

# **OFFICIAL NOTICE OF SALE**

**\$15,860,000\***

## **ENCINITAS PUBLIC FINANCING AUTHORITY**

### **2015 LEASE REVENUE REFUNDING BONDS**

#### **SERIES A**

#### **(LIBRARY PROJECT)**

**Date of Sale:**

**September 3, 2015**

**10:00 a.m., Pacific Day Time**

**BIDS TO BE RECEIVED VIA PARITY®**

**For further information, please contact the City's Independent Registered Municipal Advisor:**

**Thomas Johnsen, Principal**  
**(949) 660-7311**  
**tjohnsen@fieldman.com**

**Joshua Lentz, Vice President**  
**(949) 660-7320**  
**jlentz@fieldman.com**

**Fieldman, Rolapp & Associates**  
19900 MacArthur Boulevard, Suite 1100  
Irvine, California 92612  
Fax: (949) 474-8773

**A copy of the Preliminary Official Statement  
may be obtained at:  
[www.munios.com](http://www.munios.com)**

---

\* Preliminary, subject to change.

## OFFICIAL NOTICE OF SALE

\$15,860,000\*  
ENCINITAS PUBLIC FINANCING AUTHORITY  
2015 LEASE REVENUE REFUNDING BONDS  
SERIES A  
(LIBRARY PROJECT)

NOTICE IS HEREBY GIVEN that all-or-none bids will be received by the Encinitas Public Financing Authority (the "Authority"), for the purchase of \$15,860,000\* par value lease revenue bonds designated "ENCINITAS PUBLIC FINANCING AUTHORITY 2015 LEASE REVENUE REFUNDING BONDS, SERIES A (LIBRARY PROJECT)" (the "Bonds"). All electronic bids must be submitted via *Parity*®, the electronic bidding system, up to the time and date specified as follows:

**TIME:** 10:00 a.m., Pacific Daylight Time

**DATE:** September 3, 2015

provided, however, that without further advertising, and so long as an electronic bid has not been accepted by the Authority, electronic bids via *Parity*® will be accepted at such time and place on September 3, 2015 and each succeeding Business Day thereafter until the earlier of September 4, 2015 or receipt by the Board of an acceptable electronic bid for the Bonds.

Bids for the purchase of the Bonds will be received and considered subject to the terms and conditions described herein.

Please note that the Authority reserves the right to cancel or reschedule the sale of the Bonds upon notice given through Bloomberg News Service, Thompson Municipal Market Monitor ([www.tm3.com](http://www.tm3.com)) or *The Bond Buyer* no later than eighteen (18) hours prior to the new time bids are to be received, and if the sale is rescheduled, notice of the new sale date and time, if any, will be given through Bloomberg News Service, Thompson Municipal Market Monitor ([www.tm3.com](http://www.tm3.com)) or *The Bond Buyer* no later than eighteen (18) hours prior to the new time bids are to be received, and bids will be received in the manner set forth above at the rescheduled date and time as the Authority may determine.

## DESCRIPTION OF THE BONDS AND FINANCING FRAMEWORK

### Terms of the Bonds

The Authority has made available a Preliminary Official Statement relating to the Bonds, a copy of which has been posted to [www.munios.com](http://www.munios.com). The Preliminary Official Statement, including the cover page and all appendices thereto, provides certain information concerning the sale and delivery of the Bonds. Each bidder must have obtained and reviewed the Preliminary Official Statement prior to bidding for the Bonds. This Official Notice of Sale contains certain information for quick reference only, is not a summary of the issue and governs only the terms of the sale of, bidding for and closing procedures with respect to the Bonds. Bidders must read the entire Preliminary Official Statement to obtain information essential to making an informed investment decision.

---

\* Preliminary, subject to change.

## Issue

The Bonds will be dated the date of delivery, will be in the denomination of \$5,000 each, or integral multiples thereof, and will bear interest from the date of the Bonds to the maturity of each of the Bonds at the rate or rates such that the interest rate shall not exceed 6% per annum, with interest payable on October 1, 2016 and semiannually on April 1 and October 1 of each year during the term of each of the Bonds. The Bonds mature on October 1 in each of the years 2016 to 2036 inclusive, as follows:

<u>MATURITY</u> <u>(OCTOBER 1)</u>	<u>PRINCIPAL</u> <u>AMOUNT*</u>	<u>MATURITY</u> <u>(OCTOBER 1)</u>	<u>PRINCIPAL</u> <u>AMOUNT*</u>
2016	\$495,000	2027	\$785,000
2017	515,000	2028	810,000
2018	535,000	2029	835,000
2019	555,000	2030	860,000
2020	580,000	2031	885,000
2021	610,000	2032	915,000
2022	640,000	2033	945,000
2023	670,000	2034	975,000
2024	700,000	2035	1,005,000
2025	740,000	2036	1,040,000
2026	765,000		

## Adjustment of Principal Amounts

The principal amounts of each maturity of Bonds set forth above reflect certain assumptions of the Encinitas Public Financing Authority (the “Authority”) and Fieldman, Rolapp & Associates, Inc., the City’s Independent Registered Municipal Advisor (the “Municipal Advisor”) with respect to the likely interest rates of the winning bid or bids. Following the determination of the successful bidder or bidders, the Authority reserves the right to increase or decrease the principal amount of each maturity of the Bonds, in \$5,000 increments of principal amounts. In no event shall such adjustment result in the principal amount of the Bonds exceeding \$17,500,000. Such adjustment shall be made within 4 hours of the bid opening and in the sole discretion of the Authority. In the event of any such adjustment, no rebidding or recalculation of the bids submitted will be required or permitted and the successful bid or bids may not be withdrawn, and the successful bidder will not be permitted to change its bid price or the interest rate(s) in its bid for the Bonds. The Authority shall not be responsible for the effect of any such adjustment on the compensation to the successful bidder and will use its reasonable best efforts to maintain a proportionate level of compensation to the successful bidder. Bidders are advised to consider such a possible change in principal amount when determining their production on each maturity of the Bonds.

## Interest Rates

Interest will be calculated on the basis of a 360-day year composed of twelve 30-day months. The Bonds shall represent interest from their date at a rate or rates to be determined at the sale thereof, but no maturity of such Bonds shall exceed six percent (6%) per annum and the true interest cost of the Bonds

---

\* Preliminary, subject to change.

shall not exceed 4.50%. Interest on the Bonds is payable semiannually on April 1 and October 1 in each year (the "Interest Payment Dates"); commencing October 1, 2016. Bidders may specify any number of separate interest rates, and any rate may be repeated as often as desired; provided, however, that (i) each interest rate specified must be in a multiple of 1/20 of 1% or 1/8 of 1%; (ii) a zero rate of interest cannot be specified; (iii) each Certificate shall bear interest from its dated date to its stated maturity date at the interest rate specified in the bid; (iv) all Bonds of the same maturity date shall bear the same rate of interest (with the exception of split coupons for Bonds of the same maturity, which is allowed; however, the Bonds of the same maturity shall bear the same yield); and (v) no bid will be accepted which provides for the cancellation and surrender of any interest payment or for the waiver of interest or other concession by the bidder as a substitute for payment in full of the purchase price of the Bond or Bonds. ***Bids that do not conform to the terms of this paragraph will be rejected.***

## **Redemption**

The Bonds are subject to optional and mandatory sinking fund redemption prior to their stated maturity, as follows:

- (a) Optional Redemption. The Bonds maturing on or after October 1, 2026 are subject, at the option of the Authority, to redemption prior to their stated maturities in whole or in part on any date commencing October 1, 2025, selected among maturities, if in part as nearly as practicable on a pro-rata basis, and by lot within a maturity, at a redemption price equal to the principal amount thereof, together with accrued interest to the date fixed for redemption, without premium.
- (b) Special Mandatory Redemption from Insurance or Condemnation Proceeds. The Bonds shall also be subject to redemption as a whole or in part on any date, from Net Proceeds required to be used for such purpose as provided in the Indenture, at a redemption price equal to the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.
- (c) Mandatory Sinking Fund Redemption. Any bidder may, at its option, specify that one or more maturities of the bonds will consist of term bonds which are subject to mandatory sinking fund redemption in consecutive years immediately preceding the maturity thereof, as designated in the proposal of such bidder; **provided that no Bond may have sinking fund payments prior to October 1, 2025.** In the event that the proposal of the successful bidder specifies that any maturity of Bonds will be term bonds, such term bonds will be subject to mandatory sinking fund redemption on October 1 in each year so designated in the proposal, in the respective amounts for such years, at redemption price equal to the principal amount thereof to be paid together with accrued interest thereon to the redemption date, without premium.

Notice of redemption shall be provided as set forth in the Preliminary Official Statement.

## **Registration of Bonds as to Principal and Interest and Place of Payment**

The Bonds, when delivered, 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 of the Bonds. Individual purchases will be made in book-entry form only, in the denominations of \$5,000 and integral multiples thereof. Purchasers will not receive certificates representing their interest in the Bonds purchased. Principal and interest are payable in lawful money of the United States of America and will

be paid to DTC which in turn will remit such amounts to the beneficial owners of the Bonds through DTC's Participants, as described in the Preliminary Official Statement.

### **Authority for Issuance and Purpose**

The Bonds will be issued by the Authority pursuant to an Indenture of Trust, dated as of September 1, 2015 (the "Indenture"), by and between MUFG Union Bank, N.A., as trustee (the "Trustee"), and the Authority, and pursuant to the laws of the State of California. The Bonds are a special obligation of the Authority payable and secured solely by Revenues of the Authority pledged under the Indenture (as defined below). The proceeds of the issuance of the Bonds will be used, together with other available moneys, (i) to current refund the Authority's outstanding 2006 Lease Revenue Bonds, Series A (Library Construction Project) (the "2006 Bonds") and (ii) to pay certain costs of issuance of the Bonds.

### **Security**

The Indenture provides that, subject to certain rights of the Trustee, the Bonds are secured by a first lien on and pledge of all Revenues and a pledge of all of the moneys held in the Interest Account and the Principal Account, including all amounts derived from the investment of such moneys. "Revenues," as defined in the Indenture, generally means (a) all amounts received by the Authority or the Trustee pursuant to or with respect to the Lease Agreement, dated as of September 1, 2015 (the "Lease Agreement"), by and between the City of Encinitas (the "City") and the Authority, including, without limiting the generality of the foregoing, all of the Lease Payments; and (b) all interest, profits or other income derived from the investment of amounts in any fund or account established pursuant to the Indenture. The principal payable with respect to the Lease Payments is \$15,860,000.\* The City is obligated to pay Lease Payments under the Lease Agreement from any legally available moneys, including its General Fund. Under California Law, the obligation of the City to make Lease Payments is contingent upon the availability of the Leased Premises for use and occupancy by the City. The City agreed in the Lease Agreement to make all Lease Payments, subject to abatement, as more fully described in the Preliminary Official Statement. Under the Indenture, the Authority is authorized under certain conditions to issue additional obligations secured by the Revenues. Under the Lease Agreement, the City is allowed to incur other obligations secured by excess value of the Lease Premises.

**The Revenues and other funds pledged under the Indenture are the sole security for the Bonds, and the Authority has no other source of funds, other than the Lease Payments, to pay debt service on the Bonds.**

THE BONDS ARE NOT A DEBT, OBLIGATION OR LIABILITY OF THE CITY, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS (OTHER THAN THE AUTHORITY), NOR DO THEY CONSTITUTE A PLEDGE OF THE FAITH AND CREDIT OR THE TAXING POWER OF ANY OF THE FOREGOING (INCLUDING THE AUTHORITY AND THE CITY). THE AUTHORITY DOES NOT HAVE ANY TAXING POWER. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. THE CITY'S OBLIGATION TO MAKE LEASE PAYMENTS IS AN OBLIGATION PAYABLE FROM THE CITY'S GENERAL FUND OR ANY OTHER SOURCE OF FUNDS LEGALLY AVAILABLE TO THE CITY TO MAKE LEASE PAYMENTS. THE OBLIGATION OF THE CITY TO MAKE LEASE PAYMENTS DOES NOT CONSTITUTE A DEBT OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMIT OR RESTRICTION OR ANY OBLIGATION FOR WHICH THE CITY IS

---

\* Preliminary, subject to change.

OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION, OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION.

### **Reserve Fund**

The Authority has not established a Reserve Fund for the Bonds.

### **Purchaser's Closing Certificate**

The Purchaser must deliver such certificates to the Authority as may be required by Bond Counsel dated the date of execution and delivery of the Bonds, indicating (among other matters): (i) receipt of the Bonds; (ii) the initial offering price at which not less than ten percent (10%) of the Bonds were sold to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers), (iii) the "yield" on the Bonds as calculated in accordance with the Internal Revenue Code of 1986, as amended, and (iv) such other information as may be required to assist the Authority in filing the required Internal Revenue Service Form 8038-G for the Bonds.

The Purchaser shall advise the Authority no later than one hour after award of the bid of such information regarding the reoffering price or prices at which the Bonds are reoffered to the general public as shall enable the Authority to comply with the Internal Revenue Code of 1986 and to make any adjustments in the principal amount of the Bonds as described under "Adjustments of Principal Amounts."

Each bidder is requested to furnish the names of all joint managers participating in the bid on the official Bid Form. The Purchaser will be required to submit a list of all syndicate members in addition to the managers not later than 24 hours after receiving a verbal award.

### **CUSIP Numbers and Other Fees**

CUSIP numbers will be applied for and will be printed on the Bonds and the cost of printing thereof and service bureau assignment will be purchaser's responsibility. Any delay, error or omission with respect thereto will not constitute cause for the purchaser to refuse to accept delivery of and pay for the Bonds. The successful bidder shall also be required to pay all fees required by The Depository Trust Company, Municipal Securities Rulemaking Board, and any other similar entity imposing a fee in connection with the issuance of the Bonds (see, "California Debt Advisory and Investment Commission" below).

### **Legal Opinion**

The Bonds are sold with the understanding that the purchaser will be furnished with the approving opinion of Bond Counsel, Best Best & Krieger LLP. A copy of the opinion will be attached to the Bonds. Said attorneys have been retained by the City as Bond Counsel and in such capacity are to render their opinion only upon the legality of the Bonds under California law and on the exemption of the interest income on such Bonds from federal and State of California income taxes. Fees of Bond Counsel and all other costs of issuance will be paid from proceeds of the Bonds.

### **Tax-Exempt Status**

In the opinion of Bond Counsel, under existing laws, interest on the Bonds is exempt from all present State of California personal income taxes, and assuming compliance with certain covenants made by the Authority, interest on the Bonds is not includable in the gross income of the owners of the Bonds.

for federal income tax purpose, provided that such interest may be included in the calculation for certain taxes, including the corporate alternative minimum tax and the corporate environmental tax. Should changes in the law cause Bond Counsel's opinion to change prior to delivery of the Bonds to the purchaser, the purchaser will be relieved of its responsibility to take delivery of and pay for the Bonds, and in that event its Deposit will be returned.

### **Certification of Reoffering Price**

As soon as practicable, but not later than five days following the date of acceptance of the bid for the Bonds, the successful bidder must submit to the Authority a certificate specifying for each maturity the reoffering price at which at least 10% of the Bonds of such maturity were sold (or were offered in a bona fide public offering and as of the date of award of the Bonds to the successful bidder reasonably expected to be sold) to the public. Such certificate shall be in form and substance satisfactory to Bond Counsel and shall include such additional information as may be requested by Bond Counsel.

### **California Debt Advisory and Investment Commission**

The successful bidder will be required, pursuant to state of California law, to pay any fees to the California Debt and Investment Advisory Commission ("CDIAC"). CDIAC will invoice the successful bidder after the closing of the Bonds.

### **Qualification for Sale; Blue Sky**

Compliance with blue sky laws shall be the sole responsibility of the successful bidder. The Board will furnish such information and take such action not inconsistent with law as the successful bidder may request and the Board shall deem necessary or appropriate to qualify the Bonds for offer and sale under the blue sky or other securities laws and regulations of such states and other jurisdictions of the United States of America as may be designated by the successful bidder; provided, however, that the Board shall not execute a general or special consent to service of process or qualify to do business in connection with such qualification or determination in any jurisdiction. The successful bidder will not offer to sell or solicit any offer to buy the Bonds in any jurisdiction where it is unlawful for such bidder to make such offer, solicitation or sale, and the bidder shall comply with the blue sky and other securities laws and regulations of the states and jurisdictions in which the bidder sells the Bonds.

### **No Litigation and Non-Arbitrage**

The Authority will deliver a certificate stating that no litigation is pending affecting the issuance and sale of the Bonds. The Authority will also deliver an arbitrage certificate covering its reasonable expectations concerning the Bonds and the use of proceeds thereof.

### **Right of Cancellation**

The successful bidder will have the right, at its option, to cancel its purchase of the Bonds if the Authority fails to execute the Bonds and tender the same for delivery within 60 days from the date of the award thereof. In such event, the successful bidder will be entitled to the return of the deposit accompany the bid.

### **Preliminary Official Statement and Final Official Statement**

The Authority has made available a Preliminary Official Statement relating to the Bonds, a copy of which has been posted to [www.munios.com](http://www.munios.com). Such Preliminary Official Statement, together with any



supplements thereto, shall be in form “deemed final” by the Authority for the purposes of SEC Rule 15c2-12(b)(1), but is subject to revision, amendment and completion in a final official statement. The Authority shall deliver, at closing, a certificate, executed by appropriate officers of the Authority acting in their official capacities, to the effect that the facts contained in the Official Statement relating to the Bonds are true and correct in all material respects, and that the Official Statement does not contain any untrue statements of a material fact or omit to state a material fact necessary to make the statement therein, in light of the circumstances under which they were made, not misleading.

The Authority will provide up to 25 copies of the final Official Statement for the Bonds to the successful bidder for the Bonds, without charge, within seven business days after the award of the bid. The successful bidder must notify the Authority through the Municipal Advisor, in writing, within three business days of the award if the bidder requires additional copies of the final Official Statement, which additional copies will be provided at the bidder’s cost.

By making a bid for the Bonds, the successful bidder agrees (1) to disseminate to all members of the underwriting syndicate copies of the final Official Statement, including any supplements prepared by the Authority, (2) to promptly file a copy of the final Official Statement, including any supplements prepared by the City, with the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access System, and (3) to take any and all other actions necessary to comply with applicable SEC rules and MSRB rules governing the offering, sale and delivery of its Bonds to ultimate purchasers.

### **Continuing Disclosure**

In order to assist bidders in complying with Rule 15c2-12(b)(5) promulgated under the Securities Exchange Act of 1934, the Authority will undertake in a Continuing Disclosure Certificate to provide certain annual financial information and Notice of the occurrence of certain events, if material. A description of this undertaking and a form of the Continuing Disclosure Certificate is included in the Preliminary Official Statement. Upon request, a continuing disclosure compliance report (the “Compliance Report”) is available FROM the Municipal Advisor. The Compliance Report covers the timing and content of all material filed by the City and its affiliated entities within the last five years.

### **Ratings**

Standard & Poor’s Ratings Services have assigned to the Bonds the rating shown on the cover page of the Preliminary Official Statement or, if not so indicated, will be available upon request from the Municipal Advisor. Such rating reflects only the views of such organization and explanation of the significance of such rating may be obtained from them as follows: Standard & Poor’s, 55 Water Street, New York, New York 10041, (212) 438-2000. There is no assurance that the rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by rating agency, if, in the judgment of such agency, circumstances so warrant. Any such downward revision or withdrawal of such rating may have an adverse effect on the market price of the Bonds.

## **TERMS OF SALE**

### **Basis of Award**

The Bonds will be awarded to the responsible bidder whose bid produces the lowest true interest cost on the Bonds. The true interest cost specified in any bid will be that rate which, when used in computing the present value of principal and interest to be paid on all Bonds from the expected date of delivery (which is assumed for computational purposes to be September 23, 2015), to their respective maturity dates, or mandatory sinking fund redemption dates in the case of term bonds, produces an



amount equal to the purchase price (including any premium) specified in such bid. For purposes of computing the true interest cost represented by any bid, the purchase price specified in such bid shall be equal to the par amount of the Bonds plus any premium specified in such bid, and the true interest rate shall be calculated by the use of a semiannual interval of compounding interest based on the Interest Payment Dates for the Bonds. In the event of a tied bid, the procedure for determining the winning bid will be the toss of a coin to be conducted by the Authority among such bidders whose bids have produced the tie.

### **All or None Bid**

Any prospective purchaser may submit a bid for the Bonds, provided that if any of the Bonds are bid for, then all of the Bonds must be bid for.

### **Par/Net Premium**

All bids for the Bonds shall be par or net premium bids; no net discount bids for the Bonds will be accepted. Individual maturities of the Bonds may be reoffered at par, a premium or a discount.

### **Form of Bid**

All bids for the Bonds must be unconditional and for not less than all of the Bonds offered for sale. Each bid must be in accordance with the terms and conditions set forth herein. Bids will only be accepted via PARITY® pursuant to this Notice until 10:00 a.m., California Time on the date set forth for receipt of bids. To the extent any instructions or directions set forth in PARITY® conflict with this Notice, the terms of this Notice shall control. For further information about PARITY®, potential bidders may contact the Municipal Advisor, Fieldman, Rolapp & Associates at (949) 660-7300 or PARITY® at (212) 849-5000.

### **Delivery and Payment**

It is estimated that delivery of the Bonds will be made to the Purchaser on or about September 23, 2015. Payment of the purchase price (less the amount of the good faith deposit mentioned below) must be made in funds immediately available to the Authority.

### **Electronic Bids**

Electronic Bids via PARITY® (the "Electronic Bidding System") will be accepted in accordance with this Notice of Inviting Proposals for Purchase of Bonds until 10:00 a.m. Pacific Daylight Time, September 3, 2015, but no bid will be received after this time. To the extent any instructions or directions set forth in Parity® conflict with this Notice of Sale, the terms of this Notice shall control. For further information about PARITY®, potential bidders may contact Fieldman, Rolapp & Associates or PARITY® at 1359 Broadway, 2nd Floor, New York, New York 10018, telephone (212) 849-5000.

### **Warning Regarding Electronic Bids**

THE AUTHORITY WILL ACCEPT BIDS IN ELECTRONIC FORM SOLELY THROUGH PARITY ON THE OFFICIAL BID FORM CREATED FOR THAT PURPOSE. EACH BIDDER SUBMITTING AN ELECTRONIC BID UNDERSTANDS AND AGREES BY DOING SO THAT IT IS SOLELY RESPONSIBLE FOR ALL ARRANGEMENTS WITH PARITY, THAT THE AUTHORITY NEITHER ENDORSES NOR EXPLICITLY ENCOURAGES THE USE OF PARITY, AND THAT

PARITY IS NOT ACTING AS AN AGENT OF THE AUTHORITY. INSTRUCTIONS AND FORMS FOR SUBMITTING ELECTRONIC BIDS MUST BE OBTAINED FROM PARITY, AND THE AUTHORITY ASSUMES NO RESPONSIBILITY FOR ENSURING OR VERIFYING BIDDER COMPLIANCE WITH THE PROCEDURES OF PARITY. THE AUTHORITY SHALL ASSUME THAT ANY BID RECEIVED THROUGH PARITY HAS BEEN MADE BY A DULY AUTHORIZED AGENT OF THE BIDDER.

THE AUTHORITY WILL MAKE ITS BEST EFFORTS TO ACCOMMODATE ELECTRONIC BIDS; HOWEVER THE AUTHORITY, THE MUNICIPAL ADVISOR AND BOND COUNSEL ASSUME NO RESPONSIBILITY FOR ANY ERROR CONTAINED IN ANY BID SUBMITTED ELECTRONICALLY, OR FOR FAILURE OF ANY BID TO BE TRANSMITTED, RECEIVED OR OPENED AT THE OFFICIAL TIME FOR RECEIPT OF BIDS. THE OFFICIAL TIME FOR RECEIPT OF BIDS WILL BE DETERMINED BY THE AUTHORITY AT THE PLACE OF BID OPENING, AND THE AUTHORITY SHALL NOT BE REQUIRED TO ACCEPT THE TIME KEPT BY PARITY AS THE OFFICIAL TIME.

### **Estimate of True Interest Cost**

Bidders are requested to supply a calculation of the true interest cost of the Bonds to the Authority on the basis of their respective bids, which shall be considered as informative only and not binding on either the bidder or the Authority. The true interest cost specified in any bid will be that rate which, when used in computing the present value of all payments of principal and interest to be paid on all Bonds from the Closing Date (which is anticipated to be September 23, 2015) to their respective maturity dates or mandatory sinking fund redemption dates, produces an amount equal to the purchase price (including any premium) specified in such bid.

### **Bid Award Deposit**

The winning bidder will be required to submit a Bid Award Deposit not later than 12:00 p.m. PDT, on September 3, 2015, the winning bidder is required to submit a Bid Award Deposit to the City equal to 1% of the par value of the Bonds which the bidder has been awarded. The Bid Award Deposit must be made in good funds by wire transfer of the required amount to:

Name of Bank:	MUFG Union Bank, N.A. 1980 Saturn Street Monterey Park, California 91755
ABA:	122000496
Account Number:	37130196431
Account Name:	TRUSDG
For Further Credit:	6712145501
Attention:	Ty Jordan

or to such other account as instructed by the Authority in writing. In the event a bidder's Bid Award Deposit is not received by the designated time, the underlying bid may be disqualified at the option of the Authority.

No interest will be paid by the Authority on the amount of the Bid Award Deposit. The proceeds of the Bid Award Deposit of the winning bidder will be applied to the purchase price of the Bonds, or in the event of the failure of a winning bidder to pay for the Bonds in compliance with the terms of the bid,

at the option of the Authority, its Bid Award Deposit may be retained as liquidated damages, as partial payment of actual damages or as security for any other remedy available to the Authority.

### **Underwriting Group**

Each bidder is requested to furnish the names of all joint managers participating in the bid. The successful bidder will be required to submit a list of all syndicate members in addition to the managers not later than 24 hours after receiving a verbal award.

### **No Municipal Bond Insurance**

THE SUCCESSFUL BIDDER SHALL NOT PURCHASE MUNICIPAL BOND INSURANCE IN CONNECTION WITH THE INITIAL OFFERING OF THE BONDS.

### **Additional Information**

Copies of the Resolutions, this Official Notice of Sale and the Preliminary Official Statement will be furnished to any potential bidder upon request made to the Authority's Municipal Advisor.

### **Right to Modify or Amend**

The Authority reserves the right to modify or amend this Official Notice of Sale including, but not limited to the right to adjust and change the aggregate principal amount of the Bonds being offered. Such notifications or amendments shall be made not later than 2:00 p.m. Pacific Standard Time on the business day immediately preceding the day of the bid opening and communicated through Thomson Municipal News and by facsimile transmission to any qualified bidder timely requesting such notice.

### **Right to Reject Bids or Waive Irregularities**

The Authority reserves the right, in its discretion, to reject any and all bids and, to the extent permitted by law, to waive any irregularity or informality in any bid.

### **Right to Cancel, Postpone, or Reschedule Sale:**

The Authority reserves the right to cancel, postpone or reschedule the sale of the Bonds upon notice given through the Bloomberg News Service, Thompson Municipal Market Monitor ([www.tm3.com](http://www.tm3.com)) or *The Bond Buyer* not less than eighteen (18) hours prior to the time bids are to be received. If the sale is postponed, bids will be received at the place set forth above, at the date and time as the Authority shall determine. Notice of the new sale date and time, if any, will be given through Bloomberg News Service, Thompson Municipal Market Monitor ([www.tm3.com](http://www.tm3.com)) or *The Bond Buyer* no later than eighteen (18) hours prior to the new time bids are to be received. As an accommodation to bidders, telephone or fax notice of the postponement of the sale date and of the new sale date will be given to any bidder requesting such notice from the Municipal Advisor. Failure of any bidders to receive such notice shall not affect the legality of the sale.

Dated: August 27, 2015

ENCINITAS PUBLIC FINANCING AUTHORITY

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

NEW ISSUE – BOOK-ENTRY ONLY

RATINGS: S&P: “AA+”

See “RATINGS” herein.

*In the opinion of Best Best & Krieger LLP, Riverside, California, Bond Counsel, subject, however, to certain qualifications described herein, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes, and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, although for the purpose of computing the federal alternative minimum tax imposed on certain corporations, such interest is taken into account in determining certain income and earnings. Interest on the Bonds and the Series B Bonds is exempt from State of California personal income taxes. See the caption “TAX MATTERS.”*

**\$15,860,000\***

**ENCINITAS PUBLIC FINANCING AUTHORITY  
2015 LEASE REVENUE REFUNDING BONDS  
SERIES A  
(LIBRARY PROJECT)**

**Dated:** Date of Delivery

**Due:** October 1, as shown on inside cover

The 2015 Lease Revenue Refunding Bonds, Series A (Library Project) (the “Bonds”) of the Encinitas Public Financing Authority (the “Authority”) will be issued as fully registered bonds in book-entry form only, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”), New York, New York. Purchasers will not receive certificates representing their interest in the Bonds. Individual purchases will be in principal amounts of \$5,000 or in any integral multiple of \$5,000. Interest payable on the Bonds will be payable on October 1 and April 1 of each year, commencing April 1, 2016, and principal payable on the Bonds will be paid by MUFG Union Bank, N.A., Los Angeles, California, as trustee for the Bonds (the “Trustee”), to DTC for subsequent disbursement to DTC Participants who will remit such payments to the beneficial owners of the Bonds.

The Bonds are being issued by the Authority for the purpose of refinancing the construction of the City’s public library (the “Project”), and to pay costs of issuance.

The Bonds are limited obligations of the Authority payable primarily from and secured by certain revenues (the “Revenues”) consisting of certain Lease Payments with respect to the Leased Premises (as described herein) by the City of Encinitas (the “City”) pursuant to an Amended and Restated Lease Agreement, dated as of September 1, 2015 (the “Lease Agreement”) between the City and the Authority. The Lease Payments are structured to produce Revenues sufficient to pay principal of and interest on the Bonds when due. The City has covenanted in the Lease Agreement to make all Lease Payments provided for therein, to include all such payments in its annual budgets, and to make the necessary annual appropriations for such Lease Payments. The City’s obligation to make Lease Payments is subject to abatement in the event of damage to, destruction or condemnation of, or title defects relating to, the Leased Premises described herein. See “SECURITY FOR THE BONDS” and “RISK FACTORS” herein.

The City has the right to incur other obligations payable from its general revenues without the consent of the Owners of the Bonds. The Revenues are to be received by the Authority and deposited pursuant to an Indenture of Trust, dated as of September 1, 2015 (the “Indenture”) between the City and the Trustee.

The Bonds are subject to redemption prior to maturity as described herein. See “THE BONDS - Redemption” herein.

This cover page contains information for general reference only. It is not a summary of the security or terms of this issue. Investors must read the entire Official Statement, including the section entitled “RISK FACTORS,” for a discussion of special factors which should be considered, in addition to the other matters set forth herein, in considering the investment quality of the Bonds. Capitalized terms used on this cover page and not otherwise defined shall have the meanings set forth herein.

THE BONDS ARE LIMITED OBLIGATIONS OF THE AUTHORITY PAYABLE SOLELY FROM REVENUES AND OTHER FUNDS HELD UNDER THE INDENTURE. THE BONDS ARE NOT A DEBT, OBLIGATION OR LIABILITY OF THE CITY, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS (OTHER THAN THE AUTHORITY), NOR DO THEY CONSTITUTE A PLEDGE OF THE FAITH AND CREDIT OR THE TAXING POWER OF ANY OF THE FOREGOING (INCLUDING THE AUTHORITY AND THE CITY). THE AUTHORITY DOES NOT HAVE ANY TAXING POWER. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. THE CITY’S OBLIGATION TO MAKE LEASE PAYMENTS IS AN OBLIGATION PAYABLE FROM THE CITY’S GENERAL FUND OR ANY OTHER SOURCE OF FUNDS LEGALLY AVAILABLE TO THE CITY TO MAKE LEASE PAYMENTS. THE OBLIGATION OF THE CITY TO MAKE LEASE PAYMENTS DOES NOT CONSTITUTE A DEBT OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMIT OR RESTRICTION OR ANY OBLIGATION FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION, OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION.

Bids for the purchase of the Bonds will be received by the City on September 3, 2015, electronically only, through the I-Deal LLC BiDCOMP™/PARITY® system, until 10:00 A.M., Pacific Daylight time. The Bonds will be sold pursuant to the terms of sale set forth in the Official Notice of Sale, dated August 27, 2015.

The Bonds are offered, when, as and if issued and received by the Underwriter, subject to the approval of legality by Best Best & Krieger LLP, Riverside, California, Bond Counsel. Certain legal matters will be passed upon for the Authority and the City by the City Attorney and Best Best & Krieger LLP, Disclosure Counsel. It is expected that the Bonds, in book-entry form, will be available through the facilities of DTC in New York, New York for delivery on or about September 23, 2015.

Dated: \_\_\_\_\_, 2015

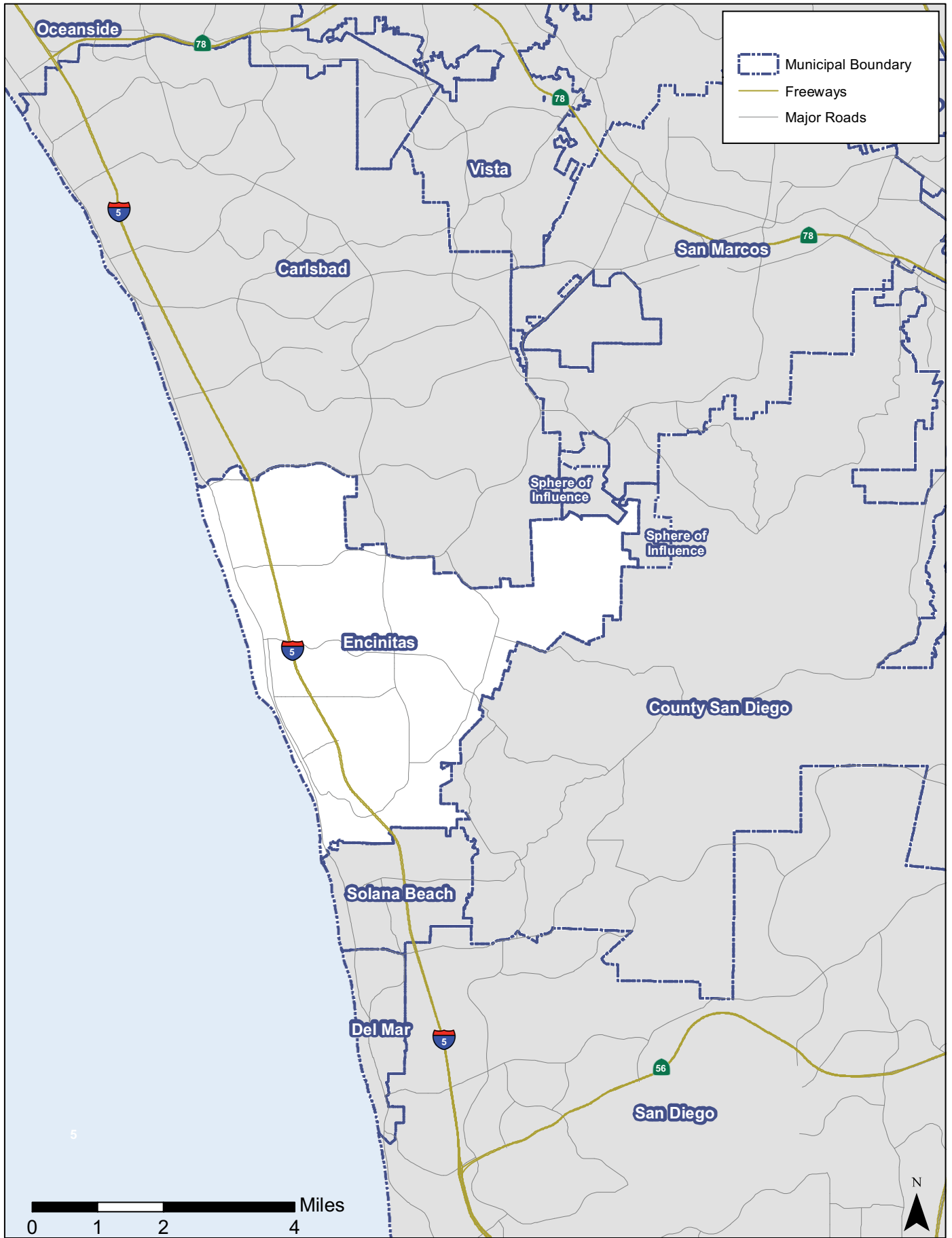
\* Preliminary, subject to change

**\$15,860,000\***  
**MATURITY SCHEDULE**

Maturity Date (October 1)	Principal Amount	Interest Rate	Yield	Price	CUSIP®
------------------------------	---------------------	------------------	-------	-------	--------

Copyright 2015. CUSIP Global Services. All rights reserved. CUSIP is a registered trademark of the American Bankers Association. CUSIP Global Services (CGS) is managed on behalf of the American Bankers Association by S&P Capital IQ. CUSIP numbers herein are provided by CGS, and are set forth herein for the convenience of reference only. None of the Authority, the City, nor the Underwriter take any responsibility for the selection or accuracy of such numbers set forth herein

# City of Encinitas Location Map





## **ENCINITAS PUBLIC FINANCING AUTHORITY**

### **AUTHORITY BOARD OF DIRECTORS**

Kristin Gaspar, Chairperson  
Catherine S. Blakespear, Vice Chairperson  
Mark Muir, Member  
Lisa Shaffer, Member  
Tony Kranz, Member

### **ENCINITAS CITY COUNCIL**

Kristin Gaspar, Mayor  
Catherine S. Blakespear, Deputy Mayor  
Mark Muir, Council Member  
Lisa Shaffer, Council Member  
Tony Kranz, Council Member

### **AUTHORITY/CITY STAFF**

Karen Brust, Executive Director/City Manager  
Tim Nash, Treasurer/Finance Director  
Kathy Hollywood, Secretary/City Clerk  
Glenn Sabine, Authority Counsel/City Attorney

### **SPECIAL SERVICES**

#### **Bond Counsel & Disclosure Counsel**

Best Best & Krieger LLP  
Riverside, California

#### **Municipal Advisor**

Fieldman, Rolapp & Associates  
Irvine, California

#### **Trustee**

MUFG Union Bank, N.A.  
Los Angeles, California

No dealer, broker, salesperson or other person has been authorized by the City, the Authority or the Underwriter to give any information or to make any representations, other than those contained in this Official Statement, and if given or made, such information or representation must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information and expressions of opinion in this Official Statement are subject to change without notice, and neither the delivery of this Official Statement nor any sale of the Bonds shall under any circumstances create any implication that there has been no change in the affairs of the City or the Authority or other matters described in this Official Statement since the date hereof.

CERTAIN STATEMENTS CONTAINED IN THIS OFFICIAL STATEMENT REFLECT NOT HISTORICAL FACTS BUT FORECASTS AND "FORWARD-LOOKING STATEMENTS." NO ASSURANCE CAN BE GIVEN THAT THE FUTURE RESULTS DISCUSSED IN THIS OFFICIAL STATEMENT WILL BE ACHIEVED, AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE FORECASTS DESCRIBED HEREIN. IN THIS RESPECT, THE WORDS "ESTIMATE," "PROJECT," "ANTICIPATE," "EXPECT," "INTEND," "BELIEVE" AND SIMILAR EXPRESSIONS ARE INTENDED TO IDENTIFY FORWARD-LOOKING STATEMENTS. ALL PROJECTIONS, FORECASTS, ASSUMPTIONS, EXPRESSIONS OF OPINIONS, ESTIMATES AND OTHER FORWARD-LOOKING STATEMENTS ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY THE CAUTIONARY STATEMENTS SET FORTH IN THIS OFFICIAL STATEMENT.

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON AN EXEMPTION CONTAINED IN SUCH ACT. THE BONDS HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE.

This Official Statement and the information contained herein are subject to completion or amendment without notice. These securities may not be sold nor may an offer to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

IN CONNECTION WITH THE OFFERING OF THE BONDS, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE 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 BONDS TO CERTAIN DEALERS AND DEALER BANKS AND BANKS ACTING AS AGENT AT PRICES LOWER THAN THE PUBLIC OFFERING PRICE STATED ON THE INSIDE FRONT COVER PAGE OF THIS OFFICIAL STATEMENT AND SAID PUBLIC OFFERING PRICE MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITER.

*The City maintains a website, with certain information relating to the Authority contained therein. However, the information presented on such website is not part of this Official Statement and should not be relied upon in making an investment decision with respect to the Bonds.*

## TABLE OF CONTENTS

INTRODUCTION.....	1	Secondary Market Risk.....	20
General.....	1	Substitution and Removal of Leased	
The Authority and the City .....	1	Premises.....	20
Security for the Bonds .....	2	No Liability of Authority to the Owners.....	21
Abatement.....	2	CONSTITUTIONAL AND STATUTORY	
Redemption.....	2	LIMITATIONS ON TAXES AND	
Continuing Disclosure .....	3	APPROPRIATIONS .....	21
Forward-Looking Statements.....	3	Limitations on Revenues.....	21
Summary of Terms .....	3	Expenditures and Appropriations.....	23
THE AUTHORITY.....	3	Voter Initiatives .....	23
THE CITY.....	3	Unitary Property .....	24
THE FINANCING PLAN.....	5	Future Initiatives .....	25
Refunding 2006 Lease Revenue Bonds .....	5	TAX MATTERS .....	26
The Library Project.....	5	CONTINUING DISCLOSURE .....	27
SOURCES AND USES OF BOND		CERTAIN LEGAL MATTERS .....	28
PROCEEDS .....	5	LITIGATION .....	28
Sources and Uses of Funds .....	5	MUNICIPAL ADVISOR .....	28
Debt Service Schedule .....	6	PROFESSIONAL FEES .....	28
THE LEASED PREMISES.....	7	FINANCIAL STATEMENTS.....	28
The Leased Premises .....	7	RATINGS.....	29
Substitution of Leased Premises .....	7	UNDERWRITING.....	29
THE BONDS .....	9	MISCELLANEOUS.....	30
Description of the Bonds .....	9		
Redemption.....	9	APPENDIX A – CITY FINANCIAL,	
Book-Entry System.....	10	ECONOMIC AND DEMOGRAPHIC	
SECURITY FOR THE BONDS .....	12	INFORMATION.....	A-1
General.....	12	APPENDIX B – CITY’S AUDITED	
Lease Payments .....	12	FINANCIAL STATEMENTS FOR	
Additional Bonds .....	13	FISCAL YEAR 2013/14 .....	B-1
Appropriation; Use of Leased Premises.....	13	APPENDIX C – SUMMARY OF PRINCIPAL	
Abatement.....	14	LEGAL DOCUMENTS.....	C-1
Action on Default.....	14	APPENDIX D – FORM OF OPINION OF	
Miscellaneous Rent.....	14	BOND COUNSEL .....	D-1
Insurance .....	15	APPENDIX E – FORM OF CONTINUING	
No Reserve Account .....	15	DISCLOSURE AGREEMENT.....	E-1
RISK FACTORS.....	16	APPENDIX F – BOOK-ENTRY PROVISIONS..	F-1
No Tax Pledge .....	16		
Appropriation.....	16		
No Limit on Additional General Fund			
Obligations .....	16		
Abatement and Eminent Domain.....	16		
No Reserve Fund .....	17		
Sufficiency of Lease Payments.....	17		
Limitation on Enforcement of Remedies;			
No Acceleration.....	17		
Seismic, Topographic and Climatic			
Conditions .....	17		
Hazardous Substances.....	18		
Public Debt Burden on Leased Premises .....	18		
Risk of Uninsured Loss.....	19		
Property Tax Allocation by the State;			
Changes in Law .....	19		
Bankruptcy and Foreclosure .....	19		
Federal Tax-Exempt Status of the Bonds .....	20		

**OFFICIAL STATEMENT**  
**\$15,860,000\***  
**ENCINITAS PUBLIC FINANCING AUTHORITY**  
**2015 LEASE REVENUE REFUNDING BONDS**  
**SERIES A**  
**(LIBRARY PROJECT)**

**INTRODUCTION**

**General**

This Official Statement, including the cover page and appendices, is provided to furnish information in connection with the sale by the Encinitas Public Financing Authority (the “Authority”) of 2015 Lease Revenue Refunding Bonds, Series A (Library Project) (the “Bonds”). The Bonds are being issued pursuant to the Constitution and laws of the State of California (the “State”), including Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the “JPA Law”). The Bonds are issued pursuant to an Indenture of Trust, dated as of September 1, 2015 (the “Indenture”), between the Authority and MUFG Union Bank, N.A. (the “Trustee”).

Proceeds of the Bonds will be used to refinance the construction of the City’s public library (the “Project”) as described herein under “THE FINANCING PLAN,” and to pay costs of issuance of the Bonds. See “THE FINANCING PLAN,” “THE LEASED PREMISES” and “SOURCES AND USES OF BOND PROCEEDS” herein.

The Bonds are limited obligations of the Authority payable primarily from and secured by certain revenues (the “Revenues”) consisting of certain Lease Payments to be paid by the City pursuant to an Amended and Restated Lease Agreement (the “Lease Agreement”), dated as of September 1, 2015, between the City and the Authority, for certain real property and the improvements thereon (the “Leased Premises”). See “THE LEASED PREMISES” herein. The City is also required to pay any taxes, assessment charges, utility charges, maintenance and repair costs of the Leased Premises. The Lease Payments are structured to produce Revenues sufficient to pay principal of and interest on the Bonds when due. The City has covenanted in the Lease Agreement to make all Lease Payments provided for therein, to include all such payments in its annual budgets, and to make the necessary annual appropriations for such rental payments. The City’s obligations to make Lease Payments is subject to abatement in the event of damage to, destruction or condemnation of, or title defects relating to, the Leased Premises, as described herein. (See “SECURITY FOR THE BONDS” herein). The Revenues are to be received by the Authority and deposited pursuant to the Indenture.

Terms used in this Official Statement and not otherwise defined shall have the meaning given to them in APPENDIX C attached hereto.

**The Authority and the City**

The City is located in the northern coastal area of San Diego County (the “County”) overlooking the Pacific Ocean. The City encompasses approximately 21.4 square miles and is located 30 miles north of the City of San Diego. The California Department of Finance has estimated that the City has a population of approximately 61,518, as of January 1, 2015. For other selected information concerning the City, see “THE CITY” herein and APPENDIX A – “CITY FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION” and APPENDIX B – “CITY’S AUDITED FINANCIAL STATEMENTS FOR FISCAL YEAR 2013/14” attached hereto.

---

\* Preliminary, subject to change.

The Authority was established pursuant to a Joint Exercise of Powers Agreement dated November 6, 1991, between the City, the Encinitas Fire Protection District, the Encinitas Sanitation District (both of which have since been absorbed into the City), the Cardiff Sanitation District and the San Dieguito Water District (the "Members"). The Authority was created for the purpose of providing financing for public capital improvements for the Members, including by issuing its obligations and making loans to the Members. See "THE CITY" herein.

### **Security for the Bonds**

The Bonds are payable solely from, and are secured by, the Revenues (as defined under "SECURITY FOR THE BONDS" herein), which primarily consist of the Lease Payments. The Lease Payments are payable for the use of the Leased Premises, together with the capital improvements located thereon, leased to the City pursuant to the Lease Agreement, from any legally available funds of the City. The City has covenanted in the Lease Agreement to include the Lease Payments in its annual budgets. The City has further covenanted to make the necessary annual appropriations for all such Lease Payments, and said covenants have been deemed to be duties imposed by law. Any legislative enactment or State constitutional amendment having the effect of reducing the property tax rate would necessarily reduce the amount of general revenues available to the City to pay the Lease Payments. Likewise, broadened property tax exemptions could have a similar effect. See "RISK FACTORS" and "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS" herein for discussion of certain other matters which may affect the collection of Revenues. The Authority does not have any power to levy and collect taxes.

The City has the right to incur other obligations payable from its general revenues without the consent of the Owners of the Bonds. In addition, the Indenture allows the Authority to issue certain additional obligations secured by the Revenues, and the Lease Agreement allows the City to incur other obligations secured by excess value of the Leased Premises. See "SECURITY FOR THE BONDS" herein.

THE BONDS ARE NOT A DEBT OF THE CITY, THE STATE OR ANY OF THEIR POLITICAL SUBDIVISIONS (OTHER THAN THE AUTHORITY). THE BONDS ARE SPECIAL OBLIGATIONS OF THE AUTHORITY AND ARE NOT OBLIGATIONS OF THE CITY. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OR ANY OTHER POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE BONDS. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION.

### **Abatement**

Except to the extent of amounts on deposit in the Bond Fund, or otherwise available from an insurance or eminent domain award, the Lease Payments due under the Lease Agreement and, correspondingly, the amount available to pay the principal of and interest on the Bonds, will be subject to abatement during any period in which, by reason of damage or destruction or eminent domain, there is substantial interference with the use and possession by the City of the Leased Premises. See "RISK FACTORS - Abatement and Eminent Domain" herein. Amounts on deposit in the Bond Fund constitute a special fund for payment of Lease Payments, and shall be available for such Lease Payments in the event there is substantial interference with the use and possession of the Leased Premises.

### **Redemption**

The Bonds are subject to optional redemption, mandatory sinking fund redemption, and special mandatory redemption as described herein.

## **Continuing Disclosure**

The City has covenanted for the benefit of owners of the Bonds, on behalf of itself and the Authority, to provide certain financial information and operating data relating to the City and the Authority by not later than March 1 of each year, commencing with the report for the 2014/15 Fiscal Year (the “Annual Report”) and to provide notices of the occurrence of certain enumerated events. The Annual Report and notices of material events will be filed by the City with the Municipal Securities Rulemaking Board (the “MSRB”). These covenants have been made in order to assist the Underwriter in complying with Securities Exchange Commission Rule 15c2-12(b)(5) (the “Rule”). The specific nature of the information to be contained in the Annual Report or the notices of material events by the City is summarized in APPENDIX E – “FORM OF CONTINUING DISCLOSURE AGREEMENT.” The City and its related entities are currently in compliance with all continuing disclosure obligations, however, prior instances of non-compliance are described herein under “CONTINUING DISCLOSURE.”

## **Forward-Looking Statements**

This Official Statement (including the appendices hereto) contains certain forward-looking statements (collectively, the “Forward-Looking Statements”). All statements other than statements of historical facts included in this Official Statement, are Forward-Looking Statements. Although the Authority and the City believe that the expectations reflected in such Forward-Looking Statements are reasonable, no one can be given assurance that such statements will prove to be correct. Important factors which could cause actual results to differ materially from expectations of the Authority or the City (collectively, the “Cautionary Statements”) are disclosed in this Official Statement. All Forward-Looking Statements attributable to the Authority or the City are expressly qualified in their entirety by the Cautionary Statements.

## **Summary of Terms**

Brief descriptions of the Bonds, the Indenture, the Lease Agreement, the Authority, the City and the Leased Premises are included in this Official Statement. Such descriptions do not purport to be comprehensive or definitive. All references herein to the Indenture, the JPA Law and the Constitution and the laws of the State, as well as the proceedings of the City with respect to the Leased Premises and the Bonds, are qualified in their entirety by reference to such documents. References herein to the Bonds are qualified in their entirety by reference to the form thereof included in the Indenture.

Copies of the documents described herein will be available at the office of the City Finance Director, 505 South Vulcan Avenue, Encinitas, California 92024.

## **THE AUTHORITY**

The Encinitas Public Financing Authority was established pursuant to a Joint Exercise of Powers Agreement dated November 6, 1991, by and among the City, the Cardiff Sanitation District, the Encinitas Fire Protection District, the Encinitas Sanitary District and the San Dieguito Water District in accordance with the provisions of the JPA Law. The Authority was created for the purpose of providing financing for public capital improvements for the City and the Members through the acquisition by the Authority of such public capital improvements and/or the purchase by the Authority of local obligations within the meaning of the JPA Law. Under the JPA Law, the Authority has the power to issue bonds to pay the costs of any public capital improvement. The Cardiff Sanitation District, the Encinitas Fire Protection District and the Encinitas Sanitation District have since been absorbed by the City and are treated as separate accounting divisions, the current members of the Authority are the City and the San Dieguito Water District.

## **THE CITY**

The City was incorporated in October, 1986. Topography of the surrounding area varies from broad coastal plains to fertile inland valleys backed up by mountain ranges to the east. The climate is equable in the



coastal and valley regions. The community has long, dry summers and mild temperatures, with mean temperatures of 70 degrees and an average annual rainfall of 10.36 inches.

The City is the ninth largest in population in the County. Most of the land in the City is zoned residential. The City is a general law city and operates under a council-manager form of government. **The City maintains a website at [www.cityofencinitas.org](http://www.cityofencinitas.org). However, the information presented there is not part of this Official Statement, is not incorporated by reference herein and should not be relied upon in making an investment decision with respect to the Bonds.**

For other selected information concerning the City, see “THE CITY” herein and APPENDIX A – “CITY FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION” and APPENDIX B – “CITY’S AUDITED FINANCIAL STATEMENTS FOR FISCAL YEAR 2013/14” attached hereto.

## THE FINANCING PLAN

### Refunding 2006 Lease Revenue Bonds

The Authority is selling the Bonds, in part, to provide moneys (together with other available funds of the Authority) necessary to currently refund and defease its \$16,975,000 outstanding 2006 Lease Revenue Bonds, Series A (Library Construction Project) (the “Prior Bonds”) in whole. A portion of the proceeds of the Bonds, along with certain remaining funds from the Prior Bonds, will be transferred to MUFG Union Bank, N.A., the trustee for the Prior Bonds (the “Prior Trustee”). Proceeds deposited with the Prior Trustee will be used by the Prior Trustee to pay the redemption price of the Prior Bonds, plus accrued interest, on October 1, 2015. See “ESTIMATED SOURCES AND USES OF FUNDS” herein. Upon deposit of such proceeds and other moneys with the Prior Trustee, the Prior Bonds will no longer be deemed outstanding.

The moneys and securities held by the Prior Trustee are pledged to the payment of the Prior Bonds, and are not available to pay principal of or interest on the Bonds.

### The Library Project

The proceeds of the Prior Bonds were used to construct a new 26,000 square foot library. The library is located on 2.1 acres immediately above the City’s civic center and overlooks the Pacific Ocean. The library is operated by the County of San Diego’s library services and serves as a branch in the county library system. The library replaced a much smaller library that was previously located on the site. The library was completed at a cost of \$20,000,000 in the fall of 2007.

## SOURCES AND USES OF BOND PROCEEDS

### Sources and Uses of Funds

The table below sets forth the estimated sources and uses of funds with respect to the Bonds.

<b><u>Source of Funds</u></b>	<b><u>Total</u></b>
Principal Amount of Bonds	
Plus: Original Issue Premium	
Plus: Prior Bonds Proceeds	
Total	
<b><u>Uses of Funds</u></b>	
Escrow for Prior Bond	
Underwriter’s Discount	
Costs of Issuance Fund <sup>(1)</sup>	
Total	

<sup>(1)</sup> Costs of Issuance includes printing costs, fees of rating agency, municipal advisor, bond counsel and disclosure counsel, trustee’s fees and expenses and other costs relating to the issuance of the Bonds.

## Debt Service Schedule

The following table presents the debt service schedule for the Bonds based on the maturity date and interest rate set forth on the cover of this Official Statement, assuming no redemptions other than mandatory sinking fund redemptions are made.

### ENCINITAS PUBLIC FINANCING AUTHORITY DEBT SERVICE SCHEDULE

<b>Bond Year Ending (<u>October 1</u>)</b>	<b><u>Principal</u></b>	<b><u>Interest</u></b>	<b><u>Total Annual Debt Service</u></b>
--	-------------------------	------------------------	---

## **THE LEASED PREMISES**

### **The Leased Premises**

The Leased Premises under the Lease Agreement consist of the library and the 2.1 acres on which it is located. The land consists of two parcels, one owned by the City and one owned by the County of San Diego (the "County Parcel"). Of the 2.1 acres, the County Parcel is 0.98 acres and had an estimated value of \$980,000.00 in 2003. The City has possession of the County Parcel pursuant to a Ground Lease Agreement dated March 11, 2003 (the "Ground Lease"). The Ground Lease term is for 40 years from the date of demolition of the old library. Upon expiration of the term of the Ground Lease, fee title of the County Parcel will transfer to the City. The City may sublease the County Parcel with the written approval of the County as provided in the Ground Lease. The Ground Lease prohibits the County Parcel from being used for purposes other than a public library. The County will provide library services at the new library pursuant to a services agreement (the "Services Agreement"). The Lease Agreement for the financing also prohibits the use of the Leased Premises for anything other than public library purposes. Should the City cause a breach of the Ground Lease or terminate the Services Agreement, the Ground Lease obligates the City to purchase the County Parcel. The Lease Agreement permits the City to substitute other property of the City in the event of the exercise of any remedies under the Lease Agreements which would cause a breach of the Ground Lease. See "RISK FACTORS" herein.

### **Substitution of Leased Premises**

Pursuant to the Lease Agreement, the City has the option at any time to substitute other land, facilities or improvements (the "Substitute Leased Premises") for the Leased Premises or any portion thereof (the "Former Leased Premises") or to release a portion of the Leased Premises (the "Released Leased Premises") from the lien of the Lease Agreement, provided that the City shall satisfy all of the following requirements:

- (a) The City shall provide written notification of such substitution or release to the Trustee and the Authority;
- (b) The City shall take all actions and shall execute all documents required to subject the Substitute Leased Premises to the terms and provisions of the Lease Agreement, including the filing with the Authority and the Trustee of an amended Exhibit A to the Lease Agreement which adds thereto a description of the Substitute Leased Premises and deletes therefrom the description of the Former Leased Premises or the Released Leased Premises, as applicable;
- (c)
  - (i) In the case of a substitution, the City shall determine and certify to the Authority and the Trustee that the fair rental value of the Substitute Leased Premises is at least equal to the fair rental value of the Former Leased Premises and that the Substitute Leased Premises is essential to the governmental functions of the City;
  - (ii) In the case of a release, the City shall determine and certify to the Authority and the Trustee that the fair rental value of the remaining Leased Premises after removal of the Released Leased Premises is at least equal to the then remaining Lease Payments;
- (d) In the case of a substitution, the City shall certify in writing to the Authority and the Trustee that the Substitute Leased Premises are essential to the governmental function of the City and constitute property which the City is permitted to lease under the laws of the State;
- (e) In the case of a substitution, the City shall certify in writing to the Authority and the Trustee that the estimated useful life of the Substitute Leased Premises at least extends to the date on which the final Lease Payment becomes due and payable;

(f) In the case of a substitution, the City shall obtain a ALTA policy of title insurance with respect to any real property portion of the Substitute Leased Premises;

(g) In the case of a substitution, the substitution of the Substitute Leased Premises shall not cause the City to violate any of its covenants, representations and warranties made in the Lease Agreement; and

(h) The City shall obtain and cause to be filed with the Trustee and the Authority an opinion of Bond Counsel stating that such substitution or release is permitted and does not cause interest on the Series A Bonds to become includable in the gross income of the Bond Owners for federal income tax purposes.

From and after the date on which all of the foregoing conditions precedent to such substitution or release are satisfied, the Lease Agreement shall cease with respect to the Former Leased Premises or Released Leased Premises, as applicable, and shall be continued with respect to the Substitute Leased Premises and the remaining Leased Premises. The City shall not be entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such substitution or release.

In addition, the Lease Agreement may be amended to allow the City to pay additional rental payments for the purpose of securing additional obligations of the Authority, to the extent of excess value of the Leased Premises. See "SECURITY FOR THE BONDS" herein.

## THE BONDS

### Description of the Bonds

The Bonds will be issued only in the form of fully registered Bonds without coupons, in denominations of \$5,000 or any integral multiple thereof. The Bonds will be dated the date of delivery to the Underwriter, will mature on October 1 in the years and in the respective principal amounts, and will bear interest at the respective rates per annum, all as set forth on the inside front cover hereof. Interest on the Bonds will be paid on April 1 and October 1 of each year, commencing April 1, 2016, by check mailed on the Interest Payment Date to the registered owners of the Bonds as of the applicable Record Date (the fifteenth day of the month preceding each Interest Payment Date); provided however, that payment of interest may be by wire transfer in immediately available funds to an account in the United States of America to any Owner of Bonds in the aggregate principal amount of \$1,000,000 or more who shall furnish written wire instructions to the Trustee at least five (5) days before the applicable Record Date.

The principal of each Bond will be payable upon the surrender of such Bond, at maturity or upon redemption prior to maturity, at the principal corporate trust office of the Trustee in Los Angeles, California.

### Redemption

*Optional Redemption.\** The Bonds maturing on or before October 1, 2025 shall not be subject to redemption prior to their respective stated maturities. The Bonds maturing on or after October 1, 2026, shall be subject to redemption at the option of the Authority as a whole or in part, on any date on or after October 1, 2025, from any available source of funds, at a redemption price equal to the principal amount of the Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.

*Sinking Account Redemption.* The Term Bonds are subject to mandatory redemption, in part by lot, from Sinking Account payments set forth in the following schedules commencing on October 1, \_\_\_\_ with respect to Term Bonds maturing October 1, \_\_\_\_, and each respective October 1 thereafter at a redemption price equal to the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption; provided, however, that if some but not all of the Term Bonds have been redeemed pursuant to optional or special mandatory redemption, the total amount of Sinking Account payments to be made subsequent to such redemption shall be reduced in an amount equal to the principal amount of the Term Bonds so redeemed by reducing each such future Sinking Account payment on a pro rata basis (as nearly as practicable) in integral multiples of \$5,000, as shall be designated pursuant to written notice filed by the Authority with the Trustee.

#### Term Bonds Maturing October 1, \_\_\_\_

**Mandatory  
Sinking Fund  
Redemption Date  
(October 1)**

**Principal  
Amount  
to Be Redeemed**

---

\* Preliminary, subject to change.



In lieu of such redemption, the Trustee may apply amounts in the Sinking Account to the purchase of Term Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as may be directed by the Authority prior to the selection of Bonds for redemption, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Term Bonds, as set forth in a Written Request of the Authority.

*Special Mandatory Redemption From Insurance or Condemnation Proceeds.* The Bonds shall also be subject to redemption as a whole or in part on any date, from Net Proceeds required to be used for such purpose as provided in the Indenture, at a redemption price equal to the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium. SEE, APPENDIX C – “SUMMARY OF PRINCIPAL LEGAL DOCUMENTS,” for information regarding the use of insurance or condemnation proceeds to prepay lease payments.

*Selection of Bonds for Redemption.* Whenever provision is made for the redemption of less than all of the Bonds, the Trustee shall select the Bonds to be redeemed from all Bonds or such given portion thereof not previously called for redemption from such maturities as shall be set forth in a Written Request of the Authority filed with the Trustee, or in the absence of such designation of maturities by the Authority, then on a pro rata basis among maturities, and in any case, by lot within a maturity in any manner which the Trustee in its sole discretion shall deem appropriate and fair.

*Notice of Redemption.* Notice of redemption shall be mailed by first class mail, postage prepaid, not less than thirty (30) nor more than sixty (60) days before any redemption date, to the respective Owners of any Bonds designated for redemption at their addresses appearing on the Registration Books. Each notice of redemption shall state the date of the notice, the redemption date, the place or places of redemption, the series of Bonds to be redeemed, whether less than all of the Bonds (of such series and maturity or all Bonds of a single maturity) are to be redeemed, the CUSIP numbers and, if less than all of the Bonds of a maturity are to be redeemed, Bond numbers of the Bonds to be redeemed, the maturity or maturities of the Bonds to be redeemed and in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Notice of redemption shall be given only if moneys sufficient to pay the Redemption Price are on deposit with the Trustee or available for such purpose on the date that notice of redemption is given or if such notice expressly states that such redemption is conditional on receipt by the Trustee of such sufficient moneys. Each such notice shall also state that on the redemption date there will become due and payable on each of said Bonds the redemption price thereof, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered. Neither the failure to receive any notice nor any defect therein shall affect the proceedings for such redemption or the cessation of accrual of interest from and after the redemption date. See “Book-Entry System” below.

*Effect of Redemption.* Notice of redemption having been duly given, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under the Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

### **Book-Entry System**

So long as Cede & Co. is the registered owner of the Bonds, transfer or exchange of Certificates may only be through the facilities of DTC. See APPENDIX F with respect to DTC procedures for transfer and exchange of ownership interests in the Bonds. DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered bonds registered in the name of Cede & Co., (DTC’s partnership nominee). One fully-registered Bond will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC. See APPENDIX F – “BOOK-ENTRY PROVISIONS” herein.

The Authority, the City and the Trustee cannot and do not give any assurances that DTC, DTC Participants or others will distribute payments of principal, interest or premium with respect to the Bonds paid to DTC or its nominee as the registered owner, or will distribute any redemption notices or other notices, to the Beneficial Owners, or that they will do so on a timely basis or will serve and act in the manner described in this Official Statement. The Authority, the City and the Trustee are not responsible or liable for the failure of DTC or any DTC Participant to make any payment or give any notice to a Beneficial Owner with respect to the Bonds or an error or delay relating thereto.

## SECURITY FOR THE BONDS

### General

The Indenture provides that, subject to certain rights of the Trustee, the Bonds are equally and ratably payable from and secured by a first lien on and pledge of all Revenues and a pledge of all of the moneys held in the Interest Account, the Principal Account and the Sinking Account, including all amounts derived from the investment of such moneys. "Revenues," as defined in the Indenture, generally means (a) all amounts received by the Authority or the Trustee pursuant to or with respect to the Lease Agreement, including, without limiting the generality of the foregoing, all of the Lease Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), but excluding any amounts payable under Section 4.8(d) of the Lease Agreement; and (b) all interest, profits or other income derived from the investment of amounts in any fund or account established pursuant to the Indenture. The principal payable with respect to the Lease Payments is \$\_\_\_\_\_.

The City is obligated to pay Lease Payments under the Lease Agreement from any legally available moneys, including its General Fund. Under California law, the obligation of the City to make Lease Payments is contingent upon the availability of the Leased Premises for use and occupancy by the City. See "Abatement" below. See "THE LEASED PREMISES" herein.

Under the Indenture, the Authority is authorized under certain conditions to issue additional obligations secured by the Revenues. See "Additional Bonds" below. Under the Lease Agreement, the City is allowed to incur other obligations secured by excess value of the Leased Premises.

**The Revenues and other funds pledged under the Indenture are the sole security for the Bonds, and the Authority has no other source of funds, other than the Lease Payments, to pay debt service on the Bonds.**

See APPENDIX C hereto for a summary of the terms of the Indenture and the Lease Agreement.

THE BONDS ARE NOT A DEBT OF THE CITY, THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS, AND NEITHER THE CITY, THE STATE NOR ANY OF ITS POLITICAL SUBDIVISIONS, OTHER THAN THE AUTHORITY, IS LIABLE THEREFOR. THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS ARE PAYABLE SOLELY FROM THE REVENUES. THE CITY'S OBLIGATIONS UNDER THE LEASE AGREEMENT ARE UNSECURED OBLIGATIONS PAYABLE FROM ANY LEGALLY AVAILABLE FUNDS OF THE CITY. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMIT OR RESTRICTION AND DO NOT CONSTITUTE AN OBLIGATION FOR WHICH THE CITY OR THE STATE IS OBLIGATED TO LEVEY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY OF THE STATE HAS LEVIED OR PLEDGED ANY FORM OF TAXATION.

### Lease Payments

The City has covenanted under the Lease Agreement to make Lease Payments for the use and possession of the Leased Premises. So long as the Leased Premises are available for the City's use, the City has covenanted to take such action each year as may be necessary to include all Lease Payments in its annual budget and annually to appropriate an amount necessary to make such Lease Payments (see "Abatement" below). The amounts payable to the Trustee as Lease Payments are to be used to make the payments of principal and interest on the Bonds. The obligation of the City to make Lease Payments (other than to the extent that funds to make Lease Payments are available in the Bond Fund or otherwise available from an insurance or eminent domain award) may be abated in whole or in part if the City does not have use and possession of the Leased Premises.

Lease Payments are required to be made by the City under the Lease Agreement at least fifteen (15) days prior to each Interest Payment Date (individually, a "Lease Payment Date"), for use and possession of the Leased Premises to the next occurring Lease Payment Date. The amount of such Lease Payment shall be credited with amounts on deposit in the Bond Fund on such Lease Payment Date. Lease Payments due on each Lease Payment Date shall also be reduced by the amount of earnings received by the Trustee as of such Lease Payment Date from the investment of certain funds held by the Trustee. Lease Payments are required to be deposited in the Bond Fund maintained by the Trustee. Pursuant to the Indenture, on each Interest Payment Date the Trustee will withdraw from the Bond Fund amounts to make principal and interest payments on the Bonds.

The Lease Payments are structured to produce Revenues sufficient to pay principal of and interest on the Bonds when due. While the Lease Payments are subject to optional prepayment, Revenues resulting from such action will be used to redeem a corresponding amount of the Bonds, so that the remaining Lease Payments will be sufficient to pay the scheduled principal and interest payments on the Bonds.

Scheduled Lease Payments relating to the Bonds are set forth herein under the heading "SOURCES AND USES OF BOND PROCEEDS – Debt Service Schedule."

### **Additional Bonds**

The Authority is authorized, without the consent of the Bondholders, in the Indenture to issue additional obligations secured by a pledge of the Revenues on a parity to the pledge securing the outstanding Bonds, provided the Lease Agreement is amended to obligate the City to pay additional amounts of rental thereunder for the use and occupancy of the Leased Premises, provided that (A) no Event of Default has occurred and is continuing under the Lease Agreement, (B) such additional amounts of rental do not cause the total rental payments made by the City thereunder to exceed the fair rental value of the Leased Premises, as set forth in a certificate of a City Representative filed with the Trustee and the Authority, (C) the City shall have obtained and filed with the Trustee and the Authority a Written Certificate of an Authorized Representative of the City showing that the fair rental value of the Leased Premises is not less than the sum of the aggregate unpaid principal components of the Lease Payments and the aggregate principal components of such additional amounts of rental, (D) such additional amounts of rental are pledged or assigned for the payment of any bonds, notes, leases or other obligations the proceeds of which shall be applied to finance the construction or acquisition of land, facilities or other improvements which are authorized pursuant to the laws of the State, and (E) such additional rental is not at variable rates.

### **Appropriation; Use of Leased Premises**

The City has covenanted to take such action as may be necessary to include all Lease Payments due under the Lease Agreement in each of its proposed annual budgets and its final adopted annual budgets and to make the necessary appropriations for such Lease Payments and Additional Payments, except to the extent such payments are abated (see "Abatement" below). The foregoing covenant on the part of the City shall be deemed to be and shall be construed to be a duty imposed by law and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform its covenants and agreements in the Lease Agreement.

The obligation of the City to pay Lease Payments shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City, or the State, or any political subdivision thereof, in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, the State, or any political subdivision thereof, nor shall such obligations constitute a pledge of general revenues, funds or moneys of the City beyond the Fiscal Year for which the City has appropriated funds to pay Lease Payments or an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

## **Abatement**

Except to the extent that proceeds of the type described in the following paragraph are available, the amount of Lease Payments and Additional Payments shall be abated during any period in which there is substantial interference with the use or possession of all or a portion of the Leased Premises by the City by condemnation, damage, destruction or title defect. The amount of such abatement shall be such that the resulting Lease Payments, exclusive of the amounts described in the following paragraph, do not exceed the fair rental value for the use and possession of the portion of the Leased Premises for which no substantial interference has occurred. Such abatement shall continue for the period of the substantial interference with the use or possession of the Leased Premises. Except as provided in the Lease Agreement, in the event of any such interference with use or possession, the Lease Agreement shall continue in full force and effect and the City waives the benefits of Civil Code Sections 1932(1), 1932(2) and 1933(4) any right to terminate the Lease Agreement by virtue of any such interference. See “Insurance” below for a discussion of rental interruption insurance to be provided by, or on behalf of, the City.

Notwithstanding a substantial interference with the use or possession of all or a portion of the Leased Premises, the City shall remain obligated to make Lease Payments (i) in an amount not to exceed the fair rental value during each Fiscal Year for the portion of the Leased Premises not damaged, destroyed, interfered with or taken; (ii) to the extent that moneys derived from any source as a result of any delay in the reconstruction, replacement or repair of the Leased Premises, or any portion thereof, are available to pay the amount which would otherwise be abated; or (iii) to the extent that moneys are available in the Bond Fund to pay the amount which would otherwise be abated, in which event the Lease Payments shall be payable from such amounts as an obligation of the City payable from a special fund.

Notwithstanding these efforts, the moneys legally available to the Trustee following the occurrence of an event which gives rise to an abatement of Lease Payments, including proceeds of rental interruption insurance, if any, may not be sufficient to pay principal of and interest on the Bonds in the amounts and at the rates set forth thereon. In such event, all Bondowners would forfeit interest attributable to abated Lease Payments payable during the period of abatement and, to the extent Bonds mature or are to be subject to mandatory redemption during a period of abatement, the Bondowners would forfeit principal attributable to such abated Lease Payments. **The failure to make such payments of principal and interest would not under such circumstances constitute a default under the Indenture, the Lease Agreement or the Bonds.**

## **Action on Default**

Should the City default under the Lease Agreement, the Trustee, as assignee of the Authority under the Lease Agreement may exercise any and all remedies available pursuant to law. However, the Trustee may not accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable or terminate the Lease or cause the leasehold interest of the Authority or the sub-leasehold interest of the City in the Leased Premises to be sold, assigned or otherwise alienated. The City expressly agrees that in the event of any default it will remain liable for the payment of all Lease Payments and the performance of all conditions contained in the Lease Agreement and will reimburse the Authority for any deficiency arising out of the re-leasing of the Leased Premises or, in the event the Authority is unable to re-lease the Leased Premises, then for the full amount of all Lease Payments to the end of the term of the Lease Agreement. See “RISK FACTORS” herein.

For a description of the events of default and permitted remedies of the Trustee (as assignee of the Authority) contained in the Lease Agreement and the Indenture, see APPENDIX C hereto.

## **Miscellaneous Rent**

For the right to the use and occupancy of the Leased Premises, the Lease Agreement requires the City to pay, in addition to the Lease Payments, the reasonable expenses of the Authority, and any reimbursement of

amounts advanced and owing in connection with the Lease Agreement and the Indenture or in connection with the issuance of the Bonds.

## **Insurance**

The Lease Agreement contains the insurance covenants described below. No assurance can be given that insurance proceeds will be available or, if available, adequate in an amount sufficient to avoid an interruption of Lease Payments. Under such a situation, an abatement of Lease Payments is likely to occur. See “Abatement” above.

The Lease Agreement requires the City to obtain a standard comprehensive general liability insurance policy or policies in protection of the Authority and the City, including their respective members, officers, agents, employees and assigns. Said policy or policies must provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$3,000,000 for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of \$100,000 for damage to property resulting from each accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of \$3,000,000 (subject to a deductible clause of not to exceed \$150,000) covering all such risks.

The Lease Agreement also requires the City to maintain, or cause to be maintained, casualty insurance insuring the facilities on the Leased Premises against loss or damage by fire and lightning, with extended coverage and vandalism and malicious mischief insurance and all other risks in an amount equal to the lesser of 100% of the replacement cost of the facilities or the aggregate unpaid principal components of the Lease Payments allocable to the facilities. Such insurance may be subject to such deductibles as the City deems prudent.

The Lease Agreement further requires the City to cause to be maintained, throughout the term of the Lease Agreement, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Leased Premises as a result of any of the hazards covered by the insurance in an amount at least equal to the maximum Leased Payments allocable to the facilities coming due and payable during any future 24 month period.

The Lease Agreement allows the City to maintain any such insurance as part of or in conjunction with any other insurance coverage carried by the City or, in whole or in part, in the form of self-insurance by the City or through participation by the City in a joint powers agency or other program providing pooled insurance.

The Lease Agreement also requires the City to obtain an CLTA policy of title insurance insuring the City’s leasehold estate, subject only to Permitted Encumbrances, in an amount at least equal to the aggregate principal amount of the Bonds.

See APPENDIX C – “SUMMARY OF PRINCIPAL LEGAL DOCUMENTS – Lease Agreement – Insurance.”

Insurance proceeds are required to be applied to the repair of the Leased Premises; or if the proceeds are insufficient to repair or replace the Leased Premises, the City may prepay the related Lease Payments and thereby cause the redemption of outstanding Bonds. The Lease Agreement permits the City to satisfy certain of its insurance requirements through a self-insurance program.

## **No Reserve Account**

Neither the City nor the Authority will create or maintain a debt service reserve account with respect to the Lease Payments or for the Bonds.



## **RISK FACTORS**

*The following factors, along with other information in this Official Statement, should be considered by potential investors in evaluating the risks in the purchase of the Bonds. However, the following does not purport to be an exhaustive listing of risk factors and other considerations which may be relevant to an investment in the Bonds. Additionally, there can be no assurance that other risk factors will not become evident at any future time.*

### **No Tax Pledge**

The obligation of the City to pay the Lease Payments does not constitute an obligation of the City for which the City has levied or pledged any form of taxation. The obligation of the City to pay Lease Payments does not constitute a debt or indebtedness of the City, the City, the State of California or any of its political subdivisions, within the meaning of any constitutional or statutory debt limit or restriction.

### **Appropriation**

Although the Lease Agreement does not create a pledge, lien or encumbrance upon the funds of the City, the City is obligated under the Lease Agreement, so long as the Leased Premises are available for its use and possession, to pay Lease Payments from any source of legally available funds (subject to certain exceptions) and has covenanted in the Lease Agreement that, for so long as the Leased Premises is available for its use, it will make the necessary annual appropriations within its budget for all Lease Payments. However, the City is currently liable on other obligations payable from general revenues which may have a priority over the Lease Payments (for example, if the City were to issue tax revenue anticipation notes), and the Lease Agreement does not prohibit the City from incurring additional obligations payable from general revenues. See APPENDIX A – “CITY FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION” herein and the financial statements included in APPENDIX B hereto. In the event the City’s revenue sources are less than its total obligations, the City could choose to fund other municipal services before making Lease Payments and other payments due under the Lease Agreement, except from amounts on deposit in the Bond Fund. The City’s ability to collect, budget and appropriate various revenues is subject to current and future State laws and constitutional provisions, and it is possible that the interpretation and application of these provisions could result in an inability of the City to pay Lease Payments when due (see “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS” below).

### **No Limit on Additional General Fund Obligations**

The City has the ability to enter into other obligations which may constitute additional charges against its general revenues. To the extent that such additional obligations are incurred by the City, the funds available to make Lease Payments may be decreased. See also “SECURITY FOR THE BONDS – Additional Bonds” herein.

### **Abatement and Eminent Domain**

Lease Payments are to be paid by the City in each rental period for and in consideration of the right to use and occupy the Leased Premises during each such period. The obligation of the City to make Lease Payments (other than to the extent that funds to make Lease Payments are available in the Bond Fund created under the Indenture) may be abated in whole or in part if the City does not have use and possession of the Leased Premises.

The amount of Lease Payments due under the Lease Agreement will be adjusted or abated during any period in which by reason of damage or destruction or eminent domain there is interference with the use and occupancy by the City of the Leased Premises. Such adjustment or abatement will end with the substantial completion or replacement, repair or reconstruction of the Leased Premises. If damage or destruction or eminent domain proceedings with respect to the Leased Premises result in abatement of Lease Payments and the

resulting Lease Payments are insufficient to make all payments of principal and interest due on the Bonds during the period that the Leased Premises is being replaced, repaired or reconstructed, then such payments of principal and interest may not be made and no remedy is available to the Trustee or the Owners of the Bonds, under the Lease Agreement or Indenture, for nonpayment under such circumstances.

### **No Reserve Fund**

Neither the City nor the Authority will create or maintain a debt service reserve account with respect to the Lease Payments or for the Bonds.

### **Sufficiency of Lease Payments**

The Lease Payments are structured to produce Revenues sufficient to pay principal of, and interest on, the Bonds when due. While the Lease Payments are subject to optional prepayment, Revenues resulting from such actions will be sufficient to redeem a corresponding amount of the Bonds, so that the remaining Lease Payments will be sufficient to pay remaining debt service on the Bonds. The Authority has no other source of funds available to pay principal of and interest on the Bonds.

### **Limitation on Enforcement of Remedies; No Acceleration**

The enforcement of any remedies provided in the Lease Agreement and Indenture could prove both expensive and time consuming. Although the Lease Agreement provides that the Trustee may take possession of the Leased Premises and lease it if there is a default by the City, and the Lease Agreement provides that the Trustee may have such rights of access to the Leased Premises as may be necessary to exercise any remedies, portions of such Leased Premises may not be easily subject to reletting and could be of little value to others. Furthermore, it is not certain whether a court would permit the exercise of the remedies of repossession and leasing with respect thereto.

IN THE EVENT OF A DEFAULT UNDER THE LEASE AGREEMENT, THERE IS NO AVAILABLE REMEDY OF ACCELERATION OF THE TOTAL LEASE PAYMENTS DUE OVER THE TERM OF THE LEASE AGREEMENT. THE CITY WILL ONLY BE LIABLE FOR LEASE PAYMENTS ON AN ANNUAL BASIS AS THEY COME DUE, AND THE TRUSTEE WOULD BE REQUIRED TO SEEK SEPARATE JUDGMENTS FOR THE LEASE PAYMENTS AS THEY COME DUE. IN ADDITION, ANY SUCH SUIT FOR MONEY DAMAGES COULD BE SUBJECT TO LIMITATIONS ON LEGAL REMEDIES AGAINST PUBLIC AGENCIES IN CALIFORNIA, INCLUDING A LIMITATION ON ENFORCEMENT OF JUDGMENTS AGAINST FUNDS NEEDED TO SERVE THE PUBLIC WELFARE AND INTEREST AND A LIMITATION ON ENFORCEMENT OF JUDGMENTS AGAINST FUNDS OF A FISCAL YEAR OTHER THAN THE FISCAL YEAR IN WHICH THE LEASE PAYMENTS WERE DUE.

### **Seismic, Topographic and Climatic Conditions**

The value of the Leased Premises, and the financial stability of the City, can be adversely affected by a variety of factors, particularly those which may affect infrastructure and other public improvements and private improvements and the continued habitability and enjoyment of such improvements. Such additional factors include, without limitation, geologic conditions (such as earthquakes), topographic conditions (such as earth movements and floods) and climatic conditions (such as droughts and tornadoes).

The area encompassed by the City, like that in much of California, may be subject to unpredictable seismic activity. The City is located within an alluvial plain and liquefaction area. There are no special study zones within the City. Although the City believes that no active or inactive fault lines pass through the City, if there were to be an occurrence of severe seismic activity in the City, there could be an abatement or adverse impact on the City's ability to pay the Lease Payments. The City is not obligated to maintain earthquake insurance with respect to the Leased Premises.

Building codes require that some of these factors be taken into account, to a limited extent, in the design of improvements, including improvements of the Leased Premises. Some of these factors may also be taken into account, to a limited extent, in the design of other infrastructure and public improvements neither designed nor subject to design approval by the City. Design criteria in any of these circumstances are established upon the basis of a variety of considerations and may change, leaving previously-designed improvements unaffected by more stringent subsequently established criteria. In general, design criteria reflect a balance at the time of protection and the future costs of lack of protection, based in part upon a present perception of the probability that the condition will occur and the seriousness of the condition should it occur. Conditions may occur and may result in damage to improvements of varying seriousness, such that the damage may entail significant repair or replacement costs and that repair or replacement may never occur either because of the cost or because repair or replacement will not facilitate habitability or other use, or because other considerations preclude such repair or replacement. Under any of these circumstances, the actual value of the Leased Premises, as well as public and private improvements within the City in general, may well depreciate or disappear, notwithstanding the establishment of design criteria for any such condition. See “Abatement and Eminent Domain” above.

The City is exposed to a variety of wildfire hazard conditions ranging from very low levels of risk along the coastal portions of the City, to more severe hazards in the inland areas. The Project is located on the western, or coastal, side of Interstate 5, and are not considered at significant risk. Currently, fire hazard severity is a function of fuel conditions, historic climate, wind conditions, and topography. Population density or the number of structures in a particular region are not currently used to determine the fire hazard severity for a particular region. The fact that an area is in a low to moderate hazard area does not mean it cannot experience a damaging fire; it means only that the probability is reduced, generally because the number of days a year that the area has “fire weather” is less.

### **Hazardous Substances**

An environmental condition that may result in the reduction in the assessed value of parcels would be the discovery of any hazardous substance that would limit the beneficial use of a property within the City, or the value of the Leased Premises. In general, the owners and operators of a property may be required by law to remedy conditions of the property relating to releases or threatened releases of hazardous substances. The Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, sometimes referred to as “CERCLA” or the “Superfund Act” is the most well-known and widely applicable of these laws, but California laws with regard to hazardous substances are also stringent and similar. Under many of these laws, the owner (or operator) is obligated to remedy a hazardous substance condition of property whether or not the owner or operator has anything to do with creating or handling the hazardous substance. The effect, therefore, should the Leased Premises or any substantial amount of property within the City be affected by a hazardous substance, would be to reduce the marketability and value of the property by the costs of, and any liability incurred by, remedying the condition, since the purchaser, upon becoming an owner, will become obligated to remedy the condition just as is the seller. Such reduction could adversely impact the property tax revenues received by the City and deposited in the General Fund, which could significantly and adversely affect the operations and finances of the City. The City and the Authority do not believe that the use of any of such substances has adversely affected the value of the Leased Premises.

### **Public Debt Burden on Leased Premises**

The ability of land owners within the City to pay property tax installments as they come due could be affected by the existence of other taxes and assessments, imposed upon the land. In addition, other public agencies whose boundaries overlap those of the City could, without consent of the City, and in certain cases without the consent of the owners of the land within the City, impose additional taxes or assessment liens on the property within the City to finance public improvements to be located inside of or outside of the City. See APPENDIX A hereto for a statement of direct and overlapping debt on property within the City.

## **Risk of Uninsured Loss**

The City covenants under the Lease Agreement to cause to be maintained certain insurance policies on the Leased Premises. These insurance policies do not cover all types of risk. For instance, the City does not covenant to maintain earthquake insurance. The City may self-insure in certain circumstances. Moreover, the insurance maintained by the City may provide for deductible amounts. The Leased Premises could be damaged or destroyed due to earthquake or other casualty for which the Leased Premises are uninsured. Under these circumstances, an abatement of Lease Payments could occur and could continue indefinitely. There can be no assurance that the providers of the City's liability and rental interruption insurance will in all events be able or willing to make payments under the respective policies for such loss should a claim be made under such policies. Further, there can be no assurances that amounts received as proceeds from insurance or from condemnation of the Leased Premises will be sufficient to prepay the Lease Payments which secure the Bonds.

## **Property Tax Allocation by the State; Changes in Law**

The responsibility for allocating general property taxes was assigned to the State by Proposition 13, which stated that property taxes were to be allocated "according to law." The formula for such allocation was contained in Assembly Bill 8 ("AB 8"), adopted in 1978, which allocates property taxes among cities, counties, and school districts. The formulas contained in AB 8 were designed to allocate property taxes in proportion to the share of property taxes received by a local entity prior to Proposition 13. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS – Limitations on Revenues."

Beginning in its fiscal year 1992-93, in response to its own budgetary shortfalls, the State began to permanently redirect billions of dollars of property taxes Statewide from cities, counties, and certain special districts to schools and community college districts. These redirected funds reduced the State's funding obligation for K-14 school districts by a commensurate amount. In response, Proposition 1A of 2004, approved by State voters in November 2004 and generally effective in Fiscal Year 2006-07, provided that the State may not reduce any local sales tax rate, limit existing local government authority to levy a sales tax rate or change the allocation of local sales tax revenues, subject to certain limitations. However, pursuant to Proposition 1A and beginning in Fiscal Year 2008-09, the State could, upon gubernatorial proclamation of fiscal hardship and following approval of two-thirds of both houses of the legislature, and it did, shift to schools and community colleges up to 8% of local government ad valorem property tax revenues, which amount must be repaid, with interest, within three years. The State could also approve voluntary exchanges of local sales tax and property tax revenues among local governments within a county. In November 2010, State voters approved Proposition 22, which amends the State's constitution to eliminate the State's authority to temporarily shift additional ad valorem property taxes from cities, counties and special districts to schools, among other things. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS, – Voter Initiatives."

No assurance can be given that the State, the County's or the City electorate will not at some future time adopt initiatives, or that the State Legislature will not enact legislation that will amend the laws of the State in a manner that could result in a reduction of the City's property tax allocations or its other revenues and therefore a reduction of the funds legally available to the City to pay Lease Payments and other payments due under the Lease Agreement. See, for example, "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS – Article XIIIC and Article XIIID of the State Constitution."

## **Bankruptcy and Foreclosure**

The enforceability of the rights and remedies of the Owners and the obligations of the Authority and the City may become subject to the following: the federal bankruptcy code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect; usual equitable principles which may limit the specific enforcement under state law of certain remedies; the exercise by the United States of America of the powers delegated to it by the

Federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State of California and its governmental bodies in the interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercising of powers by the federal or state government, if initiated, could subject the Owners to judicial discretion and interpretation of their rights in bankruptcy or otherwise and consequently may entail risks of delay, limitation, or modification of their rights. Additionally, failure by major property owners to pay property taxes when due will have an adverse impact on revenues of the City available to pay Lease Payments, and would increase the likelihood of a delay or default in payment of the principal of and interest on the Bonds. The various legal opinions to be delivered concurrently with the delivery of the Bonds (including Bond Counsel's approving legal opinion) will be qualified, as to the enforceability of the various legal instruments, by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

### **Federal Tax-Exempt Status of the Bonds**

*Tax-Exempt Status of Interest on the Series A Bonds.* The Internal Revenue Code of 1986, as amended (the "Code") imposes a number of requirements that must be satisfied for interest on state and local obligations, such as the Bonds, to be excludable from gross income for federal income tax purposes. These requirements include limitations on the use of Bond proceeds, limitations on the investment earnings on Bonds proceeds prior to expenditure, a requirement that certain investment earnings on the Bond proceeds be paid periodically to the United States and a requirement that the issuers file an information report with the Internal Revenue Service (the "IRS"). The Authority and the City have covenanted in certain of the documents referred to herein that they will comply with such requirements. Failure to comply with the requirements stated in the Code and related regulations, rulings and policies may result in the treatment of interest on the Bonds as taxable, retroactively to the date of issuance of such Bonds.

*Audit.* As a part of a larger reorganization of the IRS, the IRS commenced operation of its Tax Exempt and Government Entities Division (the "TE/GE Division"), as the successor to its Employee Plans and Exempt Organizations division. The TE/GE Division has a subdivision that is specifically devoted to tax-exempt bond compliance. Public statements by IRS officials indicate that the number of tax-exempt bond examinations is expected to increase significantly under the TE/GE Division. There is no assurance that an IRS examination of the Series A Bonds, if one is undertaken, will not adversely affect the tax-exempt status or market value of such Series A Bonds.

### **Secondary Market Risk**

There can be no guarantee that there will be a secondary market for the Bonds or, if a secondary market exists, that such Bonds can be sold for any particular price. Occasionally, because of general market conditions or because of adverse history or economic prospects connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then prevailing circumstances. Such prices could be substantially different from the original purchase price.

### **Substitution and Removal of Leased Premises**

The Authority and the City may, under the terms of the Lease Agreement, substitute alternate real property for any portion of the Leased Premises or release a portion of the Leased Premises from the Lease Agreement, upon compliance with all of the conditions set forth in the Lease Agreement. After a substitution or release, the portion of the Leased Premises for which the substitution or release has been effected shall be released from the leasehold encumbrance of the Lease Agreement. See "THE LEASED PREMISES – Substitution of Leased Premises" herein.

## **No Liability of Authority to the Owners**

Except as expressly provided in the Indenture, the Authority will not have any obligation or liability to the Owners of the Bonds with respect to the payment when due of the Lease Payments by the City, or with respect to the performance by the City of other agreements and covenants required to be performed by it contained in the Lease Agreement or the Indenture, or with respect to the performance by the Trustee of any right or obligation required to be performed by it contained in the Indenture.

## **CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS**

### **Limitations on Revenues**

**Article XIII A of the California Constitution.** Article XIII A of the State Constitution, adopted and known as Proposition 13, was approved by the voters in June 1978. Section 1(a) of Article XIII A limits the maximum ad valorem tax on real property to one percent of “full cash value,” and provides that such tax shall be collected by the counties and apportioned according to State law. Section 1(b) of Article XIII A provides that the one-percent limitation does not apply to ad valorem taxes levied to pay interest and redemption charges on (i) indebtedness approved by the voters prior to July 1, 1978, or (ii) bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast on the proposition, or (iii) bonded indebtedness incurred by a school district or community college district for the construction, reconstruction, rehabilitation or replacement of school facilities or the acquisition or lease of real property for school facilities, approved by 55% of the voters of the district, but only if certain accountability measures are included in the proposition.

Section 2 of Article XIII A defines “full cash value” to mean the county assessor’s valuation of real property as shown on the fiscal year 1975-76 tax bill, or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred. The full cash value may be adjusted annually to reflect inflation at a rate not to exceed two percent per year, or to reflect a reduction in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced in the event of declining property value caused by substantial damage, destruction or other factors. Legislation enacted by the State Legislature to implement Article XIII A provides that, notwithstanding any other law, local agencies may not levy any ad valorem property tax except the 1% base tax levied by each County and taxes to pay debt service on indebtedness approved by the voters as described above.

Since its adoption, Article XIII A has been amended a number of times. These amendments have created a number of exceptions to the requirement that property be reassessed when purchased, newly constructed or a change in ownership has occurred. These exceptions include certain transfers of real property between family members, certain purchases of replacement dwellings for persons over age 55 and by property owners whose original property has been destroyed in a declared disaster, and certain improvements to accommodate disabled persons and for seismic upgrades to property. These amendments have resulted in marginal reductions in the property tax revenues of the City.

Both the California State Supreme Court and the United States Supreme Court have upheld the validity of Article XIII A.

**Article XIII C and Article XIII D of the California Constitution.** On November 5, 1996, the voters of the State approved Proposition 218, known as the “Right to Vote on Taxes Act.” Proposition 218 adds Articles XIII C and XIII D to the California Constitution and contains a number of interrelated provisions affecting the ability of the City to levy and collect both existing and future taxes, assessments, fees and charges.

On November 2, 2010, California voters approved Proposition 26, entitled the “Supermajority Vote to Pass New Taxes and Fees Act.” Section 1 of Proposition 26 declares that Proposition 26 is intended to limit the ability of the State Legislature and local government to circumvent existing restrictions on increasing taxes by

defining the new or expanded taxes as “fees.” Proposition 26 amended Articles XIII A and XIII C of the State Constitution. The amendments to Article XIII A limit the ability of the State Legislature to impose higher taxes (as defined in Proposition 26) without a two-thirds vote of the Legislature. The amendments to Article XIII C define “taxes” that are subject to voter approval as “any levy, charge, or exaction of any kind imposed by a local government,” with certain exceptions.

Taxes. Article XIII C requires that all new local taxes be submitted to the electorate before they become effective. Taxes for general governmental purposes of the City (“general taxes”) require a majority vote; taxes for specific purposes (“special taxes”), even if deposited in the City’s General Fund, require a two-thirds vote. The voter approval requirements of Proposition 218 reduce the flexibility of the City to raise revenues for the General Fund, and no assurance can be given that the City will be able to impose, extend or increase such taxes in the future to meet increased expenditure needs.

Property-Related Fees, Charges and Assessments. Article XIII D also adds several provisions making it generally more difficult for local agencies to levy and maintain property-related fees, charges, and assessments for municipal services and programs. These provisions include, among other things, (i) a prohibition against assessments which exceed the reasonable cost of the proportional special benefit conferred on a parcel, (ii) a requirement that assessments must confer a “special benefit,” as defined in Article XIII D, over and above any general benefits conferred, (iii) a majority protest procedure for assessments which involves the mailing of notice and a ballot to the record owner of each affected parcel, a public hearing and the tabulation of ballots weighted according to the proportional financial obligation of the affected party, and (iv) a prohibition against fees and charges which are used for general governmental services, including police, fire or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

Reduction or Repeal of Taxes, Fees and Charges. Article XIII C also removes limitations on the initiative power in matters of reducing or repealing local taxes, assessments, fees or charges. No assurance can be given that the voters of the City will not, in the future, approve an initiative or initiatives which reduce or repeal local taxes, assessments, fees or charges currently comprising a substantial part of the City’s General Fund. If such repeal or reduction occurs, the City’s ability to pay debt service on the Bonds could be adversely affected.

Burden of Proof. Article XIII C provides that local government “bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.” Similarly, Article XIII D provides that in “any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance” with Article XIII D.

Impact on City’s General Fund. The approval requirements of Articles XIII C and XIII D reduce the flexibility of the City to raise revenues for the General Fund, and no assurance can be given that the City will be able to impose, extend or increase the taxes, fees, charges or taxes in the future that it may need to meet increased expenditure needs.

The City does not believe that any material source of General Fund revenue is subject to challenge under Articles XIII C or XIII D.

Judicial Interpretation. The interpretation and application of Articles XIII C and XIII D will ultimately be determined by the courts with respect to a number of the matters discussed below, and it is not possible at this time to predict with certainty the outcome of such determination.

## Expenditures and Appropriations

**Article XIII B of the California Constitution.** In addition to the limits Article XIII A imposes on property taxes that may be collected by local governments, certain other revenues of the State and local governments are subject to an annual “appropriations limit” or “Gann Limit” imposed by Article XIII B of the State Constitution, which effectively limits the amount of such revenues that government entities are permitted to spend. Article XIII B, approved by the voters in June 1979, was modified substantially by Proposition 111 in 1990. The appropriations limit of each government entity applies to “proceeds of taxes,” which consist of tax revenues, state subventions and certain other funds, including proceeds from regulatory licenses, user charges or other fees to the extent that such proceeds exceed “the cost reasonably borne by such entity in providing the regulation, product or service.” “Proceeds of taxes” exclude tax refunds and some benefit payments such as unemployment insurance. No limit is imposed on the appropriation of funds that are not “proceeds of taxes,” such as reasonable user charges or fees, and certain other non-tax funds.

Article XIII B also does not limit appropriation of local revenues to pay debt service on bonds existing or authorized by January 1, 1979, or subsequently authorized by the voters, appropriations required to comply with mandates of courts or the federal government, appropriations for qualified capital outlay projects, and appropriation by the State of revenues derived from any increase in gasoline taxes and motor vehicle weight fees above January 1, 1990, levels. The appropriations limit may also be exceeded in cases of emergency; however, the appropriations limit for the three years following such emergency appropriation must be reduced to the extent by which it was exceeded, unless the emergency arises from civil disturbance or natural disaster declared by the Governor, and the expenditure is approved by two-thirds of the legislative body of the local government.

The State and each local government entity each have their own appropriations limits. Each year, each limit is adjusted to allow for changes, if any, in the cost of living, the population of the jurisdiction, and any transfer to or from another government entity of financial responsibility for providing services.

Proposition 111 requires that each agency’s actual appropriations be tested against its limit every two years. If the aggregate “proceeds of taxes” for the preceding two-year period exceed the aggregate limit, the excess must be returned to the agency’s taxpayers through tax rate or fee reductions over the following two years. If the State’s aggregate “proceeds of taxes” for the preceding two-year period exceeds the aggregate limit, 50% of the excess is transferred to fund the State’s contribution to school and college districts.

## Voter Initiatives

Under the California Constitution, the power of initiative is reserved to the voters for the purpose of enacting statutes and constitutional amendments. Since 1978, the voters have exercised this power through the adoption of Proposition 13 and similar measures, the most recent of which was approved as Proposition 22 in the general election held on November 2, 2010.

Any such initiative may affect the collection of fees, taxes and other types of revenue by local agencies. Subject to overriding federal constitutional principles, such collection may be materially and adversely affected by voter-approved initiatives, possibly to the extent of creating cash-flow problems in the payment of outstanding obligations such as the Lease Payments.

**Proposition 62.** On November 4, 1986, California voters adopted Proposition 62, which requires that (i) any local tax for general governmental purposes (a “general tax”) must be approved by a majority vote of the electorate; (ii) any local tax for specific purposes (a “special tax”) must be approved by a two-thirds vote of the electorate; (iii) any general tax must be proposed for a vote by two-thirds of the legislative body; and (iv) proceeds of any tax imposed in violation of the vote requirements must be deducted from the local agency’s property tax allocation.



Most of the provisions of Proposition 62, which was a statutory initiative, were affirmed by the 1995 California Supreme Court decision in Santa Clara County Local Transportation Authority v. Guardino, which invalidated a special sales tax for transportation purposes because less than two-thirds of the voters voting on the measure had approved the tax. Claims for taxpayer relief where a local entity may have violated Proposition 62 are subject to a three-year statute of limitations, created by statute. In the case Howard Jarvis Taxpayers Association v. City of La Habra (2001), the California Supreme Court determined that this statute of limitations begins to run anew every time the city collects the challenged tax.

**Proposition 1A of 2004.** Proposition 1A of 2004, proposed by the Legislature in connection with the State's Fiscal Year 2004-05 Budget, approved by the voters in November 2004 and generally effective in Fiscal Year 2006-07, provided that the State may not reduce any local sales tax rate, limit existing local government authority to levy a sales tax rate or change the allocation of local sales tax revenues, subject to certain exceptions. Proposition 1A of 2004 generally prohibited the State from shifting to schools or community colleges any share of property tax revenues allocated to local governments for any Fiscal Year, as set forth under the laws in effect as of November 3, 2004. Any change in the allocation of property tax revenues among local governments within a county had to be approved by two-thirds of both houses of the Legislature.

Proposition 1A of 2004 provided, however, that beginning in Fiscal Year 2008-09, the State may shift to schools and community colleges up to 8% of local government property tax revenues, which amount must be repaid, with interest, within three years, if the Governor proclaimed that the shift is needed due to a severe state financial hardship, the shift was approved by two-thirds of both houses and certain other conditions were met. The State could also approve voluntary exchanges of local sales tax and property tax revenues among local governments within a county. Pending certain State actions, a Prop 1A shift could occur in State fiscal year in future fiscal years.

See APPENDIX A – “CITY FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION – State Budget and its Impact on the City” for information about the State's budgets and shifts of local property revenues under Proposition 1A of 2004 (which must be repaid within three years).

**Proposition 22.** Proposition 22, entitled “The Local Taxpayer, Public Safety and Transportation Protection Act,” was approved by the voters of the State in November 2010.

Proposition 22 eliminates or reduces the State's authority to (i) temporarily shift property taxes from cities, counties and special districts to schools, (ii) use vehicle license fee revenues to reimburse local governments for State-mandated costs (the State will have to use other revenues to reimburse local governments), (iii) redirect property tax increment from redevelopment agencies to any other local government, (iv) use State fuel tax revenues to pay debt service on State transportation bonds, or (v) borrow or change the distribution of State fuel tax revenues.

## **Unitary Property**

AB 454 (Chapter 921, Statutes of 1986) provides that revenues derived from most utility property assessed by the State Board of Equalization (“Unitary Property”), commencing with the 1988-89 Fiscal Year, are allocated as follows: (i) each jurisdiction will receive up to 102% of its prior year State-assessed revenue; and (ii) if county-wide revenues generated from Unitary Property are less than the previous year's revenues or greater than 102% of the previous year's revenues, each jurisdiction will share the burden of the shortfall or benefit of the excess revenues by a specified formula. This provision applies to all Unitary Property except railroads, whose valuation will continue to be allocated to individual tax rate areas.

The provisions of AB 454 do not constitute an elimination of the assessment of any State-assessed properties nor a revision of the methods of assessing utilities by the State Board of Equalization. Generally, AB 454 allows valuation growth or decline of Unitary Property to be shared by all jurisdictions in a county.

**Future Initiatives**

Article XIII A, Article XIII B, Article XIII C, Article XIII D, and Propositions 1A of 2004, 22, 26 and 62 were each adopted as measures that qualified for the ballot through California's initiative process. From time to time, other initiative measures could be adopted, further affecting the City or its revenues or the ability of the City to expend revenues.

## TAX MATTERS

In the opinion of Bond Counsel, based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, compliance with certain covenants, interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “Code”). Bond Counsel is of the further opinion that interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, provided however, that for the purpose of calculating federal corporate alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings.

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 Bonds. The Authority has covenanted to comply with certain restrictions designed to insure that interest on the Bonds will not be included in federal gross income. Failure to comply with these covenants may result in interest on the Bonds being included in federal gross income, possibly from the date of original issuance of the Bonds. The opinion of Bond Counsel assumes compliance with these covenants. Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken) or events occurring (or not occurring) after the date of issuance of the Bonds may adversely affect the value of, or the tax status of interest on, the Bonds.

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the 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 Bond Owners from realizing the full current benefit of the tax status of such interest. For example, legislative proposals are made from time to time which generally would limit the exclusion from gross income of interest on obligations like the Bonds to some extent for taxpayers who are individuals and whose income is subject to higher marginal income tax rates. Other proposals have been made that could significantly reduce the benefit of, or otherwise affect, the exclusion from gross income of interest on obligations like the Bonds. The introduction or enactment of any such legislative proposals, clarification of the Code or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the Bonds. Prospective purchasers of the Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, and regarding the impact of future legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

Certain requirements and procedures contained or referred to in the Indenture, the Tax Certificate, and other relevant documents may be changed and certain actions (including, without limitation, defeasance of the Bonds) may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents. Bond Counsel expresses no opinion as to the exclusion from gross income of interest on any Bond if any such change occurs or action is taken or omitted upon the advice or approval of counsel other than Best Best & Krieger LLP.

In the further opinion of Bond Counsel, interest on the Bonds is exempt from California personal income taxes.

The Internal Revenue Service (the “IRS”) has initiated an expanded program for the auditing of tax-exempt bond issues, including both random and targeted audits. It is possible that the Bonds will be selected for audit by the IRS. It is also possible that the market value of the Bonds might be affected as a result of such an audit of the Bonds (or by an audit of other similar bonds).

Although Bond Counsel is of the opinion that interest on the Bonds is excluded from gross income for federal income tax purposes and that interest on the Bonds is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of interest on, the Bonds may otherwise affect a Bond Owner’s federal or state tax liability. The nature and extent of these other tax consequences will depend upon the particular tax status of the Bondholder or the Bond Owner’s other items of income or deduction, and Bond Counsel expresses no opinion regarding any such other tax consequences.

A copy of the proposed form of opinion of Bond Counsel is attached hereto as Appendix D.

## CONTINUING DISCLOSURE

The City has covenanted for the benefit of owners of the Bonds to provide certain financial information and operating data relating to the City by not later than March 1 of each year commencing with the report for the 2014-15 fiscal year (the “Annual Report”) and to provide notices of the occurrence of certain enumerated events. The Annual Report and the notices of enumerated events will be filed by the Dissemination Agent with the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system (“EMMA”) or any successor assigned by the Municipal Securities Rulemaking Board or Securities and Exchange Commission. These covenants have been made in order to assist the Underwriter in complying with Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended (the “Rule”). The specific nature of the information to be contained in the Annual Report or the notices of enumerated events by the District is set forth in APPENDIX E – “FORM OF CONTINUING DISCLOSURE AGREEMENT.”

During the last five years the City, the Encinitas Public Financing Authority (the “Financing Authority”), the San Elijo Joint Powers Authority (the “JPA”), the San Dieguito Water District (the “District”) the Encinitas Ranch Golf Authority (the “Golf Authority”) and the R.E. Badger Water Facilities Financing Authority (the “R.E. Badger Authority”) failed to comply in certain respects with continuing disclosure obligations related to outstanding bonded indebtedness. The failures to comply primarily include, but are not limited to (i) failure to provide significant event notices with respect to changes in the ratings of outstanding indebtedness, primarily related to changes in the ratings of various bond insurers insuring the indebtedness of City or its related entities; and (ii) incomplete, missing or late filing of annual reports with respect to certain bond issues. The incomplete filings are described below in detail.

For its City of Encinitas 1997 Refunding Certificates of Participation, Series A (Civic Center Project), the City (1) omitted from the annual report a physical copy of the audited financial statement for Fiscal Year ending June 30, 2010, and since then, the City has filed past the filing deadline a physical copy of the audited financial statement for Fiscal Year ending June 30, 2010, and (2) filed past the filing deadline its annual report for Fiscal Year ending June 30, 2013 and its audited financial statements for Fiscal Year ending June 30, 2013, and ratings event notices.

For its Association of Bay Area Governments Lease Revenue Bonds, Series 2002-1 (California Project), the City (1) filed its annual report past the filing deadline for Fiscal Years ending June 30, 2008 and 2009 and (2) filed ratings event notices past the filing deadlines.

Ratings event notices were not filed timely for the Encinitas Public Financing Authority 2001 Lease Revenue Bonds, Series A (Acquisition Project), the San Elijo Joint Powers Authority San Diego County, California 2003 Refunding Revenue Bonds (San Elijo Wastewater Treatment Facilities), the San Dieguito Water District (San Diego County, California) Water Revenue Refunding Bonds, Series 2004, the City of Encinitas Community Facilities District No. 1 2004 Bonds, the Encinitas Public Financing Authority 2006 Lease Revenue Bonds, Series A (Library Construction Project) and the San Elijo Joint Powers Authority 2011 Refunding Revenue Bonds (San Elijo Water Reclamation Facility).

For the R.E. Badger Water Facilities Financing Authority 2007 Water Revenue Refunding Bonds, the R.E. Badger Authority (1) filed past the filing deadline the District’s annual reports for Fiscal Years ending June 30, 2011, 2012 and 2013, (2) filed past the filing deadline the District’s audited financial statements for Fiscal Years ending June 30, 2012 and 2013, and (3) filed past the filing deadline ratings event notices.

For the San Elijo Joint Powers Authority 2011 Refunding Revenue Bonds (San Elijo Water Reclamation Facility), the City filed past the filing deadline the City’s annual reports for Fiscal Year ending June 30, 2012.

In addition to the listed incomplete filings of annual disclosure reports, the City has outstanding Assessment District No. 93-1 (Requeza Street/Bracero Road) Limited Obligation Improvement Bonds, Series A

and Subordinate Series B. The City has timely filed the annual reports for the Assessment District Bonds, however the City has not included the City's Audited Financial Statements with the annual reports.

In order to ensure ongoing compliance by the City, on behalf of itself and its related agencies, with the continuing disclosure undertakings, (i) the City has instituted new procedures to ensure future compliance and coordination by the City and its related agencies as part of its financial reporting policies; and (ii) the City has contracted with a consultant to assist the City in filing accurate, complete and timely disclosure reports on behalf of the City and its related agencies.

The City was advised by Southwest Securities, Inc. that the City was reported by Southwest Securities, Inc. under the Municipalities Continuing Disclosure Cooperation ("MCDC") initiative of the SEC. The reporting relates to the Encinitas Public Financing Authority 2010 Lease Revenue Bonds (the "2010 Authority Bonds") and the statement in the official statement for the 2010 Authority Bonds that the City was in compliance with all continuing disclosure requirements. MCDC was a program allowing issuers and underwriters to voluntarily report non-compliance with disclosure obligations.

### **CERTAIN LEGAL MATTERS**

Best Best & Krieger LLP, Riverside, California, Bond Counsel, will render an opinion with respect to the validity and enforceability of the Indenture and the Lease Agreement, and as to the validity of the Bonds. Best Best & Krieger LLP, Riverside, California has acted as disclosure counsel for the City and Authority in connection with the issuance of the Bonds. Certain matters will be passed upon for the Authority and the City by the City Attorney.

### **LITIGATION**

To the best knowledge of the City and the Authority, there is no action, suit or proceeding pending or, to the knowledge of City or Authority officials, threatened, restraining or enjoining the execution or delivery of the Bonds, the Lease Agreement, or the Indenture, or in any way contesting or affecting the validity of the foregoing or any proceedings of the Authority or the City taken with respect to any of the foregoing.

### **MUNICIPAL ADVISOR**

The Authority has retained Fieldman, Rolapp & Associates, Irvine, California, as Municipal Advisor (the "Municipal Advisor") for the sale of the Bonds. The Municipal Advisor is not obligated to undertake, and has not undertaken to make, an independent verification or to assume any responsibility for the accuracy, completeness or fairness of the information contained in this Official Statement. The Financial Advisor is an independent advisory firm and is not engaged in the business of underwriting, trading, or distributing municipal or other public securities.

### **PROFESSIONAL FEES**

In connection with the issuance of the Bonds, fees payable to Best Best & Krieger LLP, as Bond Counsel and Disclosure Counsel, Fieldman, Rolapp & Associates, as Municipal Advisor, and MUFG Union Bank, N.A., as Trustee, are contingent upon the issuance of the Bonds.

### **FINANCIAL STATEMENTS**

The general purpose financial statements of the City for the Fiscal Year ending June 30, 2014, pertinent sections of which are included in APPENDIX B to this Official Statement, have been audited by Pun & McGeady LLP, independent certified public accountants, as stated in their report appearing in APPENDIX B. The City has not requested, and the auditor has not provided, any consent to the inclusion of its report herein or any update or review of its report in connection with its inclusion in this Official Statement. See APPENDIX B hereto.

## **RATINGS**

Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business. ("S&P") has assigned its municipal bond rating of "AA+" to the Bonds. The rating reflects only the views of such organization, and an explanation of the significance of such rating may be obtained from S&P.

There is no assurance that any rating will continue for any given period of time for the Bonds or that it will not be revised downward or withdrawn entirely by such rating agency, if, in the judgment of such rating agency, circumstances so warrant. The Authority undertakes no responsibility to oppose any downward revision or withdrawal of any rating obtained. Any such downward revision or withdrawal of such rating may have an adverse effect on the market price of the Bonds.

Ratings reflect only the views of the rating agency referred to in the previous paragraph. Explanations of the significance of such ratings must be obtained from S&P. There is no assurance that such ratings will continue for any given period of time or will not be revised downward or withdrawn entirely by such rating agency, if, in the judgment of such rating agency, circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the Bonds.

The City has covenanted in a Continuing Disclosure Agreement to file on EMMA, notices of any rating changes on the Bonds. See the caption "CONTINUING DISCLOSURE" above and Appendix E - "FORM OF CONTINUING DISCLOSURE AGREEMENT." Notwithstanding such covenant, information relating to rating changes on the Bonds may be publicly available from the rating agencies prior to such information being provided to the City and prior to the date the City is obligated to file a notice of rating change on EMMA. Purchasers of the Bonds are directed to the ratings agencies and their respective websites and official media outlets for the most current ratings changes with respect to the Bonds after the initial issuance of the Bonds.

## **UNDERWRITING**

The Bonds were sold by competitive bid on \_\_\_\_\_, 2015. The Bonds were awarded to \_\_\_\_\_ (the "Underwriter"), who submitted the lowest true interest cost bid, at a purchase price of \$ \_\_\_\_\_. Under the terms of its bid, the Underwriter will be obligated to purchase all of the Bonds if any are purchased, the obligation to make such purchase being subject to the approval of certain legal matters by Bond Counsel, and certain other conditions to be satisfied by the Authority.

The Underwriter has provided the reoffering prices or yields for the Bonds set forth on the inside cover of this Official Statement, and the Authority or the City undertake no responsibility for the accuracy of those prices or yields. Based on the reoffering prices, the original issue premium/discount on the reoffering of the Bonds is \$ \_\_\_\_\_ and the Underwriter's gross compensation (or "spread") is \$ \_\_\_\_\_.

## MISCELLANEOUS

References are made herein to certain documents and reports which are brief summaries and do not purport to be complete or definitive. Prospective purchasers of the Bonds are advised to refer to such documents and reports for full and complete statements of their contents. Copies of the Indenture, the Lease Agreement and other documents are available, upon request, and upon payment to the City of a charge for copying and mailing, from the City Clerk at the City of Encinitas. Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the Authority and the purchasers or Owners of any of the Bonds. The execution of this Official Statement and its use in connection with the offering of the Bonds for sale have been authorized by the Authority and the City.

### ENCINITAS PUBLIC FINANCING AUTHORITY

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

### CITY OF ENCINITAS

By: : \_\_\_\_\_  
City Manager

## APPENDIX A

### CITY FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION

The information herein is subject to change without notice, and neither delivery of this Official Statement nor any sale thereafter of the Bonds shall under any circumstances imply that there has not been any change in the affairs of the City or in any other information contained herein since the date of the Official Statement. The Bonds are payable solely from the sources described herein (see “SECURITY FOR THE BONDS”). The taxing power of the City of Encinitas, the County of San Diego, the State of California or any political subdivision thereof is not pledged to the payment of the Bonds. See the information under the caption “THE BONDS.”

#### General

The City was incorporated in October 1986. The City’s incorporation involved a reorganization consisting primarily of the incorporation of the City of Encinitas; the detachment of territory from the Cardiff Sanitation District and annexation of the same territory to the Solana Beach Sanitation District; and the establishment of the Encinitas Fire Protection District, the San Dieguito Water District (the “Water District”) and the Encinitas Sanitation District as subsidiary districts of the City. Currently, all of the subsidiary districts, excluding the Water District, have been absorbed by the City as separate accounting divisions.

The City is located in the northern coastal area of San Diego County (the “County”) overlooking the Pacific Ocean. The City encompasses approximately 21.4 square miles and is located approximately 25 miles north of the City of San Diego and immediately north of the City of Solana Beach. Topography of the surrounding area varies from broad coastal plains to fertile inland valleys backed up by mountain ranges to the east. The climate is equable in the coastal and valley regions.

**The City maintains a website at [www.encinitas.gov](http://www.encinitas.gov). However, the information presented there is not part of this Official Statement, is not incorporated by reference herein and should not be relied upon in making an investment decision with respect to the Bonds.**

#### City Government

The City is a general law city and operates under a council-manager form of government. The City Council consists of four members elected at large, who also serve as the Board of Directors of the three subsidiary districts of the City. Council members serve four-year terms, with elections every two years for either two or three seats. The Mayor is elected city-wide for a two year term. The Mayor sits as a member of the subsidiary districts of the City. The City Manager is appointed by the City Council and serves as the City Council’s administrative head of the City. All other city employees are appointed by and are responsible to the City Manager, except the City Attorney and the City Clerk, who are appointed by the City Council.

The City supplies portions of its residents with water and sewer service through its subsidiary districts. The northern portion of the City is provided with sewer service by the independent Leucadia County Wastewater District. The eastern half of the City receives potable water from the Olivenhain Municipal Water District. Power is supplied by San Diego Gas and Electric, and telephone service by Pacific Bell. The City has its own parks and community services departments, but contracts for police service from the County. The current contract with the County for law enforcement services extends through the period July 1, 2012 to June 30, 2017.

#### Population

At incorporation in 1986, there were about 48,558 people in the City limits. As of January 1, 2015, the California Department of Finance estimates that Encinitas has grown to a population of 61,518, and expects to



be built out according to general plan estimates at 73,600. Encinitas is a low density community consisting predominately of single family homes.

**TABLE A-1  
CITY OF ENCINITAS  
POPULATION ESTIMATES**

<u>Year</u>	<u>City of Encinitas</u>	<u>San Diego County</u>	<u>State of California</u>
2009	59,453	3,064,436	36,704,375
2010	59,518	3,091,579	36,966,713
2011	59,819	3,118,876	37,510,760
2012	60,016	3,143,429	37,678,563
2013	60,699	3,154,574	37,984,138
2014	61,042	3,192,457	38,357,121
2015	61,518	3,227,496	38,714,725

Source: California State Department of Finance.

### **Employees and Labor Relations**

The City currently employs 216 full-time equivalent employees, including 48 fire safety personnel. The following table presents the number of full-time City employees for the Fiscal Years 2009/10 through 2013/14.

**TABLE A-2  
CITY OF ENCINITAS  
FULL-TIME CITY EMPLOYEES  
(Fiscal Years 2009/10 through 2013/14)**

<u>Fiscal Year</u>	<u>Number of Full-Time Employees<sup>(1)</sup></u>
2009/10	217
2010/11	212
2011/12	213
2012/13	212
2013/14	216

<sup>(1)</sup> San Dieguito Water District employees are not included as employees of the City. There are approximately 24 SDWD employees.

Source: City of Encinitas Finance Department.

Approximately 73% of regular City employees are represented by various associations, and labor relations have been generally amicable. There has not been any recent major strikes, work stoppages, or other similar incidents. The following table provides a list of employee organizations in the City and the number of employees they represent as of January 1, 2014.

**TABLE A-3  
CITY OF ENCINITAS  
EMPLOYEE ORGANIZATIONS  
(As of January 1, 2014)**

<u>Organization</u>	<u>Employees Represented</u>	<u>Expiration of Contract</u>
Service Employees International Union (Local 2028)	125	June 30, 2019
Encinitas Firefighters Assoc.	48	December 31, 2015

Source: City of Encinitas.

### **Accounting Policies and Financial Reporting**

The City's accounting records are organized and operated on a "fund" basis, which is the basic fiscal and accounting unit in governmental accounting. The operations of the different funds are accounted for with separate sets of self-balancing accounts showing assets, liabilities, fund balance or equity, and revenues and expenses. The basis of accounting for all funds is more fully explained in the "Notes to the City of Encinitas General Purpose Financial Statements" contained in APPENDIX B hereto.

The City, all its funds and the Encinitas Public Financing Authority are audited annually by a certified public accounting firm. The firm of Pun & McGeady LLP, San Diego, California, is the City's current auditor. The audited financial statements of the City for Fiscal Year 2013/14 are attached hereto as APPENDIX B. The auditor has not been requested to review such audited financial statements prior to inclusion in this Official Statement. Audited financial statements for prior fiscal years are available upon request from the Finance Department of the City or on its website at [www.cityofencinitas.org](http://www.cityofencinitas.org).

The City General Fund finances the legally authorized activities of the City not provided for in other restricted funds. General fund revenues are derived from such sources as taxes; licenses and permits, fines, forfeits and penalties; use of money and property; aid from other governmental agencies; charges for current services; and other revenue. General Fund expenditures and encumbrances are classified by the functions of general government, planning and building, public safety, public works, engineering and parks and recreation. Amounts on deposit in the Bond Fund held by the Trustee are pledged to payment of Lease Payments and are not available for other uses by the City.

### **State Budget and its Impact on the City**

Set forth in the following paragraphs are descriptions of the State budget process, the current State budget situation, and the potential impacts on the City.

#### **State Budget Information**

*The following information concerning the State's budget has been obtained from publicly available information which the City believes to be reliable; however, the City takes no responsibility as to the accuracy or completeness thereof and has not independently verified such information. The following information is provided as supplementary information only, and it should not be inferred from inclusion of this information that the Bonds are payable from State revenues. The Bonds are payable solely from Lease Payments to be made by the City under the Lease Agreement and certain other moneys held under the Indenture. The Bonds are not a debt of the City, the State, or any of its political subdivisions, in contravention of any constitutional or statutory*

*limitation, nor is the City, the State, or any of its political subdivisions required to levy or impose any form of taxation.*

**State Budgeting Process.** According to the State Constitution, the Governor is required to propose a budget to the State Legislature no later than January 10 of each year, and a final budget must be adopted by a majority vote of each house of the State Legislature no later than June 15, although this deadline is routinely breached. The budget becomes law upon the signature of the Governor, who may veto specific items of expenditure.

Information about the State budget is regularly available at various State-maintained websites. Text of the State budget may be found at the State Department of Finance website, [www.govbud.dof.ca.gov](http://www.govbud.dof.ca.gov). An impartial analysis of the budget is posted by the Office of the Legislative Analyst at [www.lao.ca.gov](http://www.lao.ca.gov). In addition, various State of California official statements, many of which contain a summary of the current and past State budgets, may be found at the website of the State Treasurer at [www.treasurer.ca.gov](http://www.treasurer.ca.gov). The information referred to is prepared by the respective State agency maintaining each website and not by the City, and the City takes no responsibility for the continued accuracy of the Internet addresses or for the accuracy or timeliness of information posted there, and such information is not incorporated herein by these references.

**Fiscal Year 2015 State Budget.** On June 20, 2014, the State Legislature adopted the State's Fiscal Year 2015 Budget (the "2015 State Budget"). For Fiscal Year 2014, the 2015 State Budget projected revised total State general fund revenues of \$102.2 billion, and total State general fund expenditures of \$100.7 billion and a general fund surplus of \$2.9 billion. For Fiscal Year 2015, the 2015 State Budget projects total State general fund revenues of \$109.4 billion and expenditures of \$108 billion and a State general fund surplus of approximately \$2.1 billion. This amount is a combination of \$449 million in the traditional general fund reserve, and an authorized deposit of \$1.6 billion into the Budget Stabilization Account (the "BSA") established by the California Balanced Budget Act of 2004 (also known as Proposition 58).

As part of implementing certain provisions of the 2015 State Budget, a legislatively-referred constitutional amendment (Proposition 2) was placed on the ballot, and ultimately approved by the voters at the November 4, 2014 statewide election. Among other things, Proposition 2 will create a reserve account that is expected to smooth fluctuations in State revenues. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS."

The 2015 State Budget identified a number of risks with potential significant State General Fund impact for Fiscal Year 2015 including the threat of a future recession, a shifting of costs from the federal government to the State, a decline in the stock market given the State's reliance on capital gains as a source of revenue, costs related to ongoing litigation over the State prison population, litigation arising from the dissolution of redevelopment agencies, costs of implementing federal health care reforms and costs associated with the State's substantial unfunded liabilities for pensions and post-employment health care costs.

**2015-16 State Budget.** On June 24, 2015, Governor Brown signed the Fiscal Year 2015-16 State Budget (the "2015-16 State Budget") which expands child care, boosts funding for public schools and opens the State's public healthcare program to immigrant children who are in the country illegally. The new spending plan, including a \$115.4-billion general fund, takes effect July 1 and provides for an estimated 170,000 immigrants 18 and younger to qualify for Medi-Cal. In addition, Governor Brown called special legislative sessions to find sustainable funding for transportation and public healthcare. For K-12 schools, the 2015-16 Budget increases funding levels by more than \$3,000 per student in Fiscal Year 2015-16 over Fiscal Year 2011-12 levels with implementation of the Local Control Funding Formula. The 2015-16 Budget includes total funding of \$83.2 billion for all K-12 education programs and also includes Proposition 98 funding of \$68.4 billion for fiscal year 2015-16, an increase of \$7.6 billion over the previous year. Funding for the University of California and California State University higher education systems also increased, allowing for tuition for California undergraduate students to remain flat through fiscal year 2016-17. Components of the 2015-16 State Budget affecting local agencies include the following:

- *Drought Relief.* The 2015-16 State Budget includes appropriations from Proposition 1 in response to the drought, commencing the first of a three-year funding plan to appropriate \$1.8 billion Proposition 1 funds allocated to storm-water management, contaminated groundwater cleanup, groundwater management plans, water recycling, public water system infrastructure, and desalination.
- *Mandate Repayments.* The 2015-16 State Budget provides that as a result of trigger language included in the 2014-15 State Budget, local agencies are projected to receive an additional payment of \$533 million in mandate repayments owed to local governments from prior to 2004, building upon the \$100 million repayment received by cities, counties and special districts as part of the 2014-15 State Budget.
- *Cap-and-Trade.* The 2015-16 State Budget also provides continuous funding for 60 percent of Cap-and-Trade auction revenues, with the remaining 40 percent to be used for annual appropriations reflecting the priorities of the State Legislature and does not make any changes to the 2014-15 State Budget that provides for continuous appropriations of 60 percent of Cap-and-Trade auction revenues for affordable housing, transportation, transit, and high speed rail.
- *Law Enforcement.* The 2015-16 State Budget includes \$20 million for local law enforcement grants to city police departments, \$6 million to be awarded to local law enforcement agencies in competitive grants for community relations; and \$8 million in competitive grants to local governments to reduce community recidivism rates.
- *Judicial Branch.* The 2015-16 State Budget includes an overall increase of trial court funding of \$180 million, including an increase of \$90.1 million to support trial court operations, \$19.8 million to cover reductions in fines and penalty revenues, and the allocation of \$26.9 million for anticipated trial court workload increase due to re-sentencing petitions related to drug and theft crimes.
- *Social Services.* The 2015-16 State Budget contains \$35 million for CalWORKs Housing Support Program services, an increase of \$15 million, which provides additional support to CalWORKs families for whom homelessness is a barrier to self-sufficiency and \$17.7 million to counties for the purpose of recruiting, retaining, and supporting foster care parents and relative caregivers.
- *Workforce Development.* The 2015-16 State Budget provides \$500 million in Proposition 98 funds for the Adult Education Block Grant as part of the State's workforce development strategy, including \$250 million in one-time funding for each of the next three years to support a transitional career technical education incentive grant program.

The 2015-16 State Budget may be affected by numerous factors, including but not limited to: (i) shifts of costs from the federal government to the State, (ii) national, State and international economic conditions, (iii) litigation risk associated with proposed spending reductions, (iv) rising health care costs and (v) other factors, all or any of which could cause the revenue and spending projections made in the 2015-16 State Budget to be unattainable.

The complete 2015-16 State Budget is available from the California Department of Finance website at [www.dof.ca.gov](http://www.dof.ca.gov). An impartial analysis of the 2015-16 Budget is posted by the Office of the Legislative Analyst at [www.lao.ca.gov](http://www.lao.ca.gov). In addition, various State official statements, many of which contain a summary of the current and past State budgets, may be found at the website of the State Treasurer, [www.treasurer.ca.gov](http://www.treasurer.ca.gov). The information referred to is prepared by the respective State agency maintaining each website and not by the County, and the County can take no responsibility for the continued accuracy of these internet addresses or for the accuracy, completeness or timeliness of information posted there, and such information is not incorporated

herein by these references. The County cannot predict the impact that the 2015-16 State Budget, or subsequent budgets, will have on its own finances and operations.

### **Future State Budgets**

No prediction can be made by the City as to whether the State will encounter budgetary problems in future fiscal years, and if it were to do so, it is not clear what measures would be taken by the State to balance its budget, as required by law. In addition, the City cannot predict the final outcome of future State budget negotiations, the impact that such budgets will have on City finances and operations or what actions will be taken in the future by the State Legislature and the Governor to deal with changing State revenues and expenditures. There can be no assurance that actions taken by the State to address its financial condition will not materially adversely affect the financial condition of the City. Current and future State budgets will be affected by national and State economic conditions and other factors, including the current economic downturn, over which the City has no control.

### **Budgetary Process and Current Budget**

The City develops a two-year operating budget for planning purposes and appropriates funds annually for operations and to fund the capital improvement program prior to the start of each fiscal year. The Council conducts a public hearing (workshop) prior to adopting the budget. Supplemental appropriations, where required during the fiscal year, are also approved by the Council. The authority for budgetary control is at the department level. A department head may transfer appropriations within the department. Expenditures may exceed appropriations to the extent that departmental revenues are sufficient to offset the excess. Expenditures in excess of departmental revenues must be approved by the Council. The Council, by the affirmative vote of three members, may amend the budget to add or delete appropriations, transfer between appropriations within a fund or change appropriations transfers between funds. An item of Required Supplementary Information, pursuant to GASB 34, is a Budgetary Comparison Schedule of the Original Adopted Budget and the Final Budget for the General Fund and all major Special Revenue Funds with explanations of the major changes. That schedule is included in the financial report in APPENDIX B for Fiscal Year 2013/14.

Set forth in Table A-4 are the General Fund budget for Fiscal Year 2014 compared with actual results. During the course of each Fiscal Year, the budget is amended and revised as necessary by the City Council. The adopted budget for each fiscal year shown below is the final adopted budget as adjusted by the City Council.

**TABLE A-4  
CITY OF ENCINITAS  
GENERAL FUND BUDGETS AND RESULTS**

	<b>Adopted Fiscal Year 2014 Budget</b>	<b>Fiscal Year 2014 Results</b>	<b>Budget and Actuals</b>	<b>2014-15 Budget</b>
<b>Revenues:</b>				
Taxes	\$49,071,802	\$51,166,669	\$ 2,094,867	\$51,751,739
Licenses and permits	191,370	289,102	97,732	220,057
Intergovernmental	464,824	479,025	14,201	521,353
Charges for services	5,055,912	5,479,847	423,935	5,249,022
Fines, forfeitures and penalties	690,150	632,776	(57,374)	742,607
Use of money and property	456,839	457,135	296	476,766
Other	464,859	713,832	248,973	13,383,721
Total Revenues	<u>\$56,395,756</u>	<u>\$59,218,387</u>	<u>\$ 2,822,631</u>	<u>\$72,345,265</u>
<b>Expenditures:</b>				
General government	\$ 9,275,180	\$ 8,974,270	\$ (338,988)	\$ 9,622,010
Public Safety	24,934,050	24,047,239	(1,080,174)	25,545,726
Public works	3,956,122	3,705,395	(17,161)	4,354,482
Planning and building	4,486,614	4,294,094	402,587	5,132,945
Engineering services	4,096,145	3,949,351	(62,794)	4,254,537
Parks and recreation	4,589,838	4,543,449	42,319	5,286,891
Capital outlay	-	-	-	-
Total expenditures	<u>\$51,337,949</u>	<u>\$49,513,798</u>	<u>\$ (1,054,211)</u>	<u>\$ 54,196,591</u>
Excess of revenues over expenditures	<u>\$ 5,057,807</u>	<u>\$ 9,704,589</u>	<u>\$ 3,876,842</u>	<u>\$ 18,148,674</u>
<b>Other Financing Sources:</b>				
Transfers in – Operating	\$ 1,048,077	\$ 1,295,818	\$ 247,741	\$ 1,026,339
Transfers out – Operating	(804,962)	(835,336)	(30,374)	(1,068,064)
Transfers out – Capital	(1,200,160)	(11,228,653)	(10,028,493)	(15,574,926)
Transfers out – Debt Service	<u>(4,595,015)</u>	<u>(4,577,087)</u>	<u>17,928</u>	<u>(5,289,723)</u>
Other Financing Sources	<u>\$(5,552,060)</u>	<u>\$(15,345,258)</u>	<u>\$(9,793,198)</u>	<u>\$(20,906,374)</u>
Excess Revenues Over Expenditure after Other Financing Sources	\$ 275,687	\$ (5,640,669)	\$ (5,916,356)	\$ (2,757,700)

Source: City of Encinitas 2013-2014 Audited Financial Statements. City of Encinitas Adopted Budget for Fiscal Years 2014-2015.

The City Council adopted a balanced Fiscal Year 2015/16 budget, which reflects an approximately 8% increase in annual growth of taxes and assessments and maintains current spending levels for services, law enforcement, traffic enforcement and fire protection and prevention as compared to Fiscal Year 2014/15 budget.

The following table summarizes the Fiscal Year 2015/16 City Budget and the 2016/17 City Budget. The City may make minor mid-year adjustments to the current adopted budget.

**TABLE A-5**  
**CITY OF ENCINITAS**  
**GENERAL FUND BUDGET**  
**(Fiscal Year 2015/16 and 2016/17)**

	<b>2015-16</b>	<b>2016-17</b>
	<b><u>Budget</u></b>	<b><u>Budget</u></b>
<b>Revenues:</b>		
Taxes	\$ 55,962,564	\$ 57,040,613
Licenses and permits	250,000	255,000
Intergovernmental	500,679	510,693
Charges for services	5,291,851	5,291,851
Fines, forfeitures and penalties	674,750	679,303
Use of money and property	401,612	405,628
Other	<u>590,000</u>	<u>595,900</u>
Total Revenues	<u>\$ 63,671,456</u>	<u>\$ 64,778,988</u>
<b>Expenditures:</b>		
General government	\$ 9,260,680	\$ 9,745,581
Public Safety	26,844,081	27,665,429
Public works	4,179,825	4,280,931
Planning and building	4,981,022	5,087,870
Engineering services	4,254,745	4,300,580
Parks and recreation	<u>5,342,169</u>	<u>5,509,237</u>
Total expenditures	<u>\$ 54,862,522</u>	<u>\$ 56,589,628</u>
Excess of revenues over expenditures	\$ 8,808,934	\$ 8,189,360
<b>Other Financing Sources:</b>		
Transfers in – Operating	\$ 1,174,360	\$ 1,174,360
Transfers out – Operating	(2,633,287)	(2,639,310)
Transfers out – Capital	(4,769,090)	(3,716,997)
Transfers out – Debt Service	<u>(4,994,187)</u>	<u>(4,986,009)</u>
Other Financing Sources	<u>\$(11,222,204)</u>	<u>\$(10,167,956)</u>
Excess Revenues Over Expenditure after Other Financing Sources	\$ (2,413,270)	\$ (1,978,596)

Source: Adopted Budget of City of Encinitas for Fiscal Years 2015-16 and 2016-17.

### Historic General Fund Revenues

Taxes received by the City include property taxes, sales taxes, franchise fees, property transfer taxes and transient occupancy taxes. Of such taxes, property taxes and sales taxes constitute the major sources of revenues. See “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS – Voter Initiative,” – “Proposition 62” and – “Proposition 218” herein for a discussion of certain general taxes imposed by the City that may be affected by initiatives approved by the California voters. A significant revenue source of the City is State of California payments and other payments in-lieu of taxes. The City receives a portion of Department of Motor Vehicles fees collected statewide. Payment of State assistance depends on the adoption by the State of its budget, including the appropriations therein providing for local assistance. These revenues are shown in the accompanying financial statements as “intergovernmental revenues.”

The State 2004/05 budget included a permanent reduction of vehicle license rate from 2% to 0.65%. Backfill dollars for this reduction have been eliminated and replaced with a like amount of property taxes (property taxes in-lieu of VLF).



The following table illustrates the property tax revenues, sales tax revenues and other revenue sources of the City's General Fund for Fiscal Years 2004/05 through 2014/15.

**TABLE A-6**  
**CITY OF ENCINITAS**  
**HISTORICAL GENERAL FUND REVENUES**  
**(As of June 30)**

<b>Fiscal Year (June 30)</b>	<b>Property Tax Revenues<sup>(1)(2)</sup></b>	<b>Sales Tax Revenues<sup>(2)</sup></b>	<b>Other Taxes</b>	<b>Charges for Services</b>	<b>Other Revenue<sup>(4)</sup></b>	<b>Total Revenues</b>
2005	\$25,855,557	\$ 8,605,077	\$3,393,956	\$4,511,704	\$7,314,018	\$49,680,312
2006	28,781,043	8,807,630	3,369,427	5,317,791	3,744,403	50,020,294
2007	32,101,532	8,306,912	3,404,932	6,973,457	5,338,932	56,125,765
2008	33,500,832	8,226,837	3,555,859	7,189,773	5,739,787	58,213,088
2009	34,784,367	7,436,678	3,323,734	5,888,331	4,340,460	55,773,570
2010	31,941,731	9,324,936	3,319,744	5,164,315	3,899,537	53,650,263
2011	31,907,978	10,244,506	3,527,052	6,376,261	3,162,161	55,217,958
2012	32,303,822	10,613,188	3,760,075	4,406,737	2,891,038	53,974,860 <sup>(3)</sup>
2013	33,699,290	11,585,145	3,855,930	4,450,756	2,828,221	56,419,342
2014	35,133,220	12,067,360	3,966,089	5,479,847	2,571,871	59,218,387

<sup>(1)</sup> Includes delinquent collections from prior year.

<sup>(2)</sup> Amounts reflect the State shift of 0.25% local sales tax and in-lieu vehicle license fees to property taxes, beginning in Fiscal Year 2004/05. Vehicle license fees are not a material source of revenue for the City.

<sup>(3)</sup> Drop in revenue represents a reclassification of Self Insurance revenue from General Fund to an internal service fund.

<sup>(4)</sup> Reductions in "Other Revenues" are due to reductions in interest earnings on deposits and due to reductions in borrowed funds accounted for as revenue.  
Source: City of Encinitas.

**Property Taxes.** Property tax receipts provide the largest tax revenue source of the City in each fiscal year. Property in the State which is subject to ad valorem taxes is classified as “secured” or “unsecured.” The secured classification includes property on which any property tax levied by a county becomes a lien on that property. A tax levied on unsecured property does not become a lien against the taxed unsecured property, but may become a lien on certain other property owned by the taxpayer. Every tax which becomes a lien on secured property has priority over all other liens, arising pursuant to State law, on the secured property, regardless of the time of the creation of other liens. The valuation of property is determined as of January 1 each year, and installments of taxes levied upon secured property become delinquent on the following December 10th and April 10th of the subsequent calendar year. Taxes on unsecured property are due July 1 and become delinquent August 31.

Secured and unsecured properties are entered separately on the assessment roll maintained by the county assessor. The method of collecting delinquent taxes is substantially different for the two classifications of property. The exclusive means of forcing the payment of delinquent taxes with respect to property on the secured roll is the sale of the property securing the taxes of the State for the amount of taxes that are delinquent. The taxing authority has four methods of collecting unsecured personal property taxes: (1) filing a civil action against the taxpayer; (2) filing a certificate in the office of the county clerk specifying certain facts in order to obtain a judgment lien on certain property of the taxpayer; (3) filing a certificate of delinquency for recording in the county recorder’s office in order to obtain a lien on certain property of the taxpayer; and (4) seizing and selling personal property, improvements or possessory interests belonging or taxable to the assessee. The County of San Diego has adopted a Teeter Plan with respect to property tax disbursements, however, the City has elected not to participate.

A 10% penalty is added to delinquent taxes which have been levied with respect to property on the secured roll. In addition, beginning on the July 1 following a delinquency, interest begins accruing at the rate of 1.5% per month on the amount delinquent. Such property may thereafter be redeemed by the payment of the delinquent taxes and the 10% penalty, plus interest at the rate of 1.5% per month to the time of redemption. If taxes are unpaid for a period of five years or more, the property is deeded to the State and then is subject to sale by the county tax collector. A 10% penalty also applies to the delinquent taxes or property on the unsecured roll, and further, an additional penalty of 1.5% per month accrues with respect to such taxes beginning on the varying dates related to the tax billing date.

Legislation enacted in 1984 (Section 25 et seq. of the California Revenue and Taxation Code), provides for the supplemental assignment and taxation of property as of the occurrence of a change in ownership or completion of new construction. Previously, statutes enabled the assessment of such changes only as of the next tax lien date following the change and thus delayed the realization of increased property taxes from the new assessment for up to 14 months. Collection of taxes based on supplemental assessments occurs throughout the year. Taxes due are prorated according to the amount of time remaining in the tax year, with the exception of tax bills dated January 1 through May 31, which are calculated on the basis of the remainder of the current Fiscal Year and the full 12 months of the next Fiscal Year.

For a number of years, the State Legislature has shifted property taxes from cities, counties and special districts to the Educational Revenue Augmentation Fund (“ERAF”). In Fiscal Years 1993 and 1994, in response to serious budgetary shortfalls, the State Legislature and administration permanently redirected over \$3 billion of property taxes from cities, counties, and special districts to schools and community college districts pursuant to ERAF shifts. The City last paid ERAF in 1995 and 1996, but was not required to pay any ERAF in later years when it has been imposed on other agencies.

On November 2, 2004, State voters approved Proposition 1A, which amended the State Constitution to significantly reduce the State’s authority over major local government revenue sources. Under Proposition 1A, the State may not: (i) reduce local sales tax rates or alter the method of allocating the revenue generated by such taxes; (ii) shift property taxes from local governments to schools or community colleges; (iii) change how property tax revenues are shared among local governments without two-thirds approval of both houses of the

State Legislature; or (iv) decrease Vehicle License Fee revenues without providing local governments with equal replacement funding. See, “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS – Voter Initiatives.” Beginning in Fiscal Year 2009, the State may shift to schools and community colleges a limited amount of local government property tax revenue if certain conditions are met, including: (a) a proclamation by the Governor that the shift is needed due to a severe financial hardship of the State; and (b) approval of the shift by the State Legislature with a two-thirds vote of both houses. Under such a shift, the State must repay local governments for their property tax losses, with interest, within three years. Proposition 1A does allow the State to approve voluntary exchanges of local sales tax and property tax revenues among local governments within a county.

***Sales and Use Tax.*** The sales tax is an excise tax imposed on retailers for the privilege of selling or leasing tangible personal property. The use tax is an excise tax imposed for the storage, use, or other consumption of tangible personal property purchased from any retailer. The total sales tax rate within the City is currently 8.75%. The proceeds of sales and uses taxes imposed within the City are distributed by the State to various agencies, with the City receiving 1.0% of the amount collected less 0.25% shifted to the State pursuant to a mechanism commonly known as “Triple Flip.” The 0.25% reduction in local sales tax is used to pay State economic recovery bonds, but cities and counties are then provided with ad valorem property tax revenues in lieu of these revenues.

The California State Board of Equalization administers collection of the sales and use tax. Under its procedures, the State Board of Equalization projects receipts of the sales and use tax on a quarterly basis and remits an advance of the receipts of the sales and use tax to the City on a monthly basis. The amount of each monthly advance is based upon the State Board of Equalization’s quarterly projection. During the last month of each quarter, the State Board of Equalization adjusts the amount remitted to reflect the actual receipts of the sales and use tax for the previous quarter. The Board of Equalization receives an administrative fee based on the cost of services provided by the Board to the City in administering the City’s sales tax, which is deducted from revenue generated by the sales and use tax before it is distributed to the City.

Factors that have historically affected sales tax revenues include the overall economic growth of the San Diego County Area, competition from neighboring cities, the growth of specific industries within the City, the City’s business attraction and retention efforts, and catalog and Internet sales.

## **Other Taxes and Fees**

***Franchise Fees.*** The City levies a franchise fee on its cable television, trash collection and utility franchises.

***Transient Occupancy Taxes.*** The City levies a 10%, voter-approved transient occupancy tax on hotel and motel bills, and short-term residential vacation rentals.

***Property Transfer Taxes.*** A documentary stamp tax is assessed by the County and remitted to the City for recordation of real property transfers.

***Documentary Transfer Tax.*** The County imposes a \$1.10 per \$1,000 of value of any documented sale or transfer of real property within the City. The tax is due when the transfer is recorded with the County. Title companies collect the tax as part of the sale closing process and remit the funds to the County when sales or transfers are finalized. The County remits the amounts due monthly, and the amounts are credited to the general fund.

## **City Investment Policy**

The City may invest public funds until such time as the funds are needed to pay the obligations of the City. The City maintains an Investment Policy which sets forth guidelines of the City Treasurer’s investment of such funds. The Treasurer is a trustee and therefore a fiduciary subject to the prudent investor standards, and the

primary objective shall be to safeguard the principal of the funds under its control. The secondary objective shall be to meet liquidity needs, and the third objective shall be to achieve a market rate of return.

The City matches its investments with anticipated cash flow requirements. Pursuant to the California Government Code, maximum maturities shall not exceed five (5) years, without specific approval of the City Council. The City's investment policy limits the investment of the City's funds by specifying term, diversification and credit quality. The requirements of the City's policy regarding these investments are either the same as or more restrictive than the requirements of State law. The City has elected not to permit other types of investments which are permitted by State law.

The City's investment portfolio had a market value as of March 31, 2015 of \$93.0 Million. The following table presents a breakdown of the City's investment portfolio by type of security as of that date.

<u>Investments</u>	<u>Market Value</u>	<u>% of Portfolio</u>
LAIF	\$ 31,053,339.33	33.42%
Managed Pool Accounts	1,000,579.05	1.08
Money Market Funds	227,490.80	0.03
Certificates of Deposit – Bank	5,480,981.04	5.87
U.S. Treasury Coupon Securities	18,151,461.12	19.49
Federal Agency Coupon Securities	27,194,501.94	29.20
Federal Agency Callable Securities	8,918,141.00	9.58
Corporate Medium Term Notes	<u>1,002,410.00</u>	<u>1.07</u>
TOTALS	\$93,028,904.28	100.00%

Source: City Finance Department.

As of March 31, 2015, the average life of the City's investment portfolio was 427 days. Cash on deposit for the City equals \$1,486,153.57

## **Risk Management**

The City is self-insured for liability claims and losses up to \$500,000 per occurrence, and is covered for covered losses between \$125,000 and \$2,500,000 by the San Diego Pooled Insurance Program Authority ("SANDPIPA") reserve pool. The members share the risk of claims in excess of reserves. Excess liability insurance coverage is provided for losses between \$2,500,000 and \$47,000,000 via third-party insurers, and losses in excess of \$47,000,000 are not covered and are the responsibility of the City. The City is self-insured for workers compensation claims and losses up to \$500,000 per occurrence. The City is covered for claims between \$500,000 and \$2,500,000 as a member of the California Joint Powers Insurance Authority LACWX. CSAC, EIA also provides excess workers compensation and commercial coverage between \$2,500,000 and \$47,000,000 through reinsurance arrangements. The City has stated that settled claims have not exceeded commercial coverage in any of the past three fiscal years.

The claims liability of \$607,546 (for both workers compensation and liability) as of June 30, 2014 is based on the requirements of GASB Statement No. 30, which requires that a liability for claims be reported if information prior to the issuance of the financial statements indicates that it is probable that a liability has been incurred at the date of the financial statements and the amount of the loss can be reasonably estimated.

The City and the General Contractor of the Encinitas Community Park settled a claim with the Regional Water Quality Control Board (Regional Board) for a payment of \$224,458 and will undertake a supplemental environmental project valued at \$210,563.

## Retirement Program

The City has entered into a total of three (3) separate defined benefit pension plans covering miscellaneous and safety employees. As of June 30, 2014, the City Fire Safety Plan and the City Lifeguard Plan were placed into cost sharing pools. The City's Miscellaneous plan provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. The Plans are part of the Public Agency portion of the California Public Employees Retirement System ("PERS"), a multiple-employer public employee retirement system that acts as a common investment and administrative agent for participating public entities within the State of California. A menu of benefit provisions as well as other requirements are established by State statutes within the Public Employees' Retirement Law. The City selects optional benefit provisions from the benefit menu by contract with PERS and adopts those benefits through local ordinance. PERS issues a separate comprehensive annual financial report. Copies of the PERS annual financial report may be obtained from the PERS Executive Office, Lincoln Plaza North, 400 Q Street, Sacramento, CA 95811.

The three City plans are as follows:

- (1) The Miscellaneous Plan of the City of Encinitas (Miscellaneous Plan)
- (2) The Safety Fire Department Plan of the City of Encinitas (Fire Plan)
- (3) The Safety Lifeguard Plan of the City of Encinitas (Lifeguard Plan)

The City's Miscellaneous Plan is an agent multiple-employer Plan that is part of the Public Agency's portion of PERS. The Fire and Lifeguard Plans are cost-sharing multiple employer defined benefit plans in which the City participates with other public agencies that each have less than 100 active members and share the same benefit formula.

The Miscellaneous Plan provides employees hired before October 13, 2012 with a Tier 1 benefit equal to 2.7% @ 55 years of age, calculated based on the single highest year of qualifying compensation. As of October 13, 2012, the City Council imposed new terms and conditions on the miscellaneous employees which created a new benefit formula for employees hired after the effective date of the change (the "Tier 2 miscellaneous plan"). Employees hired under the Tier 2 miscellaneous plan receive a lower benefit formula, referred to as the 2% at 60 formula. In addition, legislation enacted by the State of California applying to all local units of government, referred to as the Public Employees' Pension Reform Act (PEPRA) which became effective on January 1, 2013, created yet another benefit formula for new hires with no experience or prior service credit with PERS. In the case of the City, this will constitute a "Tier 3 miscellaneous plan" which provides a retirement benefit, referred to as the 2% @ 62 formula. The actual retirement benefit for Tier 2 and Tier 3 miscellaneous employees will be calculated using the average of the highest 36 consecutive months of qualifying compensation.

The Safety Fire Department Plan provides employees hired before June 23, 2012 with a Tier 1 benefit equal to 3.0% @ 55 years of age, calculated based on the single highest year of qualifying compensation. Effective June 23, 2012, the Encinitas Firefighters Association executed a new four year Memorandum of Understanding (MOU) with the City that provides for modifications to the pension benefit formula for employees hired on or after the effective date (the "Tier 2 fire safety plan"). The 3.0% @ 55 formula is maintained, but the actual retirement benefit will be calculated using the average of the highest 36 consecutive months of qualifying compensation. In addition, the PEPRA legislation, created yet another benefit formula for new hires with no experience or prior service credit with PERS. In the case of the City, this will constitute a "Tier 3 fire safety plan" which provides a retirement benefit, referred to as the 2.7% @ 57 formula. This plan also utilizes the mandated method of calculation based on the average of the highest 36 consecutive months of qualifying compensation.

The Safety Lifeguard Plan provides employees hired before October 13, 2012 with a Tier 1 benefit equal to 3.0% @ 55 years of age, calculated based on the single highest year of qualifying compensation. The lifeguards have Tier II and Tier III plans which are identical to the Fire Safety Plan described above.

Funding Policy:

Employee Contributions:

Active Tier 1 miscellaneous members are required to contribute 8% of their annual covered salary (the “employee contribution”). Effective October 13, 2012, all Tier 1 miscellaneous members contribute the full 8%, which is credited to their individual accounts. Members receiving the Tier 2 or Tier 3 benefits are required to contribute 7% of their annual covered salary. Safety lifeguard members are also now required to contribute the full 9% of their annual covered salary as their employee contribution. Fire safety members are now required to contribute the full required 9%. The employee contribution requirements are established by State statute.

Employer Contributions:

The City is required to contribute the actuarially determined remaining amounts necessary to fund the benefits for its members (the “employer contributions”). The employer contribution rates for fiscal year 2012-13, 2013-14, and 2014-15 each range from approximately 18%-19% for miscellaneous members to 23% for safety members. With respect to miscellaneous members, the rates are blended to cover Tiers I, II, and III. The employer contribution rates are calculated and established annually by PERS, based on the actuarial methods and assumptions as adopted by the PERS Board of Administration.

Annual Pension Costs:

The annual pension cost (APC), which is equivalent to the actual annual required employer contributions made to PERS, is based on the actuarially determined rates in effect for that fiscal year. These amounts do not include any payments made by the City on behalf of the employees for employee contributions.

A summary of the annual pension costs and the percentage of the required APC contributed for the last three fiscal years is presented below:

	<u>Miscellaneous Plan</u>		<u>Fire Plan</u>		<u>Lifeguard Plan</u>	
<u>Year Ended</u>	<u>Annual Pension Cost</u>	<u>Percentage of APC Contributed</u>	<u>Annual Pension Cost</u>	<u>Percentage of APC Contributed</u>	<u>Annual Pension Cost</u>	<u>Percentage of APC Contributed</u>
June 30, 2012	\$2,525,786	100%	\$1,160,826	100%	\$85,924	100%
June 30, 2013	2,247,251	100	1,035,753	100	81,503	100
June 30, 2014	2,246,342	100	1,288,248	100	82,599	100

The following table summarizes the City’s Miscellaneous Plan’s funding status for the most recent actuarial valuation (latest available data):

<u>Actuarial Valuation Date</u>	<u>Actuarial Value of Assets</u>	<u>Actuarial Accrued Liability (AAL)</u>	<u>Unfunded AAL (UAAL)</u>	<u>Funded Ratio</u>	<u>Covered Payroll</u>	<u>UAAL as a % of Covered Payroll</u>
June 30, 2012	\$55,775,486	\$72,910,100	\$17,134,614	76.5%	\$12,241,227	139.97%

The actuarial assumptions in the June 30, 2011 actuarial valuation for the City's Miscellaneous Plan, which was used to determine the fiscal year 2013/14 annual required contribution, included (1) 7.50% investment rate of return (net of administrative expenses), (b) projected salary increases that vary by duration of

service ranging from 3.30% to 14.20, and (c) a 3% growth in payroll. Both (a) and (b) included an inflation component of 2.75%.

The actuarial assumptions in the June 30, 2012 actuarial valuation for the City's Miscellaneous Plan included (1) 7.50% investment rate of return (net of administrative expenses), (b) projected salary increases that vary by duration of service ranging from 3.30% to 14.20%, and (c) a 3% growth in payroll. Both (a) and (b) included an inflation component of 2.75%.

The actuarial value of the Miscellaneous Plan assets was determined using techniques that smooth the effects of short-term volatility in the market value of investments over a fifteen-year period (smoothed market value). PERS' unfunded actuarial accrued liabilities (or excess assets) are being amortized as a level percentage of projected payroll on a closed basis, depending on the size of investment gains and/or losses.

### **Post-Retirement Health Benefits**

The City provides postretirement health care benefits through the PERS healthcare program (PEMHCA) to eligible employees who retire directly from the City. The City pays the cost for lifetime retiree and dependent medical benefits (average premium for PERS health plans available in San Diego County) for fire department employees hired before March 16, 1995. Other City retirees receive the PEMHCA minimum benefit, as determined by PERS. The City does not provide a retiree contribution for dental, vision, or life insurance benefits. The City's OPEB plan does not issue a separate stand-alone report.

The City has elected to join the California Employers' Retiree Benefit Trust (the "Trust") in accordance with GASB Statement No. 45, which provides a means to fund the annual OPEB costs, referred to as the Annual Required Contribution (ARC). The City makes an annual contribution to the Trust, pays benefits either directly to retirees or through PEMHCA during the year, and then seeks reimbursement for these "pay-as-you-go expenses" from the Trust.

The actual contributions of the City to the Trust were established by City Council action. The contribution requirements are established via an actuarial valuation of the City's Retiree Healthcare Plan as of June 30, 2013, performed in conformance with the requirements of GASB Statement No. 45. The required contribution is measured on an accrual basis rather than on a pay-as-you-go basis. The actuarial cost method used to determine the benefit obligations is the entry-age cost method. The valuation is determined using a discount rate of 7.61%, which is the discount rate established for the Trust by PERS. Other key assumptions include: (1) health care cost trend rate of 5.0% to 7.5% depending on type of plan and (2) an average retirement age of 60. The unfunded actuarial accrued liability is being amortized over a closed thirty-year period.

The Annual Required Contribution ("ARC") for fiscal year 2013-14 of \$785,000 represents a level of funding that, if paid on an ongoing basis, is projected to cover normal costs each year and to amortize any unfunded actuarial liability over a maximum of 30 years. The City contributed its ARC of \$785,000 to the Trust, and received reimbursement for actual pay-as-you-expenses incurred during the year. The ARC for 2014-15 is \$544,000.

The City's annual OPEB costs, the percentage of annual OPEB cost contributed to the plan, and the net OPEB obligation as of and for the year ended June 30, 2014 and the preceding two years were as follows:

<b>Fiscal Year Ended</b>	<b>Annual OPEB Cost</b>	<b>Percentage of Annual OPEB Cost Contributed</b>	<b>Net OPEB Obligation</b>
6/30/12	\$803,000	100%	-
6/30/13	760,000	100	-
6/30/14	785,000	100	-

As of June 30, 2014, the unfunded actuarial accrued liability of the City is \$6.5 million.

## Outstanding Lease Debt

The City has executed a number of capital lease and other obligations payable from the City General Fund (see APPENDIX B hereto). See “DEBT SERVICE SCHEDULE” above for the annual debt service requirements of the Bonds. The following table shows the City’s debt service requirements to maturity for prior certificates of participation and capital lease obligations payable from the City General Fund. The table below does not include the expected payments for the Bonds.

**TABLE A-7**  
**CITY OF ENCINITAS**  
**CURRENT OUTSTANDING PRINCIPAL REQUIREMENTS TO MATURITY**  
**(GENERAL FUND)<sup>(1)</sup>**

	<b><u>Balance at</u></b> <b><u>July 1, 2013</u></b>	<b><u>Additions</u></b>	<b><u>Deletions</u></b>	<b><u>Balance at</u></b> <b><u>June 30, 2014<sup>(4)</sup></u></b>	<b><u>Due Within</u></b> <b><u>One Year</u></b>
Capital Leases:					
2007 Storm Drain Equipment	\$ 37,789	\$ -	\$ (37,789)	\$ -	-
2008 Civic Center Roof Replacement	1,523,397	-	(128,518)	1,394,879	\$ 133,304
2011 Fire Apparatus	810,359	-	(154,183)	656,176	158,030
2012 Fire Apparatus	519,447	-	(81,950)	437,497	83,747
2013 Fire Apparatus	555,384	-	(79,537)	475,847	75,605
Bonded Debt:					
1997 Civic Center COP's <sup>(2)</sup>	2,185,000	-	(505,000)	1,680,000	530,000
2002 ABAG Financing <sup>(3)</sup>	1,325,000	-	(240,000)	1,085,000	255,000
2006 Public Library Bonds	17,920,000	-	(465,000)	17,455,000	480,000
less: original issue discount	(240,000)		10,000	(230,000)	-
2010 Community Park Bonds	17,365,000	-	(665,000)	16,700,000	700,000
add: original issue premium	184,983		(10,775)	174,208	-
2013 Community Park Bonds	7,865,000	-	(305,000)	7,560,000	315,000
add: original issue premium	<u>131,400</u>	<u>-</u>	<u>(8,760)</u>	<u>122,640</u>	<u>-</u>
Total	\$50,182,759	\$	\$(2,671,512)	\$47,511,247	\$2,730,686

<sup>(1)</sup> Bonds are 2006 Library Bonds.

<sup>(2)</sup> Matures in 2017.

<sup>(3)</sup> Matures in 2018.

<sup>(4)</sup> In November 2014, the City entered additional general fund obligations with a par value of \$13,460,000 with a maximum annual lease payment of \$832,688.

Source: City Finance Department.



## City Financial Data

The following tables provide a five-year history of the City's Comparative Balance Sheets, and summarize General Fund revenues, expenditures, transfers, and ending fund balances for the City for Fiscal Years 2009/10 through 2013/14. See also "Budgetary Process and Current Budget" above for estimated revenues and expenses for the current Fiscal Year.

**TABLE A-8**  
**CITY OF ENCINITAS**  
**GENERAL FUND COMPARATIVE BALANCE SHEET**  
**(As of June 30)**

	<u>2009/10</u>	<u>2010/11</u>	<u>2011/12<sup>(1)</sup></u>	<u>2012/13</u>	<u>2014</u>
<b>Assets:</b>					
Cash and investments	\$46,257,467	\$43,967,292	\$ 38,401,869	\$ 32,529,851	\$ 35,529,453
Receivables	2,721,917	3,097,889	2,703,356	2,671,298	2,983,757
Due from other funds	1,086,249	1,910,749	994,310	992,653	801,707
Other assets	3,327,632	2,026,537	2,218,533	1,345,062	997,556
Long-term receivable	-	-	650,000	650,000	650,000
Sales tax receivable	650,907	650,000	-	-	-
Cash and investments with fiscal agent	<u>627,827</u>	<u>633,245</u>	<u>-</u>	<u>8,020,468</u>	<u>-</u>
Total Assets	<u>\$53,671,999</u>	<u>\$52,285,712</u>	<u>\$44,968,068</u>	<u>\$46,209,332</u>	<u>\$41,371,246</u>
<b>Liabilities and Fund Equity:</b>					
<b>Liabilities:</b>					
Accounts payable & accrued liabilities	\$ 4,225,759	\$ 2,664,356	\$ 3,414,452	\$ 3,060,496	\$ 3,762,589
Deferred revenue	348,965	346,932	-	-	-
Due to other governments	710,470	627,986	-	-	-
Deposits and other liabilities	<u>1,397,571</u>	<u>1,239,946</u>	<u>1,348,524</u>	<u>1,602,058</u>	<u>1,702,549</u>
Total Liabilities	<u>\$ 6,682,705</u>	<u>\$ 4,879,220</u>	<u>\$ 4,762,976</u>	<u>\$ 4,662,554</u>	<u>\$ 5,465,138</u>
<b>Fund Equity:</b>					
Reserved	\$ 4,286,026	\$ 3,281,583	\$ 2,868,533	\$ 1,980,075	\$ 1,647,556
Unreserved					
Designated	36,913,369	42,274,327	19,371,624	18,405,881	8,698,648
Undesignated	<u>5,789,899</u>	<u>1,850,000</u>	<u>17,964,935</u>	<u>21,160,822</u>	<u>25,559,904</u>
Total Fund Equity	<u>\$46,989,294</u>	<u>\$47,406,492</u>	<u>\$40,205,092</u>	<u>\$41,546,778</u>	<u>\$35,906,108</u>
Total Liabilities and Fund Equity	<u>\$53,671,999</u>	<u>\$52,285,712</u>	<u>\$44,968,068</u>	<u>\$46,209,332</u>	<u>\$41,371,246</u>

<sup>(1)</sup> Reclassification of Self Insurance from General Fund to an internal service fund of \$3,384,000. General Fund balance of approximately \$3.8 million transferred out for construction of public capital project, and reclassification of funds due to GASB 54. For years after Fiscal Year 2011, undesignated funds include all funds not previously committed or appropriated.

Source: City Audited Financial Statements.

**TABLE A-9**  
**CITY OF ENCINITAS**  
**STATEMENT OF GENERAL FUND REVENUES, EXPENDITURES AND BALANCES**  
**(Fiscal Year Ending June 30)**

	<u>2009/10</u>	<u>2010/11</u>	<u>2011/12</u>	<u>2012/13</u>	<u>2013/14</u>
<b>Revenues:</b>					
Taxes and assessments	\$44,586,411	\$45,679,536	\$ 46,677,085	\$ 49,140,365	\$ 51,166,669
Licenses and permits	212,736	205,031	207,993	219,288	289,102
Intergovernmental	567,405	747,582	522,931	522,865	479,025
Charges for service	5,164,315	6,376,261	4,406,737	4,450,756	5,479,847
Fines, forfeitures and penalties	761,202	856,392	657,364	611,029	632,776
Use of money and property	945,056	546,051	523,630	452,386	457,135
Other	<u>1,413,138</u>	<u>807,105</u>	<u>979,120</u>	<u>1,022,653</u>	<u>713,832</u>
Total Revenues	\$53,650,263	\$55,217,958	\$ 53,974,860	\$ 56,419,342	\$ 59,218,387
<b>Expenditures:</b>					
Current:					
General government	\$10,437,750	\$10,092,490	\$ 9,233,423	\$ 9,364,941	\$ 8,974,270
Public safety	21,858,528	21,991,208	22,739,268	543,342	24,047,239
Public works	2,492,736	2,400,158	3,483,137	3,597,216	3,705,395
Planning and building	3,549,257	3,684,504	3,873,138	3,825,996	4,294,094
Engineering services	3,842,284	3,646,306	3,804,813	3,716,994	3,949,351
Parks and recreation	5,482,578	5,187,256	4,228,808	4,260,368	4,543,449
Capital Outlay	-	-	599,639	559,653	-
Debt Service:					
Bond issuance costs	-	395,404	-	243,987	-
Total Expenditures	\$47,663,133	\$47,397,326	\$ 47,962,226	\$ 49,112,497	\$ 49,513,798
Excess (Deficiency) of Rev. Over Exp.	\$ 5,987,130	\$ 7,820,632	\$ 6,012,634	\$ 7,306,845	\$ 9,704,589
<b>Other Financial Sources (Uses):</b>					
Issuance of debt <sup>(2)</sup>	-	\$ 19,530,000	\$ 599,639	\$ 8,420,384	-
Premium on debt	-	215,515	-	131,400	-
Payment to refunded bond escrow agent	-	(19,040,000)	-	-	-
Transfers In <sup>(3)</sup>	183,813	333,846	1,061,378	1,121,181	\$ 1,295,818
Transfers Out <sup>(4)</sup>	<u>(6,716,933)</u>	<u>(8,442,795)</u>	<u>(11,490,139)</u>	<u>(15,638,124)</u>	<u>(16,641,076)</u>
<b>Total Other Financing Sources (Uses)</b>	<b>\$(6,533,120)</b>	<b>\$(7,403,434)</b>	<b>\$(9,829,122)</b>	<b>\$ (5,965,159)</b>	<b>\$(15,345,258)</b>
Net Change in Fund Balances	(545,990)	417,198	(3,816,488)	1,341,686	(5,640,670)
Fund Balances, Beginning	<u>\$47,535,284</u>	<u>\$46,989,294</u>	<u>\$ 47,406,492</u>	<u>\$ 40,205,092</u>	<u>\$ 41,546,778</u>
Restatement – fund reclassification <sup>(1)</sup>	-	-	<u>(3,384,912)</u>	-	-
Fund Balances – beginning of year, as restated	-	-	<u>44,021,580</u>	-	-
Fund Balances, Ending	<u>\$46,989,294</u>	<u>\$47,406,492</u>	<u>\$ 40,205,092</u>	<u>\$ 41,546,778</u>	<u>\$ 35,906,108</u>

<sup>(1)</sup> Reclassification of \$3,384,912 set aside for Self Insurance from General Fund to an internal service fund.

<sup>(2)</sup> Includes capital lease financing.

<sup>(3)</sup> Includes operating, capital and debt services transfers in.

<sup>(4)</sup> Includes operating, capital and debt service transfer out.

Source: City Audited Financial Statements.

## Direct and Overlapping Debt

Contained within the City are numerous overlapping local agencies providing public services. These local agencies have outstanding obligations issued in the form of general obligation, lease, revenue and special assessment bonds. The following is a listing of direct and overlapping bonded debt on property in the City together with lease obligation debt of agencies in the area, as of August 1, 2015.

**TABLE A-10  
DIRECT AND OVERLAPPING DEBT  
CITY OF ENCINITAS**

2015-16 Assessed Valuation: \$13,552,437,394

<u>OVERLAPPING TAX AND ASSESSMENT DEBT:</u>	<u>% Applicable<sup>(1)</sup></u>	<u>Debt 8/1/15</u>
Metropolitan Water District	0.556%	\$ 613,935
San Dieguito Union High School District	24.425	63,812,755
Cardiff School District	100.000	4,415,198
Encinitas Union School District	67.213	20,180,815
San Dieguito Union High School District Community Facilities District	1.712-100.	10,925,677
City of Encinitas Community Facilities District No. 1	100.000	29,755,000
City of Encinitas 1915 Act Bonds	100.000	165,000
Olivenhain Municipal Water District, Assessment District No. 96-1	31.067	<u>4,122,591</u>
<b>TOTAL OVERLAPPING TAX AND ASSESSMENT DEBT</b>		<b>\$133,990,971</b>
 <b>DIRECT AND OVERLAPPING GENERAL FUND DEBT:</b>		
San Diego County General Fund Obligations	3.071%	\$ 10,799,786
San Diego County Pension Obligation Bonds	3.071	20,963,112
San Diego County Superintendent of Schools Obligations	3.071	452,435
Mira Costa Community College district Certificates of Participation	15.070	256,944
San Dieguito Union High School District General Fund Obligations	24.425	3,178,914
<b>City of Encinitas Certificates of Participation</b>	<b>100.000</b>	<b><u>55,395,000<sup>(2)</sup></u></b>
<b>TOTAL DIRECT AND OVERLAPPING GENERAL FUND DEBT</b>		<b>\$91,046,191</b>
 <b>COMBINED TOTAL DEBT</b>		<b>\$225,037,162<sup>(3)</sup></b>

<sup>(1)</sup> Based on 2014-15 ratios.

<sup>(2)</sup> Excludes issue to be sold.

<sup>(3)</sup> Excludes tax and revenue anticipation notes, enterprise revenue, mortgage revenue and non-bonded capital lease obligations.

Ratios to 2014-15 Assessed Valuation:

Total Overlapping Tax and Assessment Debt: ..... 0.99%

**Total Direct Debt (\$55,395,000): .....0.41%**

Combined Total Debt: ..... 1.66%

## Assessed Valuations

As discussed under “Property Taxes” above, the City receives a share of ad valorem taxes levied on real property within its boundaries. The basic levy is equal to 1% of the assessed value of secured and unsecured property. The City receives approximately 26% of the basic levy. The following table shows the assessed valuation of the City from Fiscal Year 1998/99 through Fiscal Year 2015/16.

**TABLE A-11**  
**CITY OF ENCINITAS**  
**SCHEDULE OF ASSESSED PROPERTY**  
**(As of June 30)**

<u>Year</u>	<u>Secured</u>	<u>Utility</u> <sup>(1)</sup>	<u>Unsecured</u>	<u>Total</u>
1999	\$ 4,598,429,761	\$3,248,989	\$107,869,719	\$ 4,709,548,469
2000	5,029,321,477	3,539,663	120,050,833	5,152,911,973
2001	5,555,651,747	3,615,230	124,132,927	5,683,399,904
2002	6,094,943,187	3,687,679	121,710,903	6,220,341,769
2003	6,671,155,770	3,321,931	122,276,356	6,796,754,057
2004	7,380,752,536	2,870,543	129,666,206	7,513,289,285
2005	8,166,719,411	2,732,083	130,170,382	8,299,621,876
2006	9,012,953,568	2,785,704	137,229,829	9,152,959,101
2007	9,874,321,949	2,609,179	142,971,280	10,019,902,408
2008	10,539,452,529	0	149,460,274	10,688,912,803
2009	11,097,895,097	0	160,815,739	11,258,710,836
2010	11,175,029,435	0	163,857,938	11,338,887,373
2011	11,186,889,197	0	157,142,326	11,344,031,523
2012	11,388,978,126	0	138,583,972	11,527,562,098
2013	11,581,761,879	0	143,523,614	11,725,285,493
2014	11,997,858,077	0	151,308,388	12,149,166,465
2015	12,715,936,309	0	155,935,794	12,871,872,103
2016	13,961,520,797	0	143,365,305	14,104,886,102

<sup>(1)</sup> Change in 2008 reflects legislative alteration of how certain rail property, including property owned by North San Diego County Transit Development Authority, is allocated between the agency where such property is located and other taxing entities in the surrounding jurisdictions.

Source: California Municipal Statistics, Inc. and San Diego County Auditor-Controller.

Set forth in Table A-12 are property tax collections and delinquencies in the City as of June 30 for Fiscal Years 2005 through 2014. The County of San Diego (the “County”) operates under a statutory program entitled the Alternate Method of Distribution of Tax Levies and Collections and of Tax Sale Proceeds (the “Teeter Plan”). Under the Teeter Plan local taxing entities receive 100% of their tax levies net of delinquencies, but do not receive interest or penalties on delinquent taxes collected by the County. The City elected not to enroll in the Teeter Plan; accordingly, the City’s receipt of its property tax revenues is impacted by delinquencies in payment, as well as by the collection of interest and penalties on past delinquencies.

**TABLE A-12**  
**CITY OF ENCINITAS**  
**PROPERTY TAX LEVIES AND COLLECTIONS**  
**(As of June 30, 2014)**

<b>Fiscal Year Ended <u>June 30</u></b>	<b>Taxes Levied for the <u>Fiscal Year</u><sup>(1)</sup></b>	<b><u>Amount Collected</u></b>	<b><u>Percent of Levy Collected</u></b>
2005	\$22,082,262	\$21,269,966	96.32%
2006	24,285,772	23,360,483	96.19
2007	25,857,065	24,741,077	95.68
2008	26,950,803	25,584,630	94.93
2009	27,441,558	26,326,996	95.94
2010	27,421,386	26,490,783	96.61
2011	27,541,487	26,888,921	97.63
2012	28,100,611	27,540,858	98.01
2013	29,207,237	28,712,036	98.30
2014	30,550,301	30,009,574	98.23

<sup>(1)</sup> City of Encinitas general fund.

Source: San Diego County Assessor Combined Tax Rolls.

## Largest Taxpayers

A list of the principal property taxpayers in the City is set forth below:

**TABLE A-13**  
**CITY OF ENCINITAS**  
**PRINCIPAL SECURED PROPERTY TAXPAYERS<sup>(1)</sup>**  
**(Fiscal Year 2014/15)**

	<u>Property Owner</u>	<u>Primary Land Use</u>	<u>2014-15 Assessed Valuation</u>	<u>Percent of Total<sup>(1)</sup></u>
1.	TRC Encinitas Village LLC	Shopping Center	\$ 80,009,822	0.63%
2.	Collwood Pines Apartments LP	Apartments	65,993,312	0.52
3.	Belmont Village Tenant 2 LLC 3535	Convalescent Home	55,191,737	0.43
4.	SSL Landlord LLC	Convalescent Home	34,862,180	0.27
5.	NCHC 3 LLC	Professional Buildings	34,068,015	0.27
6.	Encinitas Town Center Associates LLC	Shopping Center	34,063,960	0.27
7.	WRI El Camino LP	Shopping Center	33,420,431	0.26
8.	PK III Encinitas Marketplace LP	Shopping Center	31,560,000	0.25
9.	Home Depot USA Inc.	Commercial	29,189,639	0.23
10.	Shea Homes LP	Residential Development	27,958,374	0.22
11.	ASN Encinitas LLC	Apartments	27,665,031	0.22
12.	Urschel Holdings LP	Apartments	23,455,949	0.18
13.	Vons Companies Inc.	Shopping Center	22,632,195	0.18
14.	Loja Pacific Station LLC	Commercial	20,084,971	0.16
15.	Keith B. and Sara S. Harrison	Residential and Commercial	19,999,498	0.16
16.	Quail Pointe Apartments LP	Apartments	19,517,683	0.15
17.	UCSD Garden View LLC	Professional Buildings	18,443,353	0.15
18.	Sterling Family Trust	Apartments	17,995,127	0.14
19.	LA Fitness International LLC	Fitness Club	17,795,490	0.14
20.	Plenc El Camino LLC	Shopping Center	17,651,034	0.14
	<u>Total</u>		<u>\$631,557,801</u>	<u>4.97%</u>

<sup>(1)</sup> 2014-15 Local Secured Assessed Valuation: \$12,715,936,309.

Source: California Municipal Statistics, Inc.

## Retail and Total Taxable Sales

The following table presents the retail taxable transactions of the City of Encinitas for the calendar years 2008 through 2014.

**TABLE A-14**  
**CITY OF ENCINITAS**  
**TAXABLE RETAIL SALES**  
**(\$ in thousands)**

	<u><b>2008</b></u>	<u><b>2009</b></u>	<u><b>2010</b></u>	<u><b>2011</b></u>	<u><b>2012</b></u>	<u><b>2013</b></u>	<u><b>2014</b></u>
Autos and Transportation	\$1,304,574	\$1,138,428	\$1,189,413	\$1,330,270	\$1,427,132	\$1,446,737	\$1,519,006
Building and Construction	1,334,408	1,057,851	818,484	774,109	868,790	820,467	887,182
Business and Industry	580,488	520,656	461,247	537,840	518,699	560,723	573,032
Food and Drugs	1,039,216	979,585	931,937	945,542	995,511	1,003,491	1,001,942
Fuel and Service Stations	1,182,908	1,085,758	1,146,372	1,351,288	1,569,265	1,577,783	1,559,342
General Consumer Goods	3,042,340	2,949,625	2,836,989	2,818,809	3,117,547	3,165,746	3,355,540
Restaurants and Hotels	<u>1,425,305</u>	<u>1,448,867</u>	<u>1,388,570</u>	<u>1,442,976</u>	<u>1,624,007</u>	<u>1,699,705</u>	<u>1,825,971</u>
Total	\$9,909,239	\$9,180,770	\$8,773,012	\$9,200,834	\$10,120,951	\$10,274,652	\$10,274,029

Note: Due to confidentiality issues, the names of the ten largest revenue payers are not available.

Source: State of California, Board of Equalization and The HdL Companies.

## Building Activity

The following table summarizes the number of residential building permits issued in the City from Fiscal Year 2004/05 through 2011/12.

**TABLE A-15**  
**CITY OF ENCINITAS**  
**NEW BUILDING PERMITS**  
**(As of June 30)**

<u><b>Fiscal Year</b></u> <u><b>(June 30)</b></u>	<u><b>Single Family</b></u> <u><b>Residential Permits</b></u>
2005	159
2006	145
2007	107
2008	98
2009	86
2010	39
2011	51
2012	121

Source: City of Encinitas.

## Income Levels

The City of Encinitas is primarily a bedroom community with primary employment in nearby cities. Encinitas median household income is \$82,618, which is 154% of the National average of \$53,706 and 37% higher than the State of California average of \$60,244. Average Effective Buying Income is \$89,061, which is 47% higher than the National average of \$60,753, and 29% higher than the State of California average of \$68,806.

**APPENDIX B**

**CITY'S AUDITED FINANCIAL  
STATEMENTS FOR FISCAL YEAR 2013/14**



[THIS PAGE INTENTIONALLY LEFT BLANK]

# **City of Encinitas**

Encinitas, California

## **Single Audit and Independent Auditors' Reports**

*For the Year Ended June 30, 2014*



# City of Encinitas

## TABLE OF CONTENTS

---

### Page

<b>Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with <i>Government Auditing Standards</i> .....</b>	<b>1</b>
<b>Report on Compliance for Each Major Program and on Internal Control over Compliance and on the Schedule of Expenditures of Federal Awards required by OMB Circular A-133 .....</b>	<b>3</b>
Schedule of Expenditures of Federal Awards .....	7
Notes to the Schedule of Expenditures of Federal Awards .....	8
Schedule of Findings and Questioned Costs .....	10

***This page intentionally left blank.***



6265 Greenwich Drive  
Suite 220  
San Diego, California 92122  
Phone: (858) 242-5100  
Fax: (858) 242-5150  
www.pm-llp.com

**REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND  
OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN  
ACCORDANCE WITH GOVERNMENTAL AUDITING STANDARDS**

**Independent Auditors' Report**

To the Honorable Mayor and Members of City Council  
of the City of Encinitas  
Encinitas, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Encinitas, California (the "City") as of and for the year ended June 30, 2014, and the related notes to the financial statements, which collectively comprise the City's basic financial statements, and have issued our report thereon dated December 5, 2014.

**Internal Control over Financial Reporting**

In planning and performing our audit of the financial statements, we considered the City's internal control over financial reporting ("internal control") to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

To the Honorable Mayor and Members of City Council  
of the City of Encinitas  
Encinitas, California  
Page 2

### **Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the City's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

### **Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

A handwritten signature in black ink that reads "Rick E. McGeady LLP". The signature is written in a cursive, flowing style.

San Diego, California  
December 5, 2014



6265 Greenwich Drive  
Suite 220  
San Diego, California 92122  
Phone: (858) 242-5100  
Fax: (858) 242-5150  
www.pm-llp.com

**REPORT ON COMPLIANCE FOR EACH MAJOR FEDERAL PROGRAM; ON INTERNAL CONTROL  
OVER COMPLIANCE AND ON THE SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS  
REQUIRED BY OMB CIRCULAR A-133**

**Independent Auditor's Report**

To the Honorable Mayor and Members of City Council  
of the City of Encinitas  
Encinitas, California

**Report on Compliance for Each Major Federal Program**

We have audited the City of Encinitas, California's (the "City") compliance with the types of compliance requirements described in the U.S. Office of Management and Budget ("OMB") *Circular A-133 Compliance Supplement* that could have a direct and material effect on each of its major federal programs for the year ended June 30, 2014. The City's major federal programs are identified in the summary of auditor's results section of the accompanying Schedule of Findings and Questioned Costs.

***Management's Responsibility***

Management is responsible for compliance with the requirements of laws, regulations, contracts, and grants applicable to its federal programs.

***Auditor's Responsibility***

Our responsibility is to express an opinion on compliance for each of the City's major federal programs based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the City's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance for each major federal program. However, our audit does not provide a legal determination of the City's compliance.

***Opinion on Each Major Federal Program***

In our opinion, the City complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended June 30, 2014.



## **Report on Internal Control Over Compliance**

Management of the City is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered the City's internal control over compliance with the types of requirements that could have a direct and material effect on each major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for each major federal program and to test and report on internal control over compliance in accordance with OMB Circular A-133, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the City's internal control over compliance.

*A deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. *A significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

## **Schedule of Expenditures of Federal Awards**

We have audited the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City as of and for the year ended June 30, 2014, and have issued our report thereon dated December 5, 2014 which contained an unqualified opinion on those financial statements. Our audit was performed for the purpose of forming our opinions on the financial statements that collectively comprise the City's basic financial statements. The accompanying Schedule of Expenditures of Federal Awards is presented for purposes of additional analysis as required by OMB Circular A-133 and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain other procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the Schedule of Expenditure of Federal Awards is fairly stated in all material respects in relation to the basic financial statements as a whole.

To the Honorable Mayor and Members of City Council  
of the City of Encinitas  
Encinitas, California  
Page 3

### **Purpose of this Report**

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of OMB Circular A-133. Accordingly, this report is not suitable for any other purpose.

A handwritten signature in black ink that reads "PwC for Mc Geady LLP". The signature is written in a cursive, flowing style.

San Diego, California  
December 5, 2014

***This page intentionally left blank***

**City of Encinitas**  
**Schedule of Expenditures of Federal Awards**  
**For the Year Ended June 30, 2014**

<b>Federal Grantor/Pass - Through Grantor/Program Title</b>	<b>Federal CFDA Number</b>	<b>Grant Identification Number</b>	<b>Federal Expenditures</b>
<b><u>U.S. Department of Housing and Urban Development</u></b>			
<i>Direct Programs:</i>			
Community Development Block Grant	14.218	B-13-MC-06-0674	\$ 217,179
Section 8 Housing Choice Vouchers	14.871	CA16-VISS-001	1,210,095
<i>Passed through the County of San Diego:</i>			
HOME Investment Partnerships Program	14.239	M-09-UC-06-0534	269,000
<b>Total U.S. Housing and Urban Development</b>			<b>1,696,274</b>
<b><u>U.S. Department of Health and Human Services</u></b>			
<i>Passed through the County of San Diego:</i>			
Title III - C1 Congregate Meals	93.045	533651	39,805
Title III - B Transportation	93.044	533651	14,959
Title III - NSIP C1 Incentive	93.053	533651	6,640
<b>Total U.S. Department of Health and Human Services</b>			<b>61,404</b>
<b><u>U.S. Department of Justice</u></b>			
<i>Passed through the City of San Diego:</i>			
Justice Assistance Grant Program	16.738	2012-DJ-BX-0836	11,495
<b>Total U.S. Department of Justice</b>			<b>11,495</b>
<b><u>U.S. Department of Homeland Security</u></b>			
<i>Direct Program</i>			
2012 Assistance to Firefighters	97.044	EMW-2012-FF	85,518
<i>Passed through the County of San Diego:</i>			
2011 State Homeland Security Grant	97.067	2010-0085	4,560
2012 State Homeland Security Grant	97.067	2012-00110	20,914
<b>Total U.S. Department of Homeland Security</b>			<b>110,992</b>
<b><u>U.S. Department of Transportation</u></b>			
<i>Passed through the State of California:</i>			
<i>Highway Planning and Construction:</i>			
L.A. Emergency Relief	20.205	ER-4213 (017)	7,245
Safe Routes to Schools	20.205	SRTSL 5446	128,826
Interchange Maintenance Discretionary	20.205	IMD-5446(015)	65,597
<b>Subtotal Highway Planning and Construction</b>			<b>201,668</b>
Railroad Safety	20.301	HSR-7500(105)	5,217
<b>Total U.S. Department of Transportation</b>			<b>206,885</b>
<b>Total Expenditures of Federal Awards</b>			<b>\$ 2,087,050</b>

See accompanying notes to schedule of expenditures of federal awards.

**City of Encinitas**  
**Notes to Schedule of Expenditures of Federal Awards**  
**For the Year Ended June 30, 2014**

---

**Note 1 – Reporting Entity**

The City of Encinitas (the City) was incorporated on October 1, 1986, pursuant to an election approving the San Dieguito Reorganization Plan, which consisted primarily of the detachment of territory from the Cardiff area and the annexation of the same territory to the City of Solana Beach.

The reporting entity of the City includes the accounts of the City, as the primary government, and the following blended component units: the Encinitas Housing Authority (the EHA), the Encinitas Public Financing Authority (the EPFA), and the San Dieguito Water District (SDWD).

The EHA was formed on January 26, 1994, under the laws of the State of California to provide housing assistance to citizens of the City.

The EPFA was formed on November 6, 1991, by the City and SDWD as a Joint Powers Authority under the laws of the State of California to purchase, finance, and lease certain real property to the members. The member agencies are the City and the SDWD.

SDWD was formed in 1922 under the laws of the State of California to supply water services to the central western portion of San Diego County. Certain management, maintenance, and operating functions are the responsibility of the City, which bills periodically for these services.

The criteria used in determining the scope of the reporting entity are based on the provisions of Governmental Accounting Standards Board (GASB) Statement No 14, *The Financial Reporting Entity*, as amended by GASB Statement No. 61, *The Financial Reporting Entity - Omnibus –An Amendment of GASB Statements No. 14 and No. 34*. The City is the primary governmental unit. Component units are financially accountable to the City. Financial accountability exists if the primary government appoints a voting majority of the entity's governing body and (1) it is able to impose its will on that organization or (2) there is potential for the organization to provide financial benefit, or impose financial burdens on the primary government. The component units have been accounted for as "blended" component units of the City. Despite being legally separate, these entities are so intertwined with the City that they are, in substance, part of the City's operations. Accordingly, the balances and transactions of these component units are reported within the funds of the City. SDWD is reported as an enterprise fund of the City.

The following specific criteria were used in determining the status of these component units:

- Members of the City Council also act as the governing body of the EHA, the EPFA, and SDWD.
- The City, the EHA, the EPFA, and SDWD are financially interdependent.
- The EHA, the EPF A, and SDWD are managed, at least in part, by employees of the City, who provide various support functions including financial reporting and investment decisions.

Separate financial statements for SDWD are available at the City's administrative office. Separate financial statements are not required or prepared for the EHA and the EPFA.

**City of Encinitas**  
**Notes to Schedule of Expenditures of Federal Awards (Continued)**  
**For the Year Ended June 30, 2014**

---

**Note 2 – Summary of Significant Accounting Policies**

***Basis of Accounting***

The activity of the City's federal award programs are recorded within the special revenue funds of the City. The City utilizes the modified accrual basis of accounting for the special revenue funds as described in Note (1) to the City's basic financial statements. Accordingly, the accompanying Schedule of Expenditures of Federal Awards is presented using the modified accrual basis of accounting.

***Schedule of Expenditures of Federal Awards***

The accompanying Schedule of Expenditures of Federal Awards presents the activity of all federal awards programs of the City of Encinitas, California (City) and, therefore, does not present the financial position or results of operations of the City. The City's reporting entity is defined in Note (1) to the City's basic financial statements.

***Catalog of Federal Domestic Assistance (CFDA) Numbers***

The CFDA numbers included in the accompanying SEFA were determined on the program name, review of grant contract information, and the Office of Management and Budget's Catalog of Federal Domestic Assistance.

**City of Encinitas**  
**Schedule of Findings and Questioned Costs**  
**For the Year Ended June 30, 2014**

---

**Section I – Summary of Auditor’s Results**

**Financial Statements**

Types of auditors’ report issued:	Unmodified
Internal control over financial reporting:	
• Material weakness(es) identified?	No
• Significant deficiency(ies) identified?	None Reported
Noncompliance material to financial statements noted?	No

**Federal Awards**

Internal control over major programs:	
• Material weakness(es) identified?	No
• Significant deficiency(ies) identified?	None Reported
Type of auditor’s report issued on compliance for major programs	Unmodified
Any audit findings disclosed that are required to be reported in Accordance with section 510(a) of OMB Circular A-133	No
Identification of major programs:	

<u>CFDA Number(s)</u>	<u>Name of Federal Program or Cluster</u>	<u>Expenditures</u>
14.871	Section 8 Housing Choice Vouchers	\$ 1,210,095
	Total Expenditures of All Major Federal Programs	\$ 1,210,095
	Total Expenditures of Federal Awards	\$ 2,087,050
	Percentage of Total Expenditures of Federal Awards	57.98%

Dollar threshold used to distinguish between type A and type B program	\$300,000
Auditee qualified as low-risk auditee under section 530 of OMB Circular A-133?	Yes

**City of Encinitas**  
**Schedule of Findings and Questioned Costs (Continued)**  
**For the Year Ended June 30, 2014**

---

**Section II – Financial Statement Findings**

No financial statements findings were noted.

**Section III – Federal Award Findings**

**A. Current Year Findings and Questioned Costs – Major Federal Award Program Audit**

No findings or questioned costs were noted on the City's major programs for the year ended June 30, 2014.

**B. Prior Year Findings and Questioned Costs – Major Federal Award Program Audit**

No findings or questioned costs were noted on the City's major programs for the year ended June 30, 2013.



[THIS PAGE INTENTIONALLY LEFT BLANK]

## APPENDIX C

### SUMMARY OF PRINCIPAL LEGAL DOCUMENTS

*The following is a summary of certain provisions of the Indenture of Trust and the Amended and Restated Lease Agreement which are not described elsewhere. This summary does not purport to be comprehensive and reference should be made to the respective agreement for a full and complete statement of the provisions thereof.*

#### THE INDENTURE OF TRUST

##### Defined Terms

Unless the context otherwise requires, the terms defined in the Indenture shall, for all purposes of the Indenture and of any indenture supplemental hereto and of any certificate, opinion or other document mentioned in the Indenture, have the meanings specified in the Indenture, to be equally applicable to both the singular and plural forms of any of the terms defined in the Indenture. In addition, all capitalized terms used in the Indenture and not otherwise defined in the Indenture shall have the respective meanings given such terms in the Lease Agreement.

“Authority” means the Encinitas Public Financing Authority, a joint powers authority duly organized and existing under the laws of the State.

“Authorized Representative” means: (a) with respect to the Authority, its Chairperson, Vice Chairperson, Executive Director, Treasurer or Secretary or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Chairperson or Vice Chairperson, Executive Director or Treasurer and filed with the City and the Trustee; and (b) with respect to the City, its Mayor, Deputy Mayor, City Manager, City Clerk, Finance Director or any other person designated as an Authorized Representative of the City by a Written Certificate of the City signed by its Mayor, Mayor, City Manager or Finance Director and filed with the Authority and the Trustee.

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

“Bond Fund” means the fund by that name established and held by the Trustee pursuant to the Indenture.

“Bond Law” means the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State, as in existence on the Closing Date or as thereafter amended from time to time.

“Bond Year” means each twelve-month period extending from October 2 in one calendar year to October 1 of the succeeding calendar year, both dates inclusive; except that the first Bond Year shall commence on the Closing Date and extend to and including October 1, 2015.

“Bonds” means the \$\_\_\_\_\_ aggregate principal amount of Encinitas Public Financing Authority Lease Revenue Refunding Bonds, 2015 Series A (Library Project) authorized by and at any time Outstanding pursuant to the Indenture.

“Book-Entry Depository” means DTC or any successor as Book-Entry Depository for the Bonds, appointed pursuant to the Indenture.

“Business Day” means a day (other than a Saturday or a Sunday) on which banks are not required or authorized to remain closed in the city in which the Office of the Trustee is located.

“City” means the City of Encinitas, a municipal corporation organized under the laws of the State.

“Closing Date” means \_\_\_\_\_, 2015, being the date of delivery of the Bonds to the Original Purchaser.

“Costs of Issuance” means all expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds and the application of the proceeds of the Bonds, including but not limited to all compensation, fees and expenses (including but not limited to fees and expenses for legal counsel) of the Authority, initial fees and expenses of the Trustee and its counsel, title insurance premiums, appraisal fees, compensation to any financial consultants or underwriters, legal fees and expenses, filing and recording costs, rating agency fees, costs of preparation and reproduction of documents and costs of printing.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee pursuant to the Indenture.

“Debt Service” means, during any period of computation, the amount obtained for such period by totaling the following amounts: (a) the principal amount of all Outstanding Serial Bonds coming due and payable by their terms in such period; (b) the minimum principal amount of all Outstanding Term Bonds scheduled to be redeemed by operation of mandatory sinking fund deposits in such period; and (c) the interest which would be due during such period on the aggregate principal amount of Bonds which would be Outstanding in such period if the Bonds are retired as scheduled, but deducting and excluding from such aggregate amount the amount of Bonds no longer Outstanding.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Escrow Account” means the account of that name established under the Escrow Agreement.

“Escrow Agent” means MUFG Union Bank, N.A., or its successor in interest, pursuant to the Escrow Agreement.

“Escrow Agreement” means the Escrow Deposit and Trust Agreement, dated as of September 1, 2015, among the City, the Authority and the Escrow Agent.

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

“Fair Market Value” means, with respect to any investment, the price at which a willing buyer would purchase such investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Tax Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, or (iii) the investment is a United States Treasury Security - State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt.

“Federal Securities” means:

(a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of

America), the payment of principal of and interest on which are unconditionally and fully guaranteed by the United States of America;

(b) any obligations the principal of and interest on which are unconditionally guaranteed by the United States of America; and

(c) pre-refunded municipal obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice: and (i) which are rated, based on the escrow, in the highest rating category of S&P and Moody's or any successors thereto; or (ii)(A) which are fully secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or obligations described in paragraphs (a) or (b) above, 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 maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (B) which fund is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in the Indenture on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate.

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

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

"Independent Accountant" means any certified public accountant or firm of certified public accountants appointed and paid by the Authority or the City, and who, or each of whom (a) is in fact independent and not under domination of the Authority or the City; (b) does not have any substantial interest, direct or indirect, in the Authority or the City; and (c) is not connected with the Authority or the City as an officer or employee of the Authority or the City but who may be regularly retained to make annual or other audits of the books of or reports to the Authority or the City.

"Information Services" means in accordance with then-current guidelines of the Securities and Exchange Commission, the Electronic Municipal Market Access System (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board (at <http://emma.msrb.org>), or such service or services as the Authority may designate in a certificate delivered to the Trustee.

"Insurance and Condemnation Fund" means the fund by that name established and held by the Trustee pursuant to the Indenture.

"Interest Account" means the account by that name established in the Bond Fund pursuant to the Indenture.

"Interest Payment Date" means each April 1 and October 1 commencing April 1, 2016.

"Lease Agreement" means that certain Amended and Restated Lease Agreement, dated as of September 1, 2015, by and between the Authority, as lessor, and the City, as lessee.

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

“Net Proceeds” means all amounts derived from any policy of casualty insurance or title insurance with respect to the Leased Premises, or the proceeds of any taking of the Leased Premises or any portion thereof in eminent domain proceedings (including sale under threat of such proceedings), to the extent remaining after payment therefrom of all expenses incurred in the collection and administration thereof.

“Office” means with respect to the Trustee, the corporate trust office of the Trustee at 120 South San Pedro Street, Suite 400, Los Angeles, California 90012, or at such other or additional offices as may be specified in writing to the Authority and the City.

“Original Purchaser” means the original purchasers of the Bonds upon their delivery by the Trustee on the Closing Date.

“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: (a) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been discharged in accordance with the Indenture, including Bonds (or portions thereof) described in the Indenture; and (c) 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,” whenever used in the Indenture with respect to a Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books.

“Permitted Investments” means any of the following which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein:

1. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

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

- a. Farmers Home Administration (FmHA)  
Certificates of beneficial ownership
- b. Federal Housing Administration Debentures (FHA)
- c. General Services Administration  
Participation certificates
- d. Government National Mortgage Association (GNMA or “Ginnie Mae”)  
GNMA - guaranteed mortgage-backed bonds  
GHMA - guaranteed pass-through obligations (participation certificates)  
(not acceptable for certain cash-flow sensitive issues.)
- e. U.S. Maritime Administration  
Guaranteed Title XI financing
- f. U.S. Department of Housing and Urban Development (HUD)  
Project Notes  
Local Authority Bonds

3. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

- a. Federal Home Loan Bank System  
Senior debt obligations (Consolidated debt obligations)
- b. Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mae”)  
Participation Certificates (Mortgage-backed securities)  
Senior debt obligations
- c. Federal National Mortgage Association (FNMA or “Fannie Mae”) Mortgage-backed securities and senior debt obligations (excluded are stripped mortgage securities which are valued greater than par on the portion of unpaid principal).
- d. Student Loan Marketing Association (SLMA or “Sallie Mae”)  
Senior debt obligations
- e. Resolution Funding Corp. (REFCORP) Only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form are acceptable.
- f. Farm Credit System  
Consolidated system-wide bonds and notes

4. Money market funds registered under the Federal Investment Company of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAm-G; AAAm, or AA-m and if rated by Moody’s rated Aaa, Aa1 or Aa2 including funds for which the Trustee or an affiliate advises or services.

5. Certificates of deposit secured at all times by collateral described in (1) and/or (2) above. CD’s must have a one year or less maturity. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks whose term obligations are rated “A-1” or better by S&P and “Prime-1” by Moody’s.

The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

6. Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF, or secured at all times by collateral described in (1) or (2) above.

7. Investment agreements with a domestic or foreign bank or corporation, the long-term debt or financial strength of which, or, in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline financial guarantee insurance company, financial strength, of the guarantor is rated in at least the “double A” category by Moody’s and S&P; provided, that, by the terms of the investment agreement:

- a. interest payments are to be made to the Trustee at all times and in the amounts as necessary to pay debt service, applied as directed in the Indenture (or, if the investment agreement is for the construction fund, construction draws) on the Bonds;
- b. the invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven days’ prior notice; the Issuer and the Trustee hereby agree to

give or cause to be given notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;

c. the investment agreement shall state that it is the unconditional and general obligation of; and is not subordinated to any other obligation of, the provider thereof or, if the provider is a bank, the agreement or the opinion of counsel shall state that the obligation of the provider to make payments thereunder ranks *pari passu* with the obligations of the provider to its other depositors and its other unsecured and unsubordinated creditors;

d. the Issuer or the Trustee receives the opinion of domestic counsel (which opinion shall be addressed to the Issuer and Trustee) that such investment agreement is legal, valid, binding and unenforceable upon the provider in accordance with its terms and of foreign counsel (if applicable) in a form and substance acceptable by the Issuer;

e. the investment agreement shall provide that if during its term

(i) the provider's rating by either S&P or Moody's falls below "AA-" or "Aa3", respectively, the provider shall, at its option, within 10 days of receipt of publication of such downgrade, either (a) collateralize the investment agreement by delivering or transferring in accordance with the applicable state and federal laws (other than by means of entries on the provider's books) to the Issuer, the Trustee or a third party acting solely as agent therefor (the "Holder of the Collateral") collateral free and clear of any third party liens or claims the market value of which collateral is maintained at levels and upon such conditions as would be acceptable to S&P and Moody's to maintain an "A" rating in an "A" rated structured financing (with a market value approach); or (b) repay the principal of and accrued but unpaid interest on the investment (including such other amounts as are required to permit the Trustee to receive the initially contemplated yield through the term of the Agreement), or (c) assign its obligations thereunder to a financial counter-party, acceptable to the Issuer, and rated in the double A category by both Moody's and S&P; and

(ii) the provider's rating by either S&P or Moody's is withdrawn or suspended or falls below "A-" or "A3," respectively, the provider must, at the direction of the Issuer or the Trustee (who shall give such direction if so directed by the Issuer), within 10 days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the Issuer or Trustee; and

f. the investment agreement shall state and an opinion of counsel shall be rendered, in the event collateral is required to be pledged by the provider under the terms of the investment agreement, at the time such collateral is delivered, that the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Holder of the Collateral is in possession); or

g. the investment agreement must provide that if during its term

(i) the provider shall default in its payment obligations, the provider's obligation under the investment agreement shall, at the direction of the Issuer or the Trustee (who shall give such direction if so directed by the Issuer), be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Issuer or Trustee, as appropriate; and

(ii) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. (“event of insolvency”), the provider’s obligations shall automatically be accelerated and the amounts invested and accrued but unpaid interest thereon shall be repaid to the Issuer or Trustee, as appropriate.

8. Commercial paper rated “Prime-1” by Moody’s and “A-1+” or better by S&P.

9. Bonds or notes issued by any state or municipality which are rated by Moody’s and S&P in the highest long-term rating categories assigned by such agencies unless such obligations are issued by the State, in which case such obligations are rated in one of the two highest long-term rating categories of S&P and Moody’s.

10. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of “Prime-1” or “A3” or better by Moody’s and “A-1+” or better by S&P.

11. Repurchase agreements that provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to the Trustee (buyer/lender), and the transfer of cash from the Trustee to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the Trustee in exchange for the securities at a specified date.

Repurchase Agreements must satisfy the following criteria:

a. Repos must be between the municipal entity and a dealer bank or securities firm.

(1) Primary dealers on the Federal Reserve reporting dealer list which fall under the jurisdiction of the SIPC and which are rated A or better by Standard & Poor’s Ratings Group and Moody’, or

(2) Banks rated “A” or above by Standard & Poor’s Ratings Group and Moody’s Investor Services.

b. The written repo contract must include the following:

(1) Securities which are acceptable for transfer are:

(a) Direct U.S. governments.

(b) Federal agencies backed by the full faith and credit of the U.S. Government (and FNMA & FHLMC)

(2) The term of the repo maybe up to 30 years

(3) The collateral must be delivered to the municipal entity, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).

(4) The trustee has perfected first priority security interest in the collateral.

(5) Collateral is free and clear of third-party liens and in the case of SIPC broker was not acquired pursuant to a repo or reverse repo.



(6) Failure to maintain the requisite collateral percentage, after a two day restoration period, will require the trustee to liquidate collateral.

(7) Valuation of Collateral

- (a) The securities must be valued weekly, marked-to-market at a current market price plus interest.
- (b) The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.

c. Legal opinion which must be delivered to the municipal entity:

Repo meets guidelines under state law for legal investment of public funds.

12. Pre-refunded municipal bonds rated “Aaa” by Moody’s and “AAA” by S&P. If, however, the issue is only rated by S&P (i.e., there is no Moody’s rating), then the pre-refunded bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or AAA rated pre-refunded municipals to satisfy this condition.

13. State of California Local Agency Investment Fund (LAIF).

“Principal Account” means the account by that name established in the Bond Fund pursuant to the Indenture.

“Record Date” means, with respect to any Interest Payment Date, the fifteenth (15th) calendar day of the month preceding such Interest Payment Date.

“Redemption Fund” means the fund by that name established pursuant to the Indenture.

“Registration Books” means the records maintained by the Trustee pursuant to the Indenture for the registration and transfer of ownership of the Bonds.

“Representation Letter” means the letter of representations from the Authority to, or other instrument or agreement of the Authority with, a Book-Entry Depository in which the Authority, among other things, makes certain representations to such Depository with respect to the Bonds, the payment thereof and delivery of notices with respect thereto.

“Revenues” means: (a) all amounts received by the Authority or the Trustee pursuant to or with respect to the Lease Agreement, including, without limiting the generality of the foregoing, all of the Lease Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), but excluding any amounts payable under the Lease Agreement; and (b) all interest, profits or other income derived from the investment of amounts in any fund or account established pursuant to the Indenture.

“S&P” means Standard & Poor’s Rating Services, a division of the McGraw Hill Companies, Inc., its successors and assigns.

“Securities Depositories” means The Depository Trust Company, 55 Water Street, 50th Floor, New York, New York 10041-0099 Attn. Call Notification Department, Fax (212) 855-7232; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Authority may designate in a Written Certificate of the Authority delivered to the Trustee.

“Serial Bonds” means the Bonds maturing on October 1 in each of the years \_\_\_\_ through \_\_\_\_, inclusive.

“Sinking Account” means the account by that name established and held by the Trustee pursuant to the Indenture.

“State” means the State of California.

“Supplemental Indenture” means any indenture hereafter duly authorized and entered into between the Authority and the Trustee, supplementing, modifying or amending the Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

“Tax Code” means the Internal Revenue Code of 1986, as amended.

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

“Term Bonds” means the Bonds maturing on October 1, \_\_\_\_.

“Trustee” means MUFG Union Bank, N.A., a national banking association organized and existing under the laws of the United States of America, or its successor, as Trustee hereunder as provided in the Indenture.

“Undertaking to Provide Continuing Disclosure” means, as applicable, that certain Certificate of the Authority or the City, as applicable, by that name and dated as of the Closing Date and referred to, in the case of the Authority, in the Indenture, and in the case of the City, in the Lease Agreement.

“Written Certificate,” “Written Request” and “Written Requisition” of the Authority or the City mean, respectively, a written certificate, request or requisition signed in the name of the Authority or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“2006 Bonds” means the \$20,000,000 original principal amount of Encinitas Public Financing Authority 2006 Lease Revenue Bonds, Series A (Library Construction Project).

“2006 Indenture” means the Indenture of Trust, dated as of November 1, 2006, among the Authority, the City and the 2006 Trustee and relating to the 2001 Bonds.

“2006 Trustee” means MUFG Union Bank, N.A., as Trustee under the 2006 Indenture.

***Establishment and Application of Costs of Issuance Fund.*** The Trustee shall establish, maintain and hold in trust a separate fund designated as the “Costs of Issuance Fund.” The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Trustee to pay the Costs of Issuance upon submission of Written Requisitions of the Authority stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. On \_\_\_\_\_, or upon the earlier Written Request of the Authority, all amounts remaining in the Costs of Issuance Fund shall be transferred by the Trustee to the Bond Fund.

***Establishment and Application of Bond Proceeds Fund.*** The Trustee shall establish, maintain and hold in trust a separate fund designated as the “Bond Proceeds Fund.” The moneys in the Bond Proceeds Fund shall be used and withdrawn by the Trustee for transfer to the Escrow Agent as instructed by the Authority in writing. Upon such transfer, the Bond Proceeds Fund shall be closed.

***Validity of Bonds.*** The validity of the authorization and issuance of the Bonds is not dependent on and shall not be affected in any way by any proceedings taken by the Authority or the Trustee with respect to or in connection with the Lease Agreement. The recital contained in the Bonds that the same are issued pursuant to the Constitution and laws of the State shall be conclusive evidence of their validity and of compliance with the provisions of law in their issuance.

## **Revenues; Funds and Accounts; Payment of Principal and Interest**

### ***Pledge and Assignment; Bond Fund.***

(a) Subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture, all of the Revenues and any other amounts (including proceeds of the sale of the Bonds) held in any fund or account established pursuant to the Indenture are hereby pledged to secure the payment of the principal of and interest on the Bonds in accordance with their terms and the provisions of the Indenture. Said pledge shall constitute a lien on and security interest in such assets and shall attach, be perfected and be valid and binding from and after the Closing Date, without any physical delivery thereof or further act.

(b) The Authority hereby transfers in trust, grants a security interest in and assigns to the Trustee, for the benefit of the Owners from time to time of the Bonds, all of the Revenues and all of the rights of the Authority in the Lease Agreement (other than the rights of the Authority under the Indenture). The Trustee shall be entitled to and shall collect and receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. The Trustee also shall be entitled to and shall, subject to the provisions of the Indenture, take all steps, actions and proceedings which the Trustee determines to be reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the City under the Lease Agreement.

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

(a) The Trustee shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to be at least equal to the amount of interest becoming due and payable on such date on all Bonds then Outstanding.

(b) The Trustee shall deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Bonds coming due and payable on such date.

(c) The Trustee shall deposit in the Sinking Account an amount equal to the aggregate principal amount of the Term Bonds required to be redeemed on such date, if any, pursuant to the Indenture.

***Application of Interest Account.*** All amounts in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity pursuant to the Indenture).

***Application of Principal Account.*** All amounts in the Principal Account shall be used and withdrawn by the Trustee solely to pay the principal amount of the Bonds at their respective maturity dates.

***Application of Sinking Account.*** All moneys on deposit in the Sinking Account shall be used and withdrawn by the Trustee for the sole purpose of redeeming or purchasing (in lieu of redemption) Term Bonds pursuant to the Indenture.

***Application of Redemption Fund.*** When required the Trustee shall establish and maintain the Redemption Fund, amounts in which shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of on the Bonds to be redeemed pursuant to the Indenture; provided, however, that at any time prior to giving notice of redemption of any such Bonds, the Trustee may apply such amounts to the purchase of Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as shall be directed pursuant to a Written Request of the Authority received prior to the selection of Bonds for redemption, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Bonds.

***Insurance and Condemnation Fund.***

(a) Establishment of Fund. Upon the receipt of any proceeds of insurance or eminent domain with respect to any portion of the Leased Premises, the Trustee shall establish and maintain a separate Insurance and Condemnation Fund, to be held and applied as set forth in the Indenture.

(b) Application of Insurance Proceeds. Any proceeds of insurance against accident to or destruction of the Facilities collected by the City in the event of any such accident or destruction shall be applied in accordance with the Lease Agreement. The City shall cause any such proceeds to be paid to the Trustee for deposit in the Insurance and Condemnation Fund. If the City fails to determine and notify the Trustee in writing of its determination, within forty five (45) days following the date of such deposit, to replace, repair, restore, modify or improve the Facilities, then such proceeds shall be promptly transferred by the Trustee to the Redemption Fund and applied to the redemption of Bonds pursuant to the Indenture; provided, however, that such redemption will occur only if the fair rental value of the remaining portion of the Leased Premises is sufficient to allow the City to continue to make Lease Payments in amounts sufficient to pay debt service on the Bonds that remain Outstanding after such redemption. Notwithstanding the foregoing sentence, however, in the event of damage or destruction of the Facilities in full, the proceeds of such insurance shall be used by the City to rebuild or replace the Facilities if such proceeds are not sufficient, together with other available funds then held by the Trustee, to redeem all of the Outstanding Bonds. All proceeds deposited in the Insurance and Condemnation Fund and not so transferred to the Redemption Fund shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Facilities by the City, upon receipt of Written Requisitions of the City as agent for the Authority (i) stating with respect to each payment to be made (A) the requisition number, (B) the name and address of the person to whom payment is due, (C) the amount to be paid and (D) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund, has not been the basis of any previous withdrawal; (ii) specifying in reasonable detail the nature of the obligation; and (iii) accompanied by a bill or a statement of account for such obligation. The Trustee may conclusively rely on any such Written Requisitions. Any balance of the proceeds remaining after such work has been completed as certified by the City as agent for the Authority shall be paid to the City.

(c) Application of Eminent Domain Proceeds. If all or any part of the Leased Premises shall be taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent

domain) the proceeds therefrom shall be applied in accordance with the Lease Agreement. The City shall cause any such proceeds to be paid to the Trustee for deposit in the Insurance and Condemnation Fund, to be applied and disbursed by the Trustee as follows:

(i) If the City has not given written notice to the Trustee, within forty-five (45) days following the date on which such proceeds are deposited with the Trustee, of its determination that such proceeds are needed for the replacement of the Leased Premises or such portion thereof, the Trustee shall transfer such proceeds to the Redemption Fund to be applied towards the redemption of the Bonds pursuant to the Indenture.

(ii) If the City has given written notice to the Trustee, within forty five (45) days following the date on which such proceeds are deposited with the Trustee, of its determination that such proceeds are needed for replacement of the Leased Premises or such portion thereof, the Trustee shall pay to the City, or to its order, from said proceeds such amounts as the City may expend for such replacement, upon the filing of Written Requisitions of the City as agent for the Authority in the form and containing the provisions set forth in the Indenture and upon which the Trustee may conclusively rely.

**Investments.** All moneys in any of the funds or accounts established with the Trustee pursuant to the Indenture shall be invested by the Trustee solely in Permitted Investments which mature not later than the date such moneys are estimated by the Authority to be required. Such investments shall be directed by the Authority pursuant to a Written Request of the Authority filed with the Trustee at least two (2) Business Days in advance of the making of such investments (which Written Request shall certify that the investments constitute Permitted Investments). In the absence of any such directions from the Authority, the Trustee shall invest any such moneys in Permitted Investments described in clause (4) of the definition thereof provided, however, that any such investment shall be made by the Trustee only if, prior to the date on which such investment is to be made, the Trustee shall have received a written direction from the District specifying a specific money market fund and, if no such written direction from the district is so received, the Trustee shall hold such moneys uninvested. Permitted Investments purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account.

All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in the Bond Fund. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee, or an affiliate, may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made pursuant to the Indenture. Permitted Investments that are registered securities shall be registered in the name of the Trustee.

The Authority covenants that all investments of amounts deposited in any fund or account created by or pursuant to the Indenture, or otherwise containing proceeds of the Bonds, shall be acquired and disposed of at the Fair Market Value thereof.

**Valuation and Disposition of Investments.** For the purpose of determining the amount in any fund or account, all Permitted Investments credited to such fund or account shall be valued at the Fair Market Value thereof; provided, however, that investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code shall be valued at their present value (within the meaning of Section 148 of the Tax Code), consisting generally of the cost thereof. The Trustee shall have no duty in connection with the determination of Fair Market Value other than to follow the investment directions of the Authority.

## **Particular Covenants**

**Punctual Payment.** The Authority shall punctually pay or cause to be paid the principal of and interest and premium (if any) on all the Bonds in strict conformity with the terms of the Bonds and of the Indenture,

according to the true intent and meaning thereof, but only out of Revenues and other assets pledged for such payment as provided in the Indenture.

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

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

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

***Accounting Records and Financial Statements.*** The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate trust industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of Bonds, the Revenues, the Lease Agreement and all funds and accounts established pursuant to the Indenture. Such books of record and account shall be available for inspection by the Authority, the City, during business hours, upon reasonable notice, and under reasonable circumstances. The Trustee shall furnish the Authority periodic cash transaction statements which include detail for all investment transactions effected by the Trustee or brokers selected by the Authority, provided that the Trustee shall not be obligated to deliver any accounting of any fund or account that (a) has a balance of zero and (b) has not had any activity since the last reporting date. Upon the Authority's election, such statements will be delivered via the Trustee's online service and upon electing such service, paper statements will be provided only upon request. The Authority waives the right to receive brokerage confirmations of security transactions effected by the Trustee as they occur, to the extent permitted by law. The Authority further understands that trade confirmations for securities transactions effected by the Trustee will be available upon request and at no additional cost and other trade confirmation may be obtained from the applicable broker.

***Additional Obligations.*** The Authority may issue additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part pursuant to the Indenture, for the purpose of financing any construction of a new city hall or for any other municipal purpose, so long as no Event of Default hereunder has occurred and is continuing and provided that the conditions of the Lease Agreement have been satisfied.

***Tax Covenants.***

(a) **Private Activity Bond Limitation.** The Authority shall assure that the proceeds of the Bonds are not so used as to cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

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

(c) **No Arbitrage.** The Authority shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Tax Code.

(d) **Maintenance of Tax Exemption.** The Authority shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date.

(e) **Rebate of Excess Investment Earnings.** The Authority shall calculate or cause to be calculated all amounts of excess investment earnings with respect to the Bonds which are required to be rebated to the United States of America pursuant to Section 148(f) of the Tax Code, at the times and in the manner required pursuant to the Tax Code. The Authority shall pay or cause to be paid when due an amount equal to excess investment earnings to the United States of America in such amounts, at such times and in such manner as may be required pursuant to the Tax Code, such payments to be made from amounts provided by the City for such purpose pursuant to the Lease Agreement. The Authority shall keep or cause to be kept, and retain or cause to be retained for a period of six (6) years following the retirement of the Bonds, records of the determinations made pursuant to the Indenture. The Trustee shall have no duty to monitor the compliance by the Authority with any of the covenants contained in the Indenture.

***Lease Agreement.*** Subject to the provisions of the Indenture, the Trustee shall promptly collect all amounts due from the City pursuant to the Lease Agreement. Subject to the provisions of the Indenture, the Trustee shall enforce, and take all steps, actions and proceedings which the Trustee determines to be reasonably necessary for the enforcement of all of its rights thereunder as assignee of the Authority and for the enforcement of all of the obligations of the City under the Lease Agreement.

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

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

***Leased Premises.*** If an event of abatement occurs pursuant to the Lease Agreement, the City shall use its best efforts to the extent permissible under the laws of the State of California to make all lease payments in excess of the amount of rental interruption insurance, if necessary, in order to ensure the reconstruction, repair, restoration, modification or improvement of the Leased Premises.

## Events of Default and Remedies

***Events of Default.*** The following events shall be Events of Default hereunder:

(a) Default in the due and punctual payment of the principal of any Bonds when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by acceleration, or otherwise.

(b) Default in the due and punctual payment of any installment of interest on any Bonds when and as the same shall become due and payable.

(c) Default by the Authority in the observance of any of the other covenants, agreements or conditions on its part in the Indenture or in the Bonds contained, if such default shall have continued for a period of thirty (30) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the Authority by the Trustee; provided, however, that if in the reasonable opinion of the Authority the default stated in the notice can be corrected, but not within such thirty (30) day period, such default shall not constitute an Event of Default hereunder if the Authority shall commence to cure such default within such sixty (60) day period and thereafter diligently and in good faith cure such failure in a reasonable period of time.

(d) The occurrence and continuation of an event of default under and as defined in the Lease Agreement.

***No Acceleration Upon Event of Default.*** If any Event of Default shall occur there shall not be any right on the part of the Trustee or the Bondholders to declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately.

***Application of Revenues and Other Funds After Default.*** Notwithstanding anything to the contrary contained in the Indenture, if an Event of Default shall occur and be continuing, all Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of the Indenture shall be applied by the Trustee as follows and in the following order:

(a) To the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Owners of the Bonds and payment of reasonable fees, charges and expenses of the Trustee (including reasonable fees and disbursements of its counsel) incurred in and about the performance of its powers and duties under the Indenture;

(b) To the payment of the principal of and interest then due on the Bonds (upon presentation of the Bonds to be paid, and stamping or otherwise noting thereon of the payment if only partially paid, or surrender thereof if fully paid) in accordance with the provisions of the Indenture, as follows:

First. To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

Second. To the payment to the persons entitled thereto of the unpaid principal of any Bonds which shall have become due, whether at maturity or by acceleration or redemption, with interest on the overdue principal at the rate borne by the respective Bonds (to the extent permitted by law), and, if the amount available shall not be sufficient to pay in full all the Bonds, together with such interest, then to the payment thereof ratably, according to the



amounts of principal due on such date to the persons entitled thereto, without any discrimination or preference.

***Trustee to Represent Bond Owners.*** The Trustee is hereby 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 and applicable provisions of any 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 Bond Owners, the Trustee in its discretion may, and upon the written request of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, and upon being indemnified to its satisfaction therefor, the Trustee shall, proceed to protect or enforce its rights or the rights of 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 in the Indenture, or in aid of the execution of any power granted in the Indenture, or for the enforcement of any other appropriate legal or equitable right or remedy vested in the Trustee or in such Owners under the Bonds, the Indenture or any other law. Upon instituting such proceeding, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver of the 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.

Notwithstanding any other provision of the Indenture in determining whether the rights of the Bondholders will be adversely affected by any action taken pursuant to the terms and provisions of the Indenture, the Trustee shall consider the effect on the Bondholders as if there were no Insurance Policy.

***Bond Owners' Direction of Proceedings.*** Anything in the Indenture to the contrary notwithstanding, the Owners of a majority in aggregate principal amount 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 indemnification of the Trustee to its reasonable satisfaction, to direct the method of conducting all remedial proceedings taken by the Trustee hereunder, provided that such direction shall not be otherwise than in accordance with law and the provisions of the Indenture, and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would expose it to liability.

***Limitation on Bond Owners' Right to Sue.*** Notwithstanding any other provision in the Indenture, no Owner of any Bonds 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 Lease Agreement or any other applicable law with respect to such Bonds, unless (a) such Owner shall have given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of 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; (c) such Owner or Owners shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee shall have failed to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee; and (e) no direction inconsistent with such written request shall have been given to the Trustee during such sixty (60) day period by the Owners of a majority in aggregate principal amount 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 hereunder 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 Bonds, the Indenture, the Lease Agreement or other applicable law with respect to the Bonds, except in the manner provided in the Indenture, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner provided in the Indenture and for the benefit and protection of all Owners of the Outstanding Bonds, subject to the provisions of the Indenture.

***Absolute Obligation of Authority.*** Nothing in the Indenture or in any other provision of the Indenture or in the Bonds contained shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the principal of and interest and premium (if any) on the Bonds to the respective Owners of the Bonds at their respective dates of maturity, or upon call for redemption, as provided in the Indenture, but only out of the Revenues and other assets pledged in the Indenture, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Bonds.

***Termination of Proceedings.*** In case any proceedings taken by the Trustee or any one or more Bond 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 or the Bond Owners, then in every such case the Authority, the Trustee and the Bond Owners, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the Authority, the Trustee and the Bond 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 or to the Owners of the Bonds 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 hereunder or now or hereafter existing at law or in equity or otherwise.

***No Waiver of Default.*** No delay or omission of the Trustee or of any Owner of the Bonds to exercise any right or power arising upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and every power and remedy given by the Indenture to the Trustee or to the Owners of the Bonds may be exercised from time to time and as often as may be deemed expedient.

## **The Trustee**

### ***Duties, Immunities and Liabilities of Trustee.***

(a) The Trustee shall, prior to an Event of Default, and after the curing of all Events of Default which may have occurred, perform such duties and only such duties as are expressly and specifically set forth in the Indenture and no implied duties or covenants shall be read into the Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured), exercise such of the rights and powers vested in it by the Indenture, and use the same degree of care and skill in its exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Authority may remove the Trustee at any time unless an Event of Default shall have occurred and then be continuing, and the Authority shall remove the Trustee if at any time requested to do so by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or if at any time the Trustee shall cease to be eligible in accordance with the Indenture, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee and the City and thereupon shall appoint a successor Trustee by an instrument in writing. Any such removal shall be made upon at least thirty (30) days' prior written notice to the

Trustee. Upon giving such written notice of removal, the Authority shall promptly appoint a successor Trustee by an instrument in writing.

(c) The Trustee may at any time resign by giving written notice of such resignation to the Authority, to the City, and by giving the Bond Owners notice of such resignation by mail at the addresses shown on the Registration Books. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee by an instrument in writing.

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee; provided, however, that no removal resignation or termination of the Trustee shall take effect until a successor shall be appointed. If no successor Trustee shall have been appointed and have accepted appointment within forty five (45) days of giving notice of removal or notice of resignation as aforesaid, the Authority shall, and the Trustee may, petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under the Indenture, shall signify its acceptance of such appointment by executing and delivering to the Authority and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee in the Indenture; but, nevertheless at the Written Request of the Authority or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under the Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions set forth in the Indenture. Upon request of the successor Trustee, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in the Indenture, the Authority shall mail or cause the successor Trustee to mail a notice of the succession of such Trustee to the trusts hereunder to the Bond Owners at the addresses shown on the Registration Books. If the Authority fails to mail such notice within fifteen (15) days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Authority.

(e) Any Trustee appointed under the Indenture shall be a corporation or association organized and doing business under the laws of any state or the United States of America or the District of Columbia, authorized under such laws to exercise corporate trust powers, which shall have (or, in the case of a corporation included in a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least Seventy-Five Million Dollars (\$75,000,000), and subject to supervision or examination by federal or State agency, so long as any Bonds are Outstanding. If such corporation publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining agency above referred to then for the purpose of the Indenture, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of the Indenture, the Trustee shall resign immediately in the manner and with the effect specified in the Indenture.

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

### ***Liability of Trustee.***

(a) The recitals of facts in the Indenture and in the Bonds contained shall not be taken as statements of the Authority, and the Trustee shall not assume responsibility for the correctness of the same, or make any representations as to the validity or sufficiency of the Indenture, the Bonds or the Lease Agreement, nor shall the Trustee incur any responsibility in respect thereof, other than as expressly stated in the Indenture in connection with the respective duties or obligations in the Indenture or in the Bonds assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence. The Trustee may become the Owner of Bonds with the same rights it would have if it were not Trustee, and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bond Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under the Indenture.

(d) The Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by the Indenture.

(e) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder, or any other event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default hereunder unless and until it shall have actual knowledge thereof, or shall have received written notice thereof, at its Office. Except as otherwise expressly provided in the Indenture, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by the Authority or the City of any of the terms, conditions, covenants or agreements in the Indenture, under the Lease Agreement or of any of the documents executed in connection with the Bonds, or as to the existence of an Event of Default or an event which would, with the giving of notice, the passage of time, or both, constitute an Event of Default. The Trustee shall not be responsible for the validity, effectiveness or priority of any collateral given to or held by it. Without limiting the generality of the foregoing, the Trustee shall not be required to ascertain or inquire as to the performance or observance by the City and the Authority of the terms, conditions, covenants or agreements set forth in the Lease Agreement, other than the covenants of the City to make Additional Lease Payments to the Trustee when due and to file with the Trustee, when due, such reports and certifications as the City is required to file with the Trustee thereunder.

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

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

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

incurred by it in compliance with such request or direction. No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(i) Whether or not therein expressly so provided, every provision of the Indenture and the Lease Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of the Indenture.

(j) The Trustee shall not be concerned with or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions of the Indenture.

(k) The Trustee makes no representation or warranty, expressed or implied as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose for the use contemplated by the Authority or the City of the Leased Premises. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Lease Agreement or the Indenture for the existence, furnishing or use of the Leased Premises.

(l) The Trustee may establish such funds and accounts hereunder as it deems necessary or appropriate to perform its obligations hereunder.

***Right to Rely on Documents.*** The Trustee shall be protected in acting upon any notice, resolution, request, requisition, consent, order, certificate, report, opinion, bonds or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Trustee may treat the Owners of the Bonds appearing in the Registration Books as the absolute owners of the Bonds for all purposes and the Trustee shall not be affected by any notice to the contrary.

Whenever in the administration of the trusts imposed upon it by the Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be specifically prescribed in the Indenture) may be deemed to be conclusively proved and established by a Written Certificate, Written Request or Written Requisition of the Authority or the City, and such Written Certificate, Written Request or Written Requisition shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of the Indenture in reliance upon such Written Certificate, Written Request or Written Requisition, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

***Preservation and Inspection of Documents.*** All documents received by the Trustee under the provisions of the Indenture shall be retained in their respective possession and shall be subject at all reasonable times to the inspection of the Authority, the City and any Bond Owner, and their agents and representatives duly authorized in writing, at reasonable hours and under reasonable conditions.

***Compensation and Indemnification.*** The Authority shall pay to the Trustee (solely from Miscellaneous Rent) from time to time the compensation for all services rendered under the Indenture and also all reasonable expenses and disbursements, incurred in and about the performance of its powers and duties under the Indenture.

The Authority shall indemnify, defend and hold harmless the Trustee and its officers, directors, agents and employees, against any loss, liability or expense incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust, including costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any

of its powers hereunder. As security for the performance of the obligations of the Authority under the Indenture and the obligation of the City to pay Miscellaneous Rent to the Trustee, the Trustee shall have a lien prior to the lien of the Bonds upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of or interest on particular Bonds. The rights of the Trustee and the obligations of the Authority under the Indenture shall survive the discharge of the Bonds and the Indenture.

## **Modification or Amendment in the Indenture**

### ***Amendments Permitted.***

(a) The Indenture and the rights and obligations of the Authority and of the Owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time by an indenture or indentures supplemental thereto, which the Authority and the Trustee may enter into when the written consents of the Owners of a majority in aggregate principal amount of all Bonds then Outstanding, shall have been filed with the Trustee. No such modification or amendment shall (i) extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the Owner of each Bond so affected, or (ii) reduce the aforesaid percentage of Bonds 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 Revenues and other assets pledged under the Indenture prior to or on a parity with the lien created by the Indenture except as permitted in the Indenture, or deprive the Owners of the Bonds of the lien created by the Indenture on such Revenues and other assets (except as expressly provided in the Indenture), without the consent of the Owners of all of the Bonds then Outstanding. It shall not be necessary for the consent of the Bond Owners to approve the particular form of any Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof.

(b) The Indenture and the rights and obligations of the Authority, of the Trustee and the Owners of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the Authority and the Trustee may enter into without the consent of any Bond Owners, if the Trustee has been furnished an opinion of counsel that the provisions of such Supplemental Indenture shall not materially adversely affect the interests of the Owners of the Bonds, including, without limitation, for any one or more of the following purposes:

(i) to add to the covenants and agreements of the Authority 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 Authority in the Indenture;

(ii) 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 Authority may deem necessary or desirable, provided that such modification or amendment does not materially adversely affect the interests of the Bond Owners, in the opinion of Bond Counsel filed with the Trustee;

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

(iv) to modify, amend or supplement the Indenture in such manner as to cause interest on the Bonds to remain excludable from gross income under the Tax Code; or

(v) to facilitate the issuance of additional bonds of the Authority secured by Lease Payments of the City pursuant to the Indenture of the Lease Agreement.

(c) The Trustee may in its discretion, but shall not be obligated to, enter into any such Supplemental Indenture authorized by the Indenture which materially adversely affects the Trustee's own rights, duties or immunities under the Indenture or otherwise.

(d) Prior to the Trustee entering into any Supplemental Indenture hereunder, there shall be delivered to the Trustee an opinion of Bond Counsel stating, in substance, that such Supplemental Indenture has been adopted in compliance with the requirements of the Indenture and that the adoption of such Supplemental Indenture will not, in and of itself, adversely affect the exclusion from gross income for purposes of federal income taxes of interest on the Bonds.

***Effect of Supplemental Indenture.*** Upon the execution of any Supplemental Indenture pursuant to the Indenture, the Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under the Indenture of the Authority, the Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of the Indenture for any and all purposes.

***Endorsement of Bonds; Preparation of New Bonds.*** Bonds delivered after the execution of any Supplemental Indenture pursuant to the Indenture may, and if the Trustee so determines shall, bear a notation by endorsement or otherwise in form approved by the Authority and the Trustee as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand on the Owner of any Bonds Outstanding at the time of such execution and presentation of his Bonds for the purpose at the Office of the Trustee or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation shall be made on such Bonds. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Authority and the Trustee, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the Authority and authenticated by the Trustee, and upon demand on the Owners of any Bonds then Outstanding shall be exchanged at the Office of the Trustee, without cost to any Bond Owner, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amount of the same series and maturity.

***Amendment of Particular Bonds.*** The provisions of the Indenture shall not prevent, any Bond Owner from accepting any amendment as to the particular Bonds held by him.

## **Defeasance**

***Discharge of Indenture.*** Any or all of the Outstanding Bonds may be paid by the Authority in any of the following ways, provided that the Authority also pays or causes to be paid any other sums payable hereunder by the Authority:

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

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

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

If the Authority shall also pay or cause to be paid all other sums payable hereunder by the Authority, then and in that case, at the election of the Authority (evidenced by a Written Certificate of the Authority, filed with the Trustee, signifying the intention of the Authority to discharge all such indebtedness and the Indenture), and notwithstanding that any of such Bonds shall not have been surrendered for payment, the Indenture and the

pledge of Revenues and other assets made under the Indenture with respect to such Bonds and all covenants, agreements and other obligations of the Authority under the Indenture with respect to such Bonds shall cease, terminate, become void and be completely discharged and satisfied. In such event, upon the Written Request of the Authority, the Trustee shall execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver to the City all moneys or securities or other property held by it pursuant to the Indenture which are not required for the payment or redemption of any of such Bonds not theretofore surrendered for such payment or redemption.

***Discharge of Liability on Bonds.*** Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in the Indenture) to pay or redeem any Outstanding Bonds (whether upon or prior to the maturity or the redemption date of such Bonds), provided that, if such Bonds are to be redeemed prior to maturity, notice of such redemption shall have been given as provided in the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the Authority in respect of such Bonds shall cease, terminate and be completely discharged, and the Owners thereof shall thereafter be entitled only to payment out of such money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of the Indenture.

The Authority may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

***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 provided in the Indenture 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 of such Bonds and all unpaid interest thereon to the redemption date; or

(b) non-callable Federal Securities, the principal of and interest on which when due will, in the written opinion of an Independent Accountant filed with the City, the Authority and the Trustee, provide money sufficient to pay the principal of and interest and premium (if any) on the Bonds to be paid or redeemed, as such principal, interest and premium 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 provided in the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice;

provided, in each case, that (i) the Trustee shall have been irrevocably instructed (by the terms of the Indenture or by Written Request of the Authority) to apply such money to the payment of such principal, interest and premium (if any) with respect to such Bonds, and (ii) the Authority shall have delivered to the Trustee an opinion of Bond Counsel to the effect that such Bonds have been discharged in accordance with the Indenture (which opinion may rely upon and assume the accuracy of the Independent Accountant's opinion referred to above).

***Unclaimed Funds.*** Notwithstanding any provisions of the Indenture, and subject to applicable provisions of State law, any moneys held by the Trustee in trust for the payment of the principal of, or interest on, any Bonds and remaining unclaimed for two (2) years after the principal of such Bonds has become due and payable (whether at maturity or upon call for redemption or by acceleration as provided in the Indenture), if



such moneys were so held at such date, or two (2) years after the date of deposit of such moneys if deposited after said date when such Bonds became due and payable, shall be repaid to the Authority free from the trusts created by the Indenture upon receipt of a Written Request of the Authority, 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 Authority as aforesaid, the Trustee may (at the cost of the City) first mail to the Owners of Bonds which have not yet been paid, at the addresses shown on the Registration Books, 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 Authority of the moneys held for the payment thereof.

## **AMENDED AND RESTATED LEASE AGREEMENT**

### **Definitions and Exhibits**

**Definitions.** Unless the context clearly otherwise requires or unless otherwise defined in the Lease Agreement, the capitalized terms in the Lease Agreement shall have the respective meanings specified in the Indenture. In addition, the following terms heretofore defined in the Lease Agreement and the following terms defined in the Lease Agreement shall, for all purposes of the Lease Agreement, have the respective meanings specified in the Lease Agreement.

“City Parcels” means Parcel One as indicated on Exhibit A attached hereto.

“County” means the County of San Diego.

“County Lease” means the Ground Lease Agreement Encinitas Branch Library, dated March 11, 2003, by and between the County and the City.

“County Parcel” means Parcel Two as indicated on Exhibit A attached hereto.

“Event of Default” means any of the events of default defined as such in the Lease Agreement.

“Facilities” means all of the buildings, improvements and facilities at any time situated on the City Parcels and County Parcel and described in any amendment to the Lease Agreement and by reference incorporated therein.

“Fiscal Year” means the twelve month period beginning on July 1 of any year and ending on June 30 of the next succeeding year, or any other twelve month period established by the City as its fiscal year pursuant to written notice filed with the Authority and the Trustee.

“Ground Lease” means the Ground Lease Agreement, dated as of the date in the Lease Agreement, by and between the City, as lessor, and the Authority, as lessee.

“Hazardous Substance” means any substance, pollutant or contamination included in such (or any similar) term under any federal, state or local statute, law, ordinance, code or regulation now in effect or hereafter enacted or amended.

“Indenture” means the Indenture of Trust dated as of September 1, 2015, by and between the Authority and the Trustee, together with any duly authorized and executed amendments thereto.

“Lease Payment Date” means, with respect to any Interest Payment Date, the fifteenth (15th) calendar day of the month preceding such Interest Payment Date.

“Lease Payments” means the amounts payable by the City pursuant to the Lease Agreement, including any prepayment thereof pursuant hereto and including any amounts payable upon a delinquency in the payment thereof.

“Leased Premises” means the City Parcels and County Parcel subject to the provisions of the Lease Agreement, described in Exhibit A.

“Miscellaneous Rent” means the amounts of additional rental which are payable by the City pursuant to the Lease Agreement.

“Permitted Encumbrances” means, as of any time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may permit to remain unpaid pursuant to the Lease Agreement; (b) the County Lease; (c) the Lease Agreement, the Indenture and any other agreement or other document contemplated hereunder to be recorded against the Leased Premises; (d) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; and (e) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the City certifies in writing will not materially impair the use of the Leased Premises for their intended purposes.

“Term” means the time during which the Lease Agreement is in effect, as provided in the Lease Agreement.

“Trustee” means MUFG Union Bank, N.A. or any successor thereto acting as Trustee pursuant to the Indenture.

## **Representations, Covenants and Warranties**

***Representations, Covenants and Warranties of the City.*** The City makes the following covenants, representations and warranties to the Authority as of the date of the execution and delivery of the Lease Agreement:

(a) Due Organization and Existence. The City is a municipal corporation duly organized and validly existing under the laws of the State, has full legal right, power and authority under the laws of the State to enter into the Lease Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the City has duly authorized the execution and delivery of the Lease Agreement.

(b) Due Execution. The representatives of the City executing the Lease Agreement have been fully authorized to execute the same pursuant to a resolution duly adopted by the City Council of the City.

(c) Valid, Binding and Enforceable Obligations. The Lease Agreement has been duly authorized, executed and delivered by the City and constitutes the legal, valid and binding agreement of the City enforceable against the City in accordance with the terms of the Lease Agreement. The City further covenants that the County has consented to the City’s execution and delivery of the Lease Agreement and the Ground Lease pursuant to the provisions of the County Lease.

(d) No Conflicts. The execution and delivery of the Lease Agreement, the consummation of the transactions contemplated in the Lease Agreement and the fulfillment of or compliance with the terms and conditions of the Lease Agreement, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the

transactions contemplated by the Lease Agreement or the financial condition, assets, properties or operations of the City.

(e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Lease Agreement, or the consummation of any transaction contemplated in the Lease Agreement, except as have been obtained or made and as are in full force and effect.

(f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Lease Agreement, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Lease Agreement or the financial conditions, assets, properties or operations of the City.

(g) Essentiality. The Leased Premises constitutes property that is essential to carrying out the governmental functions of the City.

***Representations, Covenants and Warranties of Authority.*** The Authority makes the following covenants, representations and warranties to the City as of the date of the execution and delivery of the Lease Agreement:

(a) Due Organization and Existence. The Authority is a joint powers authority duly organized and existing under and by virtue of the laws of the State; has power to enter into the Lease Agreement, the Ground Lease, and the Indenture; is possessed of full power to own and hold, improve and equip real and personal property, and to lease and lease back the same; and has duly authorized the execution and delivery of each of the aforesaid agreements and such agreements constitute the legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms.

(b) Due Execution. The representatives of the Authority executing the Lease Agreement, the Ground Lease, and the Indenture are fully authorized to execute the same pursuant to official action taken by the governing body of the Authority.

(c) Valid Binding and Enforceable Obligations. The Lease Agreement, the Ground Lease, and the Indenture have been duly authorized, executed and delivered by the Authority and constitute the legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms.

(d) No Conflicts. The execution and delivery of the Lease Agreement, the Ground Lease and the Indenture, the consummation of the transactions in the Lease Agreement and therein contemplated and the fulfillment of or compliance with the terms and conditions of the Lease Agreement and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited

lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Lease Agreement, the Ground Lease, and the Indenture or the financial condition, assets, properties or operations of the Authority.

(e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Lease Agreement, the Ground Lease, or the Indenture, or the consummation of any transaction in the Lease Agreement or therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Lease Agreement, the Ground Lease, or the Indenture, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Lease Agreement, the Ground Lease, or the Indenture or the financial conditions, assets, properties or operations of the Authority.

## **The Bonds**

***The Bonds.*** The Authority has authorized the issuance of the Bonds pursuant to the Indenture in the aggregate principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Authority agrees that the proceeds of sale of the Bonds shall be paid to the Trustee on the Closing Date for deposit and application pursuant to the terms and conditions of the Indenture. The City hereby approves the Indenture, the assignment to the Trustee of the rights of the Authority assigned or purported to be assigned thereunder, and the issuance of the Bonds by the Authority thereunder.

***Refinancing of Leased Premises.*** In order to pay the Authority's lease payment for the Leased Premises hereunder, on the Closing Date, the Authority and the City shall execute all documents and take all action as may be required to refinance the Site by depositing sufficient funds with the Escrow Fund established under the Escrow Agreement.

***Payment of Costs of Issuance.*** Payment of all Costs of Issuance shall be made from the moneys deposited with the Trustee in the Costs of Issuance Fund, which moneys shall be disbursed for such purpose in accordance with the Indenture. Any Costs of Issuance for the payment of which insufficient funds shall be available on deposit in the Costs of Issuance Fund, shall be paid by the City.

## **Lease; Term of the Lease Agreement; Rental Payments**

### ***Lease by Authority and Lease Back to City.***

(a) The Lease Agreement supersedes and amends the 2006 Lease Agreement in its entirety. In consideration of the payment of \$\_\_\_\_\_ by the Authority less the Underwriters' Bond discount, plus original issue premium, and less the payment of Costs of Issuance, and in consideration of the execution of the Lease Agreement by the City, and other good and valuable consideration, the

City has leased to the Authority pursuant to that certain Amended and Restated Ground Lease Agreement, the Leased Premises for the Term of the Lease Agreement, plus one week following the end of the Term of the Lease Agreement.

(b) The Authority hereby leases the Leased Premises and Facilities to the City, and the City hereby leases the Leased Premises and Facilities from the Authority, upon the terms and conditions set forth in the Lease Agreement.

(c) The City hereby takes possession of the Leased Premises and Facilities on the Closing Date.

***Term of Lease Agreement.*** The Term of the Lease Agreement shall commence on \_\_\_\_\_, 2015 and shall end on October 1, 2036, unless such term is extended as provided in the Lease Agreement or unless Lease Payments have been paid or prepared in full or provision shall have been made for such payment pursuant to the Lease Agreement. If on October 1, 2036, the Indenture shall not be discharged by its terms or if the Lease Payments payable hereunder shall have been abated at any time and for any reason, then the Term of the Lease Agreement shall be extended until the earlier of October 1, 2046, or the date the Indenture shall be discharged by its terms. If prior to October 1, 2036, the Indenture shall be discharged by its terms and any amounts then owed to the Trustee have been paid in full, the Term of the Lease Agreement shall thereupon end.

***Lease Payments; Security Deposit.***

(a) Obligation to Pay. In consideration of the lease and lease back by the Authority of the Leased Premises and in consideration of the issuance of the Bonds by the Authority for the purpose of constructing the Facilities, and subject to the provisions of the Lease Agreement, the City agrees to pay to the Authority, its successors and assigns, as rental for the use and occupancy of the Leased Premises and Facilities during each Fiscal Year, the Lease Payments (denominated into components of principal and interest) for the Leased Premises in the respective amounts specified in Exhibit B hereto, to be due and payable on the Lease Payment Date specified in Exhibit B hereto. Any amount held in the Bond Fund (but not including amounts resulting from the prepayment of the Lease Payments in part but not in whole pursuant to the Lease Agreement) on any Lease Payment Date shall be credited towards the Lease Payment then due and payable. The Lease Payments coming due and payable in any Fiscal Year shall be for the use of the Leased Premises and Facilities for such Fiscal Year.

(b) Effect of Prepayment. In the event that the City prepays all Lease Payments in full pursuant to the Lease Agreement, the City's obligations under the Lease Agreement shall thereupon cease and terminate, including but not limited to the City's obligation to pay Lease Payments under the Lease Agreement. In the event that the City prepays the Lease Payments in part but not in whole pursuant to the Lease Agreement the Authority shall provide, or cause to be provided, to the Trustee and the City a revised schedule of Lease Payments due after such partial prepayment, which revised schedule of Lease Payments shall be sufficient to provide for the scheduled payment of remaining principal of and interest on the Bonds, and which schedule shall represent an adjustment to the schedule of Lease Payments set forth in Exhibit B hereto after taking into account said partial prepayment.

(c) Rate on Overdue Payments. In the event the City should fail to make any of the payments required in the Lease Agreement, the payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid, and the City agrees to pay the same with interest thereon, to the extent permitted by law, from the date of default to the date of payment at the rate per annum equal to the average interest rate on the Bonds. Such interest, if received, shall be deposited in the Bond Fund.

(d) Fair Rental Value. The Lease Payments and Miscellaneous Rent coming due and payable hereunder in each Fiscal Year shall constitute the total rental for the Leased Premises for each Fiscal Year and shall be paid by the City in each Fiscal Year for and in consideration of the right of the use and occupancy of,

and the continued quiet use and enjoyment of, the Leased Premises during each Fiscal Year. The parties hereto have agreed and determined that the total amount of such Lease Payments and Miscellaneous Rent for the Leased Premises do not exceed the fair rental value of the Leased Premises. In making such determination, consideration has been given to the obligations of the parties under the Lease Agreement, the uses and purposes which may be served by the Leased Premises and the benefits therefrom which will accrue to the City and the general public.

(e) Source of Payments; Budget and Appropriation. The Lease Payments shall be payable from any source of available funds of the City, subject to the provisions of the Lease Agreement. The City covenants to take such action as may be necessary to include all Lease Payments and Miscellaneous Rent due hereunder in each of its budgets during the Term of the Lease Agreement and to make the necessary annual appropriations for all such Lease Payments and Miscellaneous Rent. The covenants on the part of the City contained in the Lease Agreement shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in the Lease Agreement agreed to be carried out and performed by the City.

The City and the Authority understand and intend that the obligation of the City to pay Lease Payments, Miscellaneous Rent, and other payments hereunder constitutes a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the City, nor shall anything contained in the Lease Agreement constitute a pledge of the general tax revenues, funds or moneys of the City. Lease Payments and Miscellaneous Rent due hereunder shall be payable only from current funds which are budgeted and appropriated, or otherwise legally available, for the purpose of paying Lease Payments, Miscellaneous Rent, or other payments due hereunder as consideration for use of the Leased Premises during the Fiscal Year for which such funds were budgeted and appropriated or otherwise made legally available for such purpose. The Lease Agreement shall not create an immediate indebtedness for any aggregate payments which may become due hereunder. The City has not pledged the full faith and credit of the City, the State or any agency or department thereof to the payment of the Lease Payments or any other payments due hereunder, the Bonds or the interest thereon.

(f) Assignment. The City understands and agrees that all Lease Payments have been assigned by the Authority to the Trustee in trust, pursuant to the Indenture, for the benefit of the Owners of the Bonds, and the City hereby assents to such assignment. The Authority hereby directs the City, and the City hereby agrees, to pay all of the Lease Payments to the Trustee at its Office.

(g) Security Deposit. Notwithstanding any other provision of the Lease Agreement, the City may on any date secure the payment of the Lease Payments in whole or in part by depositing with the Trustee an amount of cash which, together with other available amounts, is either (i) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the related Lease Payment schedule set forth in Exhibit B, or (ii) invested in whole or in part in non callable Federal Securities in such amount as will, in the opinion of an Independent Accountant, together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay such Lease Payments when due hereunder or on any optional prepayment date pursuant to the Lease Agreement, as the City shall instruct at the time of said deposit. Said security deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of the Lease Agreement. In connection with the making of any such security deposit, the Authority shall take, and shall cause the Trustee to take, any actions necessary to remove the appropriate portions of the Leased Premises from the lien of the Lease Agreement.

(h) Delinquent Lease Payments. Any delinquent Lease Payment shall be made to the Trustee for application as set forth in the Indenture.

***Optional Prepayment.*** The City shall have the option to prepay the principal components of the Lease Payments in whole, or in part in any integral multiple of \$5,000, on any date on or after October 1, \_\_\_\_\_, by paying a prepayment price equal to the aggregate principal components of the Lease Payments to be prepaid, together with a prepayment premium equal to the premium (if any) required to be paid on the corresponding redemption of the Bonds pursuant to the Indenture and together with accrued interest to the prepayment date. Such prepayment price (except the interest portion thereof, which shall be deposited into the Interest Account) shall be deposited by the Trustee in the Redemption Fund to be applied to the redemption of Bonds pursuant to the Indenture. The City shall give the Authority written notice of its intention to exercise its option not less than sixty (60) days in advance of the date of exercise. Notwithstanding any such prepayment, as long as any Bonds remain Outstanding or any Miscellaneous Rent payments remain unpaid, the City shall not be relieved of its obligations hereunder as to such Bonds or such Miscellaneous Rent.

***Quiet Enjoyment.*** During the Term of the Lease Agreement, the Authority shall provide the City with quiet use and enjoyment of the Leased Premises, and the City shall, during such Term, peaceably and quietly have and hold and enjoy the Leased Premises without suit, trouble or hindrance from the Authority, except as expressly set forth in the Lease Agreement. The Authority will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Authority may lawfully do so. Notwithstanding the foregoing, the Authority shall have the right to inspect the Leased Premises as provided in the Lease Agreement.

***Title.*** During the Term of the Lease Agreement, the Authority shall hold a leasehold in the Leased Premises, and in any and all additions which comprise fixtures, repairs, replacements or modifications to the Leased Premises, except for those fixtures, repairs, replacements or modifications which are added to the Leased Premises by the City at its own expense and which may be removed without damaging the Leased Premises and except for any items added to the Leased Premises by the City pursuant to the Lease Agreement. All right, title and interest of the Authority in and to the Leased Premises shall be transferred to and vested in the City if (a) the City pays all of the Lease Payments and Miscellaneous Rent during the Term of the Lease Agreement as the same become due and payable, or if the City posts a security deposit for payment of the Lease Payments pursuant to the Lease Agreement or prepays the Lease Payments pursuant to the Lease Agreement if the City has paid in full all of the Miscellaneous Rent coming due and payable as of the date of such prepayment; and provided in any event that no Event of Default shall have occurred and be continuing. The Authority agrees to take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer of title.

***Miscellaneous Rent.*** In addition to the Lease Payments, the City shall pay when due the following items of Miscellaneous Rent:

- (a) all fees and expenses incurred by the Authority in connection with or by reason of its leasehold estate in the Leased Premises as and when the same become due and payable;
- (b) all reasonable compensation and indemnification to the Trustee pursuant to the Indenture for all services rendered under the Indenture and for all reasonable expenses, charges, costs, liabilities, legal fees and other disbursements incurred in and about the performance of its powers and duties under the Indenture;
- (c) the reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Trustee to prepare audits, financial statements, reports, opinions or provide such other services required under the Lease Agreement or the Indenture; and
- (d) the reasonable out of pocket expenses of the Authority in connection with the execution and delivery of the Lease Agreement or the Indenture, or in connection with the issuance of the Bonds, including but not limited to amounts payable pursuant to the Lease Agreement, including, but not

limited to, any and all expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds, or incurred by the Authority in connection with any litigation which may at any time be instituted involving the Lease Agreement, the Bonds, the Indenture or any of the other documents contemplated hereby or thereby, or otherwise incurred in connection with the administration of the Lease Agreement.

***Substitution or Release of Leased Premises.*** The City shall have, and is hereby granted, the option at any time and from time to time during the Term of the Lease Agreement, to substitute other land, facilities or improvements (the “Substitute Leased Premises”) for the Leased Premises and Facilities or any portion thereof (the “Former Leased Premises”) or to release a portion of the Leased Premises and Facilities (the “Released Premises”) from the lien of the Lease Agreement, provided that the City shall satisfy all of the following requirements which are hereby declared to be conditions precedent to such substitution or release:

(a) The City shall provide written notification of such substitution or release to the Trustee and Rating Agencies, which notice shall contain the certification that all conditions set forth in the Lease Agreement are met with respect to such substitution or release.

(b) The City shall take all actions and shall execute all documents required to subject the Substitute Leased Premises to the terms and provisions of the Lease Agreement, including the filing with the Authority and the Trustee an amended Exhibit A which adds thereto a description of the Substitute Leased Premises and deletes therefrom the description of the Former Leased Premises or the Released Premises, as applicable.

(c) (i) In the case of a substitution, the City shall determine, either through an MAI appraisal or some other means acceptable to the City, and certify in writing to the Authority and the Trustee that the fair rental value of the Substitute Leased Premises is at least equal to the fair rental value of the Former Leased Premises.

(ii) In the case of a release, the City shall determine, either through an MAI appraisal or some other acceptable means, and certify in writing to the Authority and the Trustee that the fair rental value of the remaining Leased Premises after removal of the Released Premises is at least equal to the then remaining Lease Payments.

(d) In the case of a substitution, the City shall certify in writing to the Authority and the Trustee that the Substitute Leased Premises (i) have no prior liens; (ii) serve the public purposes of the City; (iii) is essential to the governmental functions of the City; and (iv) constitute property which the City is permitted to lease under the laws of the State.

(e) In the case of a substitution, the City shall certify in writing to the Authority and the Trustee that the estimated useful life of the Substitute Leased Premises at least extends to the date on which the final Lease Payment becomes due and payable hereunder.

(f) In the case of a substitution, the City shall obtain a ALTA policy of title insurance meeting the requirements of the Lease Agreement with respect to any real property portion of the Substitute Leased Premises.

(g) In the case of a substitution, the substitution of the Substitute Leased Premises shall not cause the City to violate any of its covenants, representations and warranties made in the Lease Agreement.

(h) The City shall obtain and cause to be filed with the Trustee and the Authority an opinion of Bond Counsel stating that such substitution or release is permitted hereunder and does not cause interest on the Bonds to become includable in the gross income of the Bond Owners for federal income tax purposes.



From and after the date on which all of the foregoing conditions precedent to such substitution or release are satisfied, the Term of the Lease Agreement shall cease with respect to the Former Leased Premises or Released Premises, as applicable, and shall be continued with respect to the Substitute Leased Premises and the remaining Leased Premises and Facilities and all references in the Lease Agreement to the Former Leased Premises shall apply with full force and effect to the Substitute Leased Premises. The City shall not be entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such substitution or release.

#### **Maintenance; Taxes; Insurance; Use Limitations; and Other Matters**

***Maintenance, Utilities, Taxes and Assessments.*** Throughout the Term of the Lease Agreement, as part of the consideration for the rental of the Leased Premises and Facilities, all improvement, repair and maintenance of the Leased Premises and Facilities shall be the responsibility of the City and the City shall pay for or otherwise arrange for the payment of all utility services supplied to the Leased Premises and Facilities which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Premises and Facilities resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments provided in the Lease Agreement, the Authority agrees to provide only the Leased Premises and Facilities, as more specifically set forth in the Lease Agreement. The City waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the City under the terms of the Lease Agreement.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting the Leased Premises or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of the Lease Agreement as and when the same become due.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority shall notify the City that, in the opinion of independent counsel, by nonpayment of any such items, the interest of the Authority in the Leased Premises and Facilities will be materially endangered or the Leased Premises and Facilities or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority.

***Modification of Leased Premises.*** The City shall, at its own expense, have the right to make additions, modifications and improvements to the Leased Premises and Facilities. All additions, modifications and improvements to the Leased Premises and Facilities shall thereafter comprise part of the Leased Premises and Facilities and be subject to the provisions of the Lease Agreement. Such additions, modifications and improvements shall not in any way damage the Leased Premises and Facilities or cause the Leased Premises and Facilities to be used for purposes other than those authorized under the provisions of State and federal law and the County Lease, and shall not otherwise violate the terms of the County Lease; and the City shall file with the Trustee and the Authority a Certificate stating that, upon completion of any additions, modifications and improvements made thereto pursuant to the Lease Agreement, the Leased Premises and Facilities shall be of a value which is not substantially less than the value of the Leased Premises and Facilities immediately prior to the making of such additions, modifications and improvements. The City will not permit any mechanic's or other lien to be established or remain against the Leased Premises and Facilities for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the City pursuant to the Lease Agreement; provided that if any such lien is established and the City shall first notify or cause to be notified the Authority of the City's intention to do so, the City may in good faith

contest any lien filed or established against the Leased Premises and Facilities, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Authority with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Authority. The Authority will cooperate fully in any such contest, upon the request and at the expense of the City.

***Public Liability and Property Damage Insurance.*** The City shall maintain or cause to be maintained throughout the Term of the Lease Agreement, but only if and to the extent available from reputable insurers at reasonable cost in the reasonable opinion of the City, a standard comprehensive general insurance policy or policies in protection of the Authority, City, and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$3,000,000 for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of \$100,000 (subject to a deductible clause of not to exceed \$25,000) of damage to property resulting from each accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy or policies in the amount of \$3,000,000 (subject to a deductible clause of not to exceed \$25,000) covering all such risks. Such policy or policies shall provide coverage in such liability limits and be subject to such deductibles as the City shall deem adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self insurance by the City, subject to the provisions of the Lease Agreement, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. In the case of the City's self-insurance of public liability and workers' compensation, the City may maintain a self-insured retention, and pay up to \$500,000 of each liability claim and up to \$300,000 of each worker's compensation claim, so long as the provisions of the Lease Agreement have been met. The proceeds of such liability insurance shall be applied by the City toward extinguishment or satisfaction of the liability with respect to which paid.

***Casualty Insurance.*** The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of the Lease Agreement, insurance against loss or damage to any Facilities by fire and lightning, with extended coverage and vandalism and malicious mischief insurance. Said extended coverage insurance, if required, shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance, and shall include earthquake coverage if such coverage is available at reasonable cost from reputable insurers in the judgment of the City's risk manager. Such insurance shall be in an amount at least equal to the lesser of (a) one hundred percent (100%) of the replacement cost of the Facilities; or (b) the aggregate unpaid principal components of the Lease Payments allocable to the Facilities. Such insurance may be subject to such deductibles as the City shall deem prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The Net Proceeds of such insurance shall be applied as provided in the Lease Agreement.

Each policy of insurance to be maintained by the City pursuant to the Lease Agreement shall (a) provide for the full payment of insurance proceeds up to the applicable dollar limit in connection with damage to the Leased Premises and Facilities and shall, under no circumstances, be contingent upon the degree of damage sustained at other facilities owned or leased by the City; and (b) explicitly waive any co-insurance penalty.

***Rental Interruption Insurance.*** The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of the Lease Agreement, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any Facilities on the Leased Premises, as a result of any of the hazards covered by the insurance required by the Lease Agreement, in an amount at least equal to the maximum Lease Payments allocable to the Facilities coming due and payable during any future twenty-four (24) month period. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The proceeds of such insurance, if any, shall be paid to

the Trustee and deposited in the Bond Fund, and shall be applied for the uses and purposes set forth in the Indenture.

***Recordation; Title Insurance.*** On or before the Closing Date the City shall, at its expense, (a) cause the Lease Agreement, or a memorandum in form and substance approved by Bond Counsel, to be recorded in the office of the San Diego County Recorder; and (b) obtain a ALTA policy of title insurance insuring the City's leasehold estate hereunder, subject only to Permitted Encumbrances, in an amount at least equal to the aggregate principal amount of the Bonds. All Net Proceeds received under said policy shall be deposited with the Trustee in the Redemption Fund and shall be applied to the redemption of the Bonds pursuant to the Indenture.

***Net Proceeds of Insurance; Form of Policies.***

(a) Each policy of insurance maintained pursuant to the Lease Agreement shall name the Trustee as loss payee so as to provide that all proceeds thereunder shall be payable to the Trustee and shall name the Authority, the City and the Trustee as insureds. The City shall pay or cause to be paid when due the premiums for all insurance policies required by the Lease Agreement. All such policies shall provide that the Trustee shall be given thirty (30) days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. The Trustee shall not be responsible for the sufficiency or amount of any insurance or self-insurance required in the Lease Agreement and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss. The City shall cause to be delivered to the Trustee annually, no later than May 1 in each year, a certificate stating that all of the insurance policies required by the Lease Agreement are in full force and effect and identifying whether any such insurance is then maintained in the form of self insurance.

(b) In the event that any insurance maintained pursuant to the Lease Agreement shall be provided in the form of self insurance, the City shall file with the Trustee annually, within ninety (90) days following the close of each Fiscal Year, a statement of the risk manager of the City or an independent insurance adviser engaged by the City identifying the extent of such self-insurance and stating the determination that the City maintains sufficient reserves with respect thereto. In the event that any such insurance shall be provided in the form of self insurance by the City, the City shall not be obligated to make any payment with respect to any insured event except from such reserves. The Trustee shall not be responsible for the sufficiency or adequacy of any insurance required in the Lease Agreement and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Trustee.

(c) If the City shall fail to perform any of its obligations under the Lease Agreement, the Authority or the Trustee may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as soon as possible, with interest at the rate payable by the Authority on the Bonds from the date of the advance to the date of repayment.

***Installation of Personal Property.*** The City may, at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed items of equipment or other personal property in or upon any portion of the Leased Premises. All such items shall remain the sole property of the City, in which neither the Authority nor the Trustee shall have any interest, and may be modified or removed by the City at any time provided that the City shall repair and restore any and all damage to the Leased Premises and Facilities resulting from the installation, modification or removal of any such items. Nothing in the Lease Agreement shall prevent the City from purchasing or leasing items to be installed pursuant to the Lease Agreement under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Leased Premises and Facilities.

***Liens.*** Neither the City nor the Authority shall, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to any portion of the Leased

Premises and Facilities, other than the respective rights of the Authority and the City as provided in the Lease Agreement and other than Permitted Encumbrances. Except as expressly provided in the Lease Agreement, the City and the Authority shall promptly, at their own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The City shall reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

***Tax Covenants.***

(a) Private Activity Bond Limitation. The City shall assure that the proceeds of the Bonds are not so used as to cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(b) Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(c) No Arbitrage. The City shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Tax Code.

(d) Maintenance of Tax Exemption. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date.

***Payment of Rebatable Amounts.*** The City agrees to furnish all information to, and cooperate fully with, the Authority and their respective officers, employees, agents and attorneys, in order to assure compliance with the provisions of the Indenture. In the event that the Authority shall determine, pursuant to the Indenture, that any amounts are due and payable to the United States of America thereunder and that neither the Authority nor the Trustee has on deposit an amount of available moneys (excluding moneys on deposit in the funds and accounts established for the payment of the principal of or interest or redemption premium, if any, on the Bonds) to make such payment, the Authority shall promptly notify the City of such fact. Upon receipt of any such notice, the City shall promptly pay the amounts determined by the Authority to be due and payable to the United States of America under the Lease Agreement, such payments to be made in accordance with the applicable provisions of the Tax Code.

***Continuing Disclosure.*** The City hereby covenants and agrees that it will comply with and carry out all of the provisions of its Undertaking to Provide Continuing Disclosure with respect to the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof. Notwithstanding any other provision of the Lease Agreement, failure of the City to comply with such Undertaking to Provide Continuing Disclosure shall not be considered an Event of Default; however, any Bondholder may take such actions, as provided in such Undertaking to Provide Continuing Disclosure, as may be necessary and appropriate to cause the City to comply with its obligations under such Undertaking to Provide Continuing Disclosure.

**Damage, Destruction and Eminent Domain; Use of Net Proceeds**

***Eminent Domain.*** If all of the Leased Premises shall be taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of the Lease Agreement shall cease as of the day possession shall be so taken. If less than all of the Leased Premises shall be taken permanently, or if all of the Leased Premises or any part thereof shall be taken temporarily under the power of eminent domain, (a) the Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary; and (b) there

shall be a partial abatement of Lease Payments in an amount to be agreed upon by the City and the Authority such that the resulting Lease Payments for the Leased Premises, represent fair consideration for the use and occupancy of the remaining usable portion of the Leased Premises.

***Application of Net Proceeds.***

(a) From Insurance Award. The Net Proceeds of any insurance award resulting from any damage to or destruction of the Leased Premises by fire or other casualty shall be deposited in its Insurance and Condemnation Fund or the Redemption fund, as applicable, by the Trustee and applied in accordance with the Indenture.

(b) From Eminent Domain Award. The Net Proceeds of any eminent domain award resulting from any event described in the Lease Agreement shall be deposited in the Insurance and Condemnation Fund or the Redemption Fund, as applicable, by the Trustee and applied in accordance with the Indenture.

***Abatement of Lease Payments in the Event of Damage or Destruction.*** The Lease Payments allocable to the Leased Premises shall be abated during any period in which by reason of damage or destruction (other than by eminent domain which is provided for in the Lease Agreement) there is substantial interference with the use and occupancy by the City of the Leased Premises and Facilities or any portion thereof. The amounts of the Lease Payments under such circumstances may not be less than the amounts of the unpaid Lease Payments, unless such unpaid amounts are determined to be greater than the fair rental value of the portions of the Leased Premises and Facilities not damaged or destroyed, based upon the opinion of an MAI appraiser with expertise in valuing such properties or other appropriate method of valuation, in which event the Lease Payments shall be abated such that they represent said fair rental value. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, the Lease Agreement shall continue in full force and effect and the City waives any right to terminate the Lease Agreement by virtue of any such damage and destruction. Notwithstanding the foregoing, there may be no abatement of Lease Payments to the extent that (a) the proceeds of rental interruption insurance, are available to pay Lease Payments; or (b) amounts in the Bond Fund are available to pay Debt Service payable from Lease Payments which would otherwise be abated.

**Disclaimer of Warranties; Access**

***Disclaimer of Warranties.*** Neither the Authority nor the Trustee makes any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the Leased Premises and Facilities, or any other representation or warranty with respect to the Leased Premises and Facilities. In no event shall the Authority, the Trustee, and their respective assigns be liable for incidental, indirect, special or consequential damages in connection with or arising out of the Lease Agreement or the Indenture for the existence, furnishing, functioning or the City's use of the Leased Premises and Facilities.

***Rights of Access.*** The City agrees that the Authority and any Authorized Representative of the Authority, and the Authority's successors or assigns, shall have the right at all reasonable times to enter upon and to examine and inspect the Leased Premises and Facilities. The City further agrees that the Authority, any Authorized Representative of the Authority, and the Authority's successors or assigns shall have such rights of access to the Leased Premises and Facilities as may be reasonably necessary to cause the proper maintenance of the Leased Premises and Facilities in the event of failure by the City to perform its obligations hereunder.

***Release and Indemnification Covenants.*** The City shall and hereby agrees to indemnify and save the Authority and the Trustee, and their respective officers, agents, successors and assigns, harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Leased Premises and Facilities by the City; (b) any breach or default on the part of the City in the performance of any of its

obligations under the Lease Agreement; (c) any act or negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Premises and Facilities; (d) the use, presence, storage, disposal of any Hazardous Substances on or about the Leased Premises and Facilities; (e) any act or negligence of any sublessee of the City with respect to the Leased Premises and Facilities; or (f) the Trustee's acceptance or administration of the Indenture or the exercise or performance of any of its powers or duties thereunder or hereunder. No indemnification is made under the Lease Agreement or elsewhere in the Lease Agreement for willful misconduct or negligence under the Lease Agreement by the Authority or the Trustee or any of their respective officers, agents, employees, successors or assigns.

### **Assignment, Subleasing and Amendment**

***Assignment by the Authority.*** The Authority's rights under the Lease Agreement, including the right to receive and enforce payment of the Lease Payments to be made by the City under the Lease Agreement, have been pledged and assigned to the Trustee for the benefit of the Owners of the Bonds pursuant to the Indenture, to which pledge and assignment the City hereby consents. The assignment of the Lease Agreement to the Trustee is solely in its capacity as Trustee under the Indenture and the duties, powers and liabilities of the Trustee in acting hereunder shall be subject to the provisions of the Indenture, including, without limitation, the provisions of the Indenture.

***Assignment and Subleasing by the City.*** The Lease Agreement may not be assigned by the City. The City may sublease the Leased Premises and Facilities or any portion thereof, but only with the written consent of the County pursuant to the County Lease, and the Authority and subject to all of the following conditions:

- (a) the Lease Agreement and the obligation of the City to make Lease Payments hereunder shall remain obligations of the City;
- (b) the City shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Authority and the Trustee a true and complete copy of such sublease;
- (c) no such sublease by the City shall cause the Leased Premises and Facilities to be used for a purpose other than as may be authorized under the provisions of the laws of the State and the County Lease; and
- (d) the City shall furnish the Authority and the Trustee with a written opinion of Bond Counsel, stating that such sublease is permitted by the Lease Agreement and the Indenture, and will not cause the interest on the Bonds to become included in gross income for federal income tax purposes.

***Amendment of Lease Agreement.*** The Authority and the City may at any time amend or modify any of the provisions of the Lease Agreement, but only (a) with the prior written consent of a majority in aggregate principal amount of the Outstanding Bonds, or (b) without the consent of any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City contained in the Lease Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power reserved in the Lease Agreement to or conferred upon the City;
- (ii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in the Lease Agreement, or in any other respect whatsoever as the Authority and the City may deem necessary or desirable, provided that, in the opinion of Bond Counsel, such modifications or amendments will not materially adversely affect the interests of the Owners of the Bonds;

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

(iv) to amend the description of the Leased Premises set forth in Exhibit A hereto or to reflect accurately the property originally intended to be included therein, or in connection with any substitution or release pursuant to the Lease Agreement; or

(v) to obligate the City to pay additional amounts of rental hereunder for the use and occupancy of the Leased Premises and Facilities, provided that (A) no Event of Default has occurred and is continuing under the Lease, (B) such additional amounts of rental do not cause the total rental payments made by the City hereunder to exceed the fair rental value of the Leased Premises and Facilities, as set forth in a certificate of a City Representative filed with the Trustee and the Authority, (C) the City shall have obtained and filed with the Trustee and the Authority a Written Certificate of an Authorized Representative of the City showing that the fair rental value of the Leased Premises and Facilities is not less than the sum of the aggregate unpaid principal components of the Lease Payments and the aggregate principal components of such additional amounts of rental, (D) such additional amounts of rental are pledged or assigned for the payment of any bonds, notes, leases or other obligations the proceeds of which shall be applied to finance the construction or acquisition of land, facilities or other improvements which are authorized pursuant to the laws of the State, and (E) such additional rental is not at variable rates.

***City's Termination or Breach of County Lease.*** In the event that the County or City Terminates the County Library Services Agreement, or in the event of a breach of the County Lease by the City, the City hereby agrees that it will either purchase the County Parcel pursuant to the Lease Agreement of the County Lease, or substitute the Leased Premises hereunder with Substitute Leased Premises pursuant to the Lease Agreement.

#### **Events of Default; Remedies**

***Events of Default Defined.*** The following shall be "Events of Default" under the Lease Agreement:

(a) Failure by the City to pay any Lease Payment required to be paid hereunder at the time specified in the Lease Agreement.

(b) Failure by the City to make any Miscellaneous Rent payment required hereunder and the continuation of such failure for a period of thirty (30) days.

(c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding clauses (a) or (b), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee; provided, however, that if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such sixty (60) day period, such failure shall not constitute an Event of Default if the City shall commence to cure such failure within such sixty (60) day period and thereafter diligently and in good faith shall cure such failure in a reasonable period of time.

(d) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of applicable federal bankruptcy law, or under any similar acts which may hereafter be enacted.

***Remedies on Default.*** Whenever any Event of Default referred to in the Lease Agreement shall have happened and be continuing, it shall be lawful for the Authority to exercise any and all remedies available pursuant to law or granted pursuant to the Lease Agreement; provided, however, that notwithstanding anything to the contrary in the Lease Agreement or in the Indenture, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable or to terminate the Lease Agreement or to cause the leasehold interest of the Authority or the subleasehold interest of the City in the City Parcels and County Parcel to be sold, assigned or otherwise alienated. Additionally, any exercise of remedies hereunder shall be limited by the provisions of the County Lease and the Leased Premises and Facilities shall be used solely for public library purposes, unless the provisions of the Lease Agreement have been exercised by the City. Each and every covenant of the Lease Agreement to be kept and performed by the City is expressly made a condition and upon the breach thereof the Authority may exercise any and all rights of entry and re-entry upon the Leased Premises and Facilities, subject to the provisions of the County Lease. In the event of such default and notwithstanding any re entry by the Authority, the City shall, as expressly provided in the Lease Agreement, continue to remain liable for the payment of the Lease Payments and/or damages for breach of the Lease Agreement and the performance of all conditions contained in the Lease Agreement, and in any event such rent and damages shall be payable to the Authority at the time and in the manner as provided in the Lease Agreement, to wit:

(a) The City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions contained in the Lease Agreement and shall reimburse the Authority for any deficiency arising out of the re-leasing of the Leased Premises and Facilities, or, in the event the Authority is unable to relet the Leased Premises and Facilities, then for the full amount of all Lease Payments to the end of the Term of the Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner provided in the Lease Agreement for the payment of Lease Payments hereunder, notwithstanding such entry or re entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re entry or obtaining possession of the Leased Premises and Facilities or the exercise of any other remedy by the Authority.

(b) The City hereby irrevocably appoints the Authority as the agent and attorney in fact of the City to enter upon and re lease the Leased Premises and Facilities in the event of default by the City in the performance of any covenants contained in the Lease Agreement to be performed by the City and to remove all personal property whatsoever situated upon the Leased Premises and Facilities to place such property in storage or other suitable place in the County of San Diego, for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re leasing of the Leased Premises and Facilities and the removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions contained in the Lease Agreement.

(c) The City hereby waives any and all claims for damages caused or which may be caused by the Authority in re-entering and taking possession of the Leased Premises and Facilities as provided in the Lease Agreement and all claims for damages that may result from the destruction of or injury to the Leased Premises and Facilities and all claims for damages to or loss of any property belonging to the City that may be in or upon the Leased Premises and Facilities.

(d) The City agrees that the terms of the Lease Agreement constitute full and sufficient notice of the right of the Authority to re lease the Leased Premises and Facilities in the event of such re-entry without effecting a surrender of the Lease Agreement, and further agrees that no acts of the Authority in effecting such releasing shall constitute a surrender or termination of the Lease Agreement irrespective of the term for which such re leasing is made or the terms and conditions of such re leasing, or otherwise.



(e) The City further waives the right to any rental obtained by the Authority in excess of the Lease Payments and hereby conveys and releases such excess to the Authority as compensation to the Authority for its services in re leasing the Leased Premises and Facilities.

***No Remedy Exclusive.*** No remedy conferred upon or reserved to the Authority in the Lease Agreement is intended to be exclusive and every such remedy shall be cumulative and shall, except as expressly provided in the Lease Agreement to the contrary, be in addition to every other remedy given under the Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in the Lease Agreement it shall not be necessary to give any notice, other than such notice as may be required in the Lease Agreement or by law.

***Agreement to Pay Attorneys' Fees and Expenses.*** In the event either party to the Lease Agreement should default under any of the provisions of the Lease Agreement and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party contained in the Lease Agreement, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party.

***No Additional Waiver Implied by One Waiver.*** In the event any agreement contained in the Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

***Trustee and Bondholder to Exercise Rights.*** Such rights and remedies as are given to the Authority under the Lease Agreement have been assigned by the Authority to the Trustee under the Indenture, to which assignment the City hereby consents. Such rights and remedies shall be exercised by the Trustee and the Owners of the Bonds as provided in the Indenture.

## **APPENDIX D**

### **FORM OF OPINION OF BOND COUNSEL**

[Closing Date]

Encinitas Public Financing Authority  
505 Vulcan Avenue  
Encinitas, CA 92024

Re:     \$ \_\_\_\_\_ Encinitas Public Financing Authority 2015 Lease Revenue Refunding  
       Bonds Series A (Library Project)

Ladies and Gentlemen:

We have reviewed the Constitution and laws of the State of California and certain proceedings taken by the Encinitas Public Financing Authority (the “Authority”) in connection with the issuance by the Authority of the Encinitas Public Financing Authority 2015 Lease Revenue Refunding Bonds (Library Project) (the “Bonds”), pursuant to the provisions of Article 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code (the “Law”) and pursuant to an Indenture of Trust, dated as of September 1, 2015 (the “Indenture of Trust”), by and between MUFG Union Bank, N.A., as trustee (the “Trustee”), and the Authority. The proceeds of the Bonds will be applied by the Authority to refinance improvements to the City’s public library (the “City”). The Authority and the City have entered into an Amended and Restated Lease Agreement, dated as of September 1, 2015 (the “Lease Agreement”), whereby the City has leased from the Authority certain City facilities and property (the “Leased Premises”) and the City will make Lease Payments for the Leased Premises to the Authority. Pursuant to the Indenture of Trust, the Lease Payments have been assigned by the Authority to the Trustee and will be used by the Trustee to pay the principal of and interest on the Bonds. We have examined the Indenture of Trust, the Lease Agreement and such certified proceedings and other documents and materials as we deem necessary to render this opinion.

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

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

The Authority is a joint powers authority duly organized and validly existing under the laws of the State of California, with power to enter into the Indenture of Trust and the Lease Agreement, to perform the agreements on its part contained therein and to issue the Bonds;

The Bonds constitute the valid and legally binding special obligations of the Authority enforceable in accordance with their terms and payable solely from the sources provided therefor in the Indenture of Trust;

The Indenture of Trust and the Lease Agreement have been duly approved by the Authority and constitute the valid and legally binding obligations of the Authority enforceable against the Authority in accordance with their respective terms;

The Indenture of Trust establishes a lien on and pledge of the Revenues (as such term is defined in the Indenture of Trust) which consist of Lease Payments and other funds pledged thereby for the security of the Bonds, in accordance with the terms of the Indenture of Trust;

Interest on the Bonds is exempt from California personal income taxation.

The Internal Revenue Code of 1986, as amended (the "Code"), sets forth certain investment, rebate and related requirements which must be met subsequent to the delivery of the Bonds for the interest received by the owners of the Bonds to be and remain excluded from gross income for purposes of federal income taxation. Noncompliance with such requirements could cause the interest on the Bonds to be subject to federal income taxation retroactive to the date of delivery of the Bonds. Pursuant to the Indenture of Trust the Authority has covenanted to comply with the requirements of the Code. Assuming compliance with the aforementioned covenant, we are of the opinion that, under existing statutes, regulations, rulings and court decisions, the interest on the Bonds is excluded from gross income for purposes of federal income taxation. Interest on the Bonds is not a specific preference item for purposes of the alternative minimum tax provisions of the Code. We are further of the opinion that interest on the Bonds received by corporations will be included in corporate adjusted current earnings, a portion of which may increase the alternative minimum taxable income of such corporations. Although the interest on the Bonds is excluded from gross income for purposes of federal income taxation, the accrual or receipt of interest on the Bonds, or any portion thereof, may otherwise affect the federal income tax liability of the recipient. The extent of these other tax consequences will depend on the recipient's particular tax status or other items of income or deduction. We express no opinion regarding any such consequences.

Our opinions, expressed herein, may be affected by action taken (or not taken) on events occurring (or not occurring) after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions or events are taken or occur.

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

Respectfully submitted,

## APPENDIX E

### FORM OF CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “Disclosure Agreement”) is executed and delivered by the City of Encinitas (the “City”) and the Encinitas Public Financing Authority (the “Authority”) in connection with the issuance of the Authority’s \$\_\_\_\_\_ aggregate principal amount 2015 Lease Revenue Refunding Bonds, Series A (Library Project) (the “Bonds”). The Bonds have been issued pursuant to an Indenture of Trust dated as of September 1, 2015, between the Authority and MUFG Union Bank, N.A., as trustee (the “Trustee”) (the “Indenture”). The City and the Authority covenant and agree as follows:

**Section 1. Purpose of the Disclosure Agreement.** This Disclosure Agreement is being executed and delivered by the City and the Authority for the benefit of the holders and beneficial owners of the Bonds.

**Section 2. Definitions.**

(a) “Annual Report” means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

(b) “Dissemination Agent” means, initially, Applied Best Practices, LLC, as Dissemination Agent, or any successor Dissemination Agent designated in writing by the City which has filed with the City a written acceptance of such designation.

(c) “Participating Underwriter” means \_\_\_\_\_, or any other financial institution required to comply with the Rule in connection with the reoffering of the Bonds.

(d) “Official Statement” means the Official Statement dated \_\_\_\_\_, 2015, prepared in connection with the issuance of the Bonds.

(e) “Repository” means the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access (EMMA) system, and any other Nationally Recognized Municipal Securities Information Repository for purposes of the Rule.

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

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

(h) “MSRB” means the Municipal Securities Rulemaking Board.

(i) “SEC” means the Securities and Exchange Commission.

**Section 3. Provision of Annual Reports.**

(a) The City shall, or shall cause the Dissemination Agent to, not later than March 1 in each year while the Bonds are outstanding commencing on March 1, 2016, provide to each Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. Not later than fifteen (15) business days prior to said date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). The Annual Report may be submitted as a single document or separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report.

(b) If the City is unable to provide to the Repository an Annual Report by the date required in subsection (a), the City shall send a notice to the MSRB in substantially the form attached as Exhibit A hereto.

(c) The Dissemination Agent shall:

(i) Determine each year prior to the date for providing the Annual Report the name and address of the Repository; and (if the Dissemination Agent is other than the City).

(ii) File a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and listing all Repositories to which it was provided.

**Section 4. Content of Annual Reports.** The City's Annual Report shall contain or incorporate by reference the following:

(a) A copy of its annual financial statements prepared in accordance with generally accepted accounting principles, audited by a firm of certified public accountants. If audited annual financial statements are not available by the time specified in Section 3(a) above, unaudited financial statements will be provided as part of the Annual Report and audited financial statements will be provided when and if available. In such an event, the Disclosure Agreement shall contain a statement as to the estimated date on which the City's audited financial statements are expected to be available.

(b) The following information, to the extent not included in the audited financial statements of the City, shall include the following:

(i) information concerning the actual revenues, expenditures and beginning and ending fund balances relating to the General Fund of the City for the most recently completed Fiscal Year, including information showing tax revenue collections by source (Table A-9);

(ii) information showing the aggregate principal amount of long-term bonds, leases and other obligations of the City which are payable out of the General Fund of the City, as of the close of the most recently completed Fiscal Year (Table A-7);

(iii) information concerning the assessed valuation of properties within the City for the most recently completed Fiscal Year, showing the valuation for secured, public utility and unsecured property (Table A-11);

(iv) information showing the total secured property tax levy and actual amounts collected for the most recently completed Fiscal Year (Table A-12); and

(v) information showing the balance sheet of the General Fund of the City as of the close of the most recently completed Fiscal Year, including categorized assets, liabilities and reserved and unreserved fund balances (Table A-8).

(c) In addition to any of the information expressly required to be provided under paragraphs (a) and (b) of this Section, the City shall provide such further information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

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

**Section 5.      Reporting of Significant Events.**

(a) Pursuant to the provisions of this Section 5, the City and the Authority shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds in a timely manner not in excess of 10 business days after the occurrence of the event:

1. principal and interest payment delinquencies.
2. tender offers.
3. defeasances.
4. rating changes.
5. adverse tax opinions, or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, or Notices of Proposed Issue (IRS Form 5701-TEB).
6. unscheduled draws on the debt service reserves reflecting financial difficulties.
7. unscheduled draws on credit enhancement reflecting financial difficulties.
8. substitution of the credit or liquidity providers or their failure to perform.
9. bankruptcy, insolvency, receivership or similar event of the City or Authority. For the purposes of the event identified in this Section 5(a)(9), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City or Authority in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City or Authority, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City or Authority.

(b) Pursuant to the provisions of this Section 5, the City and Authority shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

1. non-payment related defaults.
2. modifications to rights of bondholders.
3. optional, contingent or unscheduled note calls.
4. unless described under Section 5(a)(5) above, material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds.
5. release, substitution or sale of property securing repayment of the Bonds.
6. the consummation of a merger, consolidation, or acquisition involving the City or Authority or the sale of all or substantially all of the assets of the City or Authority, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms.

7. Appointment of a successor or additional trustee or paying agent with respect to the Bonds or the change of name of such a trustee or paying agent.

(c) Whenever the City or Authority obtains knowledge of the occurrence of a Listed Event under Section 5(b) hereof, the City or Authority shall as soon as possible determine if such event would be material under applicable federal securities laws.

(d) If the City or Authority determines that knowledge of the occurrence of a Listed Event under Section 5(c) hereof would be material under applicable federal securities laws, the City or Authority shall (i) file a notice of such occurrence with the Repository in a timely manner not in excess of 10 business days after the occurrence of the event or (ii) provide notice of such reportable event to the Dissemination Agent in format suitable for filing with the Repository in a timely manner not in excess of 10 business days after the occurrence of the event. The Dissemination Agent shall have no duty to independently prepare or file any report of Listed Events. The Dissemination Agent may conclusively rely on the City's or Authority's determination of materiality pursuant to Section 5(c).

**Section 6. Termination of Reporting Obligation.** The City's and the Authority's obligations under this Disclosure Agreement shall be in effect from and after the execution and delivery of the Bonds and shall extend to the earlier of (i) the date all principal and interest on the Bonds shall have been deemed paid pursuant to the terms of the Indenture; (ii) the date that the City and the Authority shall no longer constitute an "obligated person" within the meaning of the Rule.

**Section 7. Enforcement.** The obligations of the City and the Authority hereunder shall be for the benefit of the Participating Underwriter and the Owners of the Bonds, including Beneficial Owners of the Bonds. Unless otherwise required by law, no owners of the Bonds shall be entitled to damages for the City's or the Authority's non-compliance with its undertakings set forth in this Disclosure Agreement; however, the Participating Underwriter, and Owners of the Bonds, including Beneficial Owners of the Bonds, may enforce specific performance of such undertakings by any judicial proceeding available. Breach of the undertakings of the City and the Authority hereunder shall not constitute an event of default under the Indenture and none of the rights and remedies provided by the Indenture with respect to an event of default, shall be available to the Participating Underwriter, Owners of the Bonds, including Beneficial Owners.

**Section 8. Dissemination Agent; Duties.** The City or the Authority may, from time to time, appoint or engage a Dissemination Agent to assist the City in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent.

The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement. The obligations of the City under this Disclosure Agreement shall survive resignation or removal of the Dissemination Agent.

The Dissemination Agent shall be paid compensation by the Authority for its services provided hereunder in accordance with its schedule of fees as amended from time to time and shall be reimbursed by the Authority all expenses, legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder. Neither the Dissemination Agent nor the Trustee shall have any duty or obligation to review any information provided to it hereunder or shall be deemed to be acting in any fiduciary capacity for the Authority, the owners of the Bonds or any other party. Any company succeeding to all or substantially all of the Dissemination Agent's corporate trust business shall be the successor to the Dissemination Agent hereunder without the execution or filing of any document or any further act.

**Section 9. Amendment; Waiver.** Notwithstanding any other provision of this Disclosure Agreement, the City and the Authority may amend this Disclosure Agreement, and any provision of this Disclosure Agreement may be waived, if (i) such amendment or waiver does not, in and of itself, cause the

undertakings herein to violate the Rule, but taking into account any subsequent change in or official interpretation of the Rule and the amendment or waiver either (i) is approved by the Owners of the 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 Bonds. The City shall provide notice of any such amendment or waiver to each Repository.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the City 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 City. In addition, if the amendment related 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 and (ii) the Annual Report for the year in which the change is made should represent 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 10. Default.** In the event of a failure of the City or the Authority to comply with any provision of this Disclosure Agreement, the Trustee at the written direction of the Participating Underwriter or the Owners of at least 25% aggregate principal amount of Outstanding Bonds, shall, or any Owner or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Agreement, but only to the extent funds have been provided to it or it has been otherwise indemnified to its satisfaction from any cost, liability, expense or additional charges of the Trustee whatsoever, including, without limitation, fees and expenses of its attorney. 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 shall be an action to compel performance.

**Section 11. Additional Information.** Nothing in this Disclosure Agreement shall be deemed to prevent the City or the Authority 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 an event other than a Significant Event, in addition to that which is required by this Disclosure Agreement. If the City chooses to include any information in any Annual Report or notice of the occurrence of an event other than a Significant Event in addition to what is specifically required by this Disclosure Agreement, the City 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 Significant Event.

**Section 12. Beneficiaries.** This Disclosure Agreement shall inure solely to the benefit of the City, the Authority, the Trustee, the Dissemination Agent, the Underwriter and Owners and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.



**Section 13. 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: \_\_\_\_\_

**CITY OF ENCINITAS**

By: \_\_\_\_\_  
Authorized Signature

**ENCINITAS PUBLIC FINANCING  
AUTHORITY**

By: \_\_\_\_\_  
Authorized Signature

ACCEPTED BY:

**APPLIED BEST PRACTICES, LLC as  
Dissemination Agent**

By: \_\_\_\_\_  
Authorized Signature

**EXHIBIT A**

**NOTICE TO REPOSITORY OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer:           Encinitas Public Financing Authority  
  
                                  (the "Issuer")

Issue:                     2015 Lease Revenue Refunding Bonds, Series A (Library Project)

Date of Delivery:        September 1, 2015

NOTICE IS HEREBY GIVEN that the Issuer has not provided an Annual Report with respect to the above-referenced Bonds as required by resolution of the governing board of the Issuer and by the Continuing Disclosure Agreement executed on \_\_\_\_\_ by the Issuer and the City of Encinitas. The Issuer anticipates that the Annual Report will be filed on or before \_\_\_\_\_.

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

**ENCINITAS PUBLIC FINANCING AUTHORITY**

By: \_\_\_\_\_  
                                  Authorized Signature

[THIS PAGE INTENTIONALLY LEFT BLANK]

## APPENDIX F

### BOOK-ENTRY PROVISIONS

*The information in this Appendix concerning DTC and DTC's book-entry only system has been obtained from sources that the Authority and the Underwriter believe to be reliable, but neither the Authority or the Underwriter take any responsibility for the completeness or accuracy thereof. The following description of the procedures and record keeping with respect to beneficial ownership interests in the Bonds, payment of principal, premium, if any, and interest on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfers of beneficial ownership interests in the Bonds and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC.*

The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the Bonds. The 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 will be issued for each annual maturity of the 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 a Standard & Poor's rating of AA+. 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).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("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 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 bonds representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all 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 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 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such 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 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the 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 Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to 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 Authority 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 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the 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 Authority 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 DTC, the Trustee, or the Authority, 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 Authority 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.

A Bond Owner shall give notice to elect to have its Bonds purchased or tendered, through its Participant, to the Trustee, and shall effect delivery of such Bonds by causing the Direct Participant to transfer the Participant's interest in the Bonds, on DTC's records, to the Trustee. The requirement for physical delivery of Bonds in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Bonds are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Bonds to the Trustee's DTC account.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Authority or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, physical certificates are required to be printed and delivered.

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

THE TRUSTEE, AS LONG AS A BOOK-ENTRY ONLY SYSTEM IS USED FOR THE BONDS, WILL SEND ANY NOTICE OF REDEMPTION OR OTHER NOTICES TO OWNERS ONLY TO DTC. ANY FAILURE OF DTC TO ADVISE ANY DTC PARTICIPANT, OR OF ANY DTC PARTICIPANT TO NOTIFY ANY BENEFICIAL OWNER, OF ANY NOTICE AND ITS CONTENT OR EFFECT WILL NOT

AFFECT THE VALIDITY OF SUFFICIENCY OF THE PROCEEDINGS RELATING TO THE REDEMPTION OF THE BONDS CALLED FOR REDEMPTION OR OF ANY OTHER ACTION PREMISED ON SUCH NOTICE.

[THIS PAGE INTENTIONALLY LEFT BLANK]







Printed by: ImageMaster, LLC  
[www.imagemaster.com](http://www.imagemaster.com)