amount of amortizable bond premium properly allocable to such purchaser. Owners of Premium Bonds should

consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Series 2010 Bonds. The District has made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the Series 2010 Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the Series 2010 Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the Series 2010 Bonds. The opinion of Co-Bond Counsel assumes the accuracy of these representations and compliance with these covenants. Co-Bond Counsel have not undertaken to determine (or to inform any person) whether any actions taken (or not taken), or events occurring (or not occurring), or any other matters coming to Co-Bond Counsel's attention after the date of issuance of the Series 2010 Bonds may adversely affect the value of, or the tax status of interest on, the Series 2010 Bonds. Accordingly, the opinion of Co-Bond Counsel is not intended to, and may not, be relied upon in connection with any such actions, events or matters.

Although Co-Bond Counsel are of the opinion that interest on the Series 2010 Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of interest on, the Series 2010 Bonds may otherwise affect a beneficial owner's federal, state or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the beneficial owner or the beneficial owner's other items of income or deduction. Co-Bond Counsel express no opinion regarding any such other tax consequences.

Future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the Series 2010 Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such future legislative proposals, clarification of the Code or court decisions may also affect the market price for, or marketability of, the Series 2010 Bonds. Prospective purchasers of the Series 2010 Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, as to which Co-Bond Counsel express no opinion.

The opinion of Co-Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Co-Bond Counsel's judgment as to the proper treatment of the Series 2010 Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service ("IRS") or the courts. Furthermore, Co-Bond Counsel cannot give and has not given any opinion or assurance about the future activities of the District, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. The District has covenanted, however, to comply with the requirements of the Code.

The IRS has an ongoing program of auditing tax-exempt obligations to determine whether, in the view of the IRS, interest on such tax-exempt obligations is includable in the gross income of the beneficial owners thereof for federal income tax purposes. Co-Bond Counsel is not obligated to defend the District or the beneficial owners regarding the tax-exempt status of the Series 2010 Bonds in the event of an audit examination by the IRS. Under current procedures, parties other than the District and their appointed counsel, including the beneficial owners, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which the District legitimately disagrees, may not be practicable. Any action of the IRS, including but

not limited to selection of the Series 2010 Bonds for audit, or the course or result of such audit, or an audit of bonds presenting similar tax issues may affect the market price for, or the marketability of, the Series 2010 Bonds, and may cause the District or the beneficial owners to incur significant expense.

### **ABSENCE OF MATERIAL LITIGATION**

At the time of delivery of and payment for the Series 2010 Bonds, the District will certify that, except as disclosed herein, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body, pending with respect to which the District has been served with process or, to the knowledge of the District, threatened against the District in any way affecting the existence of the District or the titles of its officers to their respective offices or seeking to restrain or to enjoin the issuance, sale or delivery of the Series 2010 Bonds, the application of the proceeds thereof in accordance with the Indenture, or the levy or collection of the Sales Tax or application of the Sales Tax Revenues or other moneys to be pledged to pay the principal of and interest on the Series 2010 Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Series 2010 Bonds, the Indenture, the Continuing Disclosure Agreement or in any way contesting the completeness or accuracy of this Official Statement.

### **RATINGS**

Standard & Poor's Ratings Services ("S&P") and Fitch Ratings ("Fitch") have assigned ratings of "AA+" and "AA+," respectively, to the Series 2010 Bonds. Such ratings reflect only the views of such organizations and any desired explanation of the significance of such ratings should be obtained from such rating agencies furnishing the same at the following addresses: Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., 55 Water Street, New York, New York 10041 and Fitch Ratings, One State Street Plaza, New York, New York 10004. Generally a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. There is no assurance that any credit ratings given to the Series 2010 Bonds will be maintained for any period of time or that the ratings may not be lowered or withdrawn entirely by such rating agencies, if, in their judgment, circumstances so warrant. The District undertakes no responsibility to oppose any such revision or withdrawal. Any such downward revision or withdrawal of such rating may have an adverse effect on the market price of the Series 2010 Bonds.

### **FINANCIAL ADVISORS**

KNN Public Finance, a Division of Zions First National Bank, Oakland, California, serves as Financial Advisor to the District with respect to the sale of the Series 2010 Bonds. The Financial Advisor has not conducted a detailed investigation of the affairs of the District to determine the completeness or accuracy of this Official Statement and have not independently verified any of the data contained herein and have no responsibility for the accuracy or completeness thereof.

The compensation of the Financial Advisor is contingent upon the issuance of the Series 2010 Bonds.

### **CONTINUING DISCLOSURE**

The District has covenanted for the benefit of the Owners and Beneficial Owners of the Series 2010 Bonds to cause to be provided certain financial information and operating data relating to the District by not later than eight months following the end of the District's fiscal year (presently June 30), commencing with the report for the 2009-10 Fiscal Year (the "Annual Report"), and to provide notices of the occurrence of certain enumerated events, if material, to the Municipal Securities Rulemaking Board ("MSRB") through its Electronic Municipal Market Access website ("EMMA") for purposes of Rule

15c2-12(b)(5) promulgated by the Securities and Exchange Commission (the “Rule”). When provided by the District, the Annual Report will be filed by the Trustee on behalf of the District with the MSRB. When directed to do so by the District, the notices of material events will be filed by the Trustee on behalf of the District with the MSRB. The specific nature of the information to be contained in the Annual Report or the notices of material events is described in “APPENDIX G - FORM OF CONTINUING DISCLOSURE AGREEMENT.”

The District has never failed to comply in all material respects with any previous undertakings with regard to the Rule to provide annual reports or notices of material events. See “APPENDIX G - FORM OF CONTINUING DISCLOSURE AGREEMENT.”

### **SALE OF SERIES 2010 BONDS**

The Series 2010 Bonds were sold pursuant to a competitive bid on May 5, 2010, and awarded to the Underwriter, at an adjusted purchase price of \$145,283,073.30, and an adjusted true interest cost of 3.636652%, as set forth in the Official Notice of Sale relating to the Series 2010 Bonds. The Official Notice of Sale provides that all Series 2010 Bonds will be purchased if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in the Official Notice of Sale, the approval of certain legal matters by Co-Bond Counsel and certain other conditions. The Underwriter represented to the District that the Series 2010 Bonds have been reoffered to the public at the prices or yields stated on the cover page hereof. Based on such representation, compensation paid to the Underwriter with respect to the Series 2010 Bonds is \$377,056.65. The Underwriter may offer and sell the Series 2010 Bonds to certain dealers and others at a price lower than the offering price on the cover page. The public offering prices of the Series 2010 Bonds may be changed from time to time by the Underwriter.

### **VERIFICATION OF MATHEMATICAL ACCURACY**

Upon delivery of the Series 2010 Bonds, the arithmetical accuracy of certain computations included in the schedules provided by the Financial Advisor on behalf of the District relating to the: (i) adequacy of forecasted receipts of principal and interest on the escrow securities and cash held in the escrow fund relating to the Refunded Series 1998 Bonds; (ii) the scheduled payments of principal and interest with respect to the Refunded Series 1998 Bonds on and prior to their projected maturity and/or redemption dates; and (iii) yields on the securities to be deposited pursuant to the escrow fund relating to the Refunded Series 1998 Bonds upon delivery of the Series 2010 Bonds, will be verified by Causey Demgen & Moore, Inc., independent certified public accountants (the “Verification Agent”). Such verification shall be based solely upon information and assumptions supplied the Verification Agent by the Financial Advisor. The Verification Agent has not made a study or evaluation of the information and assumptions on which such computations are based and, accordingly, has not expressed an opinion on the data used, the reasonableness of the assumptions or the achievability of the forecasted outcome.

### **FINANCIAL STATEMENTS**

The financial statements of the District included in APPENDIX B to this Official Statement have been examined by Macias, Gini & Company, LLP, whose report thereon appears in such Appendix. Macias, Gini & Company, LLP was not requested to consent to the inclusion of its report in APPENDIX B, nor has Macias, Gini & Company LLP undertaken to update its report or to take any action intended or likely to elicit information concerning the accuracy, completeness or fairness of the statements made in this Official Statement, and no opinion is expressed by Macias, Gini & Company LLP with respect to any event subsequent to the date of its report.

## MISCELLANEOUS

This Official Statement is not to be construed as a contract or agreement between the District and the purchasers, holders or beneficial owners of any of the Series 2010 Bonds. All of the preceding summaries of the Series 2010 Bonds, the Indenture, applicable legislation and other agreements and documents are made subject to the provisions of the Series 2010 Bonds and such documents, respectively, and do not purport to be complete statements of any or all of such provisions. Reference is hereby made to such documents on file with the District for further information in connection therewith.

Any statements made in this Official Statement involving matters of opinion or of estimates, whether or not expressly stated, are set forth as such and not as representations of fact, and no representation is made that any of the estimates will be realized.

The execution and delivery of this Official Statement by the Controller/Treasurer of the District has been duly authorized by the District. Concurrently with the delivery of the Series 2010 Bonds, the District will furnish to the Underwriter a certificate of the District to the effect that this Official Statement, as of the date of this Official Statement and as of the date of delivery of the Series 2010 Bonds, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements herein, in the light of the circumstances under which they were made, not misleading.

SAN FRANCISCO BAY AREA RAPID  
TRANSIT DISTRICT

By: /s/ Scott L. Schroeder  
Controller/Treasurer

**APPENDIX A**

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
FINANCIAL AND OPERATING INFORMATION**



**APPENDIX B**

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
REPORT ON AUDITS OF FINANCIAL STATEMENTS  
FOR THE YEARS ENDED JUNE 30, 2009 AND 2008**

**APPENDIX C**

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
STATEMENT OF INVESTMENT POLICY**

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
STATEMENT OF INVESTMENT POLICY**

The Treasurer of the District shall invest District funds in a manner the Treasurer deems prudent, suitable and advantageous under existing circumstances and in accordance with the following objectives, in order of priority:

1. Preservation of Capital
2. Liquidity – funds shall be invested only until date of anticipated need or for a lesser period.
3. Yield – generation of a favorable return on investment without compromise of the first two objectives.

The Treasurer may invest in Securities authorized by the Public Utilities Code Sections 29100 through 29102; Government Code Sections 53601, 53601.1 and 53635 and Board Resolution 2697 with the following exception: the Treasurer will not invest in commercial paper, financial or commodity futures, options contracts, medium-term corporate notes, or mutual funds unless specifically authorized by the Board.

The Treasurer may invest in repurchase agreements and will accept as security only securities of the U.S. government and U.S. governmental agencies which have a market value, including accrued interest, equal to the amount of the repurchase agreement. The maturity date of the collateral may, however, be later than that required by Objective 2 above.

The Treasurer may invest in reverse repurchase agreements with a maturity of 90 days or less.

The Treasurer may invest in “swaps” defined as, the simultaneous buying and selling of a security of approximately the same maturity to increase yield, cash flow or to improve quality.

In addition to the securities authorized above, the Treasurer may invest in public time deposits in financial institutions having at least one branch within the BART boundaries. The Treasurer will accept as collateral securities authorized by the Government Code Section 53651 (a) through (p) excluding subsection (m) promissory notes secured by first mortgages and first trust deeds. The Treasurer will require 110% collateralization, less the portion authorized by Government Code Section 53653 on public time deposits, except for San Francisco Federal Home Loan Bank Letters of Credit, in which case the collateralization will be 105%.

The Treasurer has the authority to waive the required collateralization and substitute Federal Deposit Insurance Corporation (FDIC) for the first \$100,000 of the investment.

The Treasurer will continue to seek minority Banks and Savings and Loan Associations, as defined by the Federal Government, for the placement of some of the District’s funds.

The Treasurer may invest in money market mutual funds as authorized by Section 53601(k) of the Government Code up to a maximum total of \$25,000,000. The funds must carry a credit rating of “AAA” by both Standard & Poor’s and Moody’s and their portfolio must consist entirely of direct obligations of the U. S. Government, its agencies or instrumentalities, and repurchase agreements backed by such obligations.

The Treasurer may invest in the State of California Local Agency Investment Fund as authorized by Government Code Sections 16429.1 et seq. in an amount not to exceed \$25,000,000.

The District's investment policy shall also discourage the investment of funds in any institution or business which conducts operations or invests funds in any country whose laws discriminate against individuals based upon race, color or creed.

The foregoing defines the Treasurer's investment policies for calendar year 2003 and thereafter unless and until they are modified by the Treasurer and approved by the Board.

## **APPENDIX D**

### **SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE**

## SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

The following is a brief summary of certain provisions of the Indenture, dated as of July 1, 1990, as supplemented and amended, including as supplemented and amended by the Eleventh Supplemental Indenture, to be dated the date of issuance of the San Francisco Bay Area Rapid Transit District Sales Tax Revenue Bonds, Refunding Series 2010 (the “Eleventh Supplemental Indenture”), between the San Francisco Bay Area Rapid Transit District (the “District”) and U.S. Bank National Association, as trustee (the “Trustee”). Such summary does not purport to be complete or definitive, is supplemental to the summary of other provisions of the Indenture contained elsewhere in this Official Statement, and is qualified in its entirety by reference to the full terms of the Indenture. All capitalized terms used and not otherwise defined in this Official Statement shall have the meanings assigned to such terms in the Indenture. Copies of the Indenture are available from the Trustee.

### Definitions

“Accreted Value” means, with respect to any Capital Appreciation Bond, the principal amount thereof plus the interest accrued thereon, compounded at the approximate interest rate thereon on each date specified therein and, with respect to any Combination Bond, the principal amount thereof plus the interest accrued thereon, compounded at the approximate interest rate thereon, on each date specified therein for compounding and after the last date specified for such compounding, the principal and interest so determined as of such last compounding date. The Accreted Value at any date shall be the amounts set forth in the Accreted Value Table as of such date, if such date is a compounding date, and if not, as of the immediately preceding compounding date.

“Accreted Value Table” means the table denominated as such which appears as an exhibit to a Supplemental Indenture providing for a Series of Capital Appreciation Bonds issued pursuant to such Supplemental Indenture.

“Act” means Article 2, Chapter 7, Part 2, Division 10 of the Public Utilities Code of the State of California, as amended from time to time hereafter, and the Revenue Bond Law of 1941, as amended from time to time hereafter, to the extent made applicable to the District by Section 29143 of Article 2, Chapter 7, Part 2 of said Division 10, and Articles 10 and 11 of Chapter 3, Part 1 of Division 2 of Title 5 of, and other generally applicable provisions of, the Government Code of the State of California, as amended from time to time hereafter.

“Annual Debt Service” means for any Fiscal Year the aggregate amount of principal and interest on all Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Maximum Annual Debt Service.

“Associated Sales Tax Revenues” means, for any designated period, an amount of Sales Tax Revenues that would have been received by the District from a transaction and use tax imposed in a jurisdiction, if such jurisdiction had been annexed to the District during such period of time, as set forth in a Certificate of the District delivered to the Trustee.

“Board” means the Board of Directors of the District.

“Bond Insurer” means any issuer of a Municipal Bond Insurance Policy and which shall be: (i) Ambac Assurance Corporation, formerly known as AMBAC Indemnity Corporation, or any successor thereto, with respect to the Series 1990 Bonds maturing on or after July 1, 2001, the Series 1998 Bonds maturing on or after July 1, 2019, and the Series 2001 Bonds maturing on or after July 1, 2012; (ii) Financial Guaranty Insurance Company, a New York stock insurance company doing business in

California as FGIC Insurance Company, or any successor thereto, with respect to the Series 1991 Bonds and the Series 1995 Bonds and with respect to the Series 1999 Bonds scheduled to mature on July 1, 2010 through and including July 1, 2019, on July 1, 2026 and on July 1, 2034; (ii) MBIA Insurance Corporation, or any successor thereto, with respect to the Series 2005 A Bonds scheduled to mature on or after July 1, 2008; and (iii) Financial Security Assurance Inc., or any successor thereto, with respect to the Series 2006 Bonds and the Series 2006 A Bonds.

“Bond Obligation” means, as of any given date of calculation, (1) with respect to any Outstanding Current Interest Bond, the principal amount of such Bond, (2) with respect to any Outstanding Combination Bonds, the Accreted Value thereof and (3) with respect to any Outstanding Capital Appreciation Bond, the Accreted Value thereof.

“Bond Reserve Fund” means the fund by that name established pursuant to the provisions of the Indenture.

“Bond Reserve Requirement” means, as of any date of calculation, an amount equal to the lesser of (i) Maximum Annual Debt Service on all Bonds Outstanding; or (ii) 125% of average Annual Debt Service on all Bonds Outstanding; provided that with respect to a Series of Bonds consisting of Variable Rate Indebtedness, for which an Interest Rate Swap Agreement is not in place, the interest rate thereon for purposes of calculating the Bond Reserve Requirement, shall be assumed to be equal to the highest interest rate published in The Bond Buyer “25 Bond Revenue Bond Index” most recently published preceding the date of sale of such Series of Bonds; and provided further that with respect to the issuance of a Series of Bonds if the Bond Reserve Fund would have to be increased by an amount greater than ten percent (10%) of the stated principal amount of such Series of Bonds (or, if the Series has more than a de minimis amount of original issue discount or premium, of the issue price of such Series of Bonds) then the Bond Reserve Requirement shall be such lesser amount as is determined by a deposit of such ten percent (10%).”

“Bonds” means the San Francisco Bay Area Rapid Transit District Sales Tax Revenue Bonds authorized by, and at any time Outstanding pursuant to, the Indenture.

“Business Day” means any day other than (1) a Saturday, Sunday, or a day on which banking institutions in the State are authorized or obligated by law or executive order to be closed, and (2) for purposes of payments and other actions relating to Bonds secured by a letter of credit, a day upon which commercial banks in the city in which is located the office of the issuing bank at which demands for payment under the letter of credit are to be presented are authorized or obligated by law or executive order to be closed.

“Capital Appreciation Bonds” means the Bonds of any Series designated as Capital Appreciation Bonds in the Supplemental Indenture providing for the issuance of such Series and on which interest is compounded and paid at maturity or on prior redemption.

“Certificate,” “Statement,” “Request,” “Requisition,” and “Order” of the District mean, respectively, a written certificate, statement, request, requisition or order signed in the name of the District by the President of the Board or the General Manager or the Secretary or Treasurer of the District or any other person authorized by the General Manager to execute such instruments.

“Code” means the Internal Revenue Code of 1986, and the regulations applicable thereto or issued thereunder.

“Combination Bonds” means the Bonds of any Series designated as Combination Bonds in the Supplemental Indenture providing for the issuance of such Series and on which interest is compounded for a period of time and, following a specific date, is paid currently on the compounded amount.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the District and related to the authorization, execution, sale and delivery of the Bonds, including but not limited to advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, travel expenses and costs relating to rating agency meetings and other meetings concerning the Bonds, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of consultants and professionals, financial advisor fees and expenses, rating agency fees, fees and charges for preparation, execution, transportation and safekeeping of Bonds, surety, insurance and credit enhancements costs, and any other cost, charge or fee in connection with the delivery of Bonds.

“Current Interest Bonds” means the Bonds of any Series designated as Current Interest Bonds in the Supplemental Indenture providing for the issuance of such Series of Bonds and which pay interest at least semiannually to the Owners thereof excluding the first payment of interest thereon.

“District” means San Francisco Bay Area Rapid Transit District and any successor entity thereto.

“Escrow Agreement” means the Escrow Agreement, dated as of May 1, 2010, between the District and U.S. Bank National Association, as trustee and escrow agent.

“Escrow Fund” means the fund by that name created pursuant to the Escrow Agreement.

“Event of Default” means any of the events specified as such in the Indenture.

“Expense Account” means the account by that name established pursuant to the provisions of the Indenture.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other 12-month period hereafter selected and designated as the official fiscal year period of the District which designation shall be provided to the Trustee in a Certificate of the District.

“Indenture” means the indenture, dated as of July 1, 1990, between the Trustee and the District, as originally executed or as it may from time to time be supplemented or amended by any Supplemental Indenture delivered pursuant to the provisions thereof. As of the date of issuance of the Series 2010 Bonds, “Indenture” includes the First Supplemental Indenture, dated as of August 7, 1990, the Second Supplemental Indenture, dated as of August 29, 1991, the Third Supplemental Indenture, dated as of June 7, 1995, the Fourth Supplemental Indenture, dated as of April 1, 1997, the Fifth Supplemental Indenture, dated as of March 12, 1998, the Sixth Supplemental Indenture, dated as of October 7, 1999, the Seventh Supplemental Indenture, dated as of July 12, 2001, the Eighth Supplemental Indenture, dated as of September 7, 2005, the Ninth Supplemental Indenture, dated as of June 29, 2006, the Tenth Supplemental Indenture, dated as of November 30, 2006 and the Eleventh Supplemental Indenture, to be dated as of the date of issuance of the Series 2010 Bonds.

“Interest Fund” means the fund by that name established pursuant to the provisions of the Indenture.

“Interest Rate Swap Agreement” shall mean an interest rate swap agreement relating to a Series of Bonds or portion thereof or Parity Debt in which the party with which the District or the Trustee may contract is limited to: (i) entities the debt securities of which are rated in one of the two highest long-term



debt Rating Categories by either Moody's or Standard & Poor's and the debt securities of which are rated not lower than the third highest long-term debt Rating Category by the other rating agency; (ii) entities the obligations of which under the interest rate swap agreement are either guaranteed or insured by an entity the debt securities or insurance policies of which are so rated; or (iii) entities the debt securities of which are rated in the third highest long-term debt Rating Categories by Moody's and Standard & Poor's or whose obligations are guaranteed or insured by an entity so rated and, in either case, the obligations of which under the interest rate swap agreement are continuously and fully secured by Investment Securities described in clauses (i) through (iv) of the definition thereof, which shall have a market value determined, by the party designated in such interest rate swap agreement, at least monthly (exclusive of accrued interest) at least equal to the termination value, if any, that would be payable by the provider of the interest rate swap agreement under such interest rate swap agreement and which shall be deposited with a custodian acceptable to the District.

"Investment Securities" means the following:

(i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the federal agencies and federally sponsored entities set forth in clause (iii) below to the extent unconditionally guaranteed by the United States of America;

(ii) any certificates, receipts, securities or other obligations evidencing ownership of, or the right to receive, a specified portion of one or more interest payments or principal payments, or any combination thereof, to be made on any bond, note, or other obligation described above in clause (i);

(iii) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;

(iv) housing authority bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or project notes issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

(v) obligations of any state, territory or commonwealth of the United States of America or any political subdivision thereof or any agency or department of the foregoing; provided that at the time of their purchase such obligations are rated in either of the two highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(vi) any bonds or other obligations of any state of the United States of America or any political subdivision thereof (a) which are not callable prior to maturity or as to which irrevocable instructions have been given to the trustee of such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (b) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described above in clause (i), (ii) or (iii) which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the interest payment dates and the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, (c) as to which

the principal of and interest on the bonds and obligations of the character described above in clause (i), (ii) or (iii) which have been deposited in such fund along with any cash on deposit in such fund are sufficient to pay the principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (vi) on the interest payment dates and the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (vi), as appropriate, and (d) which have been rated in one of the two highest long-term Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(vii) bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by any corporation which are, at the time of purchase, rated by a nationally recognized rating agency in its highest short-term Rating Category, or, if the term of such indebtedness is longer than 3 years, rated by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) in one of its two highest long-term Rating Categories, for comparable types of debt obligations;

(viii) demand or time deposits or certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee), provided that such certificates of deposit shall be purchased directly from such a bank, trust company or national banking association and shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities and obligations as are described above in clauses (i) through (v), inclusive, which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such certificates of deposit and shall be lodged with the Trustee, as custodian, by the bank, trust company or national banking association issuing such certificates of deposit, and the bank, trust company or national banking association issuing each such certificate of deposit required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(ix) taxable commercial paper or tax-exempt commercial paper rated in the highest Rating Category by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(x) variable rate obligations required to be redeemed or purchased by the obligor or its agent or designee upon demand of the holder thereof secured as to such redemption or purchase requirement by a liquidity agreement with a corporation and as to the payment of interest and principal either upon maturity or redemption (other than upon demand by the holder thereof) thereof by an unconditional credit facility of a corporation, provided that the variable rate obligations themselves are rated in the highest Rating Category for its short-term rating, if any, and in either of the two highest Rating Categories for its long-term rating, if any, by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds), and that the corporations providing the liquidity agreement and credit facility have, at the date of acquisition of the variable rate obligation by the Trustee, an outstanding issue of unsecured, uninsured and unguaranteed debt obligations rated in either of the two highest long-term Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(xi) any repurchase agreement with any bank or trust company organized under the laws of any state of the United States or any national banking association (including the Trustee) having a minimum permanent capital of one hundred million dollars (\$100,000,000) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities and obligations described in clauses (i), (ii), (iii) or (iv) above, which shall have a market value (exclusive of accrued interest and valued at least monthly) at least equal to the principal amount of such investment and shall be lodged with the Trustee or other fiduciary, as custodian for the Trustee, by the bank, trust company, national banking association or bond dealer executing such repurchase agreement, and the entity executing each such repurchase agreement required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such repurchase agreement (as valued at least monthly) will be an amount equal to the principal amount of each such repurchase agreement and the Trustee shall be entitled to rely on each such undertaking;

(xii) any cash sweep or similar account arrangement of or available to the Trustee, the investments of which are limited to investments described in clauses (i), (ii), (iii), (iv), (v) and (xi) of this definition of Investment Securities and any money market fund, the entire investments of which are limited to investments described in clauses (i), (ii), (iii), (iv), (v) and (xi) of this definition of Investment Securities; provided that as used in this clause (xii) and clause (xiii) investments will be deemed to satisfy the requirements of clause (xi) if they meet the requirements set forth in clause (xi) ending with the words “clauses (i), (ii), (iii) or (iv) above” and without regard to the remainder of such clause (xi);

(xiii) any investment agreement with a financial institution or insurance company which has at the date of execution thereof and during the term thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated in either of the two highest long-term Rating Categories by Moody’s (if Moody’s is then rating the Bonds) and Standard & Poor’s (if Standard & Poor’s is then rating the Bonds);

(xiv) bonds, notes, certificates, bills, acceptances or other securities in which funds of the District may now or hereafter be legally invested as provided by the law in effect at the time of such investment; and

(xv) any investment approved by the Board for which confirmation is received from Moody’s (if Moody’s is then rating the Bonds) and Standard & Poor’s (if Standard & Poor’s is then rating the Bonds) that such investment will not adversely affect such agency’s rating on such Bonds.

“Mandatory Sinking Account Payment” means, with respect to Bonds of any Series and maturity, the amount required by the Indenture or a Supplemental Indenture to be deposited by the District in a Sinking Account for the payment of Term Bonds of such Series and maturity.

“Maximum Annual Debt Service” shall mean the greatest amount of principal and interest becoming due and payable on all Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year as set forth in a Certificate of the District; provided, however, that for the purposes of computing Maximum Annual Debt Service:

(a) if the Bonds or Parity Debt is Variable Rate Indebtedness for which an Interest Rate Swap Agreement is not in place, the interest rate on such debt shall be calculated at the greater per annum rate (not to exceed 12%) of: (i) the average of the BMA Index for the ten

years preceding the date of calculation, and (ii) the highest interest rate listed in The Bond Buyer “25 Bond Revenue Bond Index” published one month preceding the date of sale of such Series of Bonds or Parity Debt.

(b) principal and interest payments on Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or other fiduciary in escrow specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Bonds or Parity Debt held by the Trustee or other fiduciary as capitalized interest specifically to pay such interest by the Trustee or other fiduciary;

(c) in determining the principal amount due in each Fiscal Year, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Bonds on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Bond or Combination Bond;

(d) if the Bonds or Parity Debt are debt, the principal of which the District determines (in a Supplemental Indenture or other document delivered on a date not later than the date of issuance of such Bonds or Parity Debt) that the District intends to pay with moneys which are not Revenues (such as commercial paper, balloon indebtedness or bond anticipation notes), but from future debt obligations of the District, grants received from the State or federal government, or any agency or instrumentality thereof, or any other source of funds of the District, the principal of such Bonds or Parity Debt will be treated as if such principal were due based upon a 30-year level amortization of principal from the date of calculation and the interest on such Bonds or Parity Debt shall be calculated as if such Bonds were Variable Rate Indebtedness;

(e) if any Bonds feature an option, on the part of the Bondowners or an obligation under the terms of such Bonds, to tender all or a portion of such Bonds to the District, the Trustee, or other fiduciary or agent and require that such Bonds or portion thereof be purchased if properly presented, then for purposes of determining the amounts of principal and interest due in any Fiscal Year on such Bonds, the options or obligations of the Owners of such Bonds to tender the same for purchase or payment prior to their stated maturity or maturities shall be treated as a principal maturity occurring on the first date on which Owners of such Bonds may or are required to tender such Bonds except that any such option or obligation to tender Bonds shall be ignored and not treated as a principal maturity, if (1) such Bonds are rated in one of the two highest long-term Rating Categories by Moody’s and by Standard & Poor’s or such Bonds are rated in the highest short-term, note or commercial paper Rating Categories by Moody’s and by Standard & Poor’s and (2) funds for the purchase price of such Bonds have been set aside by the District and pledged to such payment or are to be provided by a letter of credit or standby bond purchase agreement and the obligation of the District with respect to the provider of such letter of credit or standby bond purchase agreement, other than its obligations on such Bonds, shall be subordinated to the obligation of the District on the Bonds or, if not subordinate, shall be incurred (assuming such immediate tender) under the conditions and meeting the tests for the issuance of Parity Debt set forth in the Indenture, in which latter case, such repayment obligations of the District to the provider of such letter of credit or standby bond purchase agreement shall be included in the computation of the Maximum Annual Debt Service in accordance with the terms of such obligation.

(f) with respect to any Variable Rate Indebtedness for which an Interest Rate Swap Agreement is in place, if (i) the interest rate on such Variable Rate Indebtedness, plus (ii) the payments received and made by the District under an Interest Rate Swap Agreement with respect to such variable interest rate, are expected to produce a synthetic fixed rate to be paid by the District (e.g., an interest rate swap under which the District pays a fixed rate and receives a variable rate that is expected to equal or approximate the rate of interest on such Variable Rate Indebtedness), the Variable Rate Indebtedness shall be treated as bearing such synthetic fixed rate for the duration of the synthetic fixed rate; and

(g) if any Bonds or Parity Debt bear a fixed interest rate or the Bonds or Parity Debt proposed to be issued will bear a fixed interest rate and an Interest Rate Swap Agreement is entered into with respect to such Bonds or Parity Debt, if (i) the interest rate on such fixed rate Bonds or Parity Debt, plus (ii) the payments received and made by the District under an Interest Rate Swap Agreement with respect to such fixed rate Bonds or Parity Debt, are expected to produce a synthetic variable rate to be paid by the District (e.g., an interest rate swap under which the District pays a variable rate and receives a fixed rate that is expected to equal or approximate the rate of interest on such fixed interest rate debt), the fixed interest rate debt, shall be treated as bearing such synthetic variable rate for the duration of the Interest Rate Swap Agreement calculated as if such Bonds or Parity Debt were Variable Rate Indebtedness.

“Moody’s” means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District and not objected to by the Trustee.

“Municipal Bond Insurance Policy” means the municipal bond new issue insurance policy issued by a Bond Insurer that guarantees payment of principal of and interest on a Series of Bonds or a portion thereof.

“Opinion of Bond Counsel” means a written opinion of a law firm of national standing in the field of public finance selected by the District.

“Outstanding,” when used as of any particular time with reference to Bonds, means (subject to the provisions of the Indenture) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under the Indenture except: (1) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (2) Bonds with respect to which all liability of the District shall have been discharged in accordance with the provisions of the Indenture; and (3) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to the Indenture.

“Owner” or “Bondholder” or “Bondowner”, whenever used with respect to a Bond, means the person in whose name such Bond is registered.

“Parity Debt” means any indebtedness, installment sale obligation, lease obligation or other obligation of the District for borrowed money or interest rate swap agreement having an equal lien and charge upon the Sales Tax Revenues and therefore payable on a parity with the Bonds (whether or not any Bonds are Outstanding).

“Person” means a corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

“Policy Costs” means the accrued interest and expenses owed to the provider of a Reserve Policy or letter of credit with respect to a payment thereunder.

“Principal Fund” means the fund by that name established pursuant to the provisions of the Indenture.

“Project” means the planning, acquisition, construction, operation or maintenance of any facility or facilities necessary or convenient for the transportation of passengers and their incidental baggage by any means, or incidental to, or in connection with, the operation of the rapid transit system of the District, which shall constitute an “enterprise” within the meaning of Section 54309 of the California Government Code. Such facilities shall include, but are not limited to, any and all works, structures, property, rolling stock or other facilities of any kind which the District is authorized to acquire, construct or complete.

“Project Fund” means the fund by that name established by a Supplemental Indenture to hold the proceeds of a Series of Bonds or a portion thereof prior to expenditure on the Project.

“Proportionate Basis,” when used with respect to the redemption of Bonds, means that the amount of Bonds of each maturity to be redeemed shall be determined as nearly as practicable by multiplying the total amount of funds available for redemption by the ratio which the amount of Bond Obligation of Bonds of such maturity bears to the amount of all Bond Obligation of Bonds to be redeemed, provided that if the amount available for redemption of Bonds of any maturity is insufficient to redeem a multiple of \$5,000 principal amount or Accreted Value payable at maturity, such amount shall be applied to the redemption of the highest possible integral multiple (if any) of \$5,000 principal amount or Accreted Value payable at maturity. For purposes of the foregoing, Term Bonds shall be deemed to mature in the years and in the amounts of the Mandatory Sinking Account Payments, and Capital Appreciation Bonds, Combination Bonds and Current Interest Bonds maturing or subject to Mandatory Sinking Account Payments in the same year shall be treated as separate maturities. When used with respect to the payment or purchase of Bonds, “Proportionate Basis” shall have the same meaning set forth above except that “pay” or “purchase” shall be substituted for “redeem” or “redemption” and “paid” or “purchased” shall be substituted for “redeemed.”

“Rating Category” means (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

“Rebate Fund” means that fund by that name established pursuant to the provisions of the Indenture.

“Rebate Instructions” means those calculations and directions required to be delivered to the Trustee by the District under the Tax Certificate.

“Rebate Requirement” means the Rebate Requirement as such term is defined in the Tax Certificate.

“Redemption Price” means, with respect to any Bond (or portion thereof) the principal amount or accreted value of such Bond (or portion thereof) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Bond and the Indenture.

“Reserve Policy” means a surety bond or insurance policy satisfying the Bond Reserve Requirement or portion thereof.

“Revenue Fund” means the Sales Tax Revenue Fund established pursuant to the provisions of the Indenture.

“Sales Tax Revenues” means the amounts available for distribution to the District pursuant to Section 29142.2(a) of the Act on account of the transactions and use tax imposed pursuant to Section 29140 of the Act.

“Serial Bonds” means Bonds, maturing in specified years, for which no Mandatory Sinking Account Payments are provided.

“Series,” whenever used with respect to Bonds, means all of the Bonds designated as being of the same series, authenticated and delivered in a simultaneous transaction, regardless of variations in maturity, interest rate, redemption and other provisions, and any Bonds thereafter authenticated and delivered upon transfer or exchange or in lieu of or in substitution for (but not to refund) such Bonds as provided in the Indenture.

“Series 2010 Costs of Issuance Fund” means the fund by that name established pursuant to the Tenth Supplemental Indenture.

“Sinking Accounts” means the accounts in the Principal Fund so designated and established pursuant to the Indenture for the payment of Term Bonds.

“Standard & Poor’s” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District and not objected to by the Trustee.

“State” means the State of California.

“Supplemental Indenture” means any indenture duly executed and delivered, supplementing, modifying or amending the Indenture, but only if and to the extent that such Supplemental Indenture is specifically authorized under the Indenture.

“System” means any and all works, structures, property, rolling stock or other facilities of any kind, which the District is now or hereafter authorized by law to acquire, construct or complete.

“Tax Certificate” means the Tax Certificate delivered by the District at the time of the issuance and delivery of any Series of Bonds, as the same may be amended or supplemented in accordance with its terms.

“Term Bonds” means Bonds payable at or before their specified maturity date or dates from Mandatory Sinking Account Payments established for that purpose and calculated to retire such Bonds on or before their specified maturity date or dates.

“Trustee” means U. S. Bank National Association, successor by merger to U. S. Bank Trust National Association, which was formerly known as First Trust of California, National Association, successor trustee to Bank of America National Trust and Savings Association, which was successor trustee to Security Pacific National Bank, a national banking association organized and existing under the laws of the United States, or its successor as Trustee as provided in the Indenture.”

“Variable Rate Indebtedness” means any indebtedness the interest rate on which is not fixed at the time of incurrence of such indebtedness, and has not at some subsequent date been fixed, at a single numerical rate for the entire term of the indebtedness.

### **Additional Bonds; Refunding Bonds; Parity Debt; Subordinate Obligations**

*Additional Bonds.* The District may, by Supplemental Indenture, establish one or more Series of Bonds, payable from Sales Tax Revenues and secured by a pledge under the Indenture equally and ratably with Bonds previously issued, and the District may issue, and the Trustee may authenticate and deliver to or upon the written order of the District, Bonds of any such Series so established, in such principal amount as shall be determined by the District, but only upon compliance by the District with certain requirements and conditions, including the following:

(a) The Trustee shall have received a Certificate of the District stating that no Event of Default has occurred and is then continuing.

(b) The Trustee shall have received an Opinion of Bond Counsel to the effect that the Supplemental Indenture authorizing such Series of Bonds has been duly authorized by the District, that the Bonds of the Series, when duly executed by the District and authenticated by the Trustee, will be valid and binding limited obligations of the District, and that upon delivery of such Series of Bonds, the aggregate principal amount of Bonds then Outstanding will not exceed the amount permitted by law or by the Indenture.

(c) The Trustee shall have received a Certificate of the District certifying that: (1) the amount of Sales Tax Revenues received plus the amount of Associated Sales Tax Revenues relating to any recently annexed jurisdiction for any period of 12 consecutive months during the 18 months immediately preceding the date on which such additional Series of Bonds will become Outstanding shall have been at least equal to 1.5 times the amount of Maximum Annual Debt Service on all Series of Bonds and Parity Debt then Outstanding, and the additional Series of Bonds then proposed to be issued; (2) the amount of Sales Tax Revenues for the Fiscal Year in which the Bonds are to be issued and each of the next succeeding 4 Fiscal Years under the laws then in existence at the time of issuance of such additional Series of Bonds are estimated by the District to be at least 1.5 times the amount of Annual Debt Service on all Series of Bonds and Parity Debt then Outstanding, including the additional Series of Bonds then proposed to be issued, in each such Fiscal Year; and (3) Sales Tax Revenues for the Fiscal Year in which the additional Series of Bonds are to be issued under the laws then in existence at the time of the issuance of such additional Series of Bonds shall be at least 1.0 times the amount of the District’s obligations with respect to repayment of any withdrawals under a Reserve Policy plus Policy Costs, if any, then due and owing under the Reserve Policy.

(d) The Trustee shall have received the amount, if any, necessary for deposit in the Bond Reserve Fund so that the amount on deposit in such fund immediately after authentication and delivery of such Series of Bonds shall equal the Bond Reserve Requirement with respect to all Bonds considered to be Outstanding upon the issuance of the additional Series of Bonds.

*Refunding Bonds.* Refunding Bonds may be authorized and issued by the District, without compliance with the requirements described immediately above under the subcaption “Additional Bonds,” in an aggregate principal amount sufficient (together with any additional funds available or to become available) to provide funds for the payment of all of the following:



(a) The principal or Redemption Price of the Outstanding Bonds or Parity Debt to be refunded.

(b) All expenses incident to the calling, retiring or paying of such Outstanding Bonds or Parity Debt and the Costs of Issuance of such refunding Bonds.

(c) Interest on all Outstanding Bonds or Parity Debt to be refunded to the date such Bonds or Parity Debt will be called for redemption or paid at maturity.

(d) Interest on the refunding Bonds from the date thereof to the date of payment or redemption of the Bonds or Parity Debt to be refunded.

Before such additional Series of refunding Bonds shall be issued and delivered, the District shall file the following documents with the Trustee:

(a) An Opinion of Bond Counsel to the effect that the execution of the Supplemental Indenture authorizing the refunding Bonds has been duly authorized by the District, that such Series, when duly executed by the District and authenticated and delivered by the Trustee, will be valid and binding limited obligations of the District, and that upon delivery of such Series the aggregate principal amount of Bonds then Outstanding will not exceed the amount permitted by law or by the Indenture.

(b) If any of the Bonds to be refunded are to be redeemed prior to their stated maturity dates, irrevocable instructions to the Trustee to give the applicable notice of redemption or a waiver of the notice of redemption signed by the Owners of all or the portion of the Bonds or Parity Debt to be redeemed, or proof that such notice has been given by the District; provided, however, that in lieu of such instructions or waiver or proof of notice of redemption, the District may cause to be deposited with the Trustee all of the Bonds and Parity Debt proposed to be redeemed (whether cancelled or uncanceled) with irrevocable instructions to the Trustee to cancel said Bonds or Parity Debt so to be redeemed upon the exchange and delivery of said refunding Bonds.

(c) A Certificate of the District certifying that: (1) the amount of Sales Tax Revenues received plus the amount of Associated Sales Tax Revenues relating to any recently annexed jurisdiction for any period of 12 consecutive months during the 18 months immediately preceding the date on which such additional Series of Bonds will become Outstanding shall have been at least equal to 1.5 times the amount of Maximum Annual Debt Service on all Series of Bonds and Parity Debt then Outstanding, and the additional Series of Bonds then proposed to be issued (provided that in calculating the amount of Maximum Annual Debt Service on all Series of Bonds and Parity Debt then Outstanding, the Bonds and Parity Debt to be refunded by such refunding Bonds shall not be treated as Outstanding); (2) the amount of Sales Tax Revenues for the Fiscal Year in which the Bonds are to be issued and each of the next succeeding 4 Fiscal Years under the laws then in existence at the time of issuance of such additional Series of Bonds are estimated by the District to be at least 1.5 times the amount of Annual Debt Service on all Series of Bonds and Parity Debt then Outstanding, including the additional Series of Bonds then proposed to be issued, in each such Fiscal Year; and (3) Sales Tax Revenues for the Fiscal Year in which the additional Series of Bonds are to be issued under the laws then in existence at the time of the issuance of such additional Series of Bonds shall be at least 1.0 times the amount of the District's obligations with respect to repayment of any withdrawals under a Reserve Policy plus Policy Costs, if any, then due and owing under the Reserve Policy.

*Parity Debt.* The District will not, so long as any of the Bonds are outstanding, issue any obligations or securities, payable in whole or in part from Sales Tax Revenues, except additional Bonds issued pursuant to the provisions of the Indenture described above under the subcaption “Additional Bonds,” refunding Bonds issued pursuant to the provisions of the Indenture described above under the subcaption “Refunding Bonds,” and Parity Debt payable on a parity with the Bonds, which Parity Debt will have, when issued, an equal lien and charge upon the Sales Tax Revenues, provided that the following conditions to the issuance of such Parity Debt are satisfied:

(1) Such Parity Debt has been duly and legally authorized for any lawful purpose.

(2) No Event of Default shall have occurred and then be continuing, as evidenced by a Certificate the District filed with the Trustee.

(3) Unless such Parity Debt is for refunding purposes as specified in the Indenture, the District shall have obtained and placed on file with the Trustee a Certificate of the District certifying that the debt service coverage ratio requirements applicable to the issuance of additional Bonds described above under the subcaption “Additional Bonds” have been met with respect to such Parity Debt.

(4) The District shall have filed with the Trustee an Opinion of Bond Counsel to the effect that such Parity Debt has been duly authorized in accordance with law.

(5) The Trustee shall be designated as paying agent or trustee for such Parity Debt and the District shall deliver to the Trustee a transcript of the proceedings providing for the issuance of such Parity Debt.

*Subordinate Obligations.* The District may also issue obligations which are junior and subordinate to the payment of the principal, premium, interest and reserve fund requirements for the Bonds and all Parity Debt, which subordinated obligations are payable as to principal, premium, interest and reserve fund requirements, if any, only out of Sales Tax Revenues after the prior payment of all amounts then required to be paid under the Indenture from Sales Tax Revenues for principal, premium, interest and reserve fund requirements for the Bonds and all Parity Debt.

### **Mandatory Purchase In Lieu of Redemption**

Each Owner, by purchase and acceptance of any Series 2010 Bond irrevocably grants to the District the option to purchase such Series 2010 Bond, at any time such Series 2010 Bond is subject to optional redemption as provided in the Indenture at a purchase price equal to the Redemption Price then applicable to such Series 2010 Bond. In order to exercise such option, the District shall direct the Trustee to provide notice of mandatory purchase, such notice to be provided, as and to the extent applicable, in accordance with the provisions set forth in the Indenture. On the date fixed for purchase of any Series 2010 Bond as described in this paragraph, the District shall pay the purchase price of such Series 2010 Bond to the Trustee in immediately available funds and the Trustee shall pay the same to the Owners of Series 2010 Bonds being purchased against delivery thereof. Following such purchase, the Trustee shall register such Series 2010 Bonds in accordance with the written instructions of the District. No purchase of any Series 2010 Bond pursuant to this paragraph shall operate to extinguish the indebtedness evidenced by such Series 2010 Bond. No Owner may elect to retain a Series 2010 Bond subject to mandatory purchase pursuant to this paragraph. Notwithstanding the foregoing, nothing contained herein is meant to prevent the District from purchasing Series 2010 Bonds on the open market for cancellation.

## **Establishment and Application of Funds and Accounts; Investments**

The following funds and accounts are established pursuant to the Indenture: the Revenue Fund, the Interest Fund, the Principal Fund, the Bond Reserve Fund, the Redemption Fund, the Rebate Fund and the Expense Account. In addition, the Series 2010 Costs of Issuance Fund is established pursuant to the Eleventh Supplemental Indenture.

For a description of the allocation of Sales Tax Revenues and the Interest Fund, Principal Fund, Bond Reserve Fund and Expense Account see “SECURITY FOR THE SERIES 2010 BONDS” in the front portion of this Official Statement.

*Funding and Application of Bond Reserve Fund.* In lieu of making the Bond Reserve Requirement deposit, or in replacement of moneys then on deposit in the Bond Reserve Fund (which shall be transferred by the Trustee to the District), or in substitution of any other letter of credit, insurance policy or surety bond comprising part of the Bond Reserve Requirement, the District may, at any time and from time to time, deliver to the Trustee an irrevocable letter of credit issued by a financial institution having unsecured debt obligations rated in one of the two highest Rating Categories of Moody’s and Standard & Poor’s, in an amount, together with moneys, Investment Securities or surety bonds or insurance policies (as described in the following paragraph) on deposit in the Bond Reserve Fund, equal to the Bond Reserve Requirement. Such letter of credit shall have an original term of no less than three (3) years or, if less, the maturity of the Series of Bonds in connection with which such letter of credit is obtained. At least one year prior to the stated expiration of such letter of credit, the District shall either (i) deliver a replacement letter of credit, (ii) deliver an extension of the letter of credit for at least an additional year or, if less, the maturity of the Series of Bonds in connection with which such letter of credit was obtained, or (iii) deliver to the Trustee a surety bond or an insurance policy satisfying the requirements described in the following paragraph. If the District shall fail to deposit a replacement letter of credit, extended letter of credit or surety bond or insurance policy with the Trustee, the District shall immediately commence to make monthly deposits with the Trustee so that an amount equal to the Bond Reserve Requirement will be on deposit in the Bond Reserve Fund no later than the stated expiration date of the letter of credit. If an amount equal to the Bond Reserve Requirement as of the date following the expiration date of the letter of credit is not on deposit in the Bond Reserve Fund one week prior to the stated expiration date of the letter of credit (excluding from such determination the amount of the letter of credit), the Trustee shall draw on the letter of credit to fund the deficiency resulting therefrom in the Bond Reserve Fund.

In lieu of making the Bond Reserve Requirement deposit, or in replacement of moneys then on deposit in the Bond Reserve Fund (which shall be transferred by the Trustee to the District) or in substitution of any letter of credit, insurance policy or surety bond comprising part of the Bond Reserve Requirement, the District may, at any time and from time to time, deliver to the Trustee a surety bond or an insurance policy securing an amount, together with moneys, Investment Securities or letters of credit on deposit in the Bond Reserve Fund, equal to the Bond Reserve Requirement. Such surety bond or insurance policy shall be issued by an insurance company whose unsecured debt obligations (or obligations secured by such insurance company’s insurance policies) are rated in one of the two highest Rating Categories of Moody’s or Standard & Poor’s. Such surety bond or insurance policy shall have a term of no less than the maturity of the Series of Bonds in connection with which such surety bond or insurance policy is obtained. In the event that such surety bond or insurance policy for any reason lapses or expires, the District shall immediately implement (i) or (iii) of the preceding paragraph or make the required deposits to the Bond Reserve Fund.

All amounts in the Bond Reserve Fund (including all amounts which may be obtained from letters of credit and surety bonds and insurance policies on deposit in the Bond Reserve Fund) shall be

used and withdrawn by the Trustee solely for the purpose of making up any deficiency in the Interest Fund or the Principal Fund, or (together with any other moneys available therefor) for the payment or redemption of all Bonds then Outstanding or, for the payment of the final principal and interest payment of a Series of Bonds, if following such payment the amounts in the Bond Reserve Fund (including the amounts which may be obtained from letters of credit and surety bonds and insurance policies on deposit therein) will equal the Bond Reserve Requirement. The Trustee shall, on a pro rata basis with respect to the portion of the Bond Reserve Fund held in cash or Investment Securities and amounts held in the form of letters of credit and amounts held in the form of surety bonds and insurance policies (calculated by reference to the maximum amounts of such letters of credit and surety bonds and insurance policies and the amount of the initial deposit of such cash and Investment Securities), draw under each letter of credit or surety bond or insurance policy issued with respect to the Bond Reserve Fund, in a timely manner and pursuant to the terms of such letter of credit or surety bond or insurance policy to the extent necessary in order to obtain sufficient funds on or prior to the date such funds are needed to pay the Bond Obligation of, Mandatory Sinking Account Payments with respect to, and interest on the Bonds when due. To the extent provided in such letter of credit, insurance policy or surety bond or in the Supplemental Indenture pursuant to which a Series of Bonds is issued, such instrument or portion of the Bond Reserve Fund may be available to pay only the Series of Bonds for which it was obtained. In such event, all other amounts or instruments on deposit in the Bond Reserve Fund shall not be available for payments with respect to such Series of Bonds, but shall be applied by the Trustee to payments with respect to all or such other Series of Bonds not so secured. In the event that the Trustee has notice that any payment of principal of or interest on a Bond has been recovered from a Bondowner pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Trustee, pursuant to and provided that the terms of the letter of credit or surety bond or bond insurance policy, if any, securing the Bonds so provide, shall so notify the issuer thereof and draw on such letter of credit or surety bond or policy to the lesser of the extent required or the maximum amount of such letter of credit or surety bond or policy in order to pay to such Bondowners the principal of and interest so recovered. Any amounts in the Bond Reserve Fund in excess of the Bond Reserve Requirement shall be transferred by the Trustee to the District on January 1 and July 1 of each year; provided that such amounts shall be transferred only from the portion of the Bond Reserve Fund held in the form of cash or Investment Securities.

*Redemption Fund.* All moneys deposited by the District with the Trustee for the purpose of optionally redeeming Bonds of any Series shall, unless otherwise directed by the District, be deposited in the Redemption Fund. All amounts deposited in the Redemption Fund shall be used and withdrawn by the Trustee solely for the purpose of redeeming Bonds of such Series and maturity as shall be specified by the District in a request to the Trustee, in the manner, at the times and upon the terms and conditions specified in the Supplemental Indenture pursuant to which such Series of Bonds was created; provided that, at any time prior to giving such notice of redemption, the Trustee shall, upon receipt of a Request of the District, apply such amounts to the purchase of Bonds of such Series at public or private sale, as and when and at such prices (including brokerage and other charges) as is directed by the District, except that the purchase price (exclusive of accrued interest) may not exceed the Redemption Price or Accreted Value then applicable to such Bonds. All Term Bonds purchased or redeemed from the Redemption Fund shall be allocated to Mandatory Sinking Account Payments applicable to such Series and maturity of Term Bonds as may be specified in a Request of the District.

*Investments.* All moneys in any of the funds and accounts held by the Trustee and established pursuant to the Indenture shall be invested, as directed by the District solely in Investment Securities, subject to the limitations set forth in the Indenture. If and to the extent the Trustee does not receive investment instructions from the District with respect to the moneys in the funds and accounts held by the Trustee pursuant to the Indenture, such moneys will be invested in Investment Securities described in

clause (xii) of the definition thereof and the Trustee shall request investment instructions from the District for such moneys.

Moneys in the Bond Reserve Fund shall be invested in Investment Securities available on demand or maturing within 10 years of the date of such investment. Moneys in the remaining funds and accounts shall be invested in Investment Securities maturing or available on demand not later than the date on which it is estimated that such moneys will be required by the Trustee.

Unless otherwise provided in a Supplemental Indenture, all interest, profits and other income received from the investment of moneys in any fund or account, other than the Rebate Fund or a Project Fund, shall be transferred to the District when received. All investment earnings on funds held in each Project Fund shall be deposited in such Project Fund unless transferred by the District to the Trustee to be deposited in the Rebate Fund. All interest, profits and other income received from the investment of moneys in the Rebate Fund shall be deposited in the Rebate Fund pursuant to the Indenture, unless the Trustee is otherwise directed by the District in accordance with the provisions of the Tax Certificate.

### **Certain Covenants of the District**

*Collection of Sales Tax Revenues.* The District has duly levied a transactions and use tax in accordance with the Act, pursuant to and in accordance with Ordinance No. 1, as amended by Ordinance Nos. 2, 3, 4, 5, 7, 8, 9 and 10. Said Ordinance has not and will not be amended, modified or altered so long as any of the Bonds are Outstanding in any manner which would reduce the amount of or timing of receipt of Sales Tax Revenues, and the District will continue to levy and collect such transactions and use taxes to the full amount permitted by law. The District has entered into an agreement with the State Board of Equalization under and pursuant to which the State Board of Equalization processes and supervises collection of said transactions and use taxes and transmits Sales Tax Revenues directly to the Trustee. Said agreement will be continued in effect so long as any of the Bonds are Outstanding and shall not be amended, modified or altered without the written consent of the Trustee so long as any of the Bonds are Outstanding. The District will receive and hold in trust for (and remit immediately to) the Trustee any Sales Tax Revenues paid to the District by the State Board of Equalization.

The District covenants and agrees to separately account for all Sales Tax Revenues and to provide to the Trustee access to such accounting records at reasonable hours and under reasonable circumstances.

The District covenants that so long as the Bonds are Outstanding, it will not, to the best of its ability, suffer or permit any change, modification or alteration to be made to the legislation authorizing the levy and collection of the transactions and use tax which would materially and adversely affect the rights of Bondholders.

*General Covenants.* The District has covenanted, among other things, (1) to punctually pay or cause to be paid the principal or Redemption Price of and interest on the Bonds, but only out of Sales Tax Revenues as provided in the Indenture, (2) to maintain and preserve the System in good repair and working order at all times and to operate the System in an efficient and economical manner, (3) to keep proper books of record and accounts, prepared in accordance with generally accepted accounting principles, relating to Sales Tax Revenues, which shall be available for inspection by the Trustee at reasonable hours and under reasonable circumstances, (4) to cause the annual preparation and filing with the Trustee, so long as any of the Bonds are Outstanding, of reasonably detailed financial statements for the preceding Fiscal Year, which financial statements shall be accompanied by an opinion of an independent certified public accountant, (5) to pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges, if any, lawfully imposed upon the System or any part thereof or upon any Sales Tax Revenues, when the same shall become due, and (6) to commence and

continue to completion the acquisition and construction of all facilities for which any of the Bonds are issued.

*Tax Covenants.* The District has covenanted in the Indenture not to take any action, or fail to take any action, if any such action or failure to act would adversely affect the exclusion from gross income of the interest on the Bonds under Section 103 of the Code. The District has covenanted to comply with the provisions of the Tax Certificate.

The District specifically covenants to pay or cause to be paid to the federal government of the United States of America the Rebate Requirement at the times and in the amounts determined under and as described in the Tax Certificate. This covenant shall survive the defeasance of the Bonds or any Series thereof.

If the District shall receive an Opinion of Bond Counsel to the effect that any action required under the tax covenants of the Indenture is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the Bonds pursuant to Section 103 of the Code, the District and the Trustee may rely conclusively on such opinion in complying with the provisions of the Indenture, and such tax covenants in the Indenture shall be deemed to be modified to that extent.

### **Events of Default and Remedies**

The following events shall be Events of Default:

(a) default in the due and punctual payment of the principal or Redemption Price of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise, or default in the redemption from any Sinking Account of any Bonds in the amounts and at the times provided therefor;

(b) default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable;

(c) if the District shall fail to observe or perform any covenant, condition, agreement or provision in the Indenture on its part to be observed or performed, other than as described in subsection (a) or (b) above, for a period of 60 days after written notice, specifying such failure and requesting that it be remedied, has been given to the District by the Trustee; except that, if such failure can be remedied but not within such 60-day period and if the District has taken all action reasonably possible to remedy such failure within such 60-day period, such failure shall not become an Event of Default for so long as the District shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Trustee;

(d) if any default shall exist under any agreement governing any Parity Debt and such default shall continue beyond the grace period, if any, provided for with respect to such default;

(e) if the District files a petition in voluntary bankruptcy, for the composition of its affairs or for its corporate reorganization under any state or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

(f) if a court of competent jurisdiction shall enter an order, judgment or decree declaring the District insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the District, or approving a petition filed against the District seeking reorganization of the District under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of the entry thereof;

(g) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the District or of the Sales Tax Revenues, and such custody or control shall not be terminated within 60 days from the date of assumption of such custody or control; or

(h) if the Legislature of the State shall repeal or amend all or any portion of the provisions of the Act relating to the retail transactions and use tax, being Section 29140 of the Public Utilities Code, unless the District determines that said repeal or amendment does not materially and adversely affect the rights of Bondholders.

*Determination of Events of Default.* So long as a Municipal Bond Insurance Policy is in effect with respect to a Series of Bonds, for purposes of determining whether any Event of Default concerning such Bonds, as set forth in clause (a) or (b) above, has occurred, no effect shall be given to payments made under such Municipal Bond Insurance Policy.

*Application of Sales Tax Revenues and Other Funds After Default.* If and for so long as an Event of Default shall occur and be continuing, the District shall immediately transfer to the Trustee all Sales Tax Revenues held by it and the Trustee shall apply all Sales Tax Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of the Indenture (except as otherwise provided in the Indenture) as follows and in the following order:

(1) To the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Owners of the Bonds and Parity Debt, including the costs and expenses of the Trustee and the Bondholders in declaring such Event of Default, and payment of reasonable fees and expenses of the Trustee (including reasonable fees and disbursements of its counsel and other agents) incurred in and about the performance of its powers and duties under the Indenture;

(2) To the payment of the whole amount of Bond Obligation then due on the Bonds and Parity Debt (upon presentation of the Bonds and Parity Debt to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) subject to the provisions of the Indenture, with interest on such Bond Obligation, at the rate or rates of interest borne by the respective Bonds and Parity Debt, to the payment to the persons entitled thereto of all installments of interest then due and the unpaid principal or Redemption Price of any Bonds and Parity Debt which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, with interest on the overdue Bond Obligation and Parity Debt at the rate borne by the respective Bonds and Parity Debt, and, if the amount available shall not be sufficient to pay in full all the Bonds and Parity Debt due on any date, together with such interest, then to the payment thereof ratably, according to the amounts of principal or interest or Accreted Value (plus accrued interest) due on such date to the persons entitled thereto, without any discrimination or preference.

(3) To the payment of reimbursement of withdrawals under a Reserve Policy and Policy Costs.

*Trustee to Represent Bondholders.* The Trustee is irrevocably appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney-in-fact of the Owners of the Bonds for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, the Indenture, the Act and applicable provisions of any other law. Upon the occurrence and continuance of an Event of Default or other occasion giving rise to a right in the Trustee to represent the Bondholders, the Trustee in its discretion may, and upon the written request of the Owners of not less than 25% in aggregate amount of Bond Obligation of the Bonds then Outstanding, and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of such Owners by such appropriate action, suit, mandamus or other proceedings as it shall deem most effectual to protect and enforce any such right, at law or in equity, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable right or remedy vested in the Trustee or in such Owners under the Indenture, the Act or any other law; and upon instituting such proceeding, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver of the Sales Tax Revenues and other assets pledged under the Indenture, pending such proceedings. All rights of action under the Indenture or the Bonds or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Owners of such Bonds, subject to the provisions of the Indenture.

*Bond Insurer's Direction of Proceedings.* So long as a Municipal Bond Insurance Policy is in effect with respect to a Series of Bonds, upon the occurrence and continuance of an Event of Default concerning such Series of Bonds, the rights of the Owners of the Series of Bonds to direct or institute remedies as set forth in the Indenture shall be subject to the prior written consent of the Bond Insurer, and the Bond Insurer, acting alone, shall have the right to direct all remedies upon an Event of Default concerning such Series of Bonds and shall be required to consent in writing to any waiver of an Event of Default concerning such Series of Bonds, pursuant to any provision of the Indenture, so long as the Bond Insurer has not failed to comply with its payment obligations under the Municipal Bond Insurance Policy; provided, however, that such direction from the Bond Insurer shall not materially adversely affect the rights of the Owners of any other Series of Bonds.

*Termination of Proceedings.* In case any proceedings taken by the Trustee, the Bond Insurer or any one or more Owners on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, the Bond Insurer or the Owners, then in every such case the District, the Trustee, the Bond Insurer and the Owners, subject to any determination in such proceedings, shall be restored to their former positions and rights under the Indenture, severally and respectively, and all rights, remedies, powers and duties of the District, the Trustee, the Bond Insurer and the Owners shall continue as though no such proceedings had been taken.

*Remedies Not Exclusive.* No remedy in the Indenture conferred upon or reserved to the Trustee, the Bond Insurer or to the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given under the Indenture or now or hereafter existing at law or in equity or otherwise.

*Bondholders' Direction of Proceedings.* Except as provided under "Bond Insurer's Direction of Proceedings" anything in the Indenture to the contrary notwithstanding, the Owners of a majority in aggregate amount of Bond Obligation of the Bonds then Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee and upon furnishing



the Trustee with indemnification satisfactory to it, to direct the method of conducting all remedial proceedings taken by the Trustee under the Indenture, all as more fully described in the Indenture.

*Limitation on Bondholders' Right to Sue.* No Owner of any Bond shall have the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under the Indenture, the Act or any other applicable law with respect to such Bond, unless: (1) such Owner shall have given to the Trustee written notice of the occurrence of an Event of Default; (2) the Owners of not less than 25% in aggregate amount of Bond Obligation of the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers granted in the Indenture or to institute such suit, action or proceeding in its own name; (3) such Owner or said Owners shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (4) the Trustee shall have refused or omitted to comply with such request for a period of 60 days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee; and (5) the Trustee shall not have received contrary directions from the Owners of a majority in aggregate amount of Bond Obligation of the Bonds then Outstanding.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy under the Indenture or under law; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of the Indenture or the rights of any other Owners of Bonds, or to enforce any right under the Indenture, the Act or other applicable law with respect to the Bonds, except in the manner in the Indenture provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner in the Indenture provided and for the benefit and protection of all Owners of the Outstanding Bonds, subject to the provisions of the Indenture.

*Reserve Policy Remedies.* If any reimbursement for prior withdrawals and Policy Costs shall not be repaid in accordance with the requirements of the Indenture, the provider of a Reserve Policy delivered in connection with a Series of Bonds shall be entitled to exercise any and all remedies available at law or under the Indenture with respect to such Series of Bonds other than remedies which would adversely affect Bondholders.

## **Defeasance**

Bonds of any Series or a portion thereof may be paid by the District in any of the following ways:

(a) by paying or causing to be paid the Bond Obligations of and interest on such Outstanding Bonds, as and when the same become due and payable;

(b) by depositing with the Trustee, an escrow agent or other fiduciary, in trust, at or before maturity, money or securities in the necessary amount (as provided in the Indenture) to pay or redeem such Outstanding Bonds; or

(c) by delivering to the Trustee, for cancellation by it, such Outstanding Bonds.

If the District shall pay all Bonds Outstanding and also pay or cause to be paid all other sums payable under the Indenture by the District, then and in that case, at the election of the District (evidenced by a Certificate of the District filed with the Trustee, signifying the intention of the District to discharge all such indebtedness and the Indenture), and notwithstanding that any Bonds shall not have been surrendered for payment, the Indenture and the pledge of Sales Tax Revenues and other assets made

under the Indenture and all covenants, agreements and other obligations of the District under the Indenture shall cease, terminate, become void and be completely discharged and satisfied.

So long as a Reserve Policy is in effect, the Indenture shall not be discharged until all reimbursement for prior withdrawals and Policy Costs owing to the provider of such Reserve Policy shall have been paid in full.

*Discharge of Liability on Bonds.* Upon the deposit with the Trustee, escrow agent or other fiduciary, in trust, at or before maturity, of money or securities in the necessary amount (as provided in the Indenture and described below under the subcaption “Deposit of Money or Securities with Trustee”) to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be redeemed prior to maturity, notice of such redemption shall have been given as in the Indenture provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the District in respect of such Bond shall cease, terminate and be completely discharged, provided that the Owner thereof shall thereafter be entitled to the payment of the principal of and premium, if any, and interest on the Bonds, and the District shall remain liable for such payment, but only out of such money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of the Indenture described below under the subcaption “Payment of Bonds After Discharge of Indenture,” and continuing duties of the Trustee thereunder.

*Deposit of Money or Securities with Trustee.* Whenever in the Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to the Indenture and shall be:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as in the Indenture provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or Redemption Price of such Bonds and all unpaid interest thereon to the redemption date; or

(b) Non-callable Investment Securities described in clauses (i), (ii) or (vi) of the definition thereof the principal of and interest on which when due will, in the opinion of an independent certified public accountant delivered to the Trustee, provide money sufficient to pay the principal or Redemption Price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such principal or Redemption Price and interest become due, provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in the Indenture provided or provision satisfactory to the Trustee shall have been made for the giving of such notice;

provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of the Indenture or by request of the District) to apply such money to the payment of such principal or Redemption Price and interest with respect to such Bonds.

*Payment of Bonds After Discharge of Indenture.* Any moneys held by the Trustee in trust for the payment of the principal or Redemption Price of, or interest on, any Bonds and remaining unclaimed for 4 years after the principal of all of the Bonds has become due and payable (whether at maturity or upon call

for redemption as provided in the Indenture), if such moneys were so held at such date, or 4 years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall, upon Request of the District, be repaid to the District free from the trusts created by the Indenture, and all liability of the Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the District as aforesaid, the Trustee may (at the cost of the District) first mail to the Owners of any Bonds remaining unpaid at the addresses shown on the registration books maintained by the Trustee a notice, in such form as may be deemed appropriate by the Trustee, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the District of the moneys held for the payment thereof. All moneys held by or on behalf of the Trustee for the payment of principal of Accreted Value of or interest or premium on Bonds, whether at redemption or maturity, shall be held in trust for the account of the Owners thereof and the Trustee shall not be required to pay Owners any interest on, or be liable to the Owners or any other person (other than the District) for any interest earned on, moneys so held. Any interest earned thereon shall belong to the District and shall be deposited monthly by the Trustee into the Revenue Fund.

### **Amendments**

The Indenture and the rights and obligations of the District, the Owners of the Bonds and the Trustee may be modified or amended at any time by a Supplemental Indenture, with the written consent of the Owners of a majority in the aggregate amount of Bond Obligation of the Bonds (or, if such Supplemental Indenture is only applicable to a Series of Bonds, such Series of Bonds) then Outstanding; provided that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any particular maturity remain Outstanding, the consent of the Owners of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Bonds Outstanding under this caption.

The Indenture and the rights and obligations of the District and of the Owners of the Bonds and of the Trustee may also be modified or amended at any time by a Supplemental Indenture entered into by the District and the Trustee which shall become binding when the written consents of each provider of a letter of credit or a policy of bond insurance for the Bonds shall have been filed with the Trustee, provided that at such time the payment of all the principal of and interest on all Outstanding Bonds shall be insured by a policy or policies of municipal bond insurance or payable under a letter of credit the provider of which shall be a financial institution or association having unsecured debt obligations rated, or insuring or securing other debt obligations rated on the basis of such insurance or letters of credit, in one of the two highest Rating Categories of Moody's or Standard & Poor's.

No such modification or amendment shall (a) extend the fixed maturity of any Bond or reduce the amount of principal thereof, or extend the time of payment or reduce the amount of any Mandatory Sinking Account payment provided for the payment of any Bond, or reduce the rate of interest thereon, or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, without the consent of the Owner of each Bond so affected, or (b) reduce the aforesaid percentage of Bond Obligation the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Sales Tax Revenues or other assets pledged under the Indenture prior to or on a parity with the lien created by the Indenture, or deprive the Owners of the Bonds of the lien created by the Indenture on such Sales Tax Revenues and other assets (except as expressly provided in the Indenture), without the consent of the Owners of all of the Bonds then Outstanding.

The Indenture and the rights and obligations of the District, of the Trustee and of the Owners of the Bonds may also be modified or amended at any time by a Supplemental Indenture, without the

consent of any Bondholders, but only to the extent permitted by law and only for any one or more of the following purposes:

(1) To add to the covenants and agreements of the District in the Indenture contained other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof) or to surrender any right or power reserved to or conferred upon the District;

(2) To make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision contained in the Indenture, or in regard to matters or questions arising under the Indenture, as the District may deem necessary or desirable, and which shall not materially and adversely affect the interests of the Owners of the Bonds;

(3) To modify, amend or supplement the Indenture in such manner as to permit qualification under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute, and which shall not materially and adversely affect the interests of the Owners of the Bonds;

(4) To make modifications or adjustments necessary, appropriate or desirable to provide for the issuance of Variable Rate Indebtedness, Capital Appreciation Bonds or Parity Debt with such interest rate, payment, maturity and other terms as the District may deem desirable, subject to the provisions of the Indenture described above under the caption "Additional Bonds, Refunding Bonds, Parity Debt, Subordinate Obligations," provided such modifications or adjustments shall not materially and adversely affect the interests of Owners of the Bonds;

(5) To provide for the issuance of Bonds in book-entry form or bearer form, provided that no such provisions shall materially and adversely affect the interest of the Owners of the Bonds;

(6) To make modifications or adjustments necessary, appropriate or desirable to accommodate credit enhancements including letters of credit, surety bonds and insurance policies delivered with respect to the Bond Reserve Fund, provided such modifications or adjustments shall not materially and adversely affect the interests of Owners of the Bonds;

(7) If the District agrees in a Supplemental Indenture to maintain the exclusion of interest on a Series of Bonds from gross income for purposes of federal income taxation, to make such provisions as are necessary or appropriate to ensure such exclusion;

(8) To provide for the issuance of an additional Series of Bonds pursuant to provisions of the Indenture described above under the caption "Additional Bonds, Refunding Bonds, Parity Debt, Subordinate Obligations;" and

(9) For any other purpose that does not materially and adversely affect the interests of the Owners of the Bonds.

#### Other Provisions

*Waiver of Personal Liability.* No Board member, officer, agent or employee of the District or the Trustee shall be individually or personally liable for the payment of the principal or Redemption Price of or interest on the Bonds or be subject to any personal liability or accountability by reason of the issuance

thereof; but nothing in the Indenture contained shall relieve any such Board member, officer, agent or employee of the District or the Trustee from the performance of any official duty provided by law or by the Indenture.

## **APPENDIX E**

### **THE ECONOMY OF THE THREE BART COUNTIES**

## APPENDIX F

### BOOK-ENTRY ONLY SYSTEM

*The information in this Appendix concerning The Depository Trust Company (“DTC”) and DTC’s book-entry system has been obtained from sources that the San Francisco Bay Area Rapid Transit District (the “District”) believes to be reliable, but neither the District nor the Underwriter takes responsibility for the accuracy thereof. Beneficial Owners (as such term is defined herein) should confirm the following information with DTC or the DTC Participants (as such term is defined herein). All defined terms used and not otherwise defined herein shall have the meanings assigned to such terms in the front portion of this Official Statement.*

DTC will act as securities depository for the Series 2010 Bonds. The Series 2010 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond certificate will be issued for each annual maturity of Series 2010 Bonds, each in the aggregate principal amount of such annual maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor’s highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Series 2010 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2010 Bonds on DTC’s records. The ownership interest of each actual purchaser of each Series 2010 Bond (each a “Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2010 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will

not receive certificates representing their ownership interests in Series 2010 Bonds, except in the event that use of the book-entry system for the Series 2010 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2010 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Series 2010 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2010 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2010 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Series 2010 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2010 Bonds, such as redemptions, tenders, defaults, and proposed amendments to the documents. For example, Beneficial Owners of Series 2010 Bonds may wish to ascertain that the nominee holding the Series 2010 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Series 2010 Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Series 2010 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the District or to the Trustee as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Series 2010 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Series 2010 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the District or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of the DTC, the Trustee, or the District, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the District or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Series 2010 Bonds at any time by giving reasonable notice to the District or the Trustee. Under such circumstances, in the



event that a successor depository is not obtained, bond certificates are required to be printed and delivered.

The District may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, bond certificates will be printed and delivered to DTC.

**APPENDIX G**

**FORM OF CONTINUING DISCLOSURE AGREEMENT**

## CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (this “Disclosure Agreement”) is executed and delivered by the San Francisco Bay Area Rapid Transit District (the “Issuer”) and U.S. Bank National Association, successor by merger to U. S. Bank Trust National Association, formerly known as First Trust of California, National Association, which was successor trustee to Bank of America National Trust and Savings Association which was successor trustee to Security Pacific National Bank, as trustee (the “Trustee”) and as dissemination agent (the “Dissemination Agent”), in connection with the issuance of \$129,595,000 aggregate principal amount of San Francisco Bay Area Rapid Transit District Sales Tax Revenue Bonds, Refunding Series 2010 (the “Series 2010 Bonds”). The Series 2010 Bonds are being issued pursuant to an Indenture, dated as of July 1, 1990, as supplemented and amended by a First Supplemental Indenture, dated as of August 7, 1990, a Second Supplemental Indenture, dated as of August 29, 1991, a Third Supplemental Indenture, dated as of June 7, 1995, a Fourth Supplemental Indenture, dated as of April 1, 1997, a Fifth Supplemental Indenture, dated as of March 12, 1998, a Sixth Supplemental Indenture, dated as of October 7, 1999, a Seventh Supplemental Indenture, dated as of July 12, 2001, an Eighth Supplemental Indenture, dated as of September 7, 2005, a Ninth Supplemental Indenture, dated as of June 29, 2006, a Tenth Supplemental Indenture, dated as of November 30, 2006, and an Eleventh Supplemental Indenture, dated as of the date hereof (hereinafter collectively referred to as the “Indenture”), between the Issuer and the Trustee. The Issuer, the Trustee and the Dissemination Agent covenant and agree as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Issuer, the Trustee and the Dissemination Agent for the benefit of the Owners (as such term is defined in the Indenture) and the Beneficial Owners (as hereinafter defined) of the Series 2010 Bonds and in order to assist the Participating Underwriters (as hereinafter defined) in complying with Securities and Exchange Commission Rule 15c2-12(b)(5).

SECTION 2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Agreement and not otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Series 2010 Bonds (including persons holding Series 2010 Bonds through nominees, depositories or other intermediaries).

“Disclosure Representative” shall mean the Controller/Treasurer of the Issuer or his designee, or such other officer or employee of the Issuer as the Controller/Treasurer of the Issuer shall designate in writing to the Trustee and the Dissemination Agent from time to time.

“Dissemination Agent” shall mean U. S. Bank National Association, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Trustee a written acceptance of such designation.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board or any other entity designated or authorized by the SEC to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the SEC, filings with the MSRB are to be made through the Electronic Municipal Market Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org>.

“Participating Underwriter” shall mean any of the original underwriters of the Series 2010 Bonds required to comply with the Rule in connection with offering of the Series 2010 Bonds.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” shall mean the Securities and Exchange Commission or any successor agency thereto.

“State” shall mean the State of California.

### SECTION 3. Provision of Annual Reports.

(a) The Issuer shall, or shall cause the Dissemination Agent to, not later than eight (8) months after the end of the Issuer’s fiscal year (presently June 30), commencing with the Annual Report for the fiscal year of the Issuer ending June 30, 2010, provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. Each Annual Report must be submitted in electronic format, accompanied by such identifying information as is prescribed by the MSRB, and may include by reference other information as provided in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Issuer may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. Neither the Trustee nor the Dissemination Agent shall have any duties or responsibilities with respect to the contents of the Annual Report. If the Issuer’s fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(f).

(b) Not later than fifteen (15) Business Days prior to the date specified in subsection (a) for providing the Annual Report to the MSRB, the Issuer shall provide the Annual Report to the Dissemination Agent and the Trustee (if the Trustee is not the Dissemination Agent). If by such date, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the Issuer and the Trustee to determine if the Issuer is in compliance with the first sentence of this subsection (b).

(c) If the Trustee is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a), the Trustee shall send a notice, in electronic format, to the MSRB, such notice to be in substantially the form attached as Exhibit A.

(d) If the Annual Report is delivered to the Dissemination Agent for filing, the Dissemination Agent shall file a report with the Issuer and (if the Dissemination Agent is not the Trustee) the Trustee certifying that the Annual Report has been provided pursuant to this Disclosure Agreement and stating the date it was provided.

SECTION 4. Content of Annual Reports. The Annual Report shall contain or include by reference the following:

(a) The audited financial statements of the Issuer for the prior fiscal year, prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the Issuer's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the Official Statement, dated May 5, 2010, relating to the Series 2010 Bonds (the "Official Statement"), and the audited financial statements shall be filed in the same manner as the Annual Report when such audited financial statements become available.

(b) An update (as of the most recently ended fiscal year of the Issuer) for the table entitled "Sales Tax Revenues" set forth in the Official Statement under the caption "SECURITY FOR THE SERIES 2010 BONDS—Sales Tax Revenues" and an update for the table entitled "Debt Service Requirements" set forth in the Official Statement under the caption "DEBT SERVICE REQUIREMENTS."

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Issuer or related public entities, which have been filed with the MSRB or the SEC. If the document included by reference is a final official statement, it must be available from the MSRB. The Issuer shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the Issuer shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Series 2010 Bonds, if material:

1. principal and interest payment delinquencies;
2. non-payment related defaults;
3. modifications to rights of Owners;
4. optional, contingent or unscheduled bond calls;
5. defeasances;
6. rating changes;
7. adverse tax opinions or events adversely affecting the tax-exempt status of the Series 2010 Bonds;
8. unscheduled draws on the debt service reserves reflecting financial difficulties;
9. unscheduled draws on credit enhancements reflecting financial difficulties;
10. substitution of credit or liquidity providers, or their failure to perform;

11. release, substitution or sale of property securing repayment of the Series 2010 Bonds.

(b) The Trustee shall, within one (1) Business Day, or as soon thereafter as practicable, of obtaining actual knowledge of the occurrence of any of the Listed Events, contact the Disclosure Representative, inform the Disclosure Representative of the event, and request that the Issuer promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to subsection (f).

(c) Whenever the Issuer obtains knowledge of the occurrence of a Listed Event, whether because of a notice from the Trustee pursuant to subsection (b) or otherwise, the Issuer shall as soon as practicable determine if such event would be material under applicable federal securities laws.

(d) If the Issuer has determined that knowledge of the occurrence of a Listed Event would be material under applicable federal securities laws, the Issuer shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (f).

(e) If in response to a request under subsection (b), the Issuer determines that the Listed Event would not be material under applicable federal securities laws, the Issuer shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (f).

(f) If the Dissemination Agent has been instructed by the Issuer to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence of such event with the MSRB. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(4) and (a)(5) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to Owners of the affected Series 2010 Bonds pursuant to the Indenture.

SECTION 6. Termination of Reporting Obligation. The obligations of the Issuer, the Trustee and the Dissemination Agent under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Series 2010 Bonds. If such termination occurs prior to the final maturity of the Series 2010 Bonds, the Issuer shall give notice of such termination in the same manner as for a Listed Event under Section 5(f).

SECTION 7. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent may resign by providing thirty (30) days written notice to the Issuer and the Trustee. The Dissemination Agent shall not be responsible in any manner for the form or the content of any notice or report prepared by the Issuer pursuant to this Disclosure Agreement. If at any time there is not any other designated Dissemination Agent, the Trustee shall be the Dissemination Agent.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the Issuer, the Trustee and the Dissemination Agent may amend this Disclosure Agreement (and the Trustee and the Dissemination Agent shall agree to any amendment so requested by the Issuer, provided neither the Trustee nor the Dissemination Agent shall be obligated to enter into any such amendment that modifies or increases its duties or obligations hereunder), and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Series 2010 Bonds, or the type of business conducted;

(b) This Disclosure Agreement, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Series 2010 Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Trustee or the Owners of the Series 2010 Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners or Beneficial Owners of the Series 2010 Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Issuer shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(f), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the Issuer, the Dissemination Agent or the Trustee to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the written request of any Participating Underwriter or the Owners of at least 25% aggregate principal amount of Outstanding Series 2010 Bonds, shall) (but only to the extent funds in an amount satisfactory to the Trustee have been provided to it or it has been otherwise indemnified to its satisfaction from any cost, liability, expense or additional charges and fees of the Trustee whatsoever, including, without limitation, fees and expenses of its attorneys), or any Owner or Beneficial Owner of the Series 2010 Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer, the Dissemination Agent or the Trustee, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the Issuer or the Trustee or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

SECTION 11. Duties, Immunities and Liabilities of Trustee and Dissemination Agent. Article VIII of the Indenture is hereby made applicable to this Disclosure Agreement as if this Disclosure Agreement were (solely for this purpose) contained in the Indenture and the Trustee and the Dissemination Agent shall be entitled to the protections, limitations from liability and indemnities afforded the Trustee thereunder. The Dissemination Agent (if other than the Trustee or the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Disclosure Agreement, and the Issuer agrees to indemnify and save the Dissemination Agent and the Trustee and their officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of their powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Trustee's or the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall be paid compensation by the Issuer for its services provided hereunder in accordance with its schedule of fees as amended from time to time and all expenses, legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder. The obligations of the Issuer under this Section shall survive resignation or removal of the Trustee or the Dissemination Agent and payment of the Series 2010 Bonds.

SECTION 12. Notices. Any notices or communications to or among any of the parties to this Disclosure Agreement may be given as follows:

(i) If to the Issuer:

San Francisco Bay Area Rapid Transit District  
300 Lakeside Drive  
Oakland, California 94612-3534  
Attention: Controller/Treasurer  
Telephone: (510) 464-6070  
Fax: (510) 464-6011

(ii) If to the Trustee or the Dissemination Agent:

U. S. Bank National Association  
One California Street, Suite 1000  
San Francisco, California 94111  
Telephone: (415) 273-4540  
Fax: (415) 273-4590

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent. Notices may also be given by electronic means.

SECTION 13. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Trustee, the Dissemination Agent, the Participating Underwriters and Owners and Beneficial Owners from time to time of the Series 2010 Bonds, and shall create no rights in any other person or entity.



SECTION 14. Counterparts. This Disclosure Agreement 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.

Date: May 19, 2010.

SAN FRANCISCO BAY AREA RAPID  
TRANSIT DISTRICT

By \_\_\_\_\_  
Controller/Treasurer

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee and Dissemination Agent

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

**Exhibit A**

**NOTICE TO MUNICIPAL SECURITIES RULEMAKING BOARD OF  
FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: San Francisco Bay Area Rapid Transit District  
Name of Bond Issue: San Francisco Bay Area Rapid Transit District Sales Tax Revenue  
Bonds, Refunding Series 2010  
Date of Issuance of Bonds: May 19, 2010

NOTICE IS HEREBY GIVEN that the San Francisco Bay Area Rapid Transit District (the “Issuer”) has not provided an Annual Report with respect to the above-named Bonds as required by Section 22.15 of the Indenture, dated as of July 1, 1990, as supplemented and amended by the First Supplemental Indenture, dated as of August 7, 1990, the Second Supplemental Indenture, dated as of August 29, 1991, the Third Supplemental Indenture, dated as of June 7, 1995, the Fourth Supplemental Indenture, dated as of April 1, 1997, the Fifth Supplemental Indenture, dated as of March 12, 1998, the Sixth Supplemental Indenture, dated as of October 7, 1999, the Seventh Supplemental Indenture, dated as of July 12, 2001, an Eighth Supplemental Indenture, dated as of September 7, 2005, a Ninth Supplemental Indenture, dated as of June 29, 2006, a Tenth Supplemental Indenture, dated as of November 30, 2006, and an Eleventh Supplemental Indenture, dated as of May 19, 2010, between the Issuer and U. S. Bank National Association, as trustee. [The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.]

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

U.S. BANK NATIONAL ASSOCIATION,  
as trustee on behalf of the San Francisco Bay Area  
Rapid Transit District

cc: Issuer

**APPENDIX H**

**PROPOSED FORM OF OPINION OF CO-BOND COUNSEL**

[Date of Closing]

San Francisco Bay Area  
Rapid Transit District  
Oakland, California

San Francisco Bay Area Rapid Transit District  
Sales Tax Revenue Bonds, Refunding Series 2010  
(Final Opinion)

Ladies and Gentlemen:

We have acted as co-bond counsel to the San Francisco Bay Area Rapid Transit District (the "District") in connection with the issuance by the District of \$129,595,000 aggregate principal amount of San Francisco Bay Area Rapid Transit District Sales Tax Revenue Bonds, Refunding Series 2010 (the "Bonds"), issued pursuant to an Indenture, dated as of July 1, 1990, as supplemented and amended by a First Supplemental Indenture, dated as of August 7, 1990, a Second Supplemental Indenture, dated as of August 29, 1991, a Third Supplemental Indenture, dated as of June 7, 1995, a Fourth Supplemental Indenture, dated as of April 1, 1997, a Fifth Supplemental Indenture, dated as of March 12, 1998, a Sixth Supplemental Indenture, dated as of October 7, 1999, a Seventh Supplemental Indenture, dated as of July 12, 2001, an Eighth Supplemental Indenture, dated as of September 7, 2005, a Ninth Supplemental Indenture, dated as of June 29, 2006, a Tenth Supplemental Indenture, dated as of November 30, 2006, and an Eleventh Supplemental Indenture, dated as of May 19, 2010 (hereinafter collectively referred to as the "Indenture"), between the District and U. S. Bank National Association, successor by merger to U. S. Bank Trust National Association, formerly known as First Trust of California, National Association, successor to Bank of America National Trust and Savings Association, successor by merger to Security Pacific National Bank, as trustee (the "Trustee"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

In such connection, we have reviewed the Indenture, the Tax Certificate, dated the date hereof (the "Tax Certificate"), certificates of the District, the Trustee, and others, opinions of counsel to the District and the Trustee and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. Accordingly, this opinion speaks only as of its date and is not intended to, and may not, be relied upon in connection with any such actions, events or matters. Our engagement with respect to the Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any parties other than the District. We have assumed, without undertaking to verify the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture and the Tax Certificate, including without limitation covenants and agreements

compliance with which is necessary to assure that future actions, omissions or events will not cause interest on the Bonds to be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under the Bonds, the Indenture and the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public transit districts in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum, choice of venue, waiver or severability provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the assets described in or as subject to the lien of the Indenture or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such assets. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement, dated May 5, 2010, or other offering material relating to the Bonds and express no opinion with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Bonds constitute the valid and binding special obligations of the District payable from and secured by a pledge of Sales Tax Revenues.

2. The Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, the District.

3. Interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. Interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although we observe that interest on the Bonds is included in adjusted current earnings when calculating corporate alternative minimum taxable income.

We express no opinion regarding other tax consequences relating to the ownership or disposition of, or the accrual or receipt of interest on, the Bonds.

Faithfully yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

per

LOFTON & JENNINGS

Per